
Final Report

June 22, 2011

City of Portland Disparity Study

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Prepared for

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Table of Contents

ES. Executive Summary

What are the City’s current efforts?.....	ES-1
What are the key results of the study?.....	ES-1
Who performed the disparity study?.....	ES-5
Did interested groups and the general public have an opportunity to provide input?	ES-5
What does a disparity study include?.....	ES-6
How was the availability analysis performed.....	ES-7
Of the firms available for City construction and construction-related professional services work, what share are minority- or women-owned?.....	ES-9
What percentage of City construction and construction-related professional services contract dollars might be expected to go to minority- and women-owned firms?	ES-10
Was there a disparity between utilization and availability of minority- and women-owned firms on City construction and PTE contracts?	ES-11
Did utilization exceed availability for each MBE group?	ES-12
What role do City programs play in addressing potential disparities in City construction and PTE contracts?	ES-13
But for the City’s programs to encourage utilization of MBEs and WBEs, would there have been disparities in the utilization of minority- and women-owned firms?	ES-13
Is there any evidence that availability of minority- and women-owned firms in the local marketplace has been affected by race or gender discrimination?	ES-15
How should the City use this information?	ES-15

1. Introduction

A. The City’s M\W\ESB-Related Fair Contracting Programs	1-2
B. Disparity Study Team	1-4
C. Study Scope.....	1-5

2. Legal Framework

A. U.S. Supreme Court Decisions Regarding MBE Programs	2-1
B. Standard for Evaluating the Validity of Race-conscious Programs.....	2-2
C. Standard for Evaluating the Validity of Gender-conscious Programs	2-4
D. Summary	2-4

3. Collection and Analysis of City of Portland Contracts

A. Collection and Analysis of Contract Data.....	3-1
B. Contracts Included in the Study	3-2
C. Identification of Ownership (Race/Ethnicity/Gender) of Utilized Firms.....	3-4
D. Differences in Approach from Past Utilization Reports	3-5

Table of Contents

4.	Marketplace Conditions for Minorities and Women	
	A. Entry and Advancement of Minorities and Women.....	4-2
	B. Business Ownership	4-4
	C. Access to Capital, Bonding and Insurance	4-8
	D. Success of Businesses.....	4-12
	E. Summary.....	4-17
5.	Availability of MBE/WBEs for City of Portland Contracts	
	A. Purpose of the Availability Analysis.....	5-1
	B. Collecting Information on Potentially Available Firms.....	5-1
	C. Number of Firms Included in the Availability Database	5-6
	D. Definitions of MBE/WBEs and ESBs.....	5-6
	E. Calculation of MBE/WBE Availability as Inputs to the Disparity Analysis	5-7
	F. Implications for any MBE/WBE Contract Goals.....	5-10
	G. Other Approaches to Measuring Availability	5-11
6.	MBE/WBE Utilization and Disparity Analysis for City of Portland Construction Contracts	
	A. Utilization Results	6-1
	B. Disparity Analysis	6-11
7.	MBE/WBE Utilization and Disparity Analysis for City of Portland Construction-Related Professional Services Contracts	
	A. Utilization Results	7-1
	B. Disparity Analysis	7-12
8.	Exploration of Possible Causes of Any Disparities in City Contracting	
	A. Why are there disparities for MBEs on certain City construction prime contracts?.....	8-1
	B. Why are there disparities for certain City construction subcontracts?.....	8-15
	C. Why are there disparities for certain City construction-related professional services prime contracts	8-16
	D. Use of MBE/WBEs as subconsultants on certain City construction-related professional services subcontracts	8-21
	E. Summary.....	8-21

Table of Contents

9. Summary of Evidence	
A. Marketplace Analysis	9-1
B. Disparity Analyses for Construction Prime Contracts	9-2
C. Disparity Analyses for Construction Subcontracts	9-3
D. Disparity Analyses for Construction-related PTE Prime Contracts.....	9-4
E. Disparity Analysis for Subcontracts on Construction-related Professional Services Contracts...	9-5
F. Summary	9-5
10. Contracting Practices and Business Assistance Programs	
A. Efforts to Remove Barriers to Entry and Advancement	10-1
B. Business Assistance Efforts	10-2
C. Changes or Additions to City Contracting Policies and Procedures.....	10-5
D. Changes to the Sheltered Market Program.....	10-9
E. New Joint-venture Program for Larger Contracts	10-11
F. Good Faith Efforts Program.....	10-12
G. Other City Programs	10-14
H. Other Program Options	10-15
Appendices	
A. Definition of Terms.....	A-1
B. Legal Framework and Analysis.....	B-1
C. Collection of Availability Information.....	C-1
D. Availability Survey	D-1
E. Entry and Advancement in the Portland Construction and Professional Services Industries	E-1
F. Business Ownership in the Portland Construction and Professional Services Industries.....	F-1
G. Access to Capital for Business Formation and Success	G-1
H. Success of Businesses in the Portland Construction and Professional, Technical and Expert Services Industries	H-1
I. Description of Data Sources for Marketplace Analyses	I-1
J. Summary of Anecdotal Interviews	J-1
K. Inventory of Neutral Programs	K-1
L. Detailed Disparity Results – Construction	L-1
M. Detailed Disparity Results – Professional Services.....	M-1

CHAPTER ES.

Executive Summary

The City of Portland and the Portland Development Commission (PDC) engaged a team led by BBC Research & Consulting (BBC) to study whether their current efforts to promote a “level playing field” for minority- and women-owned firms (MBE/WBEs) in City and PDC contracting were effective and whether other programs are needed. The BBC study team examined the construction and construction-related professional services industries in the Portland metropolitan area.

Throughout the country, a number of groups have filed lawsuits challenging the legality of MBE/WBE programs. Disparity studies are a court-approved method that helps public agencies determine whether there is a need for programs to assist MBEs and WBEs and whether those programs comply with relevant court decisions.

The BBC disparity study follows court guidelines for the collection and analysis of quantitative and qualitative information regarding opportunities for MBEs and WBEs in public contracts and in the local marketplace as a whole. BBC’s methodology was recently reviewed and approved by a court within the Ninth Circuit.¹

What are the City’s current efforts?

The City encourages utilization of minority- and women-owned firms on City contracts as part of its fair contracting and small business support programs. These programs include:

- Professional Services Marketing and Outreach Program;
- Sheltered Market Program (SMP); and
- Good Faith Efforts (GFE) Program.

What were the key results of the study?

Courts have held that public agencies operating a program that specifically assist minority- and women-owned firms must demonstrate:

1. A strong basis in evidence that discrimination affects minority- and women-owned firms; and
2. That any program adopted is *narrowly tailored* to achieve the goal of remedying the specific identified discrimination. A number of elements determine whether a program is narrowly tailored.

1. Evidence. The City’s current programs have a positive effect on the overall utilization of minority- and women-owned firms in City construction and construction-related professional services contracts. However, as explained in this Executive Summary and the body of the disparity study report, BBC identified evidence of disparities in the utilization of MBEs and WBEs on City and PDC contracts *when City and PDC programs did not apply*. For example, there are disparities in the use of

¹ *Associated General Contractors of America, San Diego Chapter v. California Department of Transportation, et al.*

MBEs as subcontractors on City construction contracts without the GFE Program. There is also evidence of disparities in the utilization of MBE/WBEs as prime contractors on City construction contracts outside the Sheltered Market Program. There were also disparities in the utilization of MBEs and WBEs on PDC contracts when MBE/WBE programs did not apply.

But for City programs, there is evidence that there would be disparities in the City's overall utilization of MBEs and WBEs.

Even with City efforts, there was evidence of disparities for certain MBE groups and WBEs. For example, WBEs received about 5 percent of construction-related professional services prime contract dollars, which is lower than what those firms might be expected to receive based on availability. As discussed in Chapter 8, one reason behind the disparities for WBEs on City construction-related professional services contracts may be low actual use of WBEs once they were awarded on-call contracts.

There is also evidence of disparities within the local marketplace.

- Annual revenue of certain MBE groups and WBEs is lower than other firms in the Portland area construction and construction-related professional services industries.
- There is evidence that minorities and women face greater disadvantages than other firm owners when seeking capital, bonding and insurance.
- There is also quantitative and qualitative evidence that MBE/WBEs face barriers to working as prime contractors and as subcontractors on local public sector contracts.
- There is evidence that the current availability of MBEs and WBEs to perform City construction and construction-related professional services contracts is less than what might be expected if minorities and women had the same opportunities as non-minorities and men to enter and advance within these industries, and form and grow their businesses.

The disparity study included in-depth personal interviews with local trade associations and business owners, thousands of telephone interviews with business representatives, and oral and written statements from the public. In this research, a number of individuals reported that discrimination affects MBEs and WBEs in the Portland metropolitan area. Some have urged the City to strengthen its programs that assist minority- and women-owned firms.

The City will need to assess the results of this disparity study and other information it has to determine an appropriate course of action. Its independent assessment of whether this combined information meets the requirements for MBE/WBE programs is a necessary first step in planning the future of any City efforts.

2. Narrow-tailoring of City programs. Any MBE/WBE program operated by the City must also be narrowly tailored. Court review of narrow tailoring includes:

- Whether the government agency seriously considered workable race-neutral means to increase minority business participation in contracting (e.g., simplification of bidding procedures, relaxation of bonding requirements and training);

- Limitation of the remedy to only those minority groups for which there is evidence of discrimination in the local area;
- The flexibility and duration of the relief, including the availability of waiver provisions;
- The relationship of numerical goals to the relevant labor market; and
- The impact of race-, ethnicity-, or gender-conscious remedies on the rights of third parties.

In sum, the City should only implement those programs to assist minority- and women-owned firms that are necessary to remedy any effects of identified discrimination. If neutral measures like small business assistance efforts alone would be an adequate remedy, courts would not consider race- and gender-based programs to be narrowly-tailored.

The BBC study team reviewed the City’s current efforts to assist small businesses in general (“neutral programs”) plus a wide range of changes to City policies and potential new City programs to assist all small businesses. In addition, the study team examined ways to strengthen or add to programs that assist minority- and women-owned firms.

Individuals participating in the public forum and providing other comments have given considerable input as part of the disparity study process. Many urged stronger actions to open more City contracting opportunities to minority- and women-owned businesses. Some individuals indicated that past City programs have not been successful in building a strong core of minority- and women-owned firms that can compete for City and other work without assistance. Some individuals said that the City should not have MBE/WBE programs. (Appendix J of the report includes this information.)

The information collected in this study supports stronger City action to remove barriers to MBE/WBE participation in its contracts, foster more contract opportunities for MBE/WBEs, and help to build a strong minority- and women-owned business community in the Portland area. Although many past City initiatives have had a positive effect on MBEs and WBEs, there are substantial opportunities for improvement and expansion of such efforts. The City will need to determine whether this is solely done through neutral programs or whether continued or stronger programs that specifically assist MBE/WBEs are also needed.

Continuation and expansion of neutral efforts. The BBC study team suggests the City consider the following continued or new efforts (alone or in combination with MBE/WBE programs):

- Continued support for workforce and hiring programs that help to open doors for groups underrepresented in the construction industry (see Chapter 10, page 1);
- Continued support of technical assistance services (Chapter 10, page 2);
- Continuation of the City’s Small Business Liaison program (Chapter 10, page 3);
- Either support for the Port of Portland’s mentor-protégé program or a new program (Chapter 10, page 3);
- Serving as a referral source for existing small business finance and capital assistance programs (Chapter 10, page 3);

- Continued outreach and other support for local organizations by attending events, referring businesses and sponsoring programs (Chapter 10, page 4);
- Serving as a referral source for local business incubators and possibly financially supporting one or more business incubators (Chapter 10, page 4);
- Encouraging more subcontracting on City contracts (minimum subcontracting program similar to a City of Los Angeles program as discussed on page 5 of Chapter 10);
- A requirement to evaluate when contracts can be divided into multiple smaller contracts (Chapter 10, page 6);
- More use of alternative contracting method for City construction contracts (Chapter 10, page 6);
- Strong enforcement of prime contractor prompt payment to subcontractors (Chapter 10, page 6);
- Providing a means for businesses to electronically register as a vendor when applying for business licenses through the City (Chapter 10, page 7);
- Providing City-specific contracting training to local service providers so that they can better educate local businesses on how to do business with the City (Chapter 10, page 7);
- Partnering with other local government agencies and private firms to host a construction management or engineering institute (Chapter 10, page 7); and
- Launching an online training program for firms (Chapter 10, page 7).

Each of the above initiatives can be designed to be race- and gender-neutral, and many are in place at the City.

Changes to City prequalification process. The BBC study team found that the City’s current prequalification process limits opportunities for City prime construction contracts for small firms, including MBE/WBEs. Because MBEs and WBEs tend to be smaller firms, the prequalification process may present a more substantial barrier to City construction prime contracts for those firms. There is also some indication that outcomes of the prequalification process differ for MBEs and WBEs compared with similar majority-owned firms. Chapter 10 of the report presents detailed options for the City to consider that would minimize the negative impact of prequalification on MBE/WBEs. Alternatively, the City could consider eliminating prequalification as a City standard practice.

Initiatives to minimize or remove barriers created by bonding and insurance requirements. Bonding and insurance requirements on City contracts present barriers for all small businesses, particularly minority- and women-owned firms. Chapter 10 of the report examines a number of ways the City could lessen the negative impact of bonding and insurance requirements, including relaxing or waiving bonding and insurance requirements when possible.

Changes to the Sheltered Market Program. The City might strengthen its current Sheltered Market Program through actions by including larger City contracts in the program, changing eligibility requirements for the program and adding a second tier to the program for somewhat larger

contractors. Based on its review of the evidence and past program performance, City might also decide to focus assistance toward minority- and women-owned firms rather than small firms in general. Chapter 10 of the report discusses different opportunities to improve the Sheltered Market Program.

New programs for prime contractors. The City might consider other programs to strengthen MBE/WBE prime contractors. Chapter 10 reviews the City of Atlanta’s joint venture program as one example of such a program.

Changes to the Good Faith Efforts Program. The City’s GFE Program appears to effectively address potential disparities in the use of MBEs and WBEs as subcontractors on City construction contracts, and eliminates overall disparities in the use of MBE/WBEs in City construction contracts. On contracts without the GFE Program, there is evidence of disparities in the use of MBE/WBEs as subcontractors. Chapter 10 explores future program options.

Who performed the disparity study?

BBC is a Denver-based economic research firm that is one of the leading disparity study consultants in the United States, having conducted nearly 80 disparity studies since 1989. In addition to BBC, the study team included:

- **Holland & Knight LLP (H&K)**, a national law firm with offices in Portland;
- **Group AGB, Ltd.**, a Portland-based consulting firm.
- **F.M. Burch & Associates, Inc. (FMBA)**, a Portland-based consulting firm.
- **Montesi & Associates**, a Portland-based consulting firm.
- **Customer Research International (CRI)**, a Texas-based survey research firm.

Group AGB, FMBA, Montesi & Associates and CRI are all minority- or women-owned firms. Chapter 1 of the report provides more information about the study team.

Did interested groups and the general public have an opportunity to provide input?

BBC began the assignment in fall 2009 and presented a draft report to the City in January 2011. In 2010, the BBC study team interviewed 60 representatives of trade associations, business owners and managers, and other groups. The study team also contacted thousands of firms by telephone to give them an opportunity to provide their experiences attempting to perform work with the City, PDC and in the local marketplace.

- During the course of the study, BBC, the City and PDC regularly met with an advisory group comprised of representatives of minority-, women- and majority-owned contractors and consultants and local trade associations.²

² The term “majority-owned firms” refers to firms not owned by minorities or women.

- In April 2011, the City and PDC provided a draft report to the public for review and held a public forum where interested individuals provided input. The agencies also provided an online venue for written comments from the public.

The BBC study team reviewed the testimony from the public forum, written comments and other input received by the City and PDC prior to preparing the final report in June 2011. A number of the comments made appear in Appendix J of the full report. The study team made a number of other additions and clarifications based on review of the comments, including substantial modifications to this Executive Summary.

What does a disparity study include?

Disparity studies typically include analyses of whether there is a *disparity* between the utilization and availability of MBEs and WBEs.

- “Utilization” refers to the percentage of contract dollars that went to MBEs and WBEs during the study period.
- “Availability” refers to the percentage of contract dollars that one might expect to go to MBEs and WBEs given the relative number of MBEs and WBEs available for specific types and sizes of prime contracts and subcontracts.

Based upon relevant court decisions, BBC included both certified and non-certified MBEs and WBEs in the utilization and availability results so that the disparity analysis would pertain to any potential barriers related to race, ethnicity or gender of the business owner.³

To further isolate the possible effects of race/ethnicity versus gender, “WBEs” refers to white women-owned firms in this disparity study. Firms owned by minority women are included in the utilization and availability results for minority-owned firms (see Chapter 5 of this report for more detail about why BBC classifies WBEs in this way).

- To perform the utilization analysis, the BBC study team compiled and analyzed data on nearly 4,000 prime contracts and subcontracts that the City awarded between July 2004 and June 2009. The study team examined the types of work involved, size of the contract or subcontract, year of the contract and what City programs applied.
- In the availability analysis, the study team successfully contacted more than 3,700 local firms doing business in relevant subindustries to discuss whether they were qualified and interested in City work, the types of work they conduct, sizes of contracts they perform and other firm characteristics.
- BBC compared utilization of MBEs and WBEs on City contracts with the dollars those firms might be expected to receive based on their availability for those types and sizes of prime contracts and subcontracts.

³ If the disparity analysis were conducted based only on currently certified MBEs and WBEs, conclusions could not be drawn about the effectiveness or need for programs to assist minority- and women-owned firms. Inclusion of certified and non-certified MBEs and WBEs in both the utilization and availability results has been accepted by the courts.

The BBC study team also analyzed City contracting processes, local marketplace conditions and potential business assistance programs. As part of those analyses, the study team developed statistical models using U.S. Census data and other information on the local marketplace; compiled and analyzed many hundreds of bids and proposals on City contracts; performed telephone interviews with thousands of local businesses; and conducted in-depth personal interviews with 60 business owners, trade associations and other individuals knowledgeable about local marketplace conditions.

How was the availability analysis performed?

The BBC study team made extensive efforts to contact local firms for specific types of City construction and construction-related professional services work. The study team contacted firms using a telephone survey and discussed whether they were qualified and interested in City work, the types of work they conduct, sizes of contracts they perform and other firm characteristics.

- Not all firms reported qualifications and interest in City work.
- A business that did express qualifications and interest in City work was typically only available for certain types and sizes of City prime contracts and subcontracts. For example, a business might have only been in operation for a portion of the July 2004 through June 2009 study period and thus only would have been available for certain years of contracts.
- BBC determined overall availability by examining the number of MBEs and WBEs available for each prime contract and subcontract in proportion to the total number of firms available for that prime contract or subcontract.⁴
- Contract-by-contract availability results were then aggregated on a dollar-weighted basis to determine the overall percentage of City contract dollars that might be expected to go to MBEs and WBEs.

For a number of reasons, the availability analysis did not capture every firm potentially available for City construction and construction-related professional services prime contracts and subcontracts. The availability analysis produced a statistically reliable availability benchmark for use in determining whether there were disparities in City's utilization of MBEs and WBEs. This methodology has been accepted in federal court, including the favorable review of a BBC disparity study by the Federal District Court in Sacramento, which is in the Ninth Circuit Court of Appeals.

The accuracy of availability benchmarks (dollar-weighted percentage availability) — not the size of the availability database developed as part of this study — was most important in the disparity study. The availability data allowed BBC to develop a representative depiction of firms qualified and interested in City work, but it should not be considered an exhaustive list of every minority-, woman-

⁴ For example, if BBC examined a \$50,000 electrical subcontract in 2009, only firms indicating that they were qualified and interested in City work as a subcontractor, had performed or bid on similar work in the past in the Portland area, had bid on or performed work of that size, and were in business in 2009 were counted as available for that work. (All of this information was collected from each firm by telephone in the availability interviews.) If 100 firms in the BBC availability database met those criteria, and 10 were minority-owned, MBE availability for that subcontract would be 10 percent. These results were weighted by the size of subcontract and combined with all of the other results for each City prime contract and subcontract to determine overall availability.

and majority-owned firm that could participate on a City project. Reasons for this include the following:

- BBC designed the availability analysis to be independent of any City, PDC or other agency list of companies that perform construction and personal services work. Such lists might be too limiting because certain firms that are qualified and interested in City or PDC contracts might have been discouraged from such public sector work in the past. It was important to include those firms in the availability database. Because BBC did not use PDC and City lists to develop the availability database, there might be some firms that have worked on City contracts that were not included in the availability analysis.
- The availability analysis requires data about MBE/WBEs and majority-owned firms on an apples-to-apples basis. Therefore, all firms, regardless of race/ethnicity/gender ownership, must be identified from a consistent source. For example, certification lists for MBEs, WBEs and ESBs could not be used as the source of the availability database when no similar lists exist for non-certified or majority-owned firms.
- BBC purchased names and contact information of certain types of construction and personal services firms located in the Portland area from Dun & Bradstreet (D&B) Marketplace. The study team then contacted those firms to collect information about those firms for the availability analysis. D&B Marketplace represents the most consistent, comprehensive database of firms that can be used in disparity study research, and its application in availability analysis has been accepted in court decisions. Even though D&B strives to include every firm doing business in the United States in its Marketplace database, it does not capture every company.
- In terms of dollars, most City construction and construction-related professional services prime contracts and subcontracts go to firms located in the Portland Metropolitan Area. Only firms within this area were included in the availability analysis, consistent with guidance from relevant case law. In addition, BBC only conducted availability interviews with firms performing the types of construction or personal services work that comprised most City prime contract and subcontracts. Therefore, only local businesses and firms that perform work within the core areas of City projects are included in the availability database.
- BBC's availability methodology required information from firms that could only be received through interviews. Only businesses that agreed to participate in an interview are included in the availability database.
- The BBC study team was unable to reach every firm in the D&B Marketplace list, even after repeated attempts to contact an individual at the business who could complete an interview. Only firms that had working phone numbers, answered their phone and made individuals available for an interview are included in the availability database.
- BBC researched whether firms that were not reached were disproportionately MBE/WBEs. Using D&B data and using State MBE/WBE certification data, relatively few of these firms appeared to be minority-or women-owned. This was also true for firms declining to participate in interviews.

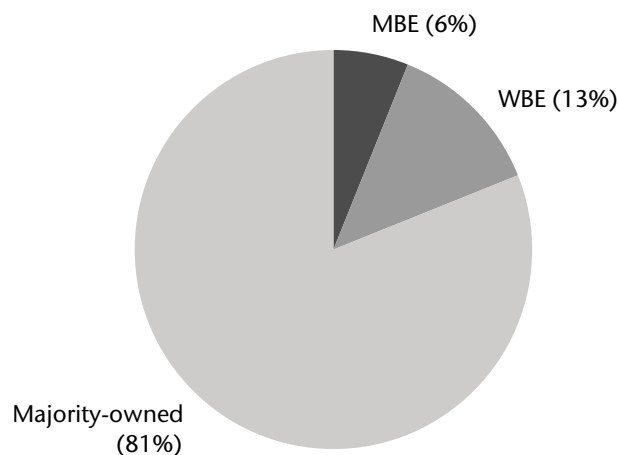
BBC developed availability benchmarks for use in the City disparity study using an approach that has been favorably considered by courts. However, the above points are important to remember when considering other uses of the availability database developed as part of the disparity study.

Of the firms available for City construction and construction-related professional services work, what share are MBEs and WBEs?

Of the firms successfully interviewed that reported qualifications, interest and other characteristics indicating that they were available for certain City construction and construction-related professional services contracts, 6 percent were MBEs⁵ and 13 percent were WBEs. In total, nearly one in five firms available for City construction and construction-related professional services prime contracts or subcontracts were MBE or WBE firms.

Figure ES-1.
Available firms by ownership classification

Source:
BBC Research & Consulting from 2010
Availability Survey.



These results are based on research with firms in the Portland metropolitan area available for City construction and construction-related professional services contracts, including identification of the race/ethnicity/gender of ownership of those firms.⁶

BBC’s study went beyond lists of firms certified by the State of Oregon or others when counting firms as MBE or WBE. To determine race/ethnicity/gender of ownership, the BBC study team contacted firms potentially available to perform relevant City work and conducted detailed phone interviews with business owners and managers.

Availability interviews focused on the subindustries of construction and construction-related professional services most related to City contracts. More than 3,700 firms were successfully contacted, about 1,500 of which reported qualifications, interest and other characteristics that indicated availability for City prime contracts and subcontracts.

Chapter 5 and Appendix D of this report provide additional results and documentation of the availability analysis.

⁵ For purposes of this study, “minority” follows the definitions from the State of Oregon’s MWESB Program: African Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Hispanic Americans and Native Americans.

⁶ Among the subindustries included in the utilization analysis, 97 percent of contract dollars went to vendors with locations in the Portland Metropolitan Statistical Area. Defined by the Census Bureau, the Portland Metropolitan Statistical Area includes the Oregon counties Clackamas, Columbia, Multnomah, Washington and Yamhill and the Washington counties Clark and Skamania.

What percentage of City construction and construction-related professional services contract dollars might be expected to go to MBEs and WBEs?

The following example shows how BBC calculated availability for a specific City subcontract.

On a City contract issued in 2006, the prime contractor issued a subcontract for electrical work for \$19,166. In order to determine the overall availability of minority- and women-owned firms for this subcontract, the study team indentified firms in the availability database that:

- Were in business in 2006;
- Indicated that they performed electrical work;
- Reported bidding on work of similar size or greater in the past; and
- Reported qualifications and interest in working as a subcontractor on City of Portland projects.

The study team found 140 firms in the availability database that met these criteria. Of those firms, 33 were women or minority owned. The MBE/WBE availability for this contract piece was 23.6 percent.

This process was completed for all prime contract and subcontract pieces. In order to determine the overall availability for a certain set of contracts, the study team took an average of the availability for each contract and subcontract, weighting the availability of each contract element by its dollar value.

Based on the information collected in telephone interviews with local firms, and a review of more than 2,000 construction prime contracts and subcontracts, the percentage of City construction contract dollars expected to go to MBEs and WBEs is:

- 1.9 percent for MBEs on City construction contracts; and
- 3.5 percent for WBEs on City construction contracts.

These dollar-weighted availability figures are lower than what is indicated from a simple “headcount” of minority-, women- and majority-owned firms because relatively few of the firms available for the City’s largest prime contracts are MBE or WBE firms.

Similar analyses of City construction-related professional services contracts, including review of more than 1,000 prime contracts and subcontracts, indicated dollar-weighted availability of:

- 7.2 percent for MBEs on City construction-related professional services contracts; and
- 7.4 percent for WBEs on City construction-related professional services contracts.

BBC also developed availability estimates for specific groups of MBEs, and for specific subsets of City prime contracts and subcontracts. These values serve as benchmarks to evaluate the actual percentage of contract dollars going to MBEs and WBEs.

Was there a disparity between utilization and availability of MBEs and WBEs on City construction and construction-related professional services contracts?

Overall, there were no disparities in the City’s utilization of MBEs on either construction contracts or construction-related professional services contracts.

- MBEs received 2.9 percent of City construction contract dollars, which exceeded what might be expected based upon availability for those prime contracts and subcontracts (1.9%).
- MBEs received 28.4 percent of City construction-related professional services contract dollars, which also exceeded what might be expected based on their availability for those prime contracts and subcontracts (7.2%).

There were no disparities in the overall utilization of WBEs on City construction contracts, and utilization of WBEs on City construction-related professional services contracts was roughly in line with availability:

- WBEs received 5.3 percent of City construction contract dollars, more than what might be expected given their availability for those prime contracts and subcontracts (3.5%).
- WBEs received 6.7 percent of City construction-related professional services contract dollars, close to what would be expected given their availability to perform those prime contracts and subcontracts (7.4%).

City utilization of MBEs and WBEs is detailed in Figure ES-2. Note that the overall results shown below reflect the positive effect of the City’s existing programs to assist minority- and women-owned firms. *BBC also examined subsets of City prime contracts and subcontracts where no such programs applied — in general, MBE/WBE utilization fell below what would be expected based on availability for those contracts.*

Figure ES-2.
Utilization and availability of MBE/WBEs on City construction and construction-related professional services contracts, July 2004–June 2009

	Utilization	Availability	Disparity?
Construction			
MBE	2.9 %	1.9 %	No
WBE	5.4	3.5	No
Construction-related professional services			
MBE	28.2 %	7.2 %	No
WBE	6.8	7.4	No

Note: “WBE” refers to white women-owned firms.
Source: BBC Research & Consulting.

Chapter 6 provides detailed results of the utilization and disparity analyses for City construction contracts. Chapter 7 examines utilization and disparity results for City construction-related professional services contracts. Chapter 3 and Appendix C document study team methods for compiling and analyzing City contract data.

Did utilization exceed availability for each MBE group?

For City construction and construction-related professional services contracts, overall, utilization of African American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms was either close to or exceeded what might be expected based on their availability for those prime contracts and subcontracts.

Utilization of Asian-Pacific American-owned firms was below what might be expected based on their availability for City construction and construction-related professional services contracts.

However, when City programs to assist MBE/WBEs did not apply, utilization of MBEs by specific racial/ethnic group was often below what might be expected based on their availability for that work. For example, BBC examined utilization of MBEs and WBEs on the 76 construction prime contracts over \$100,000 from July 2004 through June 2009 on which the GFE Program did not apply. MBEs obtained only one of those prime contracts. There were substantial disparities for prime contracts for each MBE group.

Chapters 6 and 7 examine these results.

Does the utilization reported in the disparity study match the utilization reported in the City's annual reports?

During the study period, the City released reports on utilization of M/W/ESBs in City contracting. The results reported in the disparity study may differ from the data presented in City's utilization reports. There are several reasons for these differences:

- **MBE/WBE certified firms.** To calculate MBE/WBE utilization for reporting purposes, The City considered only those firms that are certified as such through the State of Oregon. To calculate MBE/WBE utilization for the disparity study, BBC considered certified and non-certified MBE/WBEs.
- **Time period.** The disparity study aggregates results across a five year time period (July 2004 through June 2009). The City reported annually or biannually during this time period.
- **Professional services subindustries.** During the study period, the City tracked participation on all professional services contracts. BBC only analyzed information on construction-related professional services contracts.

What role do City programs play in addressing potential disparities in City construction and construction-related professional services contracts?

The City's efforts to encourage participation of MBEs and WBEs on construction and construction-related professional services contracts have effectively produced the following results:

- About 24 percent of City construction subcontract dollars went to MBE/WBEs, above what might be expected based on availability for those subcontracts (see Chapter 6). The City's GFE Program was successful in eliminating any overall disparities in the use of MBEs in City construction contracts.
- MBE/WBEs received 45 percent of the subcontract dollars on City construction-related professional services contracts, also above what might be expected based on availability for those subcontracts (see Chapter 7).
- The City's Professional Services Marketing and Outreach Program appears to be successful in encouraging utilization of MBEs as prime consultants on City construction-related professional services contracts. MBE firms received about one-quarter of the prime consultant dollars on City construction-related professional services contracts. The program may have been less successful for WBEs (see Chapter 7).
- The City's SMP is effective in encouraging MBE/WBE utilization as prime contractors in small construction contracts. However, because contracts included in the SMP are small (less than \$200,000), the program did not eliminate disparities between the overall utilization and availability of MBEs as prime contractors on City construction contracts.⁷ (See Chapter 9 for additional information.) In addition, a number of the MBE/WBE firms participating in the SMP reported receiving very few contracts or no contracts at all.

But for the City's programs to encourage utilization of MBEs and WBEs, would there have been disparities in the utilization of those firms?

The BBC study team was able to compile and analyze data for certain groups of contracts and subcontracts for which programs to encourage MBE/WBE utilization did not apply, or were less comprehensively applied. There is evidence that, without City programs, there would be disparities in the utilization of MBEs and WBEs on City construction and construction-related professional services contracts.

Results for construction contracts. Results for City construction contracts include the following:

- There were substantial disparities in the utilization of MBEs as prime contractors on City construction contracts (see Chapter 6).
- Further analysis indicated that the City's prequalification adversely affects MBE/WBE prime contractors. On average, MBE/WBEs are smaller and have less experience with

⁷ Combined, contracts awarded through the SMP and the City's informal contracting methods accounted for less than 2 percent of total City construction prime contract dollars during the study period.

larger projects than majority-owned firms. There is also evidence that MBE/WBEs fare differently in the prequalification process than similarly-situated majority-owned firms. Chapter 8 analyzes the impact of the City’s prequalification process.

- Considering subcontracts on formal construction contracts not awarded under the Fair Contracting Programs (including the GFE Program and the SMP), MBE/WBE utilization was 12.8 percent, substantially below the 20.2 percent MBE/WBE availability for those subcontracts (see Chapter 6).

Certain evidence of disparities comes from the concurrent disparity study that BBC completed for PDC:

- PDC contributes funding or land to many major construction contracts in Portland. Prime contractors for those projects are selected by the developer or other project owner — not PDC — and no PDC programs to encourage utilization of MBE/WBEs as prime contractors apply. When examining prime contract dollars for these “PDC-sponsored” contracts, BBC found MBE/WBE utilization of less than one-half of 1 percent. There were substantial disparities between MBE/WBE utilization and availability (see Chapter 9).
- Although PDC applies a Business Equity Program to contracts on PDC-sponsored construction projects, there were substantial disparities for WBEs and certain MBE groups as subcontractors on those contracts (see Chapter 9).

Results for construction-related professional services. Even with the City’s program to encourage MBE/WBE utilization as prime consultants on construction-related professional services contracts, there were disparities for WBEs:

- WBEs were substantially underutilized as prime consultants on City construction-related professional services contracts (see Chapter 7).
- Further analyses indicated that WBEs receiving on-call contracts were not utilized as much as other firms receiving such contracts, and many received no work under those contracts (see Chapter 8). In addition, WBEs competing for City construction-related professional services contracts received lower evaluation scores than other proposers (see Chapter 8).

PDC’s Business Equity Program did not apply to construction-related professional services contracts on PDC-sponsored projects. The study team’s analysis of PDC-sponsored construction-related professional services contracts identified disparities in the use of MBEs and WBEs:

- Only 1.5 percent of prime consultant dollars on PDC-sponsored projects went to MBE/WBEs, substantially below what might be expected based on availability of those firms for that work. There were substantial disparities for WBEs and each MBE group except for African American-owned firms (see Chapter 9).

- MBE/WBEs received 1 percent of subcontract dollars on PDC-sponsored construction-related professional services contracts. There were substantial disparities between utilization and availability for every MBE/WBE group (see Chapter 9).

Results for the Portland area marketplace. BBC also examined quantitative and qualitative information about the success of MBEs and WBEs in the local construction and construction-related professional services industries.

- Annual revenue of certain MBE groups and WBEs is lower than other firms in the Portland area construction and construction-related professional services industries.
- There is evidence that minorities and women face greater disadvantages than other firm owners when seeking capital, bonding and insurance.
- There is also quantitative and qualitative evidence that MBE/WBEs face barriers to working as prime contractors and as subcontractors on local public sector contracts.

Chapter 4 and Appendices G, H, I and J present these analyses.

Is there any evidence that availability of MBEs/WBEs in the local marketplace has been affected by race or gender discrimination?

BBC also examined quantitative and qualitative information about any barriers that could affect minorities and women entering the local construction and construction-related professional services industries.

- There is quantitative and qualitative evidence that availability of MBEs and WBEs to perform City construction and construction-related professional services contracts is less than what might be expected if minorities and women had the same opportunities as non-minorities and men to enter and advance within these industries, and form and grow their businesses.
- Perhaps contributing to the disparities in business ownership, there is evidence that minorities and women have greater disadvantages than other firm owners when seeking capital.

Chapter 4 and Appendices E, F, G, H, I and J present these analyses.

How should the City use this information?

The City should review the results from the disparity study when considering its future operation of any small business and MBE/WBE programs. In addition to the disparity study and its own internal research, the City has access to other relevant information, including results of disparity studies for other agencies in Oregon.

Some of the information included as part of the disparity study may prompt the City to further research whether certain barriers to MBEs and WBEs can be minimized or removed. For example, the City may decide to further review its prequalification process for construction prime contractors; bonding and insurance requirements; process for scoring professional services qualifications

statements or proposals; and procedures to ensure equitable use of firms receiving on-call contracts. Efforts to help all small businesses (i.e., “race- and gender-neutral” measures) should continue to be an important component of the City’s fair contracting and small business assistance programs. Chapter 10 explores several initiatives for the City to consider.

As the City considers the future of its M/W/ESB assistance programs, it should not only review whether there is a need for such programs but also the legal requirements for “narrow-tailoring” those programs (see Chapter 2 and Appendix B).

CHAPTER 1.

Introduction

The City of Portland (the “City”) periodically evaluates the degree to which it encourages utilization of minority- and women-owned firms (MBE/WBEs) in City contracts as part of its implementation of its fair contracting and small business support programs. These programs include:

- Professional Services Marketing and Outreach Program;
- Sheltered Market Program; and
- Good Faith Efforts (GFE) Program.

The most recent independent review of MBE/WBE participation in City contracting was performed in 1996.¹

The City partnered with the Portland Development Commission (PDC) to engage a team led by BBC Research & Consulting (BBC) to conduct the current review. BBC began the assignment in fall 2009 and presented a draft report to the City in January 2011. The BBC study includes a comprehensive analysis of:

- Utilization of MBE/WBEs as prime contractors and subcontractors on City construction and construction-related professional services contracts, by race, ethnicity and gender, between July 1, 2004 and June 30, 2009;²
- Availability of MBE/WBEs to perform different types and sizes of City construction and construction-related professional services prime contracts and subcontracts;
- Whether there are disparities between the City’s utilization of MBE/WBEs and the availability of MBEs and WBEs to perform the work;
- Whether there are disparities in the City’s utilization of MBE/WBEs but for the City’s current fair contracting and small business support programs;
- Whether marketplace conditions, City procurement policies and procedures, or other factors present barriers to creation, growth and success of MBEs and WBEs; and
- Initiatives for the City to consider to maintain or to improve opportunities for MBE/WBE participation in City contracting.

¹ Mason Tillman Associates, Ltd., Oregon Regional Disparity Study, Prepared for the Oregon Regional Consortium, 1996.

² The City’s construction-related professional services contracts are awarded through the Professional, Expert and Technical Services contracting process.

Because these types of MBE/WBE studies include analysis of whether there is a *disparity* between the utilization and availability of MBEs and WBEs, they are often referred to as *disparity studies*. The City can use the BBC disparity study to help it make decisions about future implementation of its business programs and consider whether changes to policies and procedures are needed to enhance contracting opportunities for MBE/WBEs and emerging small businesses (ESBs).

Chapter 1 introduces the study in three parts:

- A. The City's M/W/ESB-related Fair Contracting Programs;
- B. Study team; and
- C. Study scope.

A. The City's M/W/ESB-related Fair Contracting Programs

The City operates three business programs specifically related to MBE/WBE participation in the types of contracts included in the study:

- Professional Services Marketing and Outreach program;
- Sheltered Market Program; and
- GFE Program.

Note that Appendix A also provides useful background information including definitions of key terms used in the City's business programs and explanations of concepts used in the disparity study analysis.

Professional Services Marketing and Outreach Program. The City maintains an active outreach program to assist M/W/ESB firms in professional services. Key components of this program include:

- Outreach events;
- Networking groups;
- One-on-one consultations with business owners;
- Advertising small business opportunities and services; and
- Presentations to organizations that represent M/W/ESB firms.

The program coordinator also helps facilitate meetings between firm owners and the City project managers who hire professional services in order to familiarize owners with the procurement process.

Additionally, the City has implemented an aspirational goal for utilization of ESBs. The current goal is 20 percent.

Sheltered Market Program. The Sheltered Market Program (SMP) was established in 1997 to provide opportunities for state-certified M/W/ESBs in the regional market area. The program allows the City to limit bidders on certain construction contracts to SMP program participants. The City can designate to the SMP program up to one-half of its construction contracts between \$100,000 and \$200,000. Additionally, SMP participants are the first source for the City's informal contracts ranging from \$5,000 to \$100,000.

SMP participation requirements. The City of Portland has established the following requirements for participation in the Sheltered Market Program:

- Firms must be certified by the State of Oregon Office of Minority, Women and Emerging Small Business (OMWESB) as an MBE, WBE or ESB.
- At time of application, a firm's average annual gross receipts must not exceed \$1 million dollars per year for the three prior years.
- The firm must agree to an assessment of technical assistance needs by a consultant provided by the City and to participate in training opportunities.
- Firms applying for the SMP must have the ability to perform a commercially useful function — typically at least 50 percent of the construction involved on any contract they are awarded, or approval of a lesser percentage by the Chief Procurement Officer (CPO).
- At time of application, the firm must have been in business for at least two years and must have experience bidding and performing projects in their specific areas of work. These areas of work are identified in the firm's Contractor Prequalification Application.
- The firm must complete the application process.

Graduation from the SMP. Firms graduate from the program in one of two ways:

- All firms are reviewed at the end of three years in the program. Firms with gross receipts exceeding \$1 million during each year for a two-year period in the program may be considered for early graduation. A firm meeting this criterion can avoid early graduation if it can identify projects and invoices where its purchases of materials and equipment was the reason it exceeded the \$1 million revenue ceiling.
- All firms participating in the program for five years will graduate or leave the program.

GFE Program. The City operates a GFE Program that applies to construction contracts worth more than \$200,000, and some contracts between \$100,000 and \$200,000 if the City determines there are substantial subcontracting opportunities.

Bidder requirements. For each contract under the GFE Program, the City identifies types of work that will provide the greatest opportunity for subcontracting. The City then provides potential bidders a list of state-certified M/W/ESB firms for those types of work. If a prime contractor decides against self-performance for a particular type of work required for the contract, the contractor must

contact a minimum of five state-certified M/W/ESB firms that attended the pre-bid meeting and specialize in the type of work required, according to state certification work areas.

Upon submission of the bid, a prime contractor must provide a completed “Form 1,” which lists types of work that the prime contractor will self-perform plus all subcontractors to be used on the project and whether they are certified as an MBE, WBE or ESB. If the contractor is chosen as the low bidder, it must submit a “Form 2” on the day after the bid opening detailing contact with M/W/ESB firms and listing bids received from those firms.

Throughout the project, the prime contractor must submit monthly subcontractor payment and utilization reports.

B. Disparity Study Team

The City commissioned BBC to provide information to help it review implementation of its M/W/ESB Program, SMP and GFE Program. The disparity study team is comprised of:

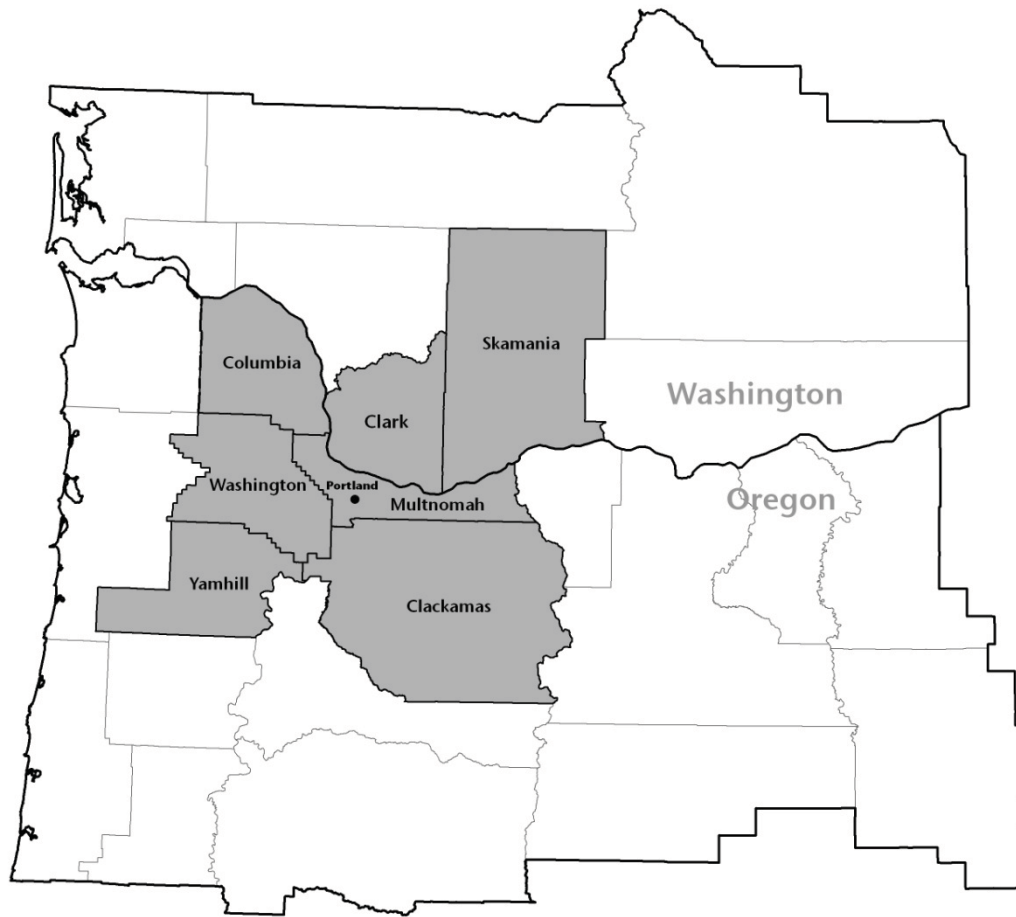
- **BBC Research & Consulting (BBC)**, a Denver-based economic and policy research firm (prime consultant). BBC has overall responsibility for this study and performed most of the required quantitative analyses. BBC is one of the leading disparity study consultants in the United States, having conducted nearly 80 disparity studies since 1989, including studies for states and large cities throughout the country.
- **Holland & Knight LLP (H&K)**, a national law firm. H&K conducted the legal analysis that provides the basis for this study and also analyzed anecdotal information collected through in-depth personal interviews of business owners and trade associations. H&K has worked with BBC on disparity studies throughout the country and has 29 years of experience relating to MBE/WBE programs, including defending programs in court.
- **Group AGB, Ltd.**, a Portland-based consulting firm that specializes in diversity management and business development assistance to MBE/WBEs. Group AGB assisted in electronic and hardcopy data collection for the study, as well as aspects of data analysis. The firm is federally-certified as a Disadvantaged Business Enterprise (DBE) and state-certified as an MBE.
- **F.M. Burch & Associates, Inc. (FMBA)**, a Portland-based consulting firm that specializes in public involvement and community and business development projects, including support programs for M/W/ESBs. FMBA conducted in-depth interviews with business owners and other groups throughout the Portland area. The firm is a DBE/WBE/ESB.
- **Montesi & Associates**, a Portland-based consulting firm that specializes in vendor diversity programs and subcontracting services outreach. Montesi & Associates conducted in-depth interviews with business owners and other groups throughout the Portland area. The firm is a MBE/ESB.

- **Customer Research International (CRI)**, a Texas-based survey research center. Under the direction of BBC, CRI conducted telephone interviews with thousands of business owners and managers throughout the state. CRI is one of the premier telephone survey research organizations in the nation and has supported BBC with survey research for many disparity studies and other assignments during the past five years.

C. Study Scope

The study team examined quantitative and qualitative information concerning public contracting and marketplace conditions in the local marketplace. BBC defined the local marketplace, in part, through examining the location of firms obtaining Portland construction and construction-related professional services contracts. Figure 1-1 shows the local marketplace considered in the disparity study — Multnomah County and four other counties in Oregon plus Columbia, Clark and Skamania counties in Washington.

Figure 1-1.
Relevant geographic market area for City of Portland construction and professional services contracting



Information reviewed to develop disparity study framework. BBC’s methodology for this disparity study reflects a review of information related to MBE/WBE programs, including:

- Oregon state law;
- Relevant court decisions (see Appendix B);
- Suggestions made by critics of disparity studies, including recommendations for disparity studies by the U.S. Commission on Civil Rights;³ and
- Other disparity studies conducted throughout the country.

Types of public contracting examined. In total, BBC analyzed approximately \$1 billion of City contracts as part of the disparity study. BBC examined two general areas of contracting: construction and construction-related professional services. As described in Chapter 3, the study focused on the specific types of construction and construction-related professional services contracts predominately made from firms with locations within the local market area. The study team did not examine types of purchases primarily made from a national market. Related case law requires disparity analyses to focus on the “relevant geographic market area” (see Appendix B).

The study included data from prime contracts as well as from subcontracts.

Racial/ethnic/gender groups examined in the study. The racial/ethnic/gender groups that are the focus of this study are based on definitions from the State of Oregon’s M/W/ESB Program. An MBE under the State of Oregon’s M/W/ESB Program is a business that is at least 51 percent owned and controlled by a member of one of the following minority groups:

- Black Americans (or “African Americans” in this study);
- Hispanic Americans;
- Native Americans;
- Asian-Pacific Americans; or
- Subcontinent Asian Americans.

A WBE under the M/W/ESB Program is a business that is at least 51 percent owned and controlled by a woman of any race or ethnicity. Certified MBE and WBE firms must meet size standards as defined by the Small Business Administration North American Industry Classification Systems (NAICS) Code.⁴

³ U.S. Commission on Civil Rights. May 2006. *Disparity Studies as Evidence of Discrimination in Federal Contracting: A Briefing Before The United States Commission on Civil Rights Held in Washington, D.C., December 16, 2005.* <http://www.usccr.gov/pubs/DisparityStudies5-2006.pdf>.

⁴ See <http://www.naics.com/SizeStandards.htm> for the Small Business Administration NAICS Size Standards.

In this study:

- “Certified MBE” and “Certified WBE” are firms that have been certified as such according to the criteria in the State of Oregon’s M/W/ESB Program.
- “MBEs” and “WBEs” are firms owned and controlled by minorities or women, according to the race/ethnicity/gender definitions listed above, regardless of whether they are certified as such by the State of Oregon or any other agency.

Appendix A provides additional definitions important to this study.

Quantitative, qualitative and other information examined in the study. The disparity study collected and analyzed information on a comprehensive set of topics.

- **Chapter 2** analyzes court cases relating to state and local MBE/WBE programs and the Federal DBE Program.
- **Chapter 3** describes how the BBC study team compiled City contract data to prepare the utilization analysis. The chapter discusses how the study team defined the geographic area and study industries that are the focus of the study, as well as differences in approach from past utilization reports.
- **Chapter 4** presents information on local marketplace conditions. The study team examined whether there is any evidence of barriers for minorities and women to enter, advance within and start businesses in Portland. BBC also analyzed access to business credit, insurance and bonding; different measures of business success; access to prime contract and subcontract opportunities; and other issues potentially affecting minorities and women in the local marketplace. Quantitative and qualitative information was included in this assessment, including results of interviews with business owners and managers throughout the state.
- **Chapter 5** presents the availability of MBE/WBEs for City construction and construction-related professional services contracts. BBC estimated availability based on analysis of contract and subcontract opportunities and information collected through telephone interviews on the availability of businesses to perform work for the City.
- **Chapter 6** presents the utilization of MBE/WBEs and disparity results for City construction contracts. The study team analyzed utilization of MBE/WBEs on City prime contracts and subcontracts. BBC then compared utilization of MBE/WBEs with the availability of those firms to perform that work and detailed any disparities between availability and utilization.
- **Chapter 7** presents utilization and disparity results for City construction-related professional services contracts.
- **Chapter 8** explores possible explanations for why any disparities occurred on City construction and construction-related professional services contracts.

- **Chapter 9** presents a summary of key disparity study results.
- **Chapter 10** explores options for race- and gender-neutral measures and other programs that the City might consider implementing to address some of the barriers that the study team observed for MBE/WBEs in various business areas.

In addition to these chapters, a number of appendices provide supporting information concerning study methodology and results, including detailed disparity analyses for the City.

CHAPTER 2.

Legal Framework

The City of Portland (the “City”) M/W/ESB Program includes a Good Faith Effort (GFE) Program encouraging the utilization of MBEs, WBEs and ESBs as subcontractors on City projects. In addition, the City’s Sheltered Market Program (SMP) limits competition on certain contracts to MBE/WBEs and small businesses. Many courts have found programs using such measures to be “race-, ethnic- and gender-conscious.”¹

Throughout the country, a number of non-minority businesses, trade associations and other groups have filed lawsuits challenging the legality of MBE/WBE programs as well as the Federal Disadvantaged Business Enterprise (DBE) Program. Many of the courts hearing these cases have found state and local MBE/WBE programs to be unconstitutional, and some courts have upheld these programs. Several court decisions have found the Federal DBE Program to be constitutional.

Information in this disparity study is instructive to the City to determine whether programs such as the M/W/ESB Programs, GFE Program and SMP meet the standards that the courts have established for legally defensible MBE/WBE programs.

Chapter 2 summarizes the legal standards applicable to race- and gender-conscious programs in four parts:

- A. U.S. Supreme Court decisions regarding MBE programs;
- B. The standard for evaluating the validity of race-conscious programs;
- C. The standard for evaluating the validity of gender-conscious programs; and
- D. A summary of the above three parts.

Appendix B provides additional detail on these topics.

A. U.S. Supreme Court Decisions Regarding MBE Programs

The U.S. Supreme Court has established that government programs including race-conscious elements must meet the “strict scrutiny” standard of constitutional review. The two key U.S. Supreme Court cases in this area are:

- The 1989 decision in *City of Richmond v. J.A. Croson Company* (“*Croson*”), which established the strict scrutiny standard of review for race-conscious programs enacted by state and local governments;² and

¹ For simplicity, in the remainder of Chapter 2 “race-conscious” means “race- and ethnic-conscious.”

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

- The 2005 decision in *Adarand Constructors, Inc. v. Peña* (“*Adarand*”), which established the same standard of review for federal race-conscious programs.³

The strict scrutiny standard is a difficult burden for a government entity to meet — it presents the highest threshold for evaluating the legality of race-conscious programs short of prohibiting them altogether. Under the strict scrutiny standard, a governmental entity must:

- Have a *compelling governmental interest* in remedying past identified discrimination; and
- Show that any program adopted is *narrowly tailored* to achieve the goal of remedying the identified discrimination. There are a number of specific elements to consider when determining whether a program is narrowly tailored (Appendix B provides a detailed discussion of relevant cases).

B. Standard for Evaluating the Validity of Race-conscious Programs

A government agency must satisfy the two components of the strict scrutiny standard to have a valid race-conscious program — a program that fails either one is unconstitutional.

Programs that have failed to meet the compelling governmental interest test. In *Croson*, the U.S. Supreme Court held that “[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise.”⁴ Disparity studies are a court-approved method to determine whether there is a compelling governmental interest for remedial measures.⁵ These studies analyze whether there is a disparity between the utilization and availability of minority-owned firms.

Lower court decisions since *Croson* have held that a compelling governmental interest must be established for each minority group for which the race-conscious program applies. It is not necessary for the government entity itself to have discriminated against minority-owned firms for the government to act. In *Croson* the Supreme Court found “if [the government entity] could show that it had essentially become a ‘passive participant’ in a system of racial exclusion practiced by elements of the local construction industry ... [i]t could take affirmative steps to dismantle such a system.”

As discussed in Appendix B, many state and local race-conscious programs that have been challenged in court were found to be unconstitutional because the evidence of discrimination produced by the government entity was not sufficient to show a compelling governmental interest.

³ *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

⁴ 488 U.S. at 509.

⁵ See Appendix B, pages 6-10.

Programs that have failed to meet the narrow tailoring test. The U.S. Supreme Court in *Croson* also held the City of Richmond failed to demonstrate that its program was “narrowly tailored” to achieve the goal of remedying the identified discrimination. As developed in *Croson* and subsequent cases, review of narrow tailoring includes:

- Whether the government agency seriously considered race-neutral means to increase minority business participation in contracting (e.g., simplification of bidding procedures, relaxation of bonding requirements and training);
- Limitation of the remedy to only those minority groups for which there is evidence of discrimination in the local area;
- The flexibility and duration of the relief, including the availability of waiver provisions;
- The relationship of numerical goals to the relevant labor market; and
- The impact of race-, ethnicity-, or gender-conscious remedies on the rights of third parties.

Many programs that have failed to meet the narrow tailoring test also fail the compelling governmental interest test. In some cases, public agency programs have been found to fail the narrow tailoring requirement without the court reaching a conclusion as to whether the program met the compelling interest test. (See Appendix B for a comprehensive discussion of relevant case law.)

Programs that have met the strict scrutiny standard. The Federal DBE Program has been held to be constitutional in legal challenges to date. There have been challenges, however, to how state and local government agencies implement the Federal DBE Program. Appendix B explores these issues in detail.

In addition to the Federal DBE Program, some state and local government minority business programs have been found to meet the strict scrutiny standard. Appendix B discusses the successful defense of state and local race-conscious programs, including *Concrete Works of Colorado v. City and County of Denver*⁶ and *H.B. Rowe Company v. Tippet, North Carolina Department of Transportation, et al.*⁷

⁶ *Concrete Works of Colorado v. City and County of Denver*, 321 F.3d 950 (10th Cir. 2003), cert. denied, 540 U.S. 1027 (2003).

⁷ *H. B. Rowe Co., Inc. v. W. Lyndo Tippet, NCDOT, et al.*, F.3d 2010 WL 2871076 (4th Cir. July 22, 2010); See also *Associated Gen. Contractors of California, Inc. v. Coalition for Econ. Equity (“AGCC”)*, 950 F.2d 1401 (9th Cir. 1991).

C. Standard for Evaluating the Validity of Gender-conscious Programs

The U.S. Supreme Court in *Croson* did not specifically address whether strict scrutiny would be the legal standard to apply to gender-conscious programs involving women-owned firms. While the Court did not establish a standard for constitutional review of gender-based programs, certain Federal Courts of Appeal have considered gender-based programs and applied intermediate scrutiny, not strict scrutiny.⁸ The courts have interpreted this standard to require that gender-based classifications be:

1. Supported by both “sufficient probative” evidence or “exceedingly persuasive justification” in support of the stated rationale for the program; and
2. Substantially related to the achievement of that underlying objective.⁹

As discussed in Appendix B, the burden based on the application of the intermediate scrutiny standard is less stringent for a government entity to successfully defend implementation of a gender-based program (a WBE program, for example) than a race-based program. Under the traditional intermediate scrutiny standard, a court reviews a gender-conscious program by analyzing whether the government agency has established a sufficient factual predicate for the claim that female-owned businesses have suffered discrimination, and whether the gender-conscious remedy is an appropriate response to such discrimination. This standard requires the government entity to present “sufficient probative” evidence in support of its stated rationale for the program.¹⁰

Unlike strict scrutiny, it has been held that the intermediate scrutiny standard does not require a showing of government involvement, active or passive, in the discrimination it seeks to remedy.¹¹ And, the Eleventh Circuit has held that “[w]hen a gender-conscious affirmative action program rests on sufficient evidentiary foundation, the government is not required to implement the program only as a last resort ... Additionally, under intermediate scrutiny, a gender-conscious program need not closely tie its numerical goals to the proportion of qualified women in the market.”¹²

Although a different legal standard of review may apply, the types of analyses BBC conducted in the disparity study concerning minorities and minority-owned firms are also performed for women and women-owned firms.

D. Summary

The discussion above provides context for the disparity study and background information for the City concerning the legal standards for evaluating the constitutionality of race- and gender-conscious programs. Appendix B discusses relevant case law in more detail.

⁸ See generally, *Western States Paving*, 407 F.3d at 990 n. 6 (9th Cir. 2005); *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Monterey Mechanical*, 125 F.3d at 712-13 (9th Cir. 1997); *Eng’g Contractors Ass’n*, 122 F.3d at 905, 908, 910; *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); *Coral Construction Co.*, 941 F.2d at 931-932 (9th Cir. 1991); see also *U.S. v. Virginia*, 518 U.S. 515, 532 and n.6 (1996) (“exceedingly persuasive justification”).

⁹ *Id.*

¹⁰ *Id.*

¹¹ See *Eng’g Contractors Ass’n*, 122 F.3d at 910.

¹² *Id.* at 929 (internal citations omitted).

CHAPTER 3.

Collection and Analysis of City of Portland Contracts

The BBC study team collected and analyzed construction and construction-related professional services contracts and subcontracts that the City of Portland (the “City”) awarded from July 2004 through June 2009.¹ BBC identified the race/ethnicity and gender of business owners, and then calculated the percentage of contract dollars going to minority-, women- and majority-owned firms.^{2, 3} The four parts of Chapter 3 describe how the BBC study team compiled City contract data to prepare the utilization analysis:

- A. Collection and analysis of contract data;
- B. Contracts included in the study;
- C. Identifying race/ethnicity/gender of ownership of utilized firms; and
- D. Differences in approach from past utilization reports.

Appendix C provides a more extensive discussion of this process.

A. Collection and Analysis of Contract Data

BBC examined City contracts awarded between July 1, 2004 and June 30, 2009, corresponding to fiscal years 2004 through 2009. The utilization analysis included all construction and construction-related professional services contracts included in the Bureau of Purchases BizTrak database.

For all construction and most construction-related professional services contracts, BBC used total contract and subcontract award amounts (including change orders) as the basis for determining utilization. For on-call construction-related professional services contracts, BBC used invoice and payment data to determine utilization.

BBC examined 1,197 contracts and 2,659 subcontracts totaling more than \$1 billion as part of the utilization analysis. After initial screening, some of those contracts and corresponding dollars were not included in the disparity study, as explained in Part B of this chapter.

The City collected subcontract data for all contracts estimated to exceed \$100,000 as required by the City’s first-tier subcontractor disclosure rules.⁴

¹ The City’s construction-related professional services contracts are awarded through the Professional, Expert and Technical Services contracting process.

² The term “majority-owned firms” refers to firms not owned by minorities or women.

³ A number of courts have ruled that a preferred way to measure utilization is as a percentage of dollars, not number of contracts (see Appendix B).

⁴ City of Portland Charter. *5.34.493 First-Tier Subcontractors; Disclosure and Substitution.*

B. Contracts Included in the Study

BBC examined City utilization of minority- and women-owned firms (MBE/WBEs) within two study industries: construction and construction-related professional services. Both industries included a broad range of subindustries.⁵ For each contract and subcontract, the study team researched whether the firm was a for-profit business and identified the subindustry that characterized its primary line of business.

The following types of contracts were included in BBC's utilization analysis based on analysis of the contracts and firms receiving the contracts:

1. The firm was a for-profit business and worked within a subindustry mostly comprised of for-profit businesses;
2. The contract was for construction or construction-related professional services and not for a type of purchase typically excluded from disparity studies;⁶
3. The subindustry reflected a local (Portland-area) market (i.e., not made from a national market).

Some contracts were with government agencies or non-profit organizations, and were properly excluded from the utilization analysis (171 contracts representing about \$40 million).⁷ One contract, for \$10 million, was excluded from the study because it was in a subindustry that reflects a national market (cable driven lifts).

BBC also did not include contracts or subcontracts for which the study team could not identify type of work based on the information available for the contract or the subcontractor (representing less than \$2 million).

Contract dollars by subindustry. Figure 3-1 lists the 26 subindustries included in BBC's utilization analysis and the contract dollars that each subindustry represented across City contracts and subcontracts. Figure D-1 of Appendix D provides information about the subindustries included in BBC's analysis of construction and construction-related professional services contracts.

⁵ For example, the subindustries of electrical work and excavation were included in construction.

⁶ For example, payments for services delivered from regulated industries (e.g., electricity) and purchases or leases of real property are typically not included in disparity studies.

⁷ This category also includes a small number of contracts for other types of work typically not included in a disparity study.

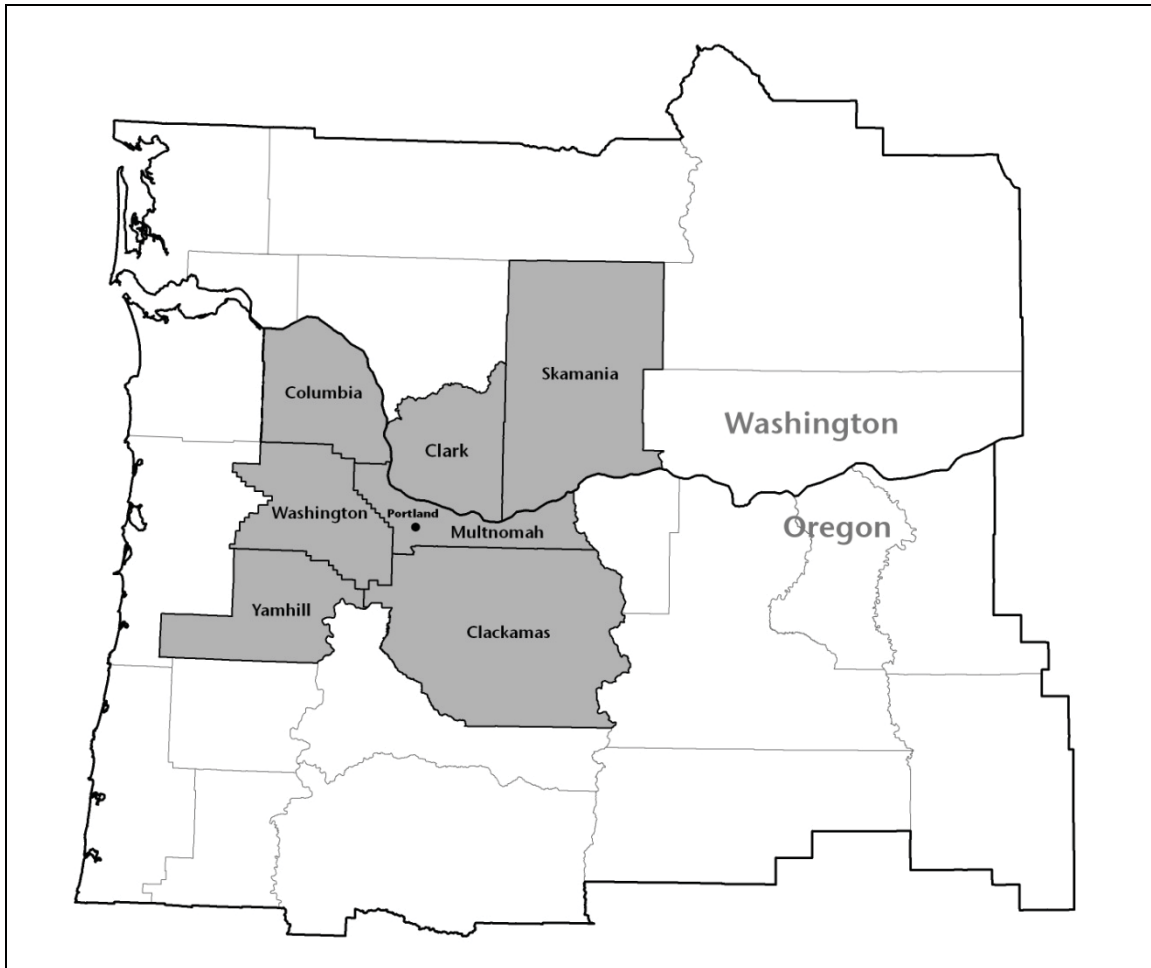
Figure 3-1.
Dollars of City of Portland prime contracts and subcontracts for types
of work examined in the disparity study, July 2004–June 2009

Sub-industry/procurement area	Total in thousands
Construction	
Water, sewer and utility line construction	\$459,252
Highway and street construction	142,531
Specialty trades and other construction	68,604
Excavation	68,154
Building construction	40,846
Electrical work	29,732
Plumbing and HVAC	15,098
Structural steel supply	12,935
Concrete work	12,141
Trucking	11,926
Concrete supply	7,052
Water, sewer and utility lines	2,951
Painting	2,485
Construction equipment rental	2,451
Roofing	2,206
Wrecking and demolition	2,199
Landscaping	1,212
Bridge construction and repair	1,148
Other construction materials	<u>12,296</u>
Construction total	\$895,219
Construction-related professional services	
Engineering	\$54,290
Construction management	15,040
Consulting services - environmental, transportation and planning	11,370
Architecture	11,225
Landscape architects	5,200
Surveying	742
Other professional services	<u>652</u>
Professional services total	\$98,518

Source: BBC Research & Consulting from City of Portland construction and construction-related professional services contract data.

Geographic distribution of contract dollars. Among the subindustries included in the utilization analysis, 97 percent of contract dollars went to firms with locations in the Portland Metropolitan Statistical Area (MSA). As a result, BBC selected the Portland MSA as the relevant geographic market area for the study.⁸ A map of the counties included in the study market area is shown in Figure 3-2. As noted above, BBC did not include in the study those subindustries for which contractors and consultants primarily came from a national market.

Figure 3-2.
Portland MSA counties included in study market area



Source: BBC Research & Consulting.

C. Identifying Race/Ethnicity/Gender of Ownership of Utilized Firms

BBC identified the race/ethnicity/gender of business owners through telephone interviews with individual businesses and other data sources, including:

- State of Oregon M/W/ESB certification list;
- Small Business Administration MBE/WBE certification list;

⁸ Defined by the U.S. Census Bureau, the Portland Metropolitan Statistical Area includes Clackamas, Columbia, Multnomah, Washington and Yamhill counties in Oregon and Clark and Skamania counties in Washington.

- City and Portland Development Commission (PDC) staff review; and
- Information from Dun & Bradstreet, which combines a number of different data sources.

D. Differences in Approach from Past Utilization Reports

BBC compiled contract and subcontract data and calculated utilization of minority-, women- and majority-owned firms using methods required for the disparity study. These methods differ from those used for the City's annual reports and its past disparity study.

City utilization reports. The City produces annual reports detailing its utilization of MBE/WBEs. BBC's analysis of utilization differs from these reports in several important ways:

- To calculate MBE/WBE utilization for annual utilization reports, the City typically considers only those firms that are certified through the State of Oregon. In contrast, BBC attempted to identify all MBE/WBEs utilized in City construction and construction-related professional services contracts, regardless of whether they were certified.
- The contracts included in the City's utilization report may differ from the contracts BBC examined.

1996 disparity study. The City last completed a disparity study in 1996.⁹ BBC used a different methodology for analyzing contract data than applied in the 1996 study (see Appendix C), and these data may not be directly comparable.

⁹ Mason Tillman Associates, Ltd. 1996. *Oregon Regional Consortium Disparity Study*.

CHAPTER 4.

Marketplace Conditions for Minorities and Women

Understanding conditions within the local construction and construction-related professional services marketplace is important when evaluating the need for initiatives to ensure that local government contract opportunities are open to minority- and women-owned firms (MBE/WBEs). The BBC study team conducted quantitative and qualitative analyses of the local business environment and how marketplace conditions may affect minorities and women.

BBC analyzed the paths to firm ownership in construction and professional services to determine whether, but for any past race or gender discrimination, there would be more local MBE/WBEs available for local government contracts and subcontracts. Business owners usually come from the ranks of people working in those industries.

- Part A of Chapter 4 examines representation of minorities and women among employees in these sectors and Part B analyzes rates of business ownership for minorities and women.
- Appendices E and F provide detailed quantitative information. Appendix I explains data sources for the marketplace analyses.
- Appendix J presents a comprehensive review of the qualitative information collected in the study.

BBC also examined whether MBE/WBEs, once formed, have similar opportunities for success as other firms within the local marketplace.

- The study team examined access to capital, bonding, insurance and other factors for minority-, women- and majority-owned businesses.¹ Part C of Chapter 4 summarizes these results.
- Part D analyzes relative success of MBE/WBEs in the local marketplace.
- Appendices G and H present detailed quantitative results, and Appendix J provides qualitative information.

¹ The term “majority-owned firms” refers to firms not owned by minorities or women.

Quantitative information regarding the local construction industry usually pertains to the construction industry as a whole. For federal data sources such as the U.S. Census, the industry definition that most closely matched professional services was architecture, engineering and related services. As explained in Chapter 3, the seven counties that comprise the federally-defined Portland Metropolitan Statistical Area (MSA) — five counties in Oregon and two counties in Washington — make up the relevant geographic market area for the disparity study.

As much as possible, BBC based its marketplace analyses on quantitative and qualitative information for the Portland MSA.

A. Entry and Advancement of Minorities and Women

BBC examined the representation of minorities and women in the construction and professional services industries relative to all Portland MSA industries. The study team also compared the advancement of minorities and women into supervisory and managerial roles to the advancement of non-Hispanic whites and males. Appendix E provides details about BBC's quantitative analyses of the representation of minorities and women in construction and professional services.

Quantitative information about entry and advancement in construction. Quantitative analysis of the Portland marketplace — based primarily on data from the 2000 U.S. Census and the 2006-2008 American Community Surveys (ACS) — showed that certain MBE/WBE groups appear to be underrepresented in the construction industry compared to all industries considered together.² In addition, some of those groups appear to face barriers regarding advancement to supervisory or managerial positions.

- In 2006-2008, 2 percent of workers in the Portland construction industry were Asian-Pacific Americans compared to 6 percent of workers in all industries.
- Eleven percent of workers in the Portland construction industry were women, which was less than one-quarter of the proportion of women when considering all industries together (46%). Women were only 1 to 3 percent of workers in some construction trades.
- In contrast, Hispanic Americans comprised a relatively large share of the Portland construction industry — 14 percent of the construction workforce was made up of Hispanic Americans compared to 9 percent of the entire Portland MSA workforce.

Among construction workers, Hispanic Americans and women were less likely than non-Hispanic whites and men, respectively, to advance to the level of first-line supervisor. In addition, women working within the local construction industry were less likely than men to be managers.

Educational attainment of minorities and women in the Portland area was generally consistent with educational requirements for construction jobs. Factors other than formal education may be behind the relatively low representation of certain groups in the construction industry.

² Data from the 2000 Census were the most current Census data available at the time of this study.

Analysis of the Portland construction industry revealed patterns of entry and advancement that were similar to those found for the United States as a whole.

Quantitative information about entry and advancement in architecture, engineering and related services. BBC also used 2000 U.S. Census data and 2006-2008 ACS data to examine employment and advancement for different racial/ethnic/gender groups in the Portland architecture, engineering and related services industry. As with construction, certain racial/ethnic/gender groups were underrepresented in this industry.

Education is an important factor for entry and advancement in architecture and engineering. Typically, a four-year college degree is an important qualification for architects, engineers and people working in related fields, and barriers to education may affect employment and advancement for certain minority groups.

College education appears to be a barrier to entry and advancement in local architecture, engineering and related services for African Americans, Hispanic Americans and Native Americans. For each of these groups, the percentage of workers age 25 or older with at least a bachelor's degree was substantially lower than that of non-Hispanic whites in both 2000 and 2006-2008.

In light of information about educational attainment, BBC examined whether there were disparities in the representation of minorities and women in the professional services industry.

- In 2006-2008, there was a statistically significant lower representation of Hispanic Americans in local architecture, engineering and related services (1.6%) compared to college-educated Hispanic Americans aged 25 years and older (3.2%) in the Portland MSA.
- Women were also underrepresented in Portland area architecture, engineering and related services. In 2006-2008, women represented 27 percent of workers in this industry but represented 46 percent of the college-educated Portland workforce that was at least 25 years old (a statistically significant difference).

Qualitative information about entry and advancement. BBC conducted in-depth interviews with Portland businesses and trade associations that provided information about barriers that minorities and women may face regarding entry and advancement in the Portland marketplace.

Several interviewees identified difficulties associated with entry and advancement for minorities and women in the Portland construction and professional services industries. They reported that such difficulties exist in many forms, including unfavorable work environments, stereotypical attitudes, and offensive comments or behavior.

- Some interviewees reported stereotypical attitudes on the part of customers and buyers in Portland as a contributor to unfavorable work environments for minorities and women. For example, a Hispanic female owner of a professional services firm reported that she has experienced discrimination. She said, "When I came from Mexico, my theme and my mantra was, 'As long as you work hard, discrimination should not exist,

because you have proven yourself.’ And I was really wrong.... It started to click [for me]. It didn’t matter how many hours I put in ... they were giving opportunities to only Caucasian women.”

- Other interviewees reported instances of racial slurs or sexist comments. An African American and Native American male owner of a contracting firm said, “You hear slurs towards minorities, and then, you know, when you call people out on it, they say, ‘I’m kidding, so, whatever.’” A white female owner of a professional services company reported, “This sexual harassment thing — I mean, it’s there. And we have to constantly retrain our people so that they understand the rules — the rules of engagement, so to speak, and the rules of professionalism.”

Other interviewees indicated that they have not experienced difficulties associated with entry and advancement, or that certain factors — such as stereotypical attitudes — were not an issue for their firms.

Some individuals reported that union apprenticeship programs in some trades were improving opportunities for minorities and women in construction. “Union apprenticeship programs in particular can be part of the solution to those problems,” according to one researcher testifying at the Public Forum.

Effects of entry and advancement barriers on the Portland marketplace. The barriers that certain minority groups and women appear to face entering and advancing within the Portland construction and professional services industries may have substantial effects on business outcomes for MBE/WBEs.

- Typically, employment and advancement are preconditions to business ownership in the Portland marketplace. Because disparities exist in entry and advancement for certain minority groups and women in the construction and professional services industries, it follows that there may be barriers that prevent some MBE/WBEs from ever forming, perhaps reducing overall MBE/WBE availability in the Portland area.
- Quantitative and qualitative evidence suggests that certain minority groups and women are underrepresented in the Portland construction and professional services industries, particularly in supervisory and managerial roles. Such underrepresentation may perpetuate beliefs and stereotypical attitudes that firms owned by those groups may not be as qualified as majority-owned firms.

B. Business Ownership

National research and studies in other states have found that race, ethnicity and gender affect opportunities for business ownership, even after accounting for other factors. Figure 4-1 summarizes how courts have used those studies when considering implementation of the Federal DBE Program in other states.

BBC examined whether there are disparities in business ownership for minorities and women in the Portland workforce compared to non-Hispanic white males. The study team developed regression models of business ownership using 2000 Census data for the Portland construction and professional

services industries. The models identified disparities for certain minority groups and women after accounting for personal characteristics such as education, age and ability to speak English. For MBE/WBE groups exhibiting statistically significant disparities, BBC compared actual business ownership rates with simulated rates if those groups, based on personal characteristics, owned businesses at the same rate as similarly situated non-Hispanic whites and white males.

The following section summarizes results and Appendix F provides details about BBC's quantitative analyses of business ownership rates in the Portland marketplace.

Quantitative information about business ownership in construction. Quantitative analysis of the Portland construction industry revealed statistically significant disparities in business ownership rates for certain minority groups:

- The business ownership rate for African Americans in 2006-2008 was less than one-half that of non-Hispanic whites; and
- Compared to all other race/ethnicity groups, Hispanic Americans had the lowest self-employment rate, about 9 percent.

Asian-Pacific Americans working in the construction industry had higher rates of business ownership than other groups, including non-Hispanic whites.

BBC statistically modeled business ownership using 2000 Census data and 2006-2008 ACS data. Sample sizes for minority groups other than Hispanics were relatively small, which somewhat constrains the ability to identify statistically significant disparities in rates of business ownership. The regression analyses included factors such as age, home value, ability to speak English and education as well as race/ethnicity/gender of the worker.

BBC did not find statistically significant disparities in business ownership rates for African Americans or for Hispanics, perhaps because of relatively small sample sizes. Asian-Pacific Americans had higher rates of business ownership than other groups. However, women had lower rates of business ownership in the construction industry in both 2000 and 2006-2008 after accounting for other factors.

Figure 4-2 compares observed business ownership rates to simulated business ownership rates if non-Hispanic white women working in the construction industry owned businesses at the same rate as similarly situated non-Hispanic white males (i.e., "benchmark business ownership rate"). The study team calculated a business ownership disparity index by dividing the observed business ownership rate for white women by the benchmark business ownership rate (and then multiplying by 100). A value of "100" would indicate "parity" in business ownership rates; a lower value indicates a larger disparity.

Figure 4-1.
Use of regression models of business ownership in defense of the Federal DBE Program

State and federal courts have considered disparities in business ownership rates when reviewing implementation of the Federal DBE Program, particularly when considering DBE participation goals. For example, disparity studies in Minnesota and Illinois used regression models to analyze the impact of race/ethnicity/gender on business ownership in the combined construction and engineering industry. Results from those models helped determine whether race- and gender-based disparities exist after statistically controlling for other personal characteristics. Those analyses, which were based on 2000 Census data, were included in materials submitted to courts in subsequent litigation concerning implementation of the Federal DBE Program. BBC used the same sources of data and similar regression models to analyze business ownership in Portland.

There were 69 percent as many businesses owned by white women as would be expected based on the characteristics of those women and the business ownership rates of white men (disparity index of 69). In other words, non-Hispanic white women working in the Portland area construction industry owned businesses at about two-thirds the rate of similarly situated non-Hispanic white men.

Figure 4-2.
Comparison of actual construction business ownership rates in Portland to simulated rates, 2006-2008

Group	Self-employment rate		Disparity index (100 = parity)
	Actual	Benchmark	
White female	18.9%	27.5%	69

Note: As the benchmark figure can only be estimated for records with an observed dependent variable, comparison is made with only this subset of the sample.

Source: BBC Research & Consulting from statistical models of 2006-2008 ACS data.

Quantitative information about business ownership in professional services. As with construction, BBC examined business ownership rates for minorities and women working in the Portland area architecture, engineering and related services industry (i.e., professional services industry). The rate of business ownership for minorities was less than one-half that of non-minorities in 2006-2008.³

BBC also developed statistical models of business ownership for people working in architecture, engineering and related services that accounted for factors such as age, education, marital status and other characteristics. The study team developed the model using combined Census data for Oregon and Washington because of small sample sizes for the Portland MSA⁴. Even with the larger geographic area and use of 2000 Census data, sample sizes were still small for individual minority groups. There were statistically significant disparities only for the “other minority” group and for women.

³ Samples sizes were too small to provide results by minority group.

⁴ As detailed in Appendix F, results suggest that business ownership rates within the Portland MSA are not significantly different from the larger geographic region of Oregon and Washington.

Figure 4-3 compares actual business ownership rates for the “other minority” group and white women to simulated benchmark business ownership rates if individuals in these groups owned businesses at the same rate as similarly situated non-Hispanics whites and non-Hispanic white males. A disparity index of 60 indicates that white women working in the architecture, engineering and related services industry in Oregon and Washington owned firms at less than two-thirds the rate of similarly-situated white men.

Figure 4-3.
Comparison of actual professional services business ownership rates in Oregon and Washington to simulated rates, 2000

Group	Self-employment rate		Disparity index (100 = parity)
	Actual	Benchmark	
Other minority group	9.4%	19.3%	49
White female	8.0%	13.3%	60

Note: As the benchmark figure can only be estimated for records with an observed dependent variable, comparison is made with only this subset of the sample.

Source: BBC Research & Consulting from statistical models of 2000 Census of Population data.

Qualitative information about business ownership. BBC conducted in-depth interviews with representatives of Portland area businesses and trade associations who provided information about whether minorities and women face barriers regarding business ownership. A number of interviewees cited difficulties associated with meeting the preconditions of starting and maintaining a business, including issues with experience and expertise, attracting qualified personnel and being excluded from industry networks.

Several interviewees indicated that it is difficult for minorities and women to own businesses in Portland due to the existence of a “good ol’ boy” network and due to the influence of unions. For example, an African American male owner of a construction firm, reported, “There’s a whole bunch of [‘Good Old Boy Networks’ or other closed networks] out there. [They say] ‘Well, you don’t do it quite like Johnny does it. I’m used to Johnny, the way he does.’ ... I get a lot of that.” Working with unions can also present a barrier as an African American male owner of a professional services firm stated. He reported that he actively seeks people of color as employees. He stated that when he requests that the union send him personnel who are people of color, the union always sends him Caucasian females “because they say [Caucasian females] are minorities.”

Effects of business ownership barriers on the Portland marketplace. Quantitative information indicating barriers to business ownership for women in construction and in professional services may affect the number of Portland area women-owned firms available to perform work in Portland.

C. Access to Capital, Bonding and Insurance

Access to capital represents one of the key factors that researchers have examined when studying business formation and success. If discrimination exists in capital markets, minorities and women may have difficulty acquiring the capital necessary to start or expand a business, as discussed in Appendix G. BBC examined whether MBE/WBEs have access to capital — both from their homes and through business credit — that is comparable to that of majority-owned firms. In addition, the study team examined information about whether minorities and women face any barriers in obtaining bonding and insurance.

Quantitative information about home mortgage lending. Wealth created through homeownership can be an important source of funds to start or expand a business. Barriers to homeownership or home equity can affect business opportunities by limiting the availability of funds for new or expanding businesses. BBC analyzed potential effects of race/ethnicity/gender on homeownership and mortgage lending in Portland. Data from 2000 and 2006-2008 indicated that, compared to non-Hispanic whites:

- Fewer African Americans, Hispanic Americans and Native Americans in the Portland MSA owned homes, and those who did own homes tended to have lower home values.
- Asian-Pacific Americans and Subcontinent Asian Americans also had relatively low homeownership rates.
- African Americans, Asian Americans and Hispanic Americans applying for home mortgages were denied loans at a greater rate.
- African Americans and Hispanic Americans were more likely to receive subprime loans, and Native Americans were more likely to receive subprime refinancing loans.

Quantitative information about business credit. Business credit is also an important source of funds for small businesses. Any race- or gender-based barriers in the application or approval processes of business loans could affect the formation and success of minority- and women-owned businesses.

Survey of Small Business Finances. To examine the role of race/ethnicity/gender in business capital markets, the study team analyzed data from the Federal Reserve Board's 1998 and 2003 Survey of Small Business Finances (SSBF).⁵ Because SSBF records the geographic location of firms by Census Division, not by MSA, BBC examined data for the Pacific Census Division (referred to below as the Pacific region), which includes Oregon, Washington, California, Alaska and Hawaii.

BBC developed regression models of loan outcomes based on SSBF data to examine outcomes for MBE/WBEs after statistically controlling for neutral factors, such as education. Compared to non-Hispanic white-owned firms, BBC observed statistically significant disparities in loan approval rates for African Americans and Hispanic Americans. In addition, when they received business loans, MBE/WBEs generally paid higher interest rates.

⁵ BBC used the most current SSBF data available at the time of this study.

Figure 4-4 compares loan approval rates for African Americans and Hispanic Americans to simulated benchmark loan approval rates if those groups were approved for business loans at the same rate as similarly situated non-Hispanic whites. Results indicate that:

- African Americans were approved for business loans at a rate that was less than two thirds (disparity index of 60) that of similarly situated non-Hispanic whites.
- Hispanic Americans were also approved for business loans at a rate lower than similarly situated non-Hispanic whites (disparity index of 71).

Figure 4-4.
Comparison of actual loan approval rates to simulated loan approval rates, 1998

Group	Loan approval rates		Disparity index (100 = parity)
	Actual	Benchmark	
African American	46.4%	76.8%	60
Hispanic American	53.7%	75.9%	71

Note: Actual approval rates presented here do not sum to 100% because some observations were dropped in the probit regression.

Source: BBC Research & Consulting analysis of 1998 SSBF data.

Results from availability interviews. As part of its availability analysis, BBC completed telephone interviews with Portland businesses, firm owners and managers and asked if they had experienced any difficulties starting or expanding a business in your industry or with obtaining work. They were asked to think about experiences within the past five years when answering the questions.

When asked whether their company had experienced any difficulties in obtaining lines of credit or loans, nearly 40 percent of minority-owned firms and one-third of WBEs indicated that they had experienced such difficulties. Only 20 percent of majority-owned firms indicated difficulties obtaining lines of credit or loans when thinking about experiences within the past five years.

Minority-, women- and majority-owned firms alike often reported that they had experienced problems receiving timely payment for their work. Appendix G provides results for this availability interview question.

Qualitative information about access to credit. BBC conducted in-depth interviews with Portland businesses and trade associations that provided information about potential barriers when attempting to obtain credit, bonding and insurance.

Several interviewees reported that business credit is difficult to obtain and indicated that race and gender discrimination contributed to those difficulties.

- An African American male owner of a construction company stated he has experienced “different [interest] rates, more collateral required, and very lengthy and involved application processes” while attempting to obtain financing.

- The African American male owner of another construction company reported that he has been “discouraged from applying for some money ... [because the lenders have said] ‘We don’t really have the funds right now,’ or ‘we don’t know when they’ll be available,’ and then someone else [applies and the lenders say], ‘oh yeah, we’ll have money next week,’ or ‘fill out the application out now and give it to us, so your application will already be in when the money comes.’”

Some interviewees reported that they were denied financing for reasons other than race or gender discrimination. An Asian-Pacific male owner of a professional services firm said, “Prior to the financial crisis, I had no difficulties [obtaining financing]. Now it is almost impossible because money is tight for everyone.” Some white male business owners also reported difficulties obtaining credit due to general economic conditions. Several people providing comments at the Public Forum or as part of the public comment process also that they had difficulty obtaining credit, which negatively affected their businesses.

Information about bonding and insurance. Bonding is often required to bid as a prime contractor on public sector projects. In addition, public sector construction and professional services contracts typically require prime contractors and consultants to carry high levels of insurance. Bonding and insurance may present barriers to working within the public sector.

Results of availability interviews. As part of the series of questions in the availability interviews, BBC asked Portland area firms:

- Has your company obtained or tried to obtain a bond for a project?
- [and if so] Has your company had any difficulties obtaining bonds needed for a project?⁶

Among firms reporting that they had obtained or tried to obtain a bond, MBEs were three times as likely as majority-owned firms to report difficulties obtaining a bond. WBEs were twice as likely as majority-owned firms to report difficulties.

BBC also examined whether MBE/WBEs were more likely than majority-owned firms within the study area to report that insurance requirements represented a barrier to bidding. MBEs were about twice as likely as majority-owned firms to report such difficulties. Fewer majority-owned firms indicated that insurance requirements presented a barrier to bidding on projects.

⁶ In the introduction to this series of questions, respondents were asked to think about their experiences within the past five years.

Qualitative information. Portland area business owners and managers completing in-depth interviews also provided information about potential barriers to obtain bonding and insurance. Some interviewees did not report barriers associated with bonding and insurance, but others did. In some cases, minority and female business owners believed that bonding and insurance presented particular barriers for MBE/WBEs.

- Some interviewees reported that obtaining bonding and meeting bonding requirements are barriers to doing business. A professional organization executive said, “Bonding has always been a problem.” He reported that bonding has always been a “stumbling block” for businesses. Additionally, the director of a different nonprofit program reported that bonding companies do not apply requirements equally to all business owners. She said, “I do know that a lot of companies, when it comes to minorities [seeking bonds], they will bring a requirement out from under the table that they [have] to dust off.”
- The African American male owner of a construction company stated that “there’s nothing in our company history that will imply that you need to have additional insurance, bonding or joint checks,” but “we’re religiously asked for a bond. Of course this brings our price up. And then we talk to our competitors and they never have to pull bonds. And so the general contractor is saying for minority contractors ... ‘you pull a bond, but [majority-owned contractor] over here, you guys don’t have to.’ We run into that all the time.”
- A number of interviewees also reported that obtaining insurance was a barrier to MBE/WBE firms. A Hispanic male co-owner of a professional services firm stated that he believes insurance is a barrier and that discrimination based on race, ethnicity, and gender contributes to this barrier. He said, “Yes, the cost that M/W/ESBs have to incur versus the requests by public agencies regarding levels of insurance versus size of projects is difficult....”

Effects of access to capital, bonding and insurance barriers on the Portland marketplace. The disadvantages for certain MBE/WBE groups associated with access to capital, bonding and insurance may affect various business outcomes for MBE/WBEs.

- There is some quantitative and qualitative evidence indicating that it is more difficult for MBE/WBEs to access capital, bonding and insurance. Such difficulties may prevent some MBE/WBEs from ever forming or growing, reducing overall availability of those firms in the Portland marketplace.
- Access to capital, bonding and insurance are often required for businesses to pursue certain types of public sector contracts. There is evidence of barriers to those business inputs for MBE/WBEs. This may place MBE/WBEs at a disadvantage when competing for public sector work, especially as prime contractors and prime consultants.

D. Success of Businesses

BBC completed quantitative and qualitative analyses that assessed whether the success of MBE/WBEs differs from that of majority-owned businesses in the Portland marketplace. The study team examined business success primarily in terms of business closures, contractions and expansions, and in terms of business receipts, revenues and earnings. Appendix H provides details about BBC's quantitative analyses of business success measures.

Quantitative analysis of business closures, contractions and expansions. BBC used analyses of U.S. Small Business Administration (SBA) data to examine business closures, contractions and expansions between 1997 and 2001.⁷ The SBA analyses compared business outcomes for minority-owned firms to business outcomes for all firms considered at the state level. Findings indicated that:

- Between 1997 and 2001, African American- (56%), Native American- (42%) and Hispanic American-owned firms (35%) in Oregon closed at higher rates than all firms considered together (31%).
- The percentage of businesses expanding was lower for African American-owned firms (13%) and Native American-owned firms (26%) than that for all Oregon firms (29%). More Hispanic American-owned firms expanded (41%) than found for Oregon firms as a whole.

Quantitative analysis of business receipts, revenues and earnings. The study team also examined business receipts and earnings of Portland businesses as indicators of business success. BBC analyzed gross receipts and business owner earnings data from the U.S. Census Bureau as well as annual revenue data from availability telephone interviews that the study team conducted. Findings showed several key differences between MBE/WBEs and majority-owned firms in terms of business receipts, revenues and earnings:

- Analysis of 2002 Census Bureau data for Oregon indicates that mean receipts for minority- and women-owned firms were lower than non-Hispanic white- and male-owned firms in the construction industry and the professional services industry.⁸
- Using 2000 Census data (which reported 1999 business earnings) and 2005-2008 American Community Survey data, BBC examined business earnings for construction business owners. Because of small sample sizes, BBC combined results for all minority groups. There were no statistically significant differences in business earnings between minority- and non-minority business owners. Women business owners, however, earned substantially less than men (see Appendix H).

⁷ These data were the most recent business closure, contractions and expansion data available for Oregon at the time of the disparity study.

⁸ Data were for the professional, scientific and technical services industry, which includes construction-related professional services.

- The study team also developed regression models of business owner earnings in the Pacific region based on 2000 U.S. Census data. The models examined the impact of race, ethnicity and gender on business owner earnings after statistically controlling for various neutral factors. Statistically significant disparities in business earnings were identified for women in the Portland construction industry.
- Sample sizes in the Census data were too small to examine earnings of minority and women owners of architecture, engineering and related services firms in the Portland MSA, or even the Oregon-Washington area. Based on data for the Pacific region, however, there appeared to be lower earnings for women business owners compared with male-owned firms after controlling for certain neutral factors (a statistically significant difference).
- BBC also examined 2009 revenue for construction and professional services firms completing availability interviews as part of the disparity study. Most MBEs, WBEs and majority-owned firms are relatively small, but a greater share of MBE/WBEs reported revenue of less than \$5 million.
- After controlling for firm specialization and length of time in business, BBC's regression analyses found no statistically significant differences in bid capacity for MBE, WBE and majority-owned firms (see Appendix H).

Other results from availability interviews. In the availability interviews conducted with local construction and professional services firms, BBC collected information on past bidding and perceptions of difficulties doing business within the local marketplace.

- MBEs and WBEs completing availability interviews were slightly more likely than majority-owned firms to have bid on a public sector construction contract within the past five years. WBEs were somewhat more likely than other groups to have bid as a subcontractor. Nearly all MBEs, WBEs and majority-owned firms reported bidding as a prime contractor or as a subcontractor on a private sector construction contract within the past five years.
- MBE professional services firms completing availability interviews were more likely than WBEs and majority-owned firms to have submitted a proposal for a public sector contract (as a prime consultant or a subconsultant) in the past five years. Conversely, MBEs were less likely than WBEs and majority-owned firms to report submitting a proposal (as a prime or sub) for private sector contracts.

Availability interviews also asked local area business owners and managers if they had experienced barriers or difficulties associated with various factors that could influence the success of businesses, such as the size of projects and learning about bid opportunities in the public and private sectors. The interviewer asked respondents to think about experiences within the past five years.

- About one-third of MBE/WBEs and majority-owned firms reported that size of projects presented a barrier. MBE/WBEs were no more likely than majority-owned firms to report difficulties with project size.
- Minority-owned firms were more likely to report difficulties learning of bid opportunities.
- MBEs and WBEs were more likely than majority-owned firms to report difficulties learning of subcontracting opportunities.

Qualitative information about businesses success. In-depth interviews with Portland-area businesses and trade associations provided information that may help explain race- and gender-based disparities in business success in Portland. Several interviewees described difficulties that may affect business success for MBE/WBEs in the Portland construction and professional services industries. Interviewees discussed stereotypical attitudes, difficulty attracting and retaining workers, unequal opportunities as prime contractors and subcontractors, unfair denial of bid opportunities and contract awards, and the existence of a “good ol’ boy” network.

A number of minority and female business owners indicated negative perceptions and double-standards for MBE and WBE firms.

- Some interviewees said that there is a perception that minority- and women-owned businesses do not have the same amount of experience and expertise as majority-owned firms. For example, an African American male owner of a professional services firm said, “Field superintendents and foremen have many, many, comments. They always show doubt when they are running a job, expecting me to fail and letting me know their expectation of me is very low. They think I will run out of money, shut down and be gone from the job.”
- Similarly, an Asian-Pacific male owner of a professional services firm said, “Often the prime contractor requires you to work in their office in the dark back corner like the worst dunce idiot employee. You have no names, just DBE 1, DBE 2, DBE 3, and they use you for simple jobs like drafting that shouldn’t even be considered engineering work in the first place. They refuse to use you in areas of your expertise, and you need to do this work to survive”
- The African American male owner of a construction firm stated, “I’ve seen some work of non-minority contractors — if I would have produced that same ... work, they would have made me come rip it out and do it again, because I’m [a] minority.”

- A white female owner of a professional services company reported, “Honestly, candidly, if you’re talking women-owned versus minority-owned, I think there’s probably a difference. I think there’s probably more stereotype casting [on the part of customers and buyers] for the minority business than the woman-owned [businesses]. I think it’s entirely possible that there are companies that might consider women-owned [firms] the lesser evil of two evils.”

Other interviewees discussed challenges associated with personnel and labor such as attracting qualified workers. Some issues may be related to firm size.

- A Hispanic female owner of a professional services firm reported that getting and keeping personnel can be an impediment to the success of firms like hers. She stated, “It’s hard to get good employees when you’re small, you can’t pay the same rates that a large firm does.” An African American female owner of a construction firm stated that the wage differential “makes it difficult to hold onto the best workforce.” She said that often times she will train workers and then they go work for other firms. She stated, “We don’t get the work, but the workers we brought in go back on the list and now those large firms, we’ve done their recruiting and training for them, and they capture our workforce.” She stated, “We can’t keep them working.”
- Some interviewees indicated that experience and expertise, attracting qualified personnel and being excluded from industry networks did not present a barrier for minorities and women.

Many interviewees reported acting primarily as subcontractors due to barriers to working as prime contractors, which they sometimes attributed to an inability to secure bonding or financing.

- An African American male owner of a construction firm stated that he primarily performs work as a subcontractor. He said that he has a desire to do more prime contract work, but the public sector creates larger projects and prices projects out of his market and bonding capability. He stated that “prime contract work opportunities fitting my capacity are hardly ever available.”
- The African American male owner of a construction firm said, “The public sector is inundated with bureaucratic [processes] with no scale of support for the administrative burdens they cause and barriers they create for those with fewer resources.”

Several interviewees indicated that their firms have been denied the opportunity to bid on contracts or have been denied contract or subcontract awards because of issues related to race/ethnicity/gender. Some interviewees also reported unfavorable prime contractor-subcontractor relationships.

- An African American female owner of construction firm reported that she was familiar with primes and customers denying women and minorities the opportunity to bid. She stated, “They just don’t contact you.” In addition, a white female owner of a construction firm, said, “I sometimes feel that something is going on that could be an unfair denial when I am not successful.”
- The African American male owner of a construction firm stated that he has experienced difficulties working with prime contractors whose “intent, from the beginning to the end, is to cost us money; to cost us a loss on the project, and they’re not working as a team on the project. They express the fact that the only reason why you’re out here is because you’re a minority, so with that it becomes really a difficult relationship to actually endure throughout the project ...”
- The white female owner of a construction firm reported that there are “some contractors out there [who] think it’s fun — this is well known in the industry — to try to destroy as many subcontractors as they can every year. They’ll treat their subs really poor. They don’t care; they just want their bottom line, they don’t care about the sub. If the sub ends up going bankrupt or ... out of business, they think it’s fun. It’s a game to them.”

Many interviewees indicated that a “good ol’ boy” network exists in Portland and that it makes it more difficult for small firms — including MBE/WBEs — to win contracts. The Native American male owner of a professional services firm stated that he has experienced barriers based on race or ethnicity on local government projects related to the “good ol’ Boy network.” He stated, “It’s ongoing with the larger businesses. On one of these projects, we were a sub, there were only two proposals from large businesses, so people obviously were talking and saying, ‘We already know who’s going to get this work; these guys are on the favored status.’ So even the large businesses don’t submit because they know they’re wasting their money, let alone small businesses.”

E. Summary

Results of the marketplace analyses include the following:

- There is some evidence of barriers to employment and advancement affecting certain minority groups and women in the Portland area construction and professional services industries.
- There appear to be barriers to business ownership for women working in the construction and professional services industries.
- Minorities and women may face greater barriers than other firm owners regarding capital, bonding and insurance.
- The rate of business failure was higher for firms owned by certain minority groups.
- Based on U.S. Bureau of the Census data, there were disparities in revenue for construction firms and for services firms owned by certain minority groups and by women. Availability interview data show that most Portland area construction and professional services firms have relatively low revenue, but that MBE/WBEs were more likely to have annual revenue of less than \$5 million.
- Regression models indicated statistically significant disparities in business earnings for female owners of construction firms in the Portland MSA and for female owners of architecture, engineering and related services firms in the Pacific region.
- Availability interview results show that relatively more minority- and women-owned firms report difficulties identifying subcontracting opportunities compared with majority-owned firms.

There is qualitative information that suggests race and gender discrimination may be affecting opportunities for minority and female business owners in the Portland construction and professional services industries.

CHAPTER 5.

Availability of MBE/WBEs for City of Portland Contracts

BBC analyzed the availability of minority- and women-owned firms (MBE/WBEs) that are ready, willing and able to perform City construction and construction-related professional services prime contracts and subcontracts.¹

Chapter 5 describes BBC's availability analysis in seven parts:

- A. Purpose of the availability analysis;
- B. Collecting information on potentially available firms;
- C. Number of firms included in the availability database;
- D. Definitions of MBE/WBEs;
- E. Calculation of MBE/WBE availability as inputs to the disparity analysis;
- F. Implications for any MBE/WBE contract goals; and
- G. Other approaches to measuring availability.

Appendix B provides supporting information.

A. Purpose of the Availability Analysis

BBC developed information on the number of available MBE/WBEs relative to the total number of firms available for specific types and sizes of City prime contracts and subcontracts. This analysis of the availability of MBE/WBEs for City work provides benchmarks for use in the disparity analysis. In the disparity analysis, the study team compared the percentage of the City's contract dollars that actually went to each racial/ethnic/gender group to the percentage of dollars that each group might be expected to receive given its availability for specific types and sizes of the prime contracts and subcontracts that the City awarded during the study period.

B. Collecting Information on Potentially Available Firms

BBC's availability analysis focused on specific areas of work specialization ("subindustries") related to the types of construction and construction-related professional services that the City procured during the study period (both prime contracts and subcontracts). BBC identified specific subindustries for inclusion in the availability analysis and identified the relevant geographic market area for the study. Then, the study team developed a database of available firms through interviews with local business

¹ The City's construction-related professional services contracts are awarded through the Professional, Expert and Technical Services contracting process.

establishments within the relevant subindustries. This method of examining availability is sometimes referred to as a “custom census.”

Chapter 3 discusses the specific subindustries that the study team identified for inclusion in the availability analysis, and the rationale behind BBC’s selection of the Portland Metropolitan Statistical Area (MSA) as the relevant geographic market area for the study.

Overview of the availability interviews. BBC first obtained information from Dun & Bradstreet (D&B) on all business establishments listed under the 8-digit industry codes that were most related to City construction and construction-related professional services contracts and subcontracts.² D&B provided 8,130 listings related to those industry codes of businesses that were located within the Portland MSA. BBC then contacted businesses on this list to collect information from firm owners and managers that identified their firms as potentially available for City work

BBC worked with Customer Research International (CRI) to conduct telephone interviews with the owners or managers of the identified business establishments. About 5,900 D&B listings had accurate, working phone numbers, and CRI was able to successfully contact 3,726 (63%) of those business establishments.³ About 1,700 establishments that were successfully contacted indicated they were not interested in participating in an interview about their availability for City and PDC contracts. Nearly 2,000 firms completed interviews about their firm characteristics and about their interest and qualifications for work with the City.

Interview topics included:

- Whether the organization was a subsidiary or branch of another company;
- Whether the organization was a private business (and not a public agency or not-for-profit organization);
- Qualifications and interest in work for state and local government agencies in the Portland MSA;
- Qualifications and interest in work as a prime contractor and as a subcontractor;
- Firm specializations and primary line of work;
- The largest contract or subcontract bid on or performed in the past five years;
- How long the firm has been in business; and
- Race/ethnicity/gender of firm ownership.

² D&B uses many different sources of information, including government filings and listings, to compile its D & B Marketplace, which is the most consistent, comprehensive database of firms that can be used in disparity study research.

³ Other establishments could not be reached after multiple attempts or could not make a responsible staff member available to complete the interview (see Appendix D).

Firm representatives were offered the option of answering questions that were e-mailed or faxed if they preferred not to complete an interview over the phone. Less than 1 percent of interviews were completed through e-mail or fax.

Consolidating responses from multi-location firms. In total, 1,972 individual organizations completed an availability interview. Before analyzing responses, BBC identified 16 instances in which multiple local offices of the same firm completed interviews. The study team combined responses for those multi-location firms.⁴

Qualifications and interest, and firm specialization. Firms that CRI successfully contacted were asked a number of questions concerning types of work performed, past bidding, and qualifications and interest in City contracts. Appendix D includes the interview instruments used in collecting those data.

BBC considered firms to be available for City prime contracts or subcontracts if they reported the following characteristics:

- a. Perform types of work relevant to City contracts;
- b. Private business (as opposed to a not-for-profit organization);
- c. Performed or bid on government (state or local) or private sector contracts or subcontracts in Portland in the past five years;⁵ and
- d. Qualifications for and interest in work for the City.⁶

In addition, firms were asked about (e) the largest contract bid on or performed in the past; and (f) the year the firm was established (so that BBC could avoid counting firms as available for contracts that predated a firm's establishment date).

Figure 5-1 shows that, based on the above criteria, 1,536 firms were considered potentially available for City work. Figure 5-1 also presents the number of firms that were excluded from the availability database for various reasons (e.g., the firm's primary line of work was outside of the study's scope).

⁴ BBC's methodology for combining responses, and following up with respondents when necessary, is described in Appendix D.

⁵ An interview question asked whether the firm had submitted bid[s], qualifications, a proposal or a price quote for any part of a construction or construction-related professional services contract or subcontract.

⁶ That information was gathered separately for prime contract and subcontract work.

**Figure 5-1.
Screening of completed
business telephone
interviews for possible
inclusion in the availability
analysis**

Note:

*One hundred and seventy-nine of these firms were not included in the availability marketplace analysis (Appendix H), because they did not respond to question D2 or D4 on the availability survey.

Source:

BBC Research & Consulting from 2009-2010 Availability Interviews.

	Number of firms
Establishments successfully contacted	3,726
Less establishments not interested in discussing availability for public work	1,754
Establishments that completed interviews about firm characteristics	1,972
Less:	
Multiple establishments	16
No City-related work	148
Line of work outside scope	5
Not a business	16
No past bid/award	244
No qualifications and interest in future City or PDC work	7
Firms available for City of Portland work*	1,536

a. Perform types of work relevant to City contracts. During the interviews, the study team confirmed with the business owner or manager that the firm’s work was related to City contracting. As shown in Figure 5-1, 148 interviews were discontinued because the firm owner or manager indicated that the firm was not involved in that type work or was uninterested in it.

As an additional step, construction firms were asked to identify the different types of work that they perform. BBC coded specific answers into one of the subindustries shown below. These firms were then deemed available for the types of contracting that corresponded to the coded answers.

- Building construction;
- Water and sewer facility construction;
- Water, sewer and utility lines (underground utility lines);
- Highway and street construction;
- Bridge construction and repair (include elevated highway);
- Concrete work;
- Excavation;
- Electrical work;
- Wrecking and demolition;
- Plumbing and HVAC;
- Painting;
- Roofing;
- Landscaping;

- Construction management;
- Concrete supply;
- Structural steel supply;
- Other construction materials; or
- Trucking.

Firms could respond that they perform only one type of work or multiple types of work. The interviewer also identified the firm's main line of business. For five firms, the primary line of business was outside the scope of the disparity study, even though the firm indicated that they did perform work related to City contracting. These firms were still included in the availability analysis for the secondary types of work they perform.

b. Private business. Most of the organizations contacted confirmed that they were a private business. However, 16 establishments indicated that they were a public sector or not-for-profit organization and were therefore excluded from the availability analysis.

c. Performed or bid on work in the past. The interviewer asked each firm owner or manager if the firm had bid on or submitted a price quote for any part of a government (state or local) or private sector construction contract in the Portland area in the past five years, or had been awarded any part of such a contract. The interviewer followed up each question by asking whether the firm had bid as a prime contractor, a subcontractor or both.

Based on responses to those questions, 244 firms were excluded from the availability analysis because they reported that they had not bid on such types of contracts in any capacity.

d. Qualified and interested in work for the City. Business owners and managers were asked whether they were qualified and interested in doing work for the City.⁷ Separate questions probed qualifications and interest in working as a prime contractor (or prime consultant) and as a subcontractor (or subconsultant).

There were an additional 7 firms that indicated that they were not qualified and interested in doing work for the City and were screened out of the availability analysis.⁸ After screening for the above characteristics, there were 1,536 firms remaining for the availability analysis out of 3,726 business establishments that the study team successfully contacted.

e. Largest contract bid on or performed in the past. Firms were counted as available for City work up to the size range of the largest contract or subcontract on which they had bid or performed in the Portland area within the prior five years (regardless of private or public sector).

⁷ The wording of this question was modified for construction and construction-related professional services work, as presented in Appendix B.

⁸ Fifty five firms were included in the availability database that expressed qualifications and interest in working only as a prime contractor and not as a subcontractor, and 348 firms were included that expressed qualifications and interest in working only as a subcontractor/supplier and not as a prime contractor.

f. **Year the firm was established.** Interviewers also confirmed when the firm was established. Firms were only counted as available for City contracts and subcontracts that were awarded after they were in business. Some firms (148) were operating for only a portion of the study period (July 1, 2004 through June 30, 2009).⁹

C. Number of Firms Included in the Availability Database

Figure 5-2 provides race/ethnicity/gender information for the firms counted as possibly available for specific types of City contracts and subcontracts. Of the 1,536 firms counted as potentially available, 285 (18.6%) were minority- or women-owned. A smaller portion of those firms were certified as MBEs or WBEs with the State of Oregon.

Figure 5-2.
MBE/WBEs as a percentage of firms available for City contracts and subcontracts,
by race, ethnicity and gender

Race, ethnicity and gender	Total MBE/WBE (percent of all firms)	Certified MBE/WBE (percent of all firms)
African American-owned	0.8 %	0.7 %
Asian-Pacific American-owned	1.5	0.7
Subcontinent Asian American-owned	0.3	0.1
Hispanic American-owned	1.7	0.7
Native American-owned	1.4	0.5
Total MBE	5.7 %	2.6 %
WBE (white women-owned)	12.9	5.1
Total MBE/WBE	18.6 %	7.7 %
Total other firms	81.4	
Total firms	100.0 %	

Source: BBC Research & Consulting from 2010 Availability Survey.

The data in Figure 5-2 solely reflect a simple count of firms, with no analysis of availability for specific contract types. Thus, it represents only a first step toward analyzing availability of MBEs and WBEs to perform City work. To develop measures of availability for the City’s disparity analysis, BBC conducted a sophisticated analysis of the relative number of MBEs and WBEs available for each contract and subcontract. Parts E and F of Chapter 5 provide those results.

D. Definitions of MBE/WBEs and ESBs

In interpreting the utilization, availability and disparity analyses in this study, one must keep in mind the difference between minority- and women-owned firms and firms certified as MBE/WBEs. In addition, it is important to understand how BBC classified firms owned by minority women. BBC’s availability analysis uses the following definitions.

⁹ Companies for which no establishment date was identified were counted as available for the full study period.

Minority- and women-owned firms (MBE/WBEs). In the disparity study, MBE/WBEs are firms that are owned and controlled by minorities or women, regardless of whether they are certified as MBE/WBEs with the State of Oregon. BBC follows the definitions of specific minority groups contained in 49 CFR Part 26.¹⁰ Some MBE/WBEs are certified as such, but most MBE/WBEs doing business in the Portland area are not currently MBE- or WBE-certified.¹¹

Certified minority- and women-owned firms (certified MBE/WBEs). Certified MBE/WBEs are minority- and women-owned firms that are certified as such by the State of Oregon or have certifications that the State of Oregon recognizes. In addition to reporting utilization for minority- and women-owned firms overall, BBC provides utilization results for MBE/WBE-certified firms.

Certified emerging small businesses (Certified ESBs). ESBs are firms that are certified as such by the State of Oregon Office of Minority, Women and Emerging Small Businesses. Minority-, women- and majority-owned firms can be certified as ESBs.¹² BBC provides utilization results for minority- and women-owned certified ESBs and majority-owned certified ESBs.

E. Calculation of MBE/WBE Availability as Inputs to the Disparity Analysis

The primary use of MBE/WBE availability information is as an input to disparity analyses. Availability of MBEs and WBEs is expressed in terms of the percentage of contract dollars that might be expected to go to those firms given their relative availability for the specific types, sizes and locations of particular sets of City contracts and subcontracts. In a disparity analysis, an availability figure represents a “benchmark” against which one can compare the actual share of contract and subcontract dollars that went to MBE/WBEs.

Steps to calculating availability. The availability database for the City’s disparity study included 1,536 businesses, but only a subset of those firms were included as potentially available for any given City prime contract or subcontract. Whether a firm was considered available for a particular contract depended on the match between certain characteristics of the contract element and characteristics of the firm.

When calculating MBE/WBE availability for the City, for example, BBC examined more than 3,200 prime contracts and subcontracts and considered both majority and MBE/WBE firms that were potentially available for each contract element.

¹⁰ Those definitions were also the basis for definitions the State of Oregon OMWESB uses for its MBE/WBE Program.

¹¹ Of the 285 MBE/WBE firms included in the availability database, 118 firms were certified as MBE/WBEs with the State of Oregon.

¹² “Majority-owned firms” in this report refers to all firms that are not minority- or women-owned.

To determine which firms were available for a particular contract element, BBC took the following steps:

1. For each contract element, BBC determined:
 - Type of work;
 - Contract role (prime contract or subcontract);
 - Contract size; and
 - Contract date.
2. BBC then identified firms in the availability database that reported that they:
 - Perform the type of work associated with the contract element;
 - Bid on or performed work in the contract role (prime contractor or subcontractor) associated with the contract element;
 - Have bid on or performed work that matched or exceeded the size of the contract element;
 - Qualifications and interest in doing work for the City; and
 - Were in business in the year the contract was awarded.
3. BBC counted the number of MBE/WBEs among all firms available for that specific type of work. For example, there may have been three white women-owned firms, one African American-owned firm and 16 majority-owned firms out of 20 firms available to perform a particular contract element.
4. The study team then translated the numeric availability of firms for a contract element into percentage availability for the contract element. Continuing the above example, if there were three white women-owned firms out of 20 available firms, WBE availability for that contract element would have been 15 percent.
5. BBC weighted the availability for each prime contract and subcontract by the dollars of work corresponding to the contract element. To determine availability for MBE/WBEs overall and for each MBE/WBE group across all City contract elements in a particular set of contracts, BBC:
 - Multiplied percentage availability for each group by the dollars associated with a particular contract element, and then repeated that process for all contract elements included in the set;
 - Added the results across contract elements in the set; and

- Divided that sum by the total dollars of all contract elements included in the set to produce dollar-weighted estimates of availability.

BBC used the above contract-by-contract process to determine MBE/WBE availability for each set of contracts and subcontracts examined in the disparity analysis. More than 3,200 contracts and subcontracts were examined when calculating availability for the City.

Figure 5-3 presents dollar-weighted availability by MBE/WBE group for City contracts and subcontracts from July 1, 2004 through June 30, 2009. As shown for construction, 5.5 percent of combined construction prime and subcontract dollars would be expected to go to MBE/WBEs. For construction-related professional services, 14.6 percent of combined prime and subcontract dollars would be expected to go to MBE/WBEs.

MBE/WBE availability differed between industries because of the number of MBE/WBEs among all firms available to perform work within an industry and because of the specific types, sizes, locations and contract roles (i.e., prime contractor or subcontractor) of the contract elements in an industry.

Figure 5-3.
Availability of firms for
City procurements,
July 2004–June 2009, by
race, ethnicity and gender

Note:
 See Figures L-2 and M-3 in Appendices L and M, respectively.
 Numbers may not sum perfectly due to rounding.

Source:
 BBC Research & Consulting from
 2010 Availability Survey.

Race, ethnicity and gender	Utilization benchmark (availability %)	
	Construction	Professional Services
MBE		
African American-owned	0.5 %	1.3 %
Asian-Pacific American-owned	0.2	4.0
Subcontinent Asian American-owned	0.0	0.1
Hispanic American-owned	0.5	1.1
Native American-owned	0.7	0.8
Total MBE	1.9 %	7.2 %
WBE (white women-owned)	3.5	7.4
Total MBE/WBE	5.5 %	14.6 %

Unique availability benchmark for each set of contracts. BBC separately determined dollar-weighted availability by racial/ethnic/gender group for each set of City contracts and subcontracts examined in the disparity analysis (detailed results can be found in Appendices L and M). A number of tables in the supporting appendices report MBE/WBE availability and disparity analysis results for subsets of contracts and subcontracts. In general:

- Dollar-weighted MBE/WBE availability is greater for small prime contracts than for large prime contracts; and
- MBE/WBE availability is greater for subcontracts than prime contracts.

Disparity analyses for MBE/WBEs, not just certified MBE/WBEs/ESBs. Utilization and availability analyses of minority- and women-owned firms allow one to analyze whether there are disparities affecting certain racial/ethnic/gender groups, independent of certification status. Firms may be discriminated against because of the race or gender of the business owner regardless of whether the owner has applied for MBE/WBE or ESB certification.

By not limiting its disparity analyses to certified firms, BBC's examination of whether firms face disadvantages based on race/ethnicity/gender includes a broad set of MBE/WBEs in the Portland area. A disparity analysis focusing on certified firms would improperly compare outcomes for certified firms (by definition, "emerging and small" if ESBs) with all other firms (combining majority-owned firms with very successful firms owned by minorities and women).

Coding of minority women-owned firms. In the disparity study, BBC combines firms owned by minority women and firms owned by minority men into "minority-owned firms." "WBEs" are firms owned by white women. Figure 5-4 discusses BBC rationale for that classification.

**Figure 5-4.
Coding of firms owned by minority women**

Firms owned by minority women present a data coding challenge in both the availability analysis and the utilization analysis. BBC considered four options for coding firms owned by minority women:

- a. Coding these firms as both minority- and women-owned;
- b. Creating a unique group of minority female-owned firms;
- c. Grouping minority female-owned firms with all women-owned firms; and
- d. Grouping minority female-owned firms with the relevant racial/ethnic group.

BBC chose not to code the firms as both women-owned and minority-owned to avoid potential double-counting when reporting total MBE/WBE utilization and availability. Dividing each racial/ethnic group into firms owned by men versus women (e.g., African American male-owned firms, African American female-owned firms, etc.) was also unworkable for purposes of the disparity analysis because some minority groups had utilization and availability so low that further disaggregation made it more difficult to interpret results.

After rejecting the first two options, BBC then considered whether to group minority female-owned firms with the relevant minority group or with all women-owned firms. BBC chose the former — to group African American women-owned firms with all African American-owned firms, etc. "WBE" in this report refers to white women-owned firms. Any evidence of discrimination against white women-owned firms should, in general, be considered evidence of discrimination against women of any race or gender. This definition of WBEs also gives the City information to answer questions that often arise pertaining to utilization of white women-owned firms, such as whether a disproportionate share of work goes to firms owned by white women compared with firms owned by minorities.

F. Implications for any MBE/WBE Contract Goals

If the City chooses to use MBE/WBE contract goals in the future, it should:

- Set goals on a contract-by-contract basis given the unique attributes of the contract.
- Set contract goals only on contracts that have subcontracting opportunities.
- Use information in the availability database developed through this study and in the City's own databases when establishing contract goals.

G. Other Approaches to Measuring Availability

BBC explored other approaches to developing a database of available firms for City contracts and subcontracts before deciding to use information collected through interviews of local businesses.

Other approaches. The City maintains lists of bidders and, for construction, a set of firms pre-qualified for City work. However, this information misses certain available firms and does not include complete information on the types, sizes and contract roles for contracts for which a firm is available. For example, firms do not need to be pre-qualified to bid or work as a subcontractor on City projects. As a result, the City's list of prequalified firms may be missing many of these firms. In addition, there may be barriers in the prequalification process that would make that list unrepresentative of all firms qualified and interested in City prime contracts.

Strengths of BBC's enhanced "custom census" approach. Some of the strengths of the "custom census" approach that BBC used in the City's disparity study are summarized in Figure 5-5. It is worthwhile to summarize certain strengths in how BBC examined specific factors for determining whether a firm was available for a particular contract element.

- **Specialization of work.** BBC examined 26 different subindustries in the City's disparity study.
- **Qualifications and interest in prime contractor and subcontractor work.** BBC collected information on whether firms reported qualifications and interest in working as a *prime contractor* or as a *subcontractor*. In BBC's availability analysis, only firms qualified and interested in prime contracts are counted as available for prime contracts. Firms reporting qualifications and interest in subcontracts are counted as available for subcontracts. Some firms reported qualifications and interest in both contract roles, and are counted as available for either role.
- **Size of contract or subcontract element.** In counting available firms, BBC also considered whether a firm had previously worked or bid on a project of equivalent size (in dollars) to the specified contract or subcontract element. BBC's approach is consistent with guidance from the U.S. Court of Appeals for the Federal Circuit regarding capacity of firms to perform different sizes of contracts (see *Rothe Development Corp. v. Department of Defense*).¹³

Appendix B provides an in-depth discussion of court cases that have considered strengths and weaknesses of different approaches to calculating availability.

Figure 5-5. Summary of the strengths of a "custom census" approach

Federal courts have reviewed and upheld "custom census" approaches to availability that begin with D&B data. The study team's methodology for analyzing MBE/WBE availability took the previous court-reviewed custom census approach as a starting point and added several layers of additional screening when determining firms available for transportation contracting work.

For example, the BBC analysis includes discussions with individual firms about interest in City and Portland Development Commission (PDC) work, contract role and geographic location of their work, items not included in the court-reviewed availability analyses. BBC also analyzes the sizes of contracts and subcontracts that firms have performed or bid on in the past.

¹³ *Rothe Development Corp. v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).

CHAPTER 6.

Utilization and Disparity Analysis for City of Portland Construction Contracts

Chapter 6 presents utilization and disparity results for City construction contracts. Chapter 6 is organized in two parts:

- A. Utilization results; and
- B. Disparity analysis.

Part A reports the share of contract dollars that went to MBE/WBEs. Figure 6-1 provides the definition of “utilization” that BBC used for the study. Part B compares utilization results with the availability benchmarks introduced in Chapter 5. Those comparisons allow BBC to determine whether utilization of MBE/WBEs on City construction contracts was above or below what would be expected given the availability of MBE/WBEs for those contracts. Detailed utilization and disparity results are presented in Appendix L.

A. Utilization Results

The first half of Chapter 6 presents City construction utilization results for:

1. All contracts by M/W/ESB group;
2. Contracts included in the Good Faith Efforts program;
3. Sheltered Market Program contracts;
4. Informal contracts; and
5. Contracts not included in the Good Faith Efforts program or Sheltered Market Program.

1. All contracts by M/W/ESB group. Figure 6-2, on the next page, details utilization of all MBE/WBEs (top third of the figure), utilization of MBE/WBE-certified firms (middle third of the figure) and utilization of firms certified as Emerging Small Businesses (ESBs) (lower part of the figure). Results presented in Figure 6-2 include all contract dollars (prime contracts and first tier subcontracts) analyzed in the study for July 2004 through June 2009.

Figure 6-1. Defining and measuring “utilization”

“Utilization” of minority- and women-owned firms refers to the share of contract dollars going to those firms. BBC reports results for firms certified as MBEs and WBEs (firms certified as MBEs or WBEs through the State of Oregon in the year of the specific contract) and for all minority- and women-owned firms. BBC also examines results by racial/ethnic/gender group.

Utilization is expressed as a percentage of prime contract and subcontract *dollars*. For example, WBE utilization of 5 percent means that 5 percent of the contract dollars examined (e.g., \$5 million out of \$100 million) went to women-owned firms. Expressed another way, 5 cents of every contract dollar went to WBEs. “Prime contract dollars” are total contract dollars less the money identified as going to subcontractors.

Information concerning utilization of minority- and women-owned firms is useful on its own, but is even more instructive when compared with a benchmark. The benchmark applied in this study is for the level of utilization expected given relative availability of minority- and women-owned firms for a particular set of contracts.

Chapter 3 and Appendix C explain how utilization data were collected and analyzed.

As shown in Figure 6-2, 5.4 percent of City construction contract dollars went to WBEs.¹ MBEs received 2.9 percent of contract dollars. About three-quarters of overall MBE/WBE participation was with firms certified as MBE/WBEs by the State of Oregon. Certified MBEs comprised nearly all of the utilization of minority-owned firms. Certified WBEs accounted for about two-thirds of WBE utilization.

Figure 6-2 also examines utilization based on ESB certification. As shown, certified ESBs accounted for about 5 percent of City construction contract dollars from July 2004 through June 2009. More contract dollars went to majority-owned ESBs than minority- or women-owned ESBs.

Figure 6-2.
MBE/WBE and certified M/W/ESB prime/subcontract dollars
for City construction contracts, July 2004–June 2009

	Total	
	\$ in thousands	Percent
Certified and non-certified MBE/WBEs		
MBE		
African American-owned	\$4,332	0.5 %
Asian-Pacific American-owned	1,122	0.1
Subcontinent Asian American-owned	1,884	0.2
Hispanic American-owned	13,932	1.5
Native American-owned	<u>5,017</u>	<u>0.6</u>
Total MBE	\$26,287	2.9 %
WBE (white women-owned)	<u>48,377</u>	<u>5.4</u>
Total MBE/WBE	\$74,664	8.3 %
Majority-owned	<u>827,770</u>	<u>91.7</u>
Total	\$902,434	100.0 %
Certified MBE/WBEs		
MBE		
African American-owned	\$4,306	0.5 %
Asian-Pacific American-owned	571	0.1
Subcontinent Asian American-owned	1,697	0.2
Hispanic American-owned	13,347	1.5
Native American-owned	<u>5,012</u>	<u>0.6</u>
Total MBE certified	\$24,932	2.8 %
WBE (white women-owned)	30,764	3.4
Total MBE/WBE certified	\$55,696	6.2 %
Non-certified	<u>846,738</u>	<u>93.8</u>
Total	\$902,434	100.0 %
Certified ESBs		
Minority- or Women-owned ESB	\$18,437	2.0 %
Majority-owned ESB	<u>25,671</u>	<u>2.8</u>
Total ESB certified	\$44,108	4.9 %
Non-certified	<u>858,326</u>	<u>95.1</u>
Total	\$902,434	100.0 %

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.
Number of contracts/subcontracts analyzed is 2,134.
For more detail, see Figure L-2 in Appendix L.

Source: BBC Research & Consulting from data on City of Portland construction contracts.

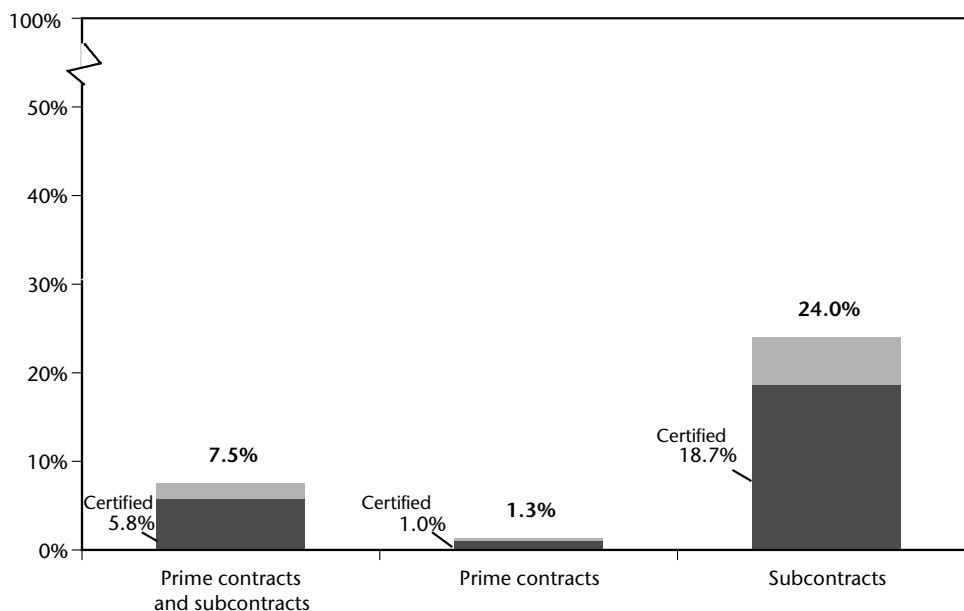
¹ As discussed in Chapter 5, “WBEs” refer to white women-owned firms in this report.

2. Contracts included in the Good Faith Efforts Program. BBC examined \$875 million of City construction contracts awarded under the Good Faith Efforts (GFE) Program during the study period. Figure 6-3 presents MBE/WBE utilization for construction contracts to which the City GFE program applied. Overall MBE/WBE utilization for GFE contracts was:

- 7.5 percent for prime contracts and subcontracts;
- 1.3 percent for prime contracts; and
- 24.0 percent for subcontracts.

Most MBE/WBE utilization on GFE contracts was with certified firms.

Figure 6-3.
MBE/WBE and certified MBE/WBE share of contract dollars for City of Portland Good Faith Efforts construction contracts awarded under the GFE program, July 2004–June 2009



Note: Number of contracts/subcontracts analyzed is 1,635 for prime contracts and subcontracts, 195 for prime contracts, and 1,440 for subcontracts. For more detail, see Figures L-5, L-6 and L-7 in Appendix L.

Source: BBC Research & Consulting from data on City of Portland construction contracts.

Prime and subcontracts. Figure 6-4, on the following page, provides results by racial/ethnic/gender group. White women-owned firms (4.7%) exhibited higher utilization for City GFE construction contracts than any other MBE/WBE group.

Certified ESBs accounted for 4.3 percent of total utilization on GFE contracts. Majority-owned firms represented more than one-half of total ESB utilization.

Prime contracts. The study team analyzed 195 prime GFE contracts. WBEs accounted for 1 percentage point of the 1.3 percent MBE/WBE utilization for prime contracts. MBEs obtained less than one-half of 1 percent of total prime contract dollars. Certified ESBs received less than 1 percent of all prime contracts to which the GFE program applied.

Subcontracts. Subcontracts accounted for about \$240 million of the total value of GFE contracts. Of the 24.0 percent MBE/WBE utilization, white women- (14.6%) and Hispanic American-owned firms (5.4%) accounted for most of the participation. All other MBE/WBE groups had less than 2 percent utilization on these subcontracts.

Firms certified as ESBs accounted for 14.1 percent of total subcontract dollars on GFE contracts. Majority-owned ESBs received more than one-half of all subcontract dollars awarded to certified ESB firms (8.3% of subcontract dollars).

Figure 6-4.
MBE/WBE and certified M/W/ESB share of contract dollars for City of Portland construction contracts awarded under the GFE program, July 2004–June 2009 (thousands)

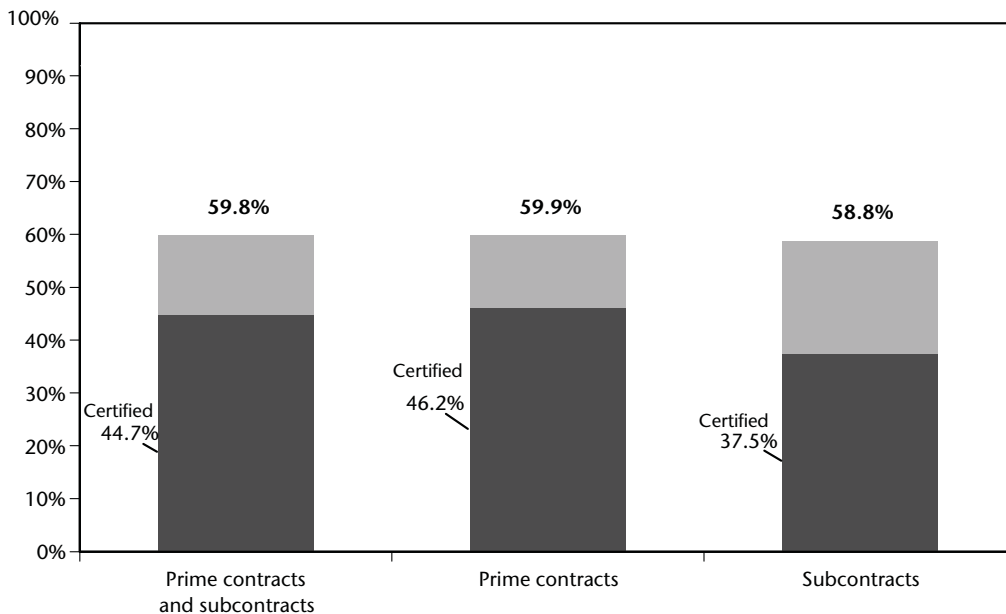
	Prime contracts and subcontracts		Prime contracts		Subcontracts	
	\$ in thousands	Percent	\$ in thousands	Percent	\$ in thousands	Percent
Certified and non-certified MBE/WBEs						
MBE						
African American-owned	\$3,659	0.4 %	\$0	0.0 %	\$3,659	1.5 %
Asian-Pacific American-owned	980	0.1	0	0.0	980	0.4
Subcontinent Asian American-owned	1,848	0.2	0	0.0	1,848	0.8
Hispanic American-owned	13,075	1.5	158	0.0	12,917	5.4
Native American-owned	<u>4,726</u>	<u>0.5</u>	<u>1,681</u>	<u>0.3</u>	<u>3,045</u>	<u>1.3</u>
Total MBE	\$24,288	2.8 %	\$1,839	0.3 %	\$22,449	9.4 %
WBE (white women-owned)	41,229	4.7	6,178	1.0	35,050	14.6
Total MBE/WBE	\$65,517	7.5 %	\$8,018	1.3 %	\$57,499	24.0 %
Majority-owned	<u>809,296</u>	<u>92.5</u>	<u>627,325</u>	<u>98.7</u>	<u>181,971</u>	<u>76.0</u>
Total	\$874,813	100.0 %	\$635,343	100.0 %	\$239,470	100.0 %
Certified MBE/WBEs						
MBEs						
African American-owned	\$3,633	0.4 %	\$0	0.0 %	\$3,633	1.5 %
Asian-Pacific American-owned	429	0.0	0	0.0	429	0.2
Subcontinent Asian American-owned	1,661	0.2	0	0.0	1,661	0.7
Hispanic American-owned	12,567	1.4	158	0.0	12,409	5.2
Native American-owned	<u>4,727</u>	<u>0.5</u>	<u>1,681</u>	<u>0.3</u>	<u>3,042</u>	<u>1.3</u>
Total MBE certified	\$23,014	2.6 %	\$1,839	0.3 %	\$21,174	8.8 %
WBE (white women-owned)	27,719	3.2	4,228	0.7	23,491	9.8
Total MBE/WBE certified	\$50,733	5.8 %	\$6,067	1.0 %	\$44,666	18.7 %
Non-certified	<u>824,080</u>	<u>94.2</u>	<u>629,276</u>	<u>99.0</u>	<u>194,804</u>	<u>81.3</u>
Total	\$874,813	100.0 %	\$635,343	100.0 %	\$239,470	100.0 %
Certified ESBs						
Minority- or women-owned ESB	\$14,955	1.7 %	\$1,077	0.2 %	\$13,878	5.8 %
Majority-owned ESB	<u>22,427</u>	<u>2.6</u>	<u>2,465</u>	<u>0.4</u>	<u>19,962</u>	<u>8.3</u>
Total ESB certified	\$37,382	4.3 %	\$3,542	0.6 %	\$33,840	14.1 %
Non-certified	<u>837,431</u>	<u>95.7</u>	<u>631,801</u>	<u>99.4</u>	<u>205,630</u>	<u>85.9</u>
Total	\$874,813	100.0 %	\$635,343	100.0 %	\$239,470	100.0 %

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.
Number of contracts/subcontracts analyzed is 1,635 for prime contracts and subcontracts, 195 for prime contracts, and 1,440 for subcontracts.
For more detail, see Figures L-5, L-6 and L-7 in Appendix L.

Source: BBC Research & Consulting from data on City of Portland construction contracts.

3. Sheltered Market Program contracts. Of the more than \$900 million of City construction contracts examined in the study, BBC identified \$3.8 million included in the Sheltered Market Program (SMP). Figure 6-5 indicates that MBE/WBEs accounted for about 60 percent of contract dollars under the SMP for July 2004 through June 2009. MBE/WBEs received roughly the same proportion of prime contract and subcontract dollars.

Figure 6-5.
MBE/WBE and certified MBE/WBE share of contract dollars for City construction contracts in the SMP, July 2004–June 2009



Note: Number of contracts/subcontracts analyzed is 93 for prime contracts and subcontracts, 60 for prime contracts, and 33 for subcontracts. For more detail, see Figures L-11, L-12 and L-13 in Appendix L.

Source: BBC Research & Consulting from data on City of Portland construction contracts.

Prime and subcontracts. Figure 6-6, on the next page, presents utilization by racial/ethnic/gender group for SMP contracts. WBEs accounted for 43 percent and MBEs received 17 percent of contract dollars awarded under the SMP. Hispanic American-owned firms (11.2%) and African American-owned firms (5.7%) received the largest portion of the MBE dollars. Utilization of other MBE groups combined was less than 1 percent.

Prime contracts. White women-owned firms received 40 percent and minority-owned firms received 20 percent of prime contract dollars awarded under the SMP. Approximately 40 percent of SMP prime contract dollars were awarded to majority-owned ESBs.

Subcontracts. Primarily because contracts were small, construction contracts awarded under the SMP involved relatively little subcontracting (less than 20 percent of contract dollars). More than half of the subcontract dollars on SMP contracts went to white women-owned firms, whereas minority-owned firms accounted for less than 4 percent of subcontract dollars. Certified firms represented most of the MBE/WBE utilization on SMP contracts.

Figure 6-6.
MBE/WBE and certified M/W/ESB contract dollars for City construction contracts in the SMP,
July 2004–June 2009

	Prime contracts and subcontracts		Prime contracts		Subcontracts	
	\$ in thousands	Percent	\$ in thousands	Percent	\$ in thousands	Percent
Certified and non-certified MBE/WBEs						
MBE						
African American-owned	\$216	5.7 %	\$216	6.9 %	\$0	0.0 %
Asian-Pacific American-owned	0	0.0	0	0.0	0	0.0
Subcontinent Asian American-owned	7	0.2	0	0.0	7	1.0
Hispanic American-owned	424	11.2	409	13.1	15	2.4
Native American-owned	<u>2</u>	<u>0.1</u>	<u>0</u>	<u>0.0</u>	<u>2</u>	<u>0.4</u>
Total MBE	\$649	17.2 %	\$625	20.0 %	\$24	3.8 %
WBE (white women-owned)	<u>1,605</u>	<u>42.5</u>	<u>1,253</u>	<u>40.0</u>	<u>353</u>	<u>55.0</u>
Total MBE/WBE	\$2,255	59.8 %	\$1,878	59.9 %	\$377	58.8 %
Majority-owned	<u>1,519</u>	<u>40.2</u>	<u>1,255</u>	<u>40.1</u>	<u>264</u>	<u>41.2</u>
Total	\$3,774	100.0 %	\$3,133	100.0 %	\$641	100.0 %
Certified MBE/WBEs						
MBEs						
African American-owned	\$216	5.7 %	\$216	6.9 %	\$0	0.0 %
Asian-Pacific American-owned	0	0.0	0	0.0	0	0.0
Subcontinent Asian American-owned	7	0.2	0	0.0	7	1.0
Hispanic American-owned	424	11.2	409	13.1	15	2.4
Native American-owned	<u>0</u>	<u>0.0</u>	<u>0</u>	<u>0.0</u>	<u>0</u>	<u>0.0</u>
Total MBE certified	\$647	17.1 %	\$625	20.0 %	\$22	3.4 %
WBE (white women-owned)	<u>1,041</u>	<u>27.6</u>	<u>822</u>	<u>26.2</u>	<u>219</u>	<u>34.1</u>
Total MBE/WBE certified	\$1,688	44.7 %	\$1,447	46.2 %	\$241	37.5 %
Non-certified	<u>2,086</u>	<u>55.3</u>	<u>1,686</u>	<u>53.8</u>	<u>400</u>	<u>62.5</u>
Total	\$3,774	100.0 %	\$3,133	100.0 %	\$641	100.0 %
Certified ESBs						
Minority- or women-owned ESB	\$1,938	51.3 %	\$1,747	55.8 %	\$191	29.7 %
Majority-owned ESB	<u>1,378</u>	<u>36.5</u>	<u>1,255</u>	<u>40.1</u>	<u>123</u>	<u>19.2</u>
Total ESB certified	\$3,315	87.9 %	\$3,002	95.8 %	\$314	48.9 %
Non-certified	<u>459</u>	<u>12.1</u>	<u>131</u>	<u>4.2</u>	<u>327</u>	<u>51.1</u>
Total	\$3,774	100.0 %	\$3,133	100.0 %	\$641	100.0 %

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.
Number of contracts/subcontracts analyzed is 93 for prime contracts and subcontracts, 60 for prime contracts, and 33 for subcontracts.

For more detail, see Figures L-11, L-12 and L-13 in Appendix L.

Source: BBC Research & Consulting from data on City of Portland construction contracts.

4. Informal contracts. BBC also examined MBE/WBE utilization on contracts awarded through the informal and emergency contracting processes. Firms participating in the SMP are the first source for City informal contracts (contracts worth \$100,000 or less). Overall MBE/WBE utilization on informal contracts was 36.7 percent for prime contracts and subcontracts. BBC did not separately analyze prime contracts and subcontracts as there were only 15 subcontracts across all 216 informal construction contracts that the City executed during the study period.

Figure 6-7 shows MBE/WBE utilization on these contracts along with the proportion of utilization from certified MBE/WBEs.

Figure 6-7.
MBE/WBE and certified MBE/WBE
contract dollars for City informal
construction contracts,
July 2004–June 2009

Note:
 Informal contracts are those less than \$100,000.
 Number of small contracts/subcontracts analyzed is 231.
 For more detail and results by group, see Figure L-8 in
 Appendix L.

Source:
 BBC Research & Consulting from data on City of Portland
 construction contracts.

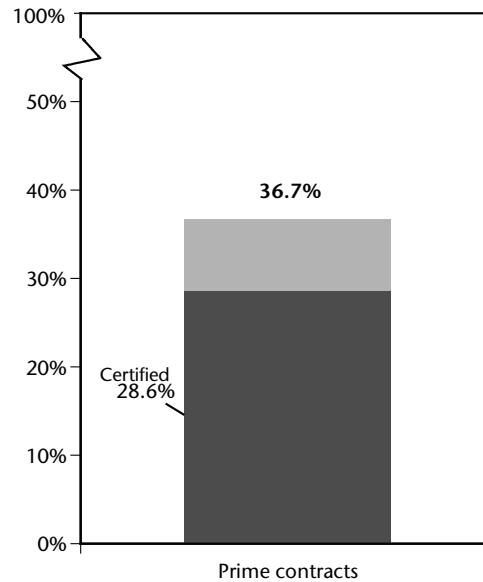


Figure 6-8 shows the detailed utilization of M/W/ESBs on all informal construction contracts.

White women-owned firms received 22.7 percent of all informal construction contract dollars. Among MBEs, Hispanic American- and African American-owned firms each received more than 5 percent of the informal contracting dollars. Almost all of the MBEs that received work were MBE-certified. More than two-thirds of the dollars received by WBEs went to certified firms.

ESBs received one-third of informal contracts. Slightly more than half of the informal contract dollars awarded to ESBs went to MBE/WBEs.

Figure 6-8.
MBE/WBE and certified M/W/ESB
contract dollars for City informal
construction contracts,
July 2004–June 2009

Note:

Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.

Informal contracts are those less than \$100,000.

Number of contracts/subcontracts analyzed is 231.

For more detail and results by group, see Figure L-8 in Appendix L.

Source:

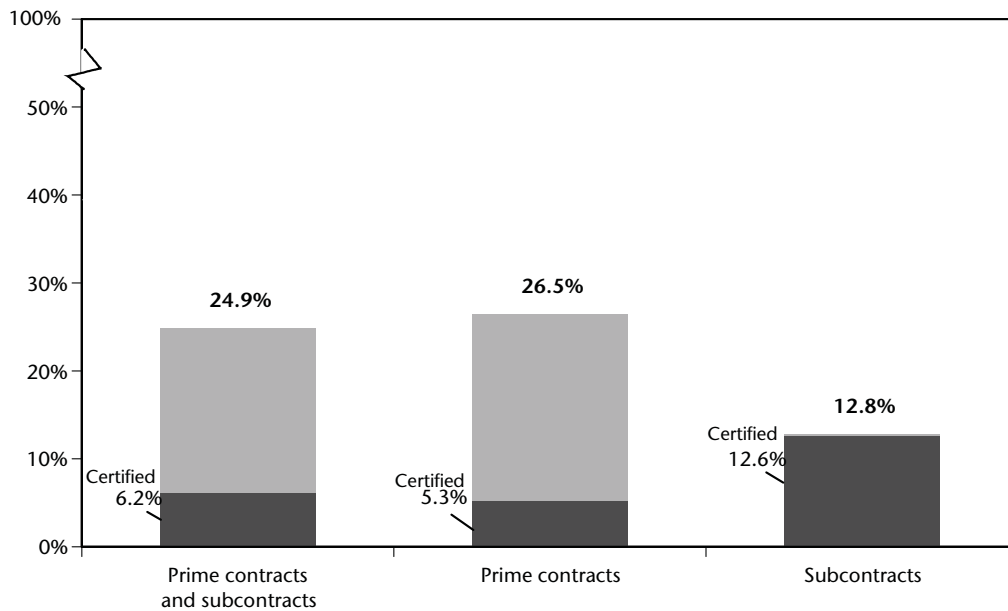
BBC Research & Consulting from data on City of Portland construction contracts.

	Prime contracts and subcontracts	
	\$ in thousands	Percent
Certified and non-certified MBE/WBEs		
MBE		
African American-owned	\$409	5.1 %
Asian-Pacific American-owned	144	1.8
Subcontinent Asian American-owned	0	0.0
Hispanic American-owned	425	5.3
Native American-owned	146	1.8
Total MBE	\$1,125	14.0 %
WBE (white women-owned)	<u>1,821</u>	<u>22.7</u>
Total MBE/WBE	\$2,946	36.7 %
Majority-owned	<u>5,080</u>	<u>63.3</u>
Total	\$8,026	100.0 %
Certified MBE/WBEs		
MBEs		
African American-owned	\$410	5.1 %
Asian-Pacific American-owned	144	1.8
Subcontinent Asian American-owned	0	0.0
Hispanic American-owned	346	4.3
Native American-owned	147	1.8
Total MBE certified	\$1,047	13.0 %
WBE (white women-owned)	<u>1,252</u>	<u>15.6</u>
Total MBE/WBE certified	\$2,299	28.6 %
Non-certified	<u>5,727</u>	<u>71.4</u>
Total	\$8,026	100.0 %
Certified ESBs		
Minority- or Women-owned ESB	\$1,439	17.9 %
Majority-owned ESB	<u>1,217</u>	<u>15.2</u>
Total ESB certified	\$2,656	33.1 %
Non-certified	<u>5,370</u>	<u>66.9</u>
Total	\$8,026	100.0 %

5. Contracts not included in the Good Faith Efforts Program or Sheltered Market Program.

Some formal contracts (contracts worth more than \$100,000) during the study period were not included in the SMP and the GFE program. These contracts included emergency contracts and contracts worth between \$100,000 and \$200,000 for which the City did not identify any substantial subcontracting opportunities. As shown in Figure 6-9, MBE/WBEs accounted for 24.9 percent of all formal construction contracting dollars not included in the GFE Program or the SMP. MBE and WBE utilization was higher for prime contracts than subcontracts.

Figure 6-9.
MBE/WBE and certified MBE/WBE contract dollars for City formal construction contracts not included in the GFE program or SMP, July 2004–June 2009



Note: Number of contracts/subcontracts analyzed is 175 for prime contracts and subcontracts, 76 for prime contracts, and 99 for subcontracts. For more detail, see Figures L-14, L-15 and L-16 in Appendix L.

Source: BBC Research & Consulting from data on City of Portland contracts.

Results for specific MBE, WBE and ESB groups are shown in Figure 6-10. Among MBE/WBEs, most of the contract dollars went to WBEs (utilization of 23.5%). MBEs accounted for only 1.4 percent of contract dollars. About 5 percent of total dollars for these contracts went to ESBs, with most of this work going to majority-owned ESBs.

Figure 6-10.
MBE/WBE and certified M/W/ESB contract dollars for City formal construction contracts not included in the GFE program or the SMP, July 2004–June 2009

	Prime contracts and subcontracts		Prime contracts		Subcontracts	
	\$ in thousands	Percent	\$ in thousands	Percent	\$ in thousands	Percent
Certified and non-certified MBE/WBEs						
MBE						
African American-owned	\$51	0.3 %	\$0	0.0 %	\$51	2.8 %
Asian-Pacific American-owned	0	0.0	0	0.0	0	0.0
Subcontinent Asian American-owned	29	0.2	0	0.0	29	1.6
Hispanic American-owned	5	0.0	0	0.0	5	0.3
Native American-owned	140	0.9	140	1.0	0	0.0
Total MBE	\$225	1.4 %	\$140	1.0 %	\$84	4.7 %
WBE (white women-owned)	3,722	23.5	3,576	25.5	146	8.1
Total MBE/WBE	\$3,946	24.9 %	\$3,716	26.5 %	\$230	12.8 %
Majority-owned	11,875	75.1	10,309	73.5	1,566	87.2
Total	\$15,821	100.0 %	\$14,025	100.0 %	\$1,796	100.0 %
Certified MBE/WBEs						
MBEs						
African American-owned	\$51	0.3 %	\$0	0.0 %	\$51	2.8 %
Asian-Pacific American-owned	0	0.0	0	0.0	0	0.0
Subcontinent Asian American-owned	29	0.2	0	0.0	29	1.6
Hispanic American-owned	5	0.0	0	0.0	5	0.3
Native American-owned	140	0.9	140	1.0	0	0.0
Total MBE certified	\$225	1.4 %	\$140	1.0 %	\$84	4.7 %
WBE (white women-owned)	752	4.8	609	4.3	143	7.9
Total MBE/WBE certified	\$977	6.2 %	\$750	5.3 %	\$227	12.6 %
Non-certified	14,844	93.8	13,275	94.7	1,569	87.4
Total	\$15,821	100.0 %	\$14,025	100.0 %	\$1,796	100.0 %
Certified ESBs						
Minority- or Women-owned ESB	\$105	0.7 %	\$0	0.0 %	\$105	5.9 %
Majority-owned ESB	649	4.1	502	3.6	146	8.2
Total ESB certified	\$754	4.8 %	\$502	3.6 %	\$252	14.0 %
Non-certified	15,067	95.2	13,523	96.4	1,544	86.0
Total	\$15,821	100.0 %	\$14,025	100.0 %	\$1,796	100.0 %

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.
 Number of contracts/subcontracts analyzed is 175 for prime contracts and subcontracts, 76 for prime contracts, and 99 for subcontracts.

For more detail, see Figures L-14, L-15 and L-16 in Appendix L.

Source: BBC Research & Consulting from data on City of Portland Good Faith Efforts construction contracts.

B. Disparity Analysis

To know whether MBE/WBE firms are “underutilized,” one must compare utilization with a benchmark that reflects the dollars those firms would be expected to receive given their availability for a particular set of procurement opportunities. Such a comparison is called a disparity analysis. Disparity analysis helps to identify whether there are disparities between utilization and availability of specific racial/ethnic/gender groups for certain types of contracts and subcontracts.

- BBC compares actual participation of an MBE/WBE group in certain contracts (expressed as a percentage of total dollars) to the percentage of work that might be expected to go to that group given its availability for that specific work (i.e., availability benchmark).
- The disparity analyses presented in this report account for differences in types, sizes, locations and timing of prime contracts and subcontracts (reflected in the availability benchmarks for specific MBE/WBE groups and sets of contracts).
- BBC creates a disparity index to easily communicate how close actual utilization comes to the availability benchmark, or whether it exceeds the benchmark. By examining the disparity index for each MBE/WBE group and set of contracts, one can directly compare results between different groups and different sets of contracts.

The second half of Chapter 6 presents disparity results for City construction contracts in eight parts:

1. Overview of disparity analysis methodology;
2. Overall construction results;
3. Contracts included in the Good Faith Efforts program;
4. Sheltered Market Program contracts;
5. Informal contracts;
6. Contracts not included in the Good Faith Efforts Program or Sheltered Market Program;
7. Analysis of statistical significance of disparities; and
8. Summary of City of Portland construction disparity results.

1. Overview of disparity analysis methodology. BBC compared actual utilization of MBE/WBEs by race/ethnicity/gender (as a percentage of contract dollars) to the share of contract dollars that might be expected to go to MBE/WBEs based on BBC’s analysis of their availability for a particular set of contracts. In the following discussion, “expected share of contract dollars” is referred to as the “utilization benchmark” or simply “availability” for particular groups and particular sets of contracts. For each MBE/WBE group and for each set of City contracts, BBC calculated a unique utilization benchmark.

Both the actual utilization and the utilization benchmark for a set of contracts are expressed as a percentage of the dollars involved in those contracts. As such, the actual utilization and the benchmark are expressed in terms that are directly comparable (e.g., 5% actual utilization compared with a benchmark of 4%). To help compare results between groups or across sets of contracts, BBC calculates a disparity index, as described in Figure 6-11.

Example of a disparity analysis table. Disparity results presented in this chapter are based on disparity tables in Appendix L. Different tables report disparity study results for different sets of contracts (e.g., construction prime contracts). Each disparity table follows the same format. Because of the number and importance of the detailed disparity tables, it is useful to first review how BBC calculated and presented results in each table.

Figure 6-12 presents an example of a disparity table from Appendix L (it is labeled Figure L-2 in Appendix L).

That disparity table pertains to combined data for all City construction prime contracts and first tier subcontracts awarded between July 2004 and June 2009. It includes dollars for prime contracts and subcontracts. Appendix L contains similar tables for different sets of contracts. (The parameters for the set of examined contracts are noted in the heading of each table.)

Utilization. Each disparity table includes the same columns and the same rows. The columns of each disparity table present the following information:

- Column (a) notes the total number of contract elements — either prime contracts, subcontracts or both — that were examined in the analysis (in Figure 6-12, 2,134 total contracts and subcontracts).
- Column (b) identifies the total dollars examined as part of the contract set. Dollars are reported in thousands. This disparity table examines contract dollars totaling more than \$900 million.
- Column (c) provides utilization dollars by racial/ethnic/gender group after reallocating any money going to firms identified as MBEs for which specific race/ethnicity information was not available. In those circumstances, the money was reallocated to each racial/ethnic group on a pro-rated basis (e.g., Because African-American-owned firms accounted for 16 percent of total allocated MBE dollars, the study team added 16 percent of unknown MBE dollars to total dollars for African American-owned firms).

Figure 6-11. Calculation of disparity indices

The disparity index provides a straightforward way of assessing how closely actual utilization of an MBE/WBE group matches what might be expected given the relative availability of that group for the work involved in a specific set of contracts (i.e., utilization benchmark). An index of “100” indicates an exact match between actual utilization and the availability for that group (also referred to as “parity”). In BBC’s disparity analysis, a disparity index is calculated for each MBE/WBE group for each set of contracts examined.

BBC calculates the disparity index for a particular group through the following formula:

$$\frac{\% \text{ actual utilization}}{\% \text{ availability}} \times 100$$

For example, if actual utilization of WBEs for a set of contracts was 2% and the availability was 10%, the index would be $2\% \div 10\%$, which is then multiplied by 100 to derive an index of 20. In this example, WBEs would have received 20 cents for every dollar expected to go to WBEs based on the availability benchmark. Smaller disparity indices indicate greater disparities.

One can directly compare the disparity index of one group to that of another group, and between sets of contracts.

- Column (d) shows relative utilization of each MBE/WBE group on a percentage basis. Each percentage in column (d) is calculated by dividing dollars awarded to a particular group in column (c) by the total dollars in the contract set, as shown in row (1) of column (c).

The rows of each disparity table (as shown in Figure 6-11) present the following information:

- Row (1) pertains to combined data for majority-, minority- and women-owned firms.
- Row (2) pertains to combined data for “MBEs” and “WBEs”, regardless of certification status.
- Row (3) pertains to data for “WBEs,” regardless of certification status.
- Row (4) pertains to data for “MBEs,” regardless of certification status.
- Rows (5) through (10) pertain to data for individual minority groups, regardless of certification status.

Combined, the utilization dollars presented in rows (5) through (10) sum to the total dollars for MBEs — the total shown in row (3) of column (c). In some cases, numbers may not sum perfectly due to rounding.

Rows (11) through (20) report analogous utilization results for firms that were certified by the State of Oregon as MBE/WBEs. The certified MBE/WBE utilization statistics in Figure 6-12 are provided as reference. BBC did not conduct availability or disparity analyses for certified MBE/WBEs alone, for the reasons described in Chapter 5.

Rows (21) through (23) report utilization results for State of Oregon certified emerging small businesses (ESBs).

Availability. Column (e) of Figure 6-12 reports availability for each racial/ethnic/gender group based on BBC’s availability analysis as applied to this set of City construction contracts. Availability results, represented as a percentage of procurement dollars, provide a benchmark against which to compare utilization for a specific group and for a particular set of contracts. BBC developed an availability estimate for each racial/ethnic/gender group following the procedures described in Chapter 5.

Difference between utilization and availability. One way of analyzing whether there is a disparity between the utilization of a particular group and its availability is to subtract the utilization result from the availability result. Column (f) of Figure 6-12 shows the percentage point difference between utilization and availability for each racial/ethnic/gender group. For example, as reported in row (2) of column (f) of Figure 6-12, MBE/WBE utilization was 2.8 percentage points above MBE/WBE availability.

Disparity indices. It is sometimes difficult to interpret absolute differences between utilization and availability, especially when utilization and availability are relatively small. Therefore, BBC also calculated a “disparity index,” which divides percentage utilization by percentage availability and multiplies the result by 100. An index of “100” means that there is “parity” between relative utilization and availability for a particular group. An index below 100, particularly one below 80 according to some courts, may indicate a substantial disparity.²

Column (g) provides the disparity index for each racial/ethnic/gender group. For example, the disparity index of 100 for African American-owned firms shown in row (5) of column (g) means that utilization of African American-owned businesses on City construction contracts was approximately equal to what would be expected given the relative availability of African American-owned firms to perform that work. The disparity index of 58 for Asian Pacific-owned firms shown in row (6) of column (g) indicates substantial underutilization for this group for this set of contracts.^{3, 4}

Results when disparity indices were very large or when availability is zero. BBC applied the following rules when disparity indices were exceedingly large or could not be calculated because no firms from the particular group were identified as available for the particular set of contracts:

- When a particular group exhibited a disparity index exceeding 200, BBC reported an index of “200+.”
- When there was no utilization and 0 percent availability for a particular group, BBC reported “parity” between utilization and availability (indicated by a disparity index of “100”).
- When a particular group exhibited 0 percent availability, but nonetheless showed utilization greater than 0 percent (which could occur for many reasons, including the fact that one or more utilized firms were out of business by the time of BBC’s availability survey), BBC reported a disparity index of “200+.”

² See e.g., *Rothe Development Corp v. U.S. Dept of Defense*, 545 F.3d 1023, 1041; *Eng’g Contractors Ass’n of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d at 914, 923 (11th Circuit 1997); *Concrete Works of Colo., Inc. v. City and County of Denver*, 36 F.3d 1513, 1524 (10th Cir. 1994). See Appendix B for additional discussion.

³ Note that all percentages in the disparity tables were rounded to the nearest tenth of 1 percent after making all calculations. Percentages correctly add and subtract, even though the rounding may make actual sums appear to differ by one tenth of 1 percent. In addition, the disparity index is derived from the detailed data for percentage utilization and availability before any rounding.

⁴ BBC’s use of the word “substantial” in describing certain disparity indices reflects the opinion of some courts that a disparity index of less than 80 reflects a substantial disparity.

Figure 6-12
MBE/WBE utilization, availability and disparity analysis for prime contracts/subcontracts
on City construction contracts, July 2004–June 2009

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	2,134	\$902,434	\$902,434				
(2) MBE/WBE	788	\$74,664	\$74,664	8.3	5.5	2.8	151.6
(3) WBE	424	\$48,377	\$48,377	5.4	3.5	1.8	152.3
(4) MBE	364	\$26,287	\$26,287	2.9	1.9	1.0	150.4
(5) African American-owned	116	\$4,329	\$4,332	0.5	0.5	0.0	100.1
(6) Asian-Pacific American-owned	13	\$1,122	\$1,122	0.1	0.2	-0.1	57.7
(7) Subcontinent Asian American-owned	96	\$1,883	\$1,884	0.2	0.0	0.2	200+
(8) Hispanic American-owned	98	\$13,923	\$13,932	1.5	0.5	1.0	200+
(9) Native American-owned	40	\$5,013	\$5,017	0.6	0.7	-0.1	83.4
(10) Unknown MBE	1	\$17					
(11) MBE/WBE-certified	607	\$55,696	\$55,696	6.2			
(12) Woman-owned (certified)	265	\$30,764	\$30,764	3.4			
(13) Minority-owned (certified)	342	\$24,932	\$24,932	2.8			
(14) African American-owned (certified)	115	\$4,303	\$4,306	0.5			
(15) Asian-Pacific American-owned (certified)	11	\$571	\$571	0.1			
(16) Subcontinent Asian American-owned (certified)	91	\$1,696	\$1,697	0.2			
(17) Hispanic American-owned (certified)	86	\$13,337	\$13,347	1.5			
(18) Native American-owned (certified)	38	\$5,008	\$5,012	0.6			
(19) Unknown Minority-owned (certified)	1	\$17					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	549	\$44,108	\$44,108	4.9			
(22) Minority- or Women-owned ESB	301	\$18,437	\$18,437	2.0			
(23) Majority-owned ESB	248	\$25,671	\$25,671	2.8			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown MWBE (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 5 would be added to column b, row 4, then 25 percent of column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

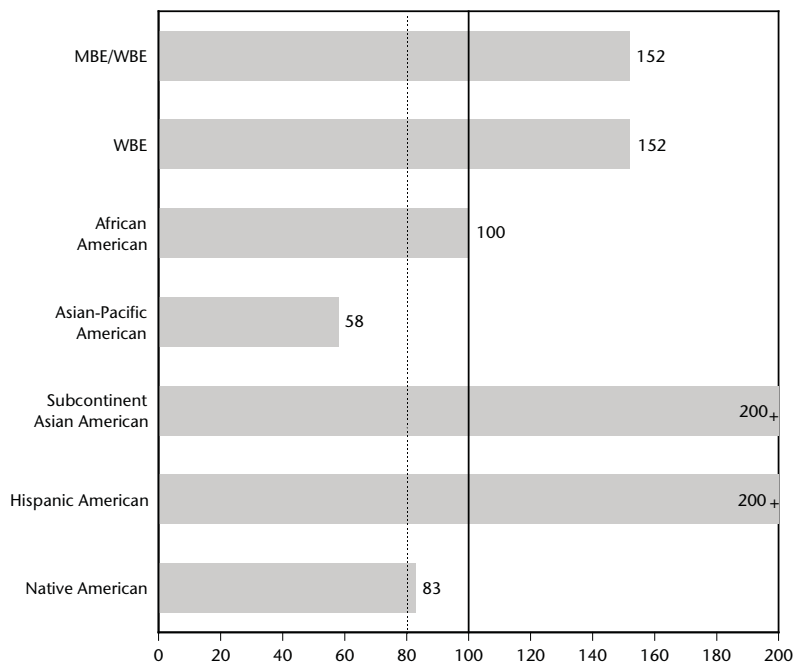
2. Overall construction results. Figure 6-13 summarizes the results of the disparity analysis for construction contracts by racial/ethnic/gender group. Overall utilization of MBE/WBEs on City construction contracts exceeded what would be expected based on their availability for City construction contracts, with a disparity index of 152.

The City’s Fair Contracting Programs, including the GFE Program and the SMP, were in place during the entire study period and were applied to a large portion of the contracts. The overall success of those programs is shown in the lack of disparities for most MBE/WBE groups. One MBE/WBE group did show a substantial disparity — Asian-Pacific American-owned firms (disparity index of 58).

Figure 6-13
Disparity indices for City
construction contracts,
July 2004–June 2009

Note:
 Number of contracts/subcontracts analyzed
 is 2,134.
 For more detail, see Figure L-2
 in Appendix L.

Source:
 BBC Research & Consulting from data on
 City of Portland construction contracts.



3. Contracts included in the Good Faith Efforts Program. Figure 6-14 on the following page presents disparity indices for City construction contracts subject to the GFE program. The top portion of Figure 6-14 presents combined results for prime contracts and subcontracts. Results for prime contracts only are presented in the middle part of the figure. Results for subcontracts only are presented in the lower part of the figure.

Prime contracts and subcontracts. Overall, there was no disparity between the utilization of MBE/WBEs on City construction contracts awarded under the GFE program. However, Asian-Pacific Americans owned firms received about one-half of the combined prime contract/subcontract dollars that they might be expected to receive based on availability (disparity index of 54). Except for this group, it appears that the City’s GFE program was effective in eliminating potential disparities in the utilization of MBE/WBEs in the contracts awarded under the program.

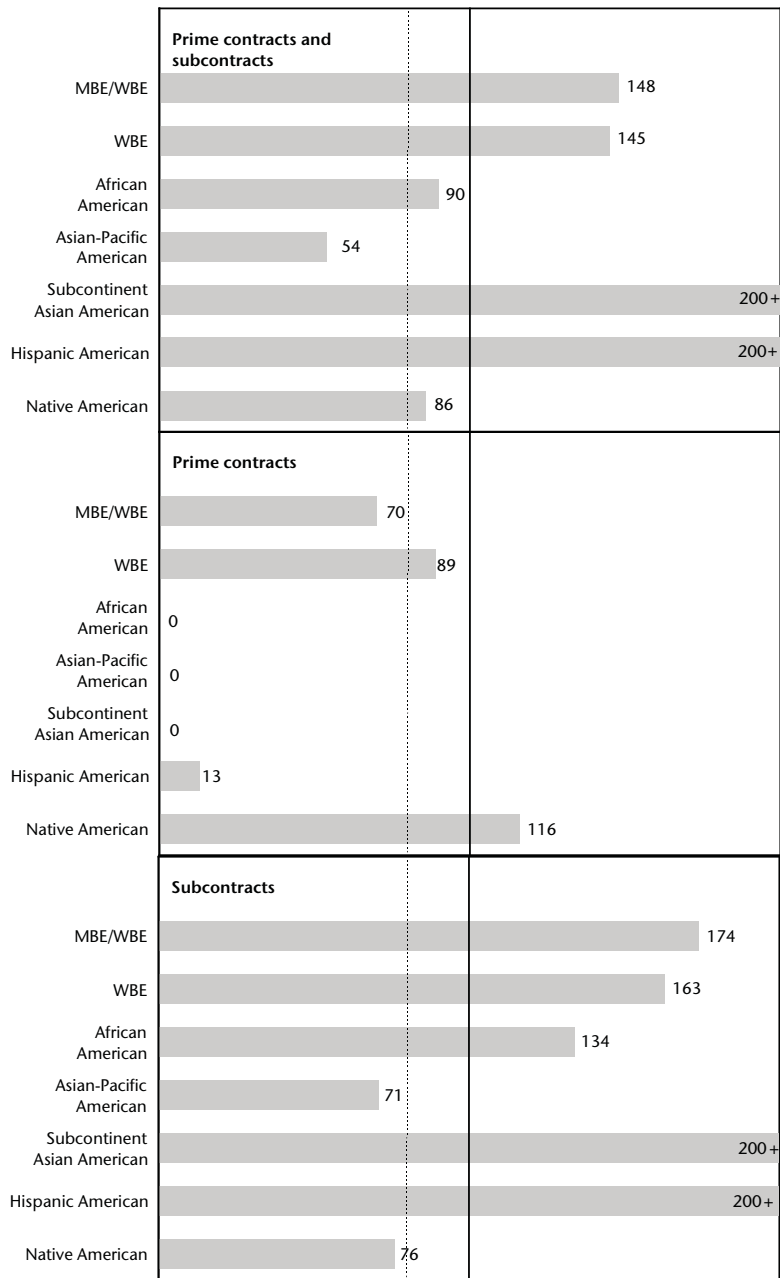
Prime contracts. MBE/WBEs received about three-quarters of the prime contract dollars that would be expected based on their availability for prime contracts under the GFE program (disparity index of 74). As a whole, MBEs showed a disparity index of 44 and WBEs a disparity index of 93. Substantial disparities were found for African American-, Asian-Pacific American-, Subcontinent Asian American- and Hispanic American-owned firms.

Subcontracts. For most MBE/WBE groups, the GFE program appeared to effectively encourage utilization as subcontractors. However, two groups of MBEs exhibited substantial underutilization — Asian-Pacific American-owned firms (disparity index of 71) and Native American-owned firms (disparity index of 76).

Figure 6-14.
Disparity indices for City construction contracts awarded under the GFE program, prime contracts and subcontracts, July 2004–June 2009

Note:
 Number of contracts/subcontracts analyzed is 1,635 for prime contracts and subcontracts, 195 for prime contracts and 1,440 for subcontracts.
 For more detail, see Figures L-5, L-6 and L-7 in Appendix L.

Source: BBC Research & Consulting from data on City of Portland construction contracts.



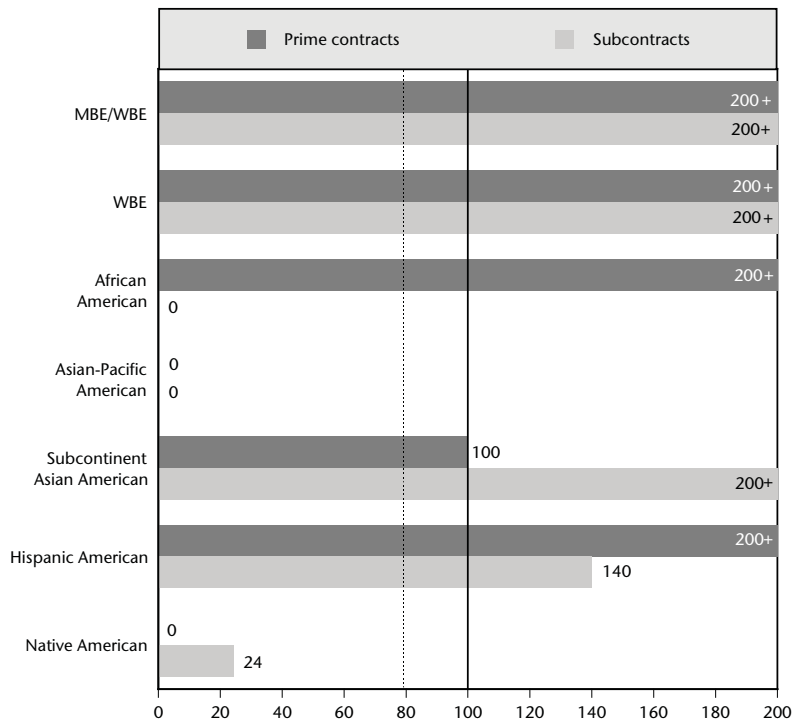
4. Sheltered Market Program contracts. Figure 6-15 shows disparity results for prime contracts (darker bars) and subcontracts (lighter bars) on contracts included in the SMP. In part because of the influence of the program, MBE/WBE utilization far exceeded availability for prime contracts included in the SMP. However, no prime contracts under the SMP appeared to go to Asian-Pacific American-owned firms or Native American-owned firms (disparity indices of 0 in Figure 6-15).

The amount of subcontracts included in SMP construction contracts (33) somewhat limits the conclusions that can be reached for individual MBE/WBE groups. However, it appears that utilization of MBE/WBEs as subcontractors exceeded what would be expected based on availability for these subcontracts (disparity index of 200+).

Figure 6-15.
Disparity indices for City
construction contracts
included in the SMP, prime
contracts and subcontracts,
July 2004–June 2009

Note:
 Number of prime contracts analyzed is 60
 and number of subcontracts analyzed is 33.
 For more detail, see Figures L-12 and L-13 in
 Appendix L.

Source:
 BBC Research & Consulting from data on
 City of Portland construction contracts.



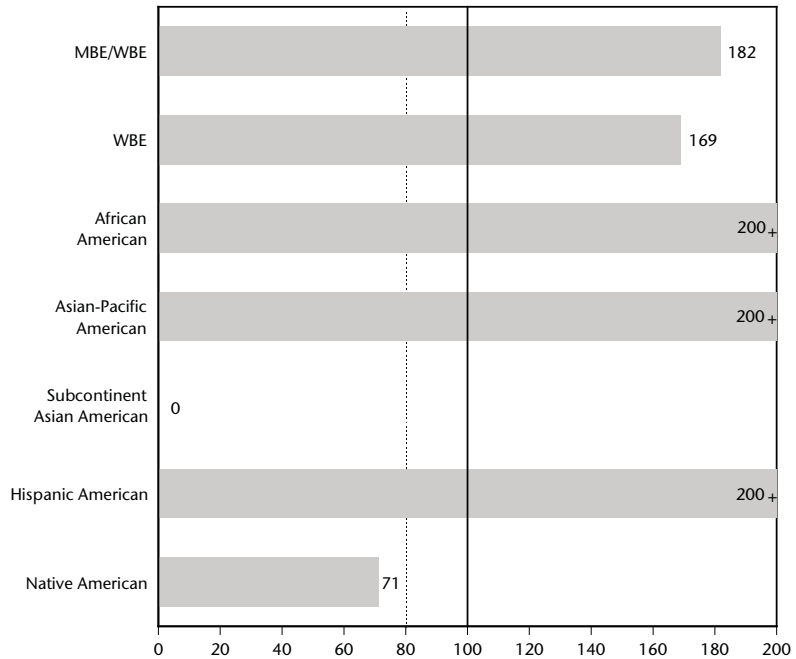
5. Informal contracts. BBC also examined disparity results for the City’s informal construction contracts (contracts under \$100,000). SMP participants are the “first source” for these contracts. As shown in Figure 6-16, overall MBE/WBE utilization exceeded availability (disparity index of 182). There were disparities in the utilization of two MBE groups — Subcontinent Asian American-owned firms (disparity index of 0) and Native American-owned firms (disparity index of 72).

Prime contracts comprise most of the dollars of informal construction contracts. Because of the small number of subcontracts involved in such contracts, BBC only examined these disparity results for prime contracts and subcontracts combined.

Figure 6-16.
Disparity indices for City
informal contracts,
July 2004–June 2009

Note:
 Number of informal contracts analyzed is 231.
 For more detail, see Figure L-8 in Appendix L.

Source:
 BBC Research & Consulting from data on City of Portland construction contracts.



6. Contracts not included in the Good Faith Efforts Program or Sheltered Market Program.

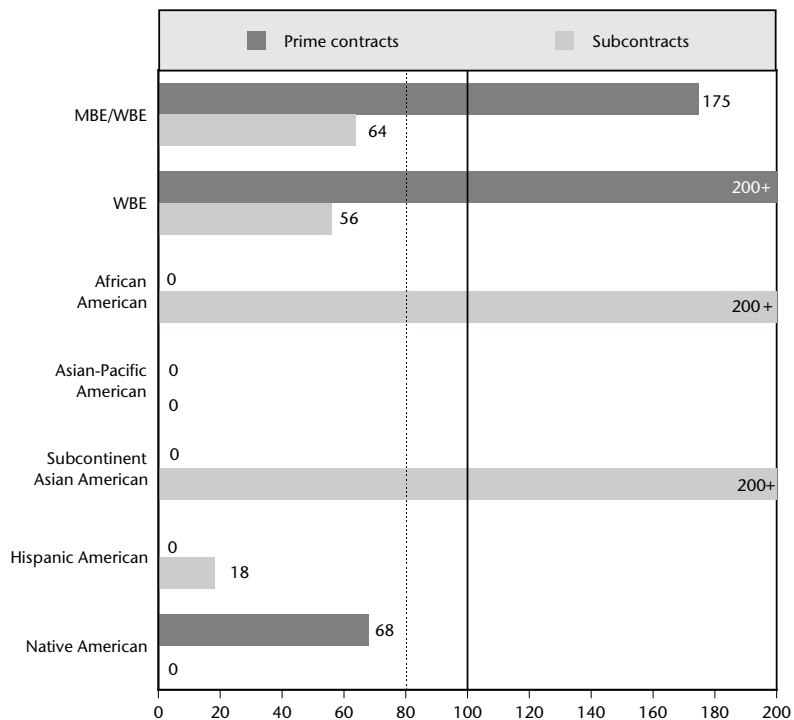
Figure 6-17 shows disparity results for the City’s formal construction contracts that were not included in the GFE program or the SMP. Utilization of WBEs as prime contractors exceeded availability. However, all MBE groups were substantially underutilized on these prime contracts.

When considering subcontracts, overall utilization of MBE/WBEs was substantially below what might be expected based on availability (disparity index of 64). All MBE/WBE groups except African American- and Subcontinent Asian-owned firms exhibited substantial disparities on these subcontracts.

Figure 6-17.
Disparity indices for City formal construction contracts not included in the GFE program or the SMP, prime contracts and subcontracts, July 2004–June 2009

Note:
Number of prime contracts analyzed is 76 and number of subcontracts analyzed is 99.
For more detail, see Figures L-15 and L-16 in Appendix L.

Source:
BBC Research & Consulting from data on City of Portland construction contracts.



7. Analysis of statistical significance of disparities. An analysis of statistical significance of observed disparities relates to the degree to which a researcher can reject random chance as an explanation for the disparity. Random chance in data sampling is the factor that researchers most often consider in determining the statistical significance of results. However, BBC did not employ sampling of availability or utilization data.

Availability. BBC attempted to contact every firm in the Portland area that Dun & Bradstreet identified as doing business within relevant subindustries (as described in Chapter 5), and thus the data could be considered a “population.” Analyzing populations, as opposed to samples, mitigates many of the concerns associated with random chance in data sampling as it relates to BBC’s availability analysis. Further discussion of these issues is presented in Figure 6-18.

Utilization. The utilization analysis also approaches a “population” of contracts. Therefore, any disparity found when comparing overall utilization with availability would be “statistically significant.” Nevertheless, BBC also used a sophisticated analytical tool to examine statistical significance of disparity results, as discussed on the next page.

Figure 6-18.
Confidence intervals for availability measures

BBC attempted to contact all Portland area firms listed under industry codes that were most related to City construction and construction-related professional services contracts. BBC successfully contacted 3,700 businesses. Because BBC attempted to contact all firms listed under relevant industry codes, rather than using a sampling method, it may be reasonable to treat the data as a population.

Should one instead treat the data as a sample, BBC computed confidence intervals around MBE/WBE representation among firms potentially available for City contracts. BBC found that, of the firms counted as potentially available for construction contracts, 19 percent were MBEs or WBEs, which is accurate within about +/-0.8 percentage points at the 95 percent confidence level. Of the firms counted as potentially available for City construction-related professional services contracts, 17 percent were MBEs or WBEs, which is accurate with about +/-0.7 percentage points at the 95 percent confidence level. By comparison, many survey results for proportions reported in the popular press are +/- 5 percentage points.

Even if one considers the availability data to be a sample, BBC's approach ensures that the sample is very large relative to the total population. BBC therefore applied a finite population correction factor when determining confidence intervals.

Monte Carlo analysis of disparities. BBC used a Monte Carlo analysis to determine whether random chance in contract or subcontract awards could explain any observed disparities in City construction contracts. BBC found that on contracts to which City MBE/WBE programs did not apply, there were too few prime contracts or subcontracts for the Monte Carlo results to be meaningful. Even when disparity indices were zero, BBC could not reject chance in contract or subcontract awards as a potential cause of the disparities because of the small number of prime contracts and subcontracts involved.

8. Summary of City of Portland construction disparity results. The City's Fair Contracting Programs (including the GFE Program and the SMP) appear to be effective in encouraging the utilization of MBE/WBEs on City construction contracts. Including utilization as prime contractors and subcontractors, 2.9 percent of City construction contract dollars from July 2004 through June 2009 went to MBEs, including firms that were not certified as either MBEs or ESBs. During the study period, 5.4 percent of City construction contract dollars went to WBEs (also including non-certified firms). Considering just ESB-certified firms, 2.0 percent of City construction contract dollars went to minority- and women-owned ESBs and 2.8 percent went to majority-owned ESBs.

Overall, the 2.9 percent utilization of MBEs on City construction contracts exceeded what might be expected based on BBC's analysis of MBE availability for that work (1.9%). The 5.4 percent utilization of WBEs on City construction contracts also exceeded WBE availability (3.5%).

Overall MBE/WBE utilization was substantially below availability in two areas in which Fair Contracting Programs did not directly apply:

- The focus of the GFE program is to encourage utilization of MBE/WBEs as subcontractors, not necessarily as prime contractors. Utilization of MBE/WBEs as prime contractors on construction contracts awarded under the GFE Program was 1.3 percent, below the 1.8 percent that might be expected based on availability (disparity index of 70).

- City programs to encourage MBE/WBE utilization as subcontractors directly applied to these contracts subcontracts on formal construction contracts not awarded under the Fair Contracting Programs. MBE/WBE utilization on subcontracts was 12.8 percent, substantially below the 20.2 percent MBE/WBE availability for these subcontracts (disparity index of 64). No

Even with application of the Fair Contracting Programs, one MBE group — Asian-Pacific American-owned firms — received a substantially smaller share of City construction contract dollars than what would be expected based on availability. BBC identified disparities for other MBE groups for certain sets of contracts under the Fair Contracting Programs, but no other groups exhibited a substantial disparity for City construction contracts overall.

Note that one must exercise caution when interpreting the existence or a lack of disparities for an MBE group for relatively small sets of prime contracts or subcontracts. Appendix L provides additional tables detailing the disparity results.

CHAPTER 7.

Utilization and Disparity Analysis for City of Portland Construction-Related Professional Services Contracts

Chapter 7 presents utilization and disparity results for City construction-related professional services contracts.¹ The term “utilization” refers to the share of contract dollars, expressed as a percentage, going to minority-, women-, and majority-owned firms (i.e., firms not owned by minorities or women) for a given set of contracts (for a more detailed description of the term “utilization,” as used in the study, see Figure 6-1). Chapter 7 is organized in two parts:

- A. Utilization results; and
- B. Disparity analysis.

Part A presents the utilization of MBE/WBEs on City construction-related professional services contracts. Part B compares utilization results with the availability benchmarks introduced in Chapter 5. Those comparisons allow BBC to determine whether utilization of MBE/WBEs on City construction-related professional services contracts was above or below what would be expected given the availability of MBE/WBEs for those contracts. Detailed utilization and disparity results are presented in Appendix M.

A. Utilization Results

The first half of Chapter 7 presents construction-related professional services utilization results for:

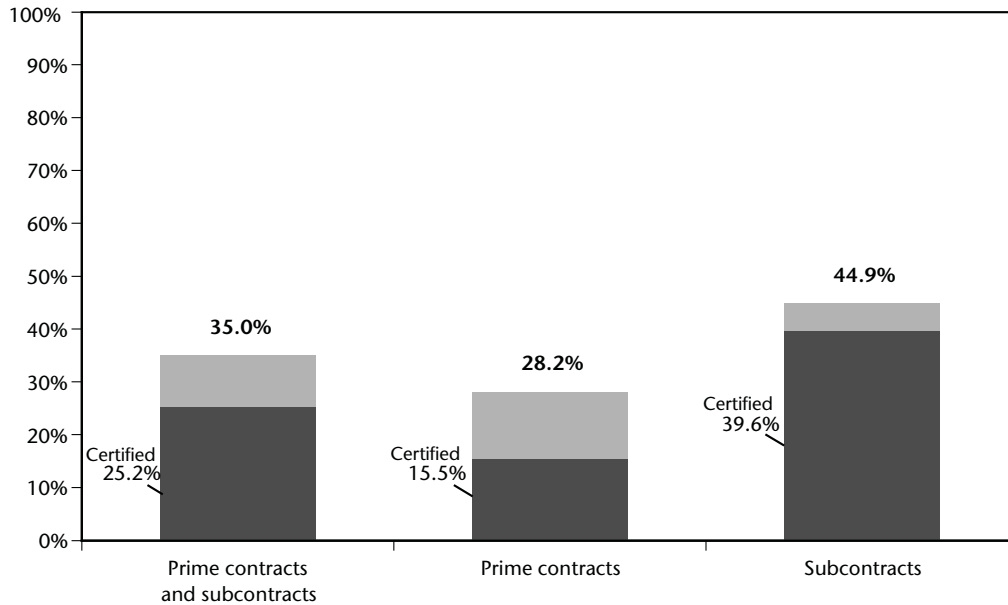
1. All contracts by M/W/ESB group;
2. On-call contracts;
3. Standard contracts (i.e., non on-call contracts);
4. Contracts worth less than \$100,000; and
5. Contracts worth \$100,000 or more.

As part of the City’s Fair Contracting and Small Business Support Programs, the City maintains an aspirational goal of 20 percent Emerging Small Business (ESB) participation on professional services contracts and has an active outreach program to encourage participation on contracts from MBEs, WBEs and ESBs.

¹ The City’s construction-related professional services contracts are awarded through the Professional, Technical and Expert Services contracting process.

1. All contracts by M/W/ESB group. The BBC study team analyzed MBE/WBE utilization of \$9 million of City construction-related professional services contracts from July 2004 through June 2009. Figure 7-1 shows that MBEs and WBEs accounted for 35 percent of total construction-related professional services contract dollars between July 2004 and June 2009. More than two-thirds of the total MBE/WBE utilization came from firms certified as MBE/WBEs by the State of Oregon. MBE/WBE utilization was higher on subcontracts (45%) than on prime contracts (28%).

Figure 7-1.
MBE/WBE and certified MBE/WBE share of contract dollars for City of Portland construction-related professional services contracts, July 2004–June 2009



Note: Number of contracts/subcontracts analyzed is 1,091 for prime contracts and subcontracts, 468 for prime contracts, and 623 for subcontracts. For more detail, see Figures M-2, M-3 and M-4 in Appendix M.

Source: BBC Research & Consulting from data on City of Portland construction-related professional services contracts.

Figure 7-2, on the next page, provides additional detail on utilization of MBE/WBEs (top third of the figure), utilization of firms certified as MBE/WBEs (middle third of the figure) and utilization of ESBs (lower third of the figure). Results presented in Figure 7-2 include all contract dollars (prime contracts and first-tier subcontracts) in the leftmost columns, prime contract dollars in the middle columns and subcontract dollars in the rightmost columns.

Prime contracts and subcontracts. As shown in Figure 7-2, MBEs (28%) accounted for most of the overall MBE/WBE utilization on City construction-related professional services contracts. WBEs received 6.8 percent of combined prime contract and subcontract dollars.²

Much of the WBE utilization was with firms certified as WBEs. Certified MBEs comprised about two-thirds of the utilization of all MBEs.

BBC also examined utilization of ESB-certified firms. As shown in Figure 7-2, certified ESBs accounted for 16.1 percent of City construction-related professional services contract dollars from

² As discussed in Chapter 5, “WBEs” refer to white women-owned firms in this report.

July 2004 through June 2009. Majority-owned ESBs received about the same amount of contract dollars (8.1% of the total dollars) as ESBs that were owned by minorities or women (8.0% of the total dollars).

Prime contracts. MBEs received almost one-quarter of the prime contract dollars for City construction-related professional services contracts. African American- and Subcontinent Asian American-owned firms accounted for most of MBE utilization. WBEs received about 5 percent of total construction-related professional services contract dollars. Certified MBEs and WBEs accounted for slightly more than half of the prime contract dollars received by MBE/WBEs. Certified ESBs received 4.8 percent of total prime contract dollars. Majority-owned ESBs accounted for \$1.8 million of the \$2.6 million that went to ESBs.

Figure 7-2.
MBE/WBE and certified M/W/ESB contract dollars for City construction-related professional services contracts, July 2004–June 2009

	Prime contracts and subcontracts		Prime contracts		Subcontracts	
	\$ in thousands	Percent	\$ in thousands	Percent	\$ in thousands	Percent
Certified and non-certified MBE/WBEs						
MBE						
African American-owned	\$7,464	8.2 %	\$5,907	10.9 %	\$1,555	4.2 %
Asian-Pacific American-owned	2,593	2.8	529	1.0	2,064	5.6
Subcontinent Asian American-owned	9,398	10.3	4,818	8.9	4,580	12.4
Hispanic American-owned	4,232	4.6	1,395	2.6	2,838	7.7
Native American-owned	<u>2,026</u>	<u>2.2</u>	<u>178</u>	<u>0.3</u>	<u>1,849</u>	<u>5.0</u>
Total MBE	\$25,713	28.2 %	\$12,826	23.6 %	\$12,887	34.9 %
WBE (white women-owned)	<u>6,229</u>	<u>6.8</u>	<u>2,532</u>	<u>4.7</u>	<u>3,697</u>	<u>10.0</u>
Total MBE/WBE	\$31,942	35.0 %	\$15,359	28.2 %	\$16,584	44.9 %
Majority-owned	<u>59,361</u>	<u>65.0</u>	<u>39,025</u>	<u>71.7</u>	<u>20,335</u>	<u>55.1</u>
Total	\$91,303	100.0 %	\$54,384	100.0 %	\$36,919	100.0 %
Certified MBE/WBEs						
MBE						
African American-owned	\$1,403	1.5 %	\$41	0.1 %	\$1,362	3.7 %
Asian-Pacific American-owned	1,599	1.8	282	0.5	1,317	3.6
Subcontinent Asian American-owned	9,395	10.3	4,818	8.9	4,577	12.4
Hispanic American-owned	3,929	4.3	1,139	2.1	2,790	7.6
Native American-owned	<u>2,015</u>	<u>2.2</u>	<u>178</u>	<u>0.3</u>	<u>1,837</u>	<u>5.0</u>
Total MBE certified	\$18,341	20.1 %	\$6,458	11.9 %	\$11,883	32.2 %
WBE (white women-owned)	<u>4,673</u>	<u>5.1</u>	<u>1,947</u>	<u>3.6</u>	<u>2,726</u>	<u>7.4</u>
Total MBE/WBE certified	\$23,014	25.2 %	\$8,405	15.5 %	\$14,609	39.6 %
Non-certified	<u>68,289</u>	<u>74.8</u>	<u>45,979</u>	<u>84.5</u>	<u>22,310</u>	<u>60.4</u>
Total	\$91,303	100.0 %	\$54,384	100.0 %	\$36,919	100.0 %
Certified ESBs						
Minority- or Women-owned ESB	\$7,293	8.0 %	\$812	1.5 %	\$6,480	17.6 %
Majority-owned ESB	<u>7,401</u>	<u>8.1</u>	<u>1,793</u>	<u>3.3</u>	<u>5,511</u>	<u>15.2</u>
Total ESB certified	\$14,694	16.1 %	\$2,605	4.8 %	\$11,992	32.7 %
Non-certified	<u>76,609</u>	<u>83.9</u>	<u>51,779</u>	<u>95.2</u>	<u>24,927</u>	<u>67.3</u>
Total	\$91,303	100.0 %	\$54,384	100.0 %	\$36,919	100.0 %

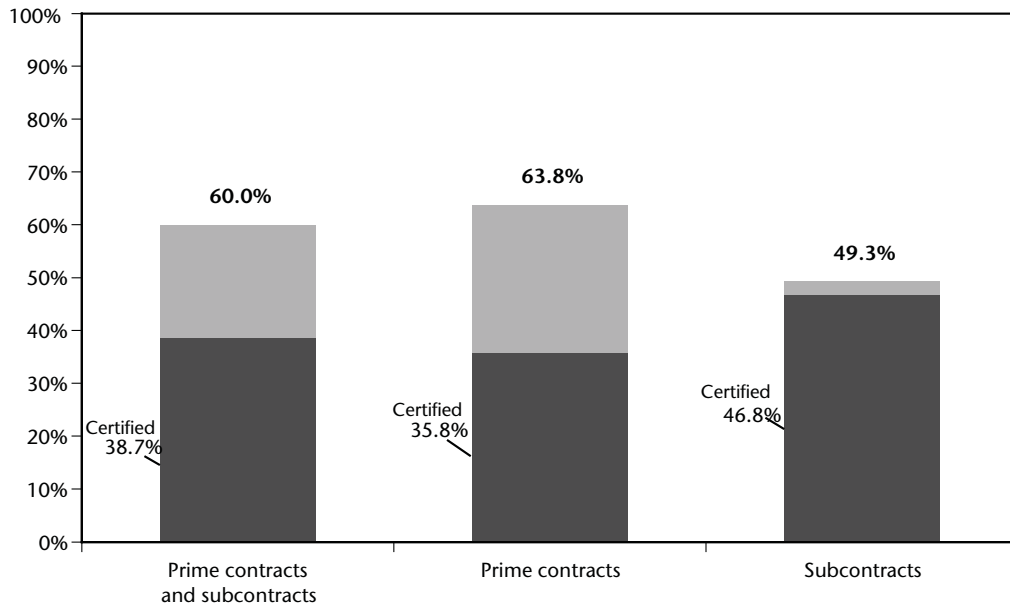
Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.
Number of contracts/subcontracts analyzed is 1,091 for prime contracts and subcontracts, 486 for prime contracts, and 623 for subcontracts.
For more detail, see Figures M-2, M-3 and M-4 in Appendix M.

Source: BBC Research & Consulting from data on City of Portland construction-related professional services contracts.

Subcontracts. Subcontracts comprised somewhat less than half of City construction-related professional services contract dollars. As shown in Figure 7-2, MBEs and WBEs received 45 percent of these dollars. Almost all of the MBE/WBE utilization as subcontractors went to certified firms. ESBs received about one-third of these subcontract dollars (32.7%).

2. On-call contracts. BBC examined \$26 million of City on-call contracts during the study period. The utilization results in Figure 7-3 reflect dollars actually going to firms that had on-call contracts, not the maximum value of the on-call contracts.³ Sixty percent of on-call construction-related professional services contract dollars went to MBE/WBEs, with relatively high utilization as both prime consultants and subconsultants. More than one-half of the MBE/WBE participation in on-call contracts was with MBE- or WBE-certified firms.

Figure 7-3.
MBE/WBE and certified MBE/WBE share of contract dollars for City on-call construction-related professional services contracts, July 2004–June 2009



Note: Number of contracts/subcontracts analyzed is 429 for prime contracts and subcontracts, 220 for prime contracts, and 209 for subcontracts. For more detail, see Figures M-5, M-6 and M-7 in Appendix M.
 Based on dollars paid to firms, not awarded contract dollars.

Source: BBC Research & Consulting from data on City of Portland construction-related professional services contracts.

On-call prime contracts and subcontracts. Figure 7-4, on the following page, provides results for on-call contracts by racial/ethnic/gender group. Subcontinent Asian American- (19%) and African American-owned firms (20%) exhibited higher utilization for on-call construction-related professional services contracts than other MBE/WBE groups and accounted for almost two-thirds of all MBE/WBE utilization. Native American-owned firms showed the lowest utilization (3.2%). White women-owned firms received 8.3 percent of total on-call contract dollars studied.

Certified ESBs accounted for 18.4 percent of total utilization. MBE/WBEs were responsible for more than one-half of total ESB utilization.

³ As discussed in Chapter 8, only some of on-call contract awards resulted in any work for the firm receiving the contract.

Prime contracts. The study team analyzed 220 on-call prime contracts. MBEs accounted for 58 percentage points of the 64 percent MBE/WBE utilization for prime contracts. WBEs accounted for 5.8 percent of total prime contract dollars. Slightly more than one-half of the MBE/WBE prime contract dollars went to certified firms.

Certified ESBs received less than 4 percent of all prime contract dollars for City construction-related professional services on-call contracts.

Figure 7-4.
MBE/WBE and certified M/W/ESB contract dollars for City on-call construction-related professional services contracts, July 2004–June 2009

	Prime contracts and subcontracts		Prime contracts		Subcontracts	
	\$ in thousands	Percent	\$ in thousands	Percent	\$ in thousands	Percent
Certified and non-certified MBE/WBEs						
MBE						
African American-owned	\$5,330	20.2 %	\$5,052	26.0 %	\$274	3.9 %
Asian-Pacific American-owned	1,007	3.8	452	2.3	557	8.0
Subcontinent Asian American-owned	5,053	19.2	4,818	24.8	232	3.3
Hispanic American-owned	1,409	5.3	805	4.1	605	8.7
Native American-owned	831	3.2	123	0.6	710	10.2
Total MBE	\$13,630	51.7 %	\$11,251	58.0 %	\$2,379	34.2 %
WBE (white women-owned)	2,184	8.3	1,133	5.8	1,051	15.1
Total MBE/WBE	\$15,814	60.0 %	\$12,385	63.8 %	\$3,429	49.3 %
Majority-owned	10,549	40.0	7,022	36.2	3,526	50.7
Total	\$26,363	100.0 %	\$19,407	100.0 %	\$6,955	100.0 %
Certified MBE/WBEs						
MBE						
African American-owned	\$293	1.1 %	\$20	0.1 %	\$273	3.9 %
Asian-Pacific American-owned	760	2.9	206	1.1	554	8.0
Subcontinent Asian American-owned	5,049	19.2	4,818	24.8	231	3.3
Hispanic American-owned	1,245	4.7	642	3.3	603	8.7
Native American-owned	821	3.1	123	0.6	697	10.0
Total MBE certified	\$8,168	31.0 %	\$5,810	29.9 %	\$2,359	33.9 %
WBE (white women-owned)	2,028	7.7	1,132	5.8	896	12.9
Total MBE/WBE certified	\$10,196	38.7 %	\$6,942	35.8 %	\$3,254	46.8 %
Non-certified	16,167	61.3	12,465	64.2	3,701	53.2
Total	\$26,363	100.0 %	\$19,407	100.0 %	\$6,955	100.0 %
Certified ESBs						
Minority- or Women-owned ESB	\$2,835	10.8 %	\$385	2.0 %	\$2,450	35.2 %
Majority-owned ESB	2,024	7.7	346	1.8	1,678	24.1
Total ESB certified	\$4,859	18.4 %	\$731	3.8 %	\$4,128	59.4 %
Non-certified	21,504	81.6	18,676	96.2	2,827	40.6
Total	\$26,363	100.0 %	\$19,407	100.0 %	\$6,955	100.0 %

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.
Number of contracts/subcontracts analyzed is 429 for prime contracts and subcontracts, 220 for prime contracts, and 209 for subcontracts.
For more detail, see Figures M-5, M-6 and M-7 in Appendix M.
Based on dollars paid to firms, not awarded contract dollars.

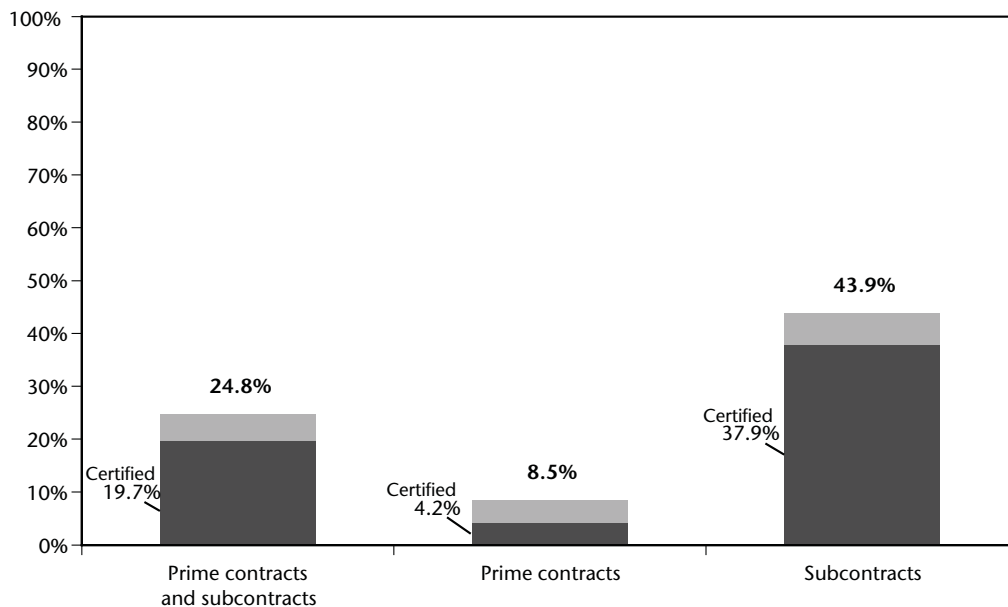
Source: BBC Research & Consulting from data on City of Portland construction-related professional services contracts.

Subcontracts. Of the \$7 million in subcontracts of on-call contracts, MBE/WBE utilization went to MBEs or WBEs. WBEs accounted for 15.1 percent of subcontract dollars. Native American-owned firms received the highest percentage (10.2%) of subcontract dollars among MBE groups.

Certified MBE/WBEs accounted for nearly all of the MBE/WBE utilization as subconsultants for on-call contracts. Firms certified as ESBs accounted for 59 percent of subconsultant utilization for construction-related professional services contracts. Minority- and women-owned ESBs received more than one-half of all subcontract dollars awarded to certified ESB firms.

3. Standard contracts (i.e., non on-call contracts). Nearly three-quarters of the total construction-related professional services contract dollars analyzed during the study period were standard contracts (as opposed to on-call contracts). MBE/WBEs accounted for 25 percent of standard construction-related professional services contract dollars. As shown in Figure 7-5, MBE/WBEs received a higher proportion of subcontract dollars (43.9%) when compared with prime contracts (8.5%).

Figure 7-5.
MBE/WBE and certified MBE/WBE share of contract dollars for City construction-related professional services contracts, July 2004–June 2009



Note: Number of contracts/subcontracts analyzed is 662 for prime contracts and subcontracts, 248 for prime contracts, and 414 for subcontracts. For more detail, see Figures M-8, M-9 and M-10 in Appendix M.

Source: BBC Research & Consulting from data on City of Portland construction-related professional services contracts.

Prime contracts and subcontracts on standard contracts. Figure 7-6, on the next page, presents utilization by racial/ethnic/gender group for standard construction-related professional services contracts. WBEs accounted for 6.2 percent and MBEs received 18.6 percent of standard construction-related professional services contract dollars awarded during the study period. Subcontinent Asian-owned firms (6.7%) and Hispanic American-owned firms (4.3%) received the largest portion of the MBE dollars. Certified firms accounted for most of the total MBE/WBE utilization. ESBs received 15.1 percent of all standard construction-related professional services contract dollars.

Prime contracts. MBE and WBE firms received 8.5 percent of the prime contract dollars on standard contracts. Firms certified as MBEs or WBEs accounted for about one-half of overall MBE/WBE utilization as prime consultants. ESBs received 5.4 percent of standard construction-related professional services prime contract dollars. Majority-owned ESBs accounted for three-quarters of ESB utilization as prime consultants (\$1.4 million out of \$1.9 million).

Subcontracts. MBEs received 35 percent of total subcontract dollars for standard construction-related professional services contracts included in the study. WBEs accounted for 8.8 percent of the total subcontract dollars. Most of the MBE/WBE utilization came from certified firms. ESBs received 26.6 percent of total dollars, with about the same amount of subcontract dollars going to majority-owned ESBs (13.1%) and minority- and women-owned ESBs (13.5%).

Figure 7-6.
MBE/WBE and certified M/W/ESB contract dollars for City standard construction-related professional services contracts, July 2004–June 2009

	Prime contracts and subcontracts		Prime contracts		Subcontracts	
	\$ in thousands	Percent	\$ in thousands	Percent	\$ in thousands	Percent
Certified and non-certified MBE/WBEs						
MBE						
African American-owned	\$2,135	3.3 %	\$855	2.4 %	\$1,281	4.3 %
Asian-Pacific American-owned	1,585	2.4	76	0.2	1,509	5.0
Subcontinent Asian American-owned	4,346	6.7	0	0.0	4,346	14.5
Hispanic American-owned	2,823	4.3	589	1.7	2,233	7.5
Native American-owned	<u>1,194</u>	<u>1.8</u>	<u>55</u>	<u>0.2</u>	<u>1,140</u>	<u>3.8</u>
Total MBE	\$12,083	18.6 %	\$1,575	4.5 %	\$10,508	35.1 %
WBE (white women-owned)	<u>4,046</u>	<u>6.2</u>	<u>1,399</u>	<u>4.0</u>	<u>2,646</u>	<u>8.8</u>
Total MBE/WBE	\$16,128	24.8 %	\$2,974	8.5 %	\$13,154	43.9 %
Majority-owned	<u>48,813</u>	<u>75.2</u>	<u>32,003</u>	<u>91.5</u>	<u>16,810</u>	<u>56.1</u>
Total	\$64,941	100.0 %	\$34,977	100.0 %	\$29,964	100.0 %
Certified MBE/WBEs						
MBE						
African American-owned	\$1,110	1.7 %	\$21	0.1 %	\$1,089	3.6 %
Asian-Pacific American-owned	839	1.3	76	0.2	763	2.5
Subcontinent Asian American-owned	4,346	6.7	0	0.0	4,346	14.5
Hispanic American-owned	2,684	4.1	496	1.4	2,188	7.3
Native American-owned	<u>1,194</u>	<u>1.8</u>	<u>55</u>	<u>0.2</u>	<u>1,140</u>	<u>3.8</u>
Total MBE certified	\$10,173	15.7 %	\$648	1.9 %	\$9,525	31.8 %
WBE (white women-owned)	<u>2,645</u>	<u>4.1</u>	<u>815</u>	<u>2.3</u>	<u>1,830</u>	<u>6.1</u>
Total MBE/WBE certified	\$12,818	19.7 %	\$1,463	4.2 %	\$11,355	37.9 %
Non-certified	<u>52,123</u>	<u>80.3</u>	<u>33,514</u>	<u>95.8</u>	<u>18,609</u>	<u>62.1</u>
Total	\$64,941	100.0 %	\$34,977	100.0 %	\$29,964	100.0 %
Certified ESBs						
Minority- or Women-owned ESB	\$4,458	6.9 %	\$427	1.2 %	\$4,031	13.5 %
Majority-owned ESB	<u>5,378</u>	<u>8.3</u>	<u>1,447</u>	<u>4.1</u>	<u>3,930</u>	<u>13.1</u>
Total ESB certified	\$9,835	15.1 %	\$1,874	5.4 %	\$7,961	26.6 %
Non-certified	<u>55,106</u>	<u>84.9</u>	<u>33,103</u>	<u>94.6</u>	<u>22,003</u>	<u>73.4</u>
Total	\$64,941	100.0 %	\$34,977	100.0 %	\$29,964	100.0 %

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.

Number of contracts/subcontracts analyzed is 662 for prime contracts and subcontracts, 248 for prime contracts, and 414 for subcontracts.

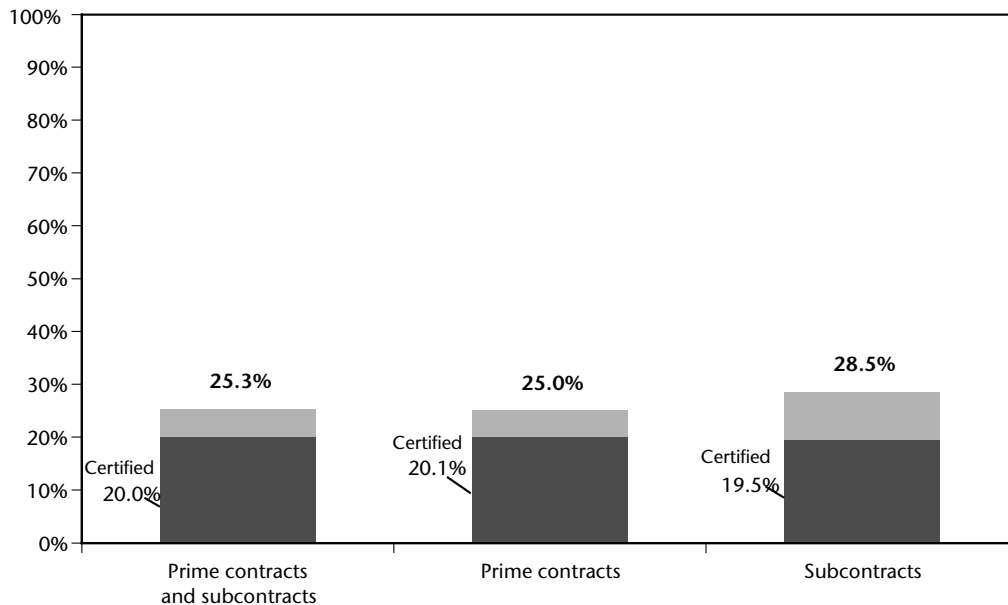
For more detail, see Figures M-8, M-9 and M-10 in Appendix M.

Source: BBC Research & Consulting from data on City of Portland construction -related professional services contracts.

4. Contracts worth less than \$100,000. BBC also examined MBE/WBE utilization for construction-related professional services contracts worth less than \$100,000 (i.e., small construction-related professional services contracts). Overall MBE/WBE utilization on these contracts, considering both prime contracts and subcontracts, was 25.3 percent. MBE/WBE utilization was similar for subcontracts when compared with prime contracts.

Figure 7-7 shows MBE/WBE utilization on these contracts along with the proportion of utilization with certified MBE/WBEs.

Figure 7-7.
MBE/WBE and certified MBE/WBE share of contract dollars for City construction-related professional services contracts worth less than \$100,000, July 2004–June 2009



Note: Number of contracts/subcontracts analyzed is 428 for prime contracts and subcontracts, 338 for prime contracts, and 90 for subcontracts. For more detail, see Figures M-11, M-12 and M-13 in Appendix M.

Source: BBC Research & Consulting from data on City of Portland construction-related professional services contracts.

Prime contracts and subcontracts on contracts less than \$100,000. Figure 7-8 shows the detailed utilization of MBE/WBE/ESBs on small construction-related professional services contracts. MBEs (12.9%) and white women-owned firms (12.4%) received about the same proportion of the dollars on small contract dollars. Among MBEs, Asian Pacific American-owned firms (6.3%) received the most contract dollars. Most of the MBE/WBE utilization was with firms certified as MBEs or WBEs by the State of Oregon.

ESBs received 13.8 percent of small construction-related professional services contract dollars. Slightly more than half of the contract dollars that the City awarded to ESBs went to MBE/WBEs.

Prime contracts. The study team identified 338 construction-related professional services prime contracts for which the total contract value was less than \$100,000. MBEs accounted for 12.9 percent of total small contract dollars and WBEs accounted for 12.1 percent of these dollars. About \$1.7 million out of the \$2.1 million that went to MBE/WBEs went to certified firms. Hispanic American- and Asian-Pacific American-owned firms received the most prime contract dollars among MBE groups, whereas Subcontinent Asian American owned firms received none of these prime contract dollars.

Majority-owned certified ESBs exhibited slightly lower utilization (5.3%) than the combined utilization of minority- and women-owned ESBs (7.4%).

Subcontracts. Subcontracts accounted for less than one-tenth of total dollars of small construction-related professional services contracts (\$0.8 million out of \$9.4 million). The study team examined utilization for 90 subcontracts. MBEs (13.2%) received a similar share of these subcontracts when compared with WBEs (15.4%). Certified firms accounted for more than two-thirds of MBE/WBE utilization on subcontracts associated with small construction-related professional services contracts. ESBs accounted for 24 percent of those subcontract dollars.

Figure 7-8.
MBE/WBE and certified M/W/ESB contract dollars for City construction-related professional services contracts worth less than \$100,000, by race/ethnicity group, July 2004–June 2009

	Prime contracts and subcontracts		Prime contracts		Subcontracts	
	\$ in thousands	Percent	\$ in thousands	Percent	\$ in thousands	Percent
Certified and non-certified MBE/WBEs						
MBE						
African American-owned	\$52	0.5 %	\$41	0.5 %	\$11	1.3 %
Asian-Pacific American-owned	595	6.3	529	6.1	67	8.1
Subcontinent Asian American-owned	9	0.1	0	0.0	10	1.2
Hispanic American-owned	432	4.6	419	4.9	11	1.3
Native American-owned	<u>133</u>	<u>1.4</u>	<u>121</u>	<u>1.4</u>	<u>11</u>	<u>1.3</u>
Total MBE	\$1,220	12.9 %	\$1,110	12.9 %	\$110	13.2 %
WBE (white women-owned)	<u>1,167</u>	<u>12.4</u>	<u>1,039</u>	<u>12.1</u>	<u>128</u>	<u>15.4</u>
Total MBE/WBE	\$2,387	25.3 %	\$2,149	25.0 %	\$238	28.5 %
Majority-owned	<u>7,045</u>	<u>74.7</u>	<u>6,448</u>	<u>75.0</u>	<u>597</u>	<u>71.5</u>
Total	\$9,432	100.0 %	\$8,597	100.0 %	\$835	100.0 %
Certified MBE/WBEs						
MBE						
African American-owned	\$51	0.5 %	\$41	0.5 %	\$10	1.2 %
Asian-Pacific American-owned	338	3.6	282	3.3	56	6.7
Subcontinent Asian American-owned	9	0.1	0	0.0	9	1.0
Hispanic American-owned	367	3.9	357	4.2	10	1.0
Native American-owned	<u>121</u>	<u>1.3</u>	<u>121</u>	<u>1.4</u>	<u>0</u>	<u>0.0</u>
Total MBE certified	\$887	9.4 %	\$802	9.3 %	\$85	10.2 %
WBE (white women-owned)	<u>1,001</u>	<u>10.6</u>	<u>924</u>	<u>10.7</u>	<u>77</u>	<u>9.3</u>
Total MBE/WBE certified	\$1,888	20.0 %	\$1,726	20.1 %	\$163	19.5 %
Non-certified	<u>7,544</u>	<u>80.0</u>	<u>6,871</u>	<u>79.9</u>	<u>672</u>	<u>80.5</u>
Total	\$9,432	100.0 %	\$8,597	100.0 %	\$835	100.0 %
Certified ESBs						
Minority- or Women-owned ESB	\$727	7.7 %	\$636	7.4 %	\$91	10.9 %
Majority-owned ESB	<u>570</u>	<u>6.0</u>	<u>457</u>	<u>5.3</u>	<u>112</u>	<u>13.4</u>
Total ESB certified	\$1,297	13.8 %	\$1,093	12.7 %	\$204	24.4 %
Non-certified	<u>8,135</u>	<u>86.2</u>	<u>7,504</u>	<u>87.3</u>	<u>631</u>	<u>75.6</u>
Total	\$9,432	100.0 %	\$8,597	100.0 %	\$835	100.0 %

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.

Number of contracts/subcontracts analyzed is 428 for prime contracts and subcontracts, 338 for prime contracts, and 90 for subcontracts.

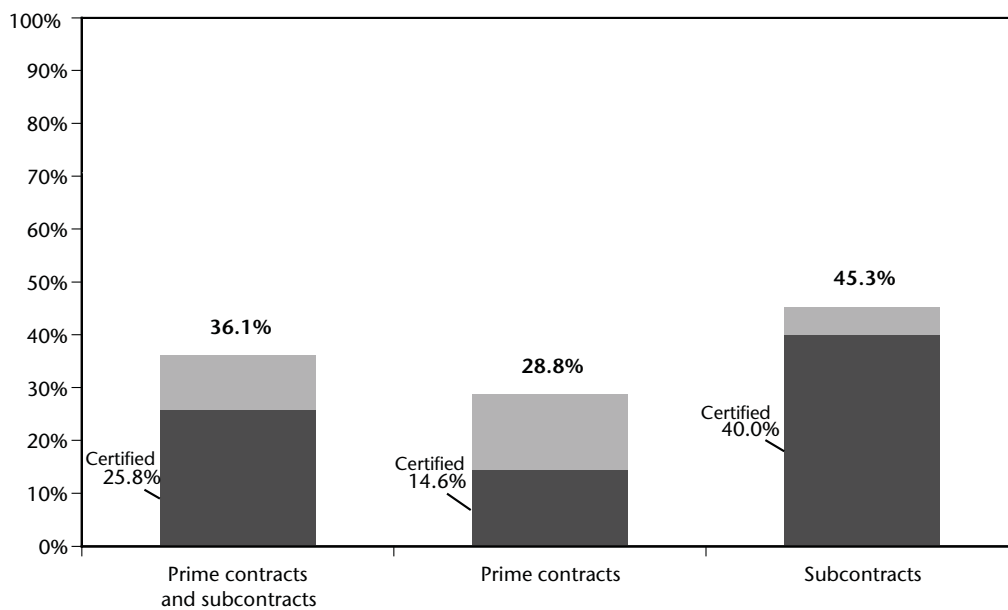
For more detail, see Figures M-11, M-12 and M-13 in Appendix M.

Source: BBC Research & Consulting from data on City of Portland construction-related professional services contracts.

5. Contracts worth \$100,000 or more. The study team also examined MBE/WBE utilization on construction-related professional services contracts with contract values equal to or greater than \$100,000 (i.e., large construction-related professional services contracts.) These contracts represented roughly 90 percent of the total construction-related professional services dollars analyzed (\$82 million out of \$91 million).

MBE/WBE utilization was higher on large contracts (see Figure 7-9) than on small contracts (see Figure 7-7). Even when only considering prime contract dollars, MBE/WBE utilization was higher on large contracts than on subcontracts.

Figure 7-9.
MBE/WBE and certified MBE/WBE share of City construction-related professional services contract dollars for contracts worth \$100,000 or more, July 2004–June 2009



Note: Number of contracts/subcontracts analyzed is 663 for prime contracts and subcontracts, 130 for prime contracts, and 533 for subcontracts. For more detail, see Figures M-14, M-15 and M-16 in Appendix M.

Source: BBC Research & Consulting from data on City of Portland construction-related professional services contracts.

Prime contracts and subcontracts on large contracts. Utilization results for individual MBE, WBE and ESB groups are shown in Figure 7-10. Most of the MBE/WBE utilization on large construction-related professional services contracts went to MBEs (utilization of 29.9%). African American- (9.1%) and Subcontinent Asian American-owned firms (11.5%) received the most dollars of any MBE group. WBEs accounted for 6.2 percent of the contract dollars. More than 16 percent of total dollars for these contracts went to ESBs. Majority-owned ESBs accounted for about half of the total ESB contract dollars.

Prime contracts. MBEs received 25.6 percent of the total prime contract dollars on large construction-related professional services contracts. Subcontinent Asian American- (10.5%) and African American-owned firms (12.8%) accounted for most of this utilization. WBEs received 3.3 percent of the total prime contract dollars on large professional services contracts. Certified firms accounted for slightly less than half of the MBE utilization and about two-thirds of the WBE utilization. ESBs received 3.3 percent of the total prime contract dollars. Majority-owned ESBs (2.9%) accounted for most of the ESB utilization (\$1.3 million out of \$1.5 million).

Subcontracts. MBEs and WBEs received 10 percent of subcontract dollars. Certified firms accounted for most of the total MBE/WBE utilization. ESBs accounted for 33 percent of total subcontracting dollars on these construction-related professional services contracts.

Figure 7-10.

MBE/WBE and certified M/W/ESB contract dollars for construction-related professional services contracts worth \$100,000 or more, July 2004–June 2009

	Prime contracts and subcontracts		Prime contracts		Subcontracts	
	\$ in thousands	Percent	\$ in thousands	Percent	\$ in thousands	Percent
Certified and non-certified MBE/WBEs						
MBE						
African American-owned	\$7,410	9.1 %	\$5,866	12.8 %	\$1,544	4.3 %
Asian-Pacific American-owned	2,002	2.4	0	0.0	2,002	5.5
Subcontinent Asian American-owned	9,386	11.5	4,818	10.5	4,568	12.7
Hispanic American-owned	3,802	4.6	976	2.1	2,826	7.8
Native American-owned	1,894	2.3	56	0.1	1,837	5.1
Total MBE	\$24,493	29.9 %	\$11,716	25.6 %	\$12,776	35.4 %
WBE (white women-owned)	5,062	6.2	1,493	3.3	3,569	9.9
Total MBE/WBE	\$29,555	36.1 %	\$13,210	28.8 %	\$16,345	45.3 %
Majority-owned	52,316	63.9	32,577	71.1	19,739	54.7
Total	\$81,871	100.0 %	\$45,787	100.0 %	\$36,084	100.0 %
Certified MBE/WBEs						
MBE						
African American-owned	\$1,352	1.7 %	\$0	0.0 %	\$1,352	3.7 %
Asian-Pacific American-owned	1,261	1.5	0	0.0	1,261	3.5
Subcontinent Asian American-owned	9,386	11.5	4,818	10.5	4,568	12.7
Hispanic American-owned	3,561	4.3	781	1.7	2,780	7.7
Native American-owned	1,894	2.3	56	0.1	1,837	5.1
Total MBE certified	\$17,454	21.3 %	\$5,656	12.4 %	\$11,798	32.7 %
WBE (white women-owned)	3,671	4.5	1,023	2.2	2,648	7.3
Total MBE/WBE certified	\$21,125	25.8 %	\$6,679	14.6 %	\$14,446	40.0 %
Non-certified	60,746	74.2	39,108	85.4	21,638	60.0
Total	\$81,871	100.0 %	\$45,787	100.0 %	\$36,084	100.0 %
Certified ESBs						
Minority- or Women-owned ESB	\$6,565	8.0 %	\$176	0.4 %	\$6,389	17.7 %
Majority-owned ESB	6,832	8.3	1,336	2.9	5,496	15.2
Total ESB certified	\$13,397	16.4 %	\$1,512	3.3 %	\$11,885	32.9 %
Non-certified	68,474	83.6	44,275	96.7	24,199	67.1
Total	\$81,871	100.0 %	\$45,787	100.0 %	\$36,084	100.0 %

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.
 Number of contracts/subcontracts analyzed is 663 for prime contracts and subcontracts, 130 for prime contracts, and 533 for subcontracts.
 For more detail, see Figures M-14, M-15 and M-16 in Appendix M.

Source: BBC Research & Consulting from data on City of Portland construction-related professional services contracts.

B. Disparity Analysis

To know whether MBE/WBE firms are “underutilized,” one must compare utilization with a benchmark that reflects the dollars those firms would be expected to receive given their availability for a particular set of procurement opportunities. Such a comparison is called a disparity analysis. Disparity analysis helps to identify whether there are disparities between utilization and availability of specific racial/ethnic/gender groups for certain types of contracts and subcontracts.

- BBC compares actual participation of an MBE/WBE group in certain contracts (expressed as a percentage of total dollars) to the percentage of work that might be expected to go to that group given its availability for that specific work (i.e., availability benchmark).
- The disparity analyses presented in this report account for differences in types, sizes, locations and timing of prime contracts and subcontracts (reflected in the availability benchmarks for specific MBE/WBE groups and sets of contracts).
- BBC creates a disparity index to easily communicate how close actual utilization comes to the availability benchmark, or whether it exceeds the benchmark. By examining the disparity index for each MBE/WBE group and set of contracts, one can directly compare results between different groups and different sets of contracts.

A detailed overview of the disparity analysis methodology used by the study team can be found starting on page 11.

The second half of Chapter 7 presents City disparity results in seven parts:

1. Overall construction-related professional services results;
2. On-call contracts;
3. Standard contracts;
4. Contracts worth less than \$100,000;
5. Contracts worth \$100,000 or more;
6. Analysis of statistical significance of disparities; and
7. Summary of City of Portland construction-related professional services disparity results.

1. Overall construction-related professional services results. Figure 7-11 on the next page summarizes the results of the disparity analysis for construction-related professional services contracts.

Prime contracts and subcontracts. As seen in the top third of Figure 7-11, overall utilization of MBE/WBEs on City construction-related professional services contracts exceeded what might be expected based on their availability for those contracts, with a disparity index greater than 200. Utilization of WBEs was somewhat below what might be expected based on their availability (disparity index of 93). The only group to exhibit a substantial disparity when considering all prime and subcontracts analyzed were Asian-Pacific American-owned firms.

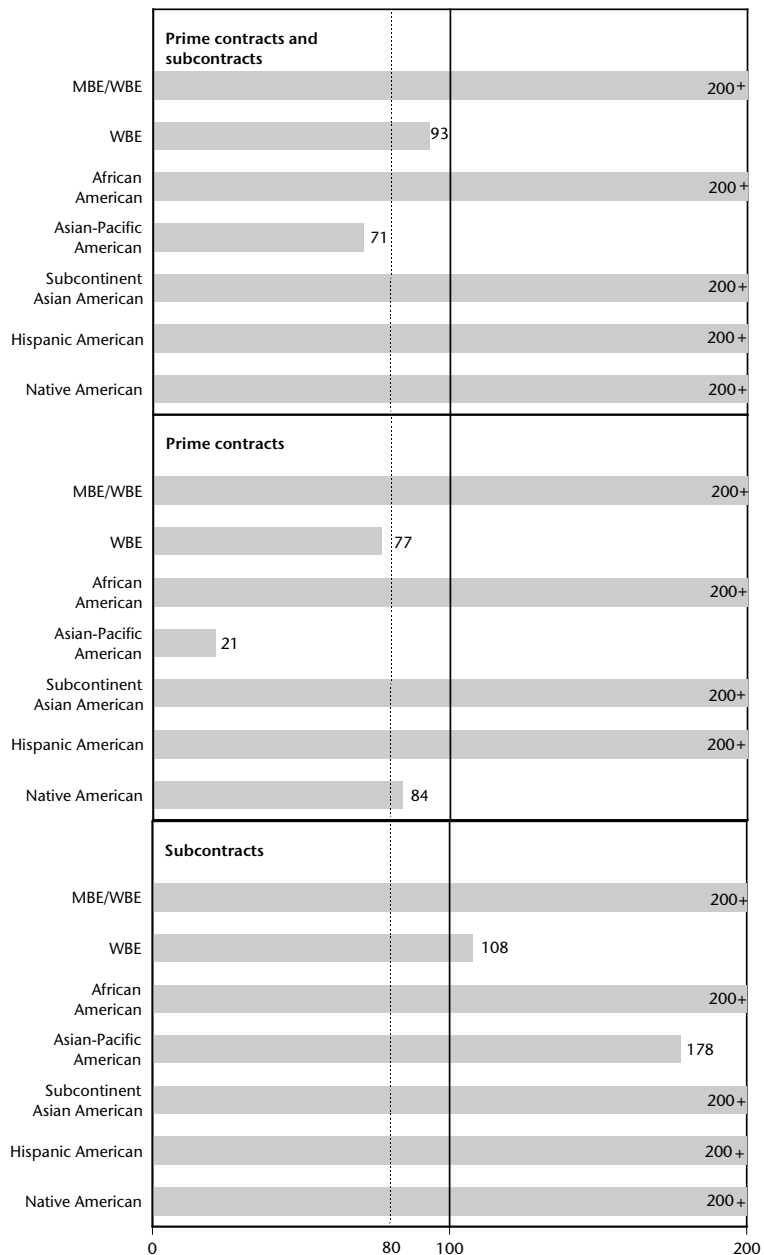
Prime contracts. When considered together, MBEs and WBEs showed a disparity index of greater than 200 as prime consultants on City construction-related professional services contracts. However, WBEs received 77 percent of the dollars that they would be expected to receive based on availability (disparity index of 77). Asian-Pacific American-owned firms showed a disparity index of 21. No other individual MBE or WBE groups showed disparity indices of less than 80.

Subcontracts. No MBE/WBE group showed a disparity when examining subcontracts on City construction-related professional services contracts.

Figure 7-11
Disparity indices for City
construction-related
professional services
contracts,
July 2004–June 2009

Note:
 Number of contracts/subcontracts analyzed is 1,091 for prime contracts and subcontracts, 468 for prime contracts and 623 for subcontracts.
 For more detail, see Figures M-2, M-3 and M-4 in Appendix M.

Source:
 BBC Research & Consulting from data on City of Portland construction-related professional services contracts.



2. On-call contracts. Figure 7-12 presents results from the disparity analysis for on-call construction-related professional services contracts.

Prime contracts and subcontracts. No MBE/WBE group was substantially underutilized when considering prime contracts and subcontracts together for on-call construction-related professional services contracts.

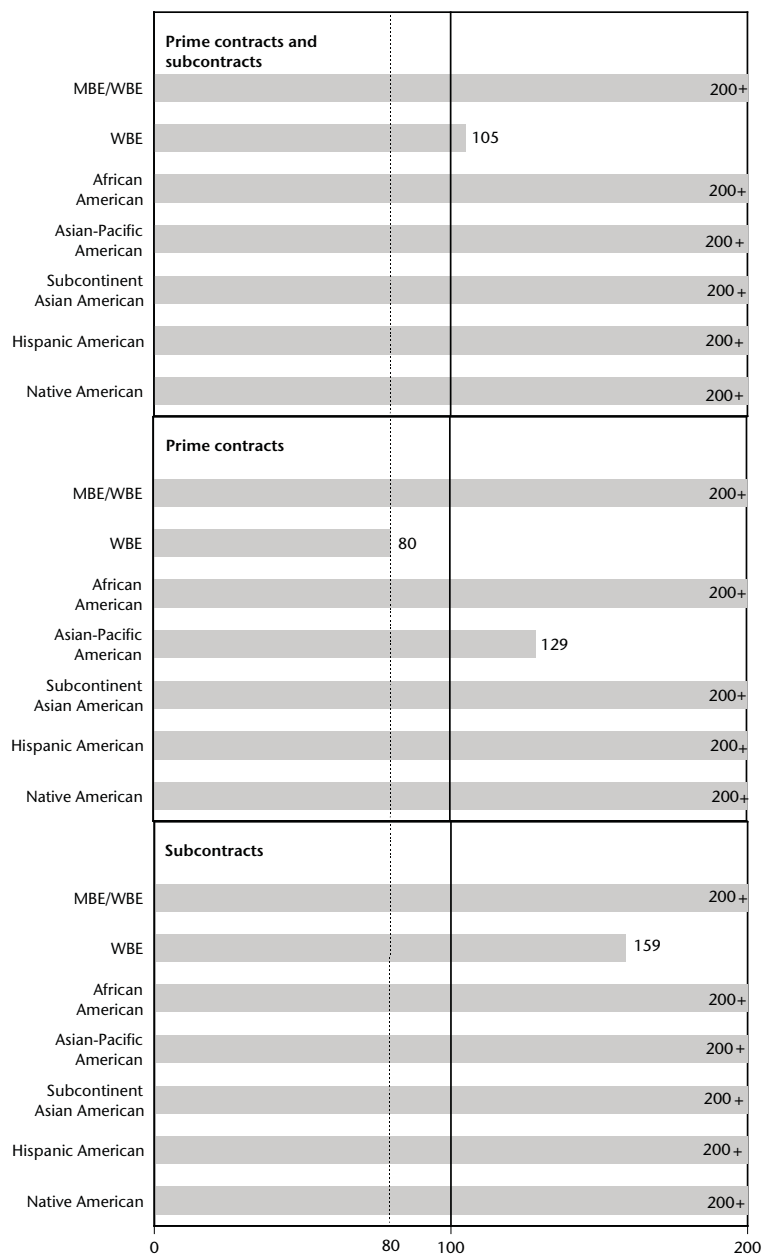
Prime contracts. Overall, MBE/WBEs did not show a disparity for on-call construction-related professional services prime contracts. However, WBEs received 80 percent of the total dollars they might be expected to receive based on their availability.

Subcontracts. No MBE/WBE groups were underutilized as subconsultants for on-call construction-related professional services contracts.

Figure 7-12.
Disparity indices for City
on-call construction-
related professional
services contracts,
July 2004–June 2009

Note:
 Number of contracts/subcontracts analyzed is 429 for prime contracts and subcontracts, 220 for prime contracts and 209 for subcontracts.
 For more detail, see Figures M-5, M-6 and M-7 in Appendix M.

Source: BBC Research & Consulting from data on City of Portland construction-related professional services contracts.



3. Standard contracts. Figure 7-13 shows disparity results for standard construction-related professional services contracts analyzed in the study.

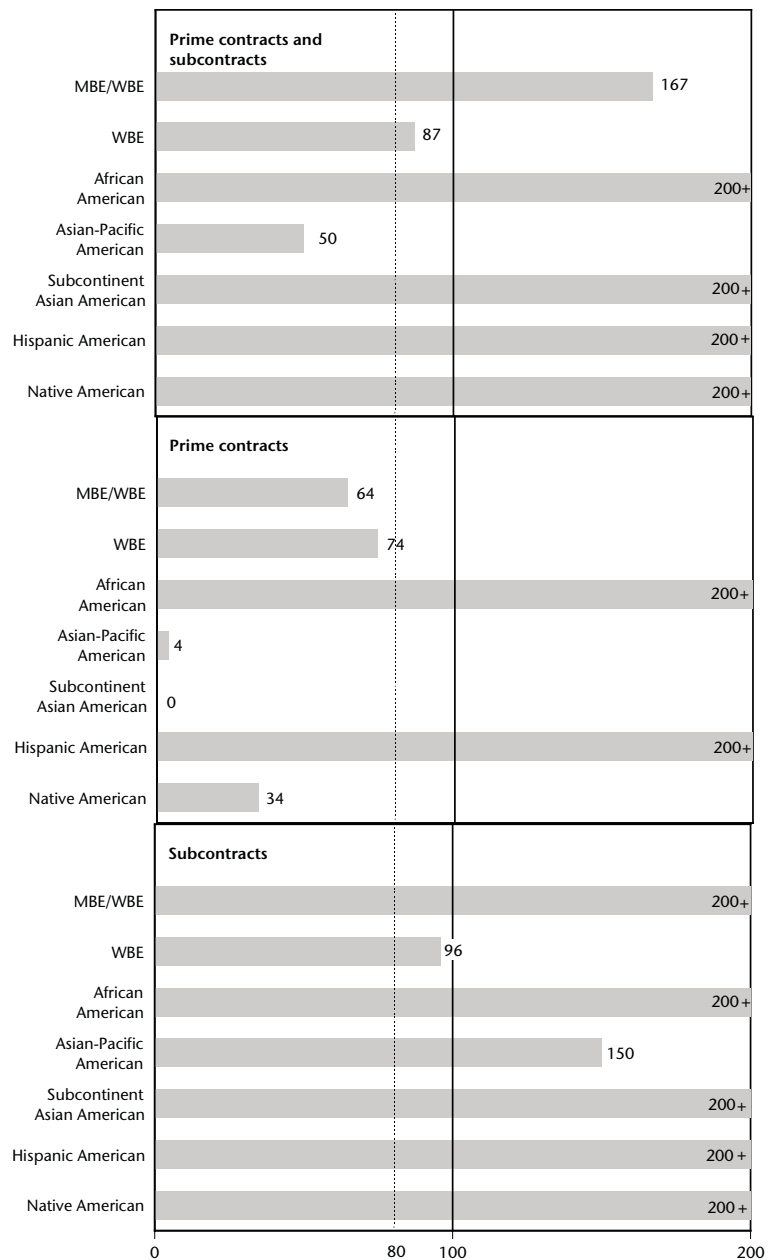
Prime contracts and subcontracts. When considering MBEs and WBEs together, there was no disparity for standard construction-related professional services contracts. However, Asian-Pacific American-owned firms were substantially underutilized, with a disparity index of 50. No other MBE/WBE groups showed substantial underutilization.

Prime contracts. Considering prime contracts, substantial disparities were found for WBEs (disparity index of 74), Asian-Pacific American-owned firms (index of 4), Subcontinent Asian American-owned businesses (index of 0) and Native American-owned firms (index of 34).

Figure 7-13.
Disparity indices for City
standard construction-
related professional services
contracts,
July 2004–June 2009

Note:
 Number of prime contracts and subcontracts analyzed is 662, the number of prime contracts analyzed is 248 and number of subcontracts analyzed is 414.
 For more detail, see Figures M-8, M-9 and M-10 in Appendix M.

Source:
 BBC Research & Consulting from data on City of Portland construction-related professional services contracts.



Subcontracts. No MBE/WBE group showed substantial disparities on standard construction-related professional services subcontracts.

4. Contracts worth less than \$100,000. BBC also examined disparity results for the City’s small construction-related professional services contracts (contracts worth less than \$100,000). Results for individual MBE/WBE groups are shown below in Figure 7-14.

Figure 7-14.
Disparity indices for City
construction-related
professional services
contracts worth less than
\$100,000,
July 2004–June 2009

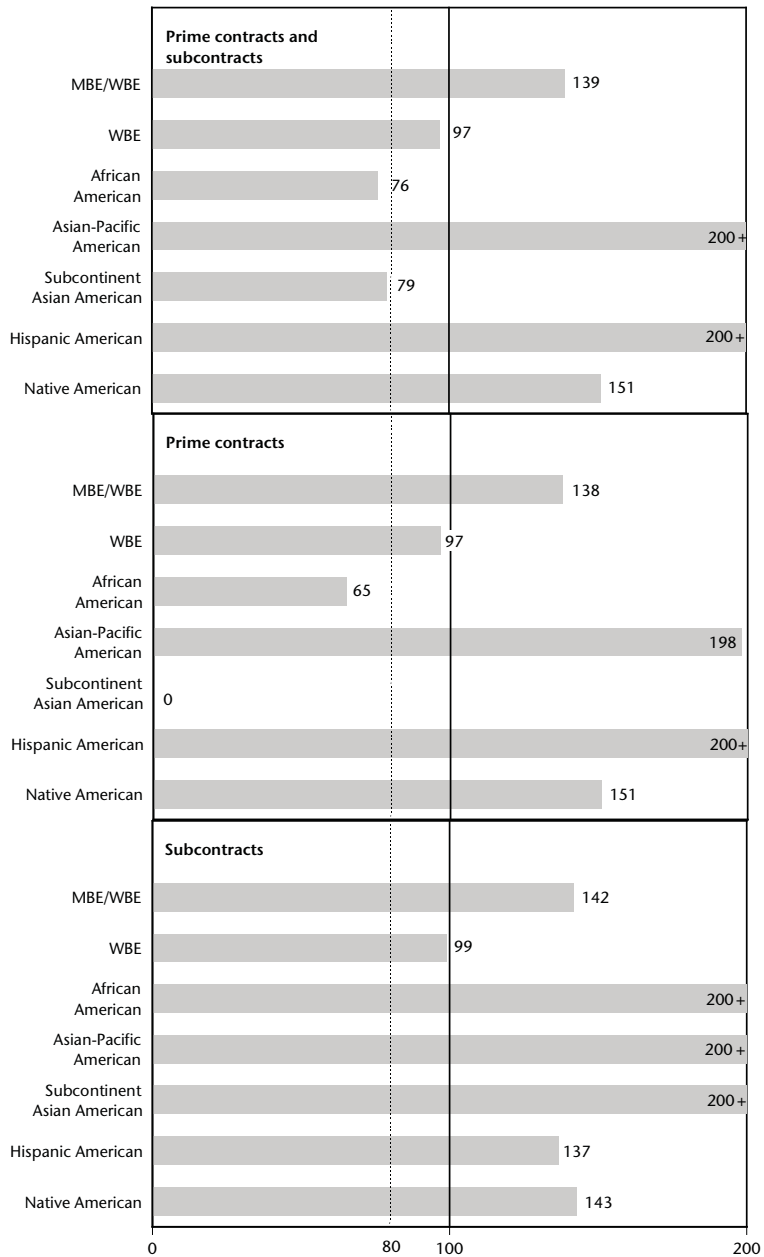
Note:

Number of prime contracts and subcontracts analyzed is 428, number of prime contracts is 338 and number of subcontracts is 90.

For more detail, see Figures M-11, M-12 and M-13 in Appendix M.

Source:

BBC Research & Consulting from data on City of Portland construction-related professional services contracts.



Prime contracts and subcontracts. When considering prime contracts and subcontracts together, substantial disparities were found for African American- (disparity index of 76) and Subcontinent Asian American-owned firms (disparity index of 79) No other groups show substantial disparities.

Prime contracts. As shown in Figure 7-14, the study team also found substantial disparities for African American- (disparity index of 65) and Subcontinent Asian American-owned firms (disparity index of 0) when considering construction-related professional services prime contracts. No other MBE/WBE groups showed substantial disparities.

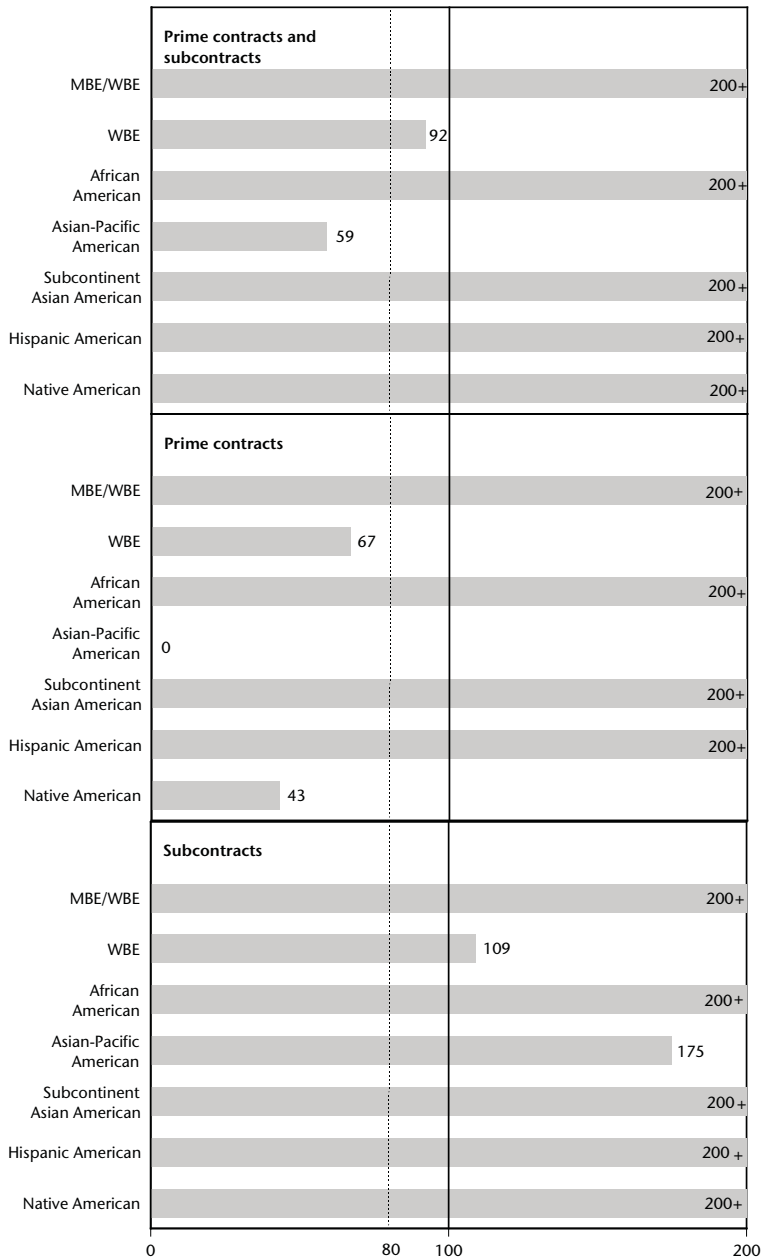
Subcontracts. No substantial disparities were found for any MBE/WBE groups on subcontracts for small construction-related professional services contracts.

5. Contracts worth \$100,000 or more. Figure 7-15 shows disparity results for City construction-related professional services contracts that were worth \$100,000 or more.

Figure 7-15.
Disparity indices for City
construction-related
professional services
contracts \$100,000 and
more,
July 2004–June 2009

Note:
 Number of prime contracts and subcontracts analyzed is 663, number of prime contracts analyzed is 130 and number of subcontracts is 533.
 For more detail, see Figures M14, M-15 and M-16 in Appendix M.

Source:
 BBC Research & Consulting from data on City of Portland construction-related professional services contracts.



Prime contracts and subcontracts. Asian-Pacific American-owned firms (disparity index of 59) showed a substantial disparity when considering prime contracts and subcontracts. No other MBE/WBE group showed a disparity index of less than 80.

Prime contracts. WBEs received 67 percent of the dollars that they would be expected to receive based on availability. Substantial disparities were also found for Asian Pacific American- (disparity index of 0) and Native American-owned firms (disparity index of 43).

Subcontracts. No disparities were found for any MBE/WBE group for subcontracts on construction-related professional services contracts \$100,000 and more.

6. Analysis of statistical significance of results. As discussed in Chapter 6, BBC’s analyses of utilization and availability were not based on sampling methods and thus could be considered analyses of populations. Therefore, any disparities found when comparing overall utilization with availability could be considered “statistically significant.” BBC also used a sophisticated analytical tool (Monte Carlo analysis) to examine whether results could be explained by “chance” in prime contract and subcontract awards. BBC found that the number of contracts and subcontracts were too small given the level of availability of individual MBE/WBE groups for random chance in contract and subcontract awards to be consistently rejected as an explanation for the disparities, even when the disparity indices were zero.

7. Summary of City of Portland construction-related professional services disparity results. City efforts to encourage the utilization of MBE/WBEs on City construction-related professional services contracts appear to be effective. More than one-third (35%) of City construction-related professional services contract dollars during the study period went to MBE/WBEs, including firms not certified as MBEs, WBEs or ESBs. MBEs accounted for 28 percent of the total construction-related professional services dollars studied and WBEs received 6.8 percent of the dollars.

The 28 percent utilization of MBEs on City construction-related professional services contracts exceeded what might be expected based on the study team’s analysis of MBE availability for that work (7.2%). WBE utilization (6.8%) was somewhat below overall availability (7.4%) for the professional services contracts studied. Overall MBE/WBE utilization was substantially below availability for prime contracts on standard (as opposed to on-call) construction-related professional services contracts (disparity index of 64).

One MBE group — Asian-Pacific American-owned firms — received a substantially smaller share of City construction-related professional services contract dollars than what might be expected based on availability (disparity index of 71). BBC identified disparities for other MBE groups for certain sets of contracts, but no other groups exhibited a substantial disparity for City construction-related professional services contracts overall.

Note that one must exercise caution when interpreting disparities or lack of disparities for an MBE group for relatively small sets of prime contracts or subcontracts. Appendix M provides additional tables detailing the disparity results.

CHAPTER 8.

Exploration of Possible Causes of Any Disparities in City Contracting

Four key questions emerge from the disparities observed in the utilization of minority- and women-owned firms (MBE/WBEs) on City of Portland (“City”) contracts discussed in Chapters 6 and 7. BBC further explored reasons why there were disparities for MBE/WBEs in the following sections:

- A. Prime contractors on certain City construction contracts;
- B. Subcontractors on certain City construction contracts;
- C. Prime consultants on certain City construction-related professional services contracts;
- D. Subconsultants on certain City construction-related professional services contracts; and
- E. A summary of these sections.

Answers to these questions may be relevant as the City considers future efforts to ensure that its construction and construction-related professional services contracting is open to MBE/WBEs.

A. Why are there disparities for MBEs on certain City construction prime contracts?

In Chapter 6, BBC examined MBE participation on City construction contracts awarded between July 2004 and June 2009 for which the Good Faith Efforts (GFE) Program applied. The GFE program encourages participation of MBEs, WBEs and Emerging Small Businesses (ESBs) as subcontractors — there is no advantage given specifically to MBE/WBEs seeking these prime contracts. MBEs obtained five of these 195 prime contracts, or \$1.8 million of the \$635 million going to prime contractors. This level of utilization represented 0.3 percent of prime contract dollars on these projects. The disparity index for MBE participation as prime contractors was 42 (see Figure L-6 in Appendix L).

Three out of six of the prime construction contracts that were obtained by MBEs were awarded to the same Native American-owned firm, representing more than half of the MBE prime contract dollars. Of the four MBE firms represented in the six prime contracts, two firms were graduates of the Sheltered Market Program (SMP).

BBC also examined utilization of MBEs on the 76 construction prime contracts worth more than \$100,000 from July 2004 through June 2009 for which the GFE program did not apply. MBEs obtained one prime contract for \$140,000, or 1 percent of the \$14 million going to prime contractors. The disparity index for MBE participation as prime contractors was 25 (see Figure L-15 in Appendix L).

Utilization of white women-owned firms as prime contractors on City construction contracts was in line with what might be expected based upon the availability analysis for these contracts (see Chapter 6).

During in-depth personal interviews, representatives of several MBEs expressed concern with the City's bid process for prime construction contracts. For example:

- The African American owner of a construction contracting firm reported that contract specifications and bidding procedures are a serious barrier to a contracting firm's success. She stated, "Oh my goodness. If [they] put in there that you need to have performed three projects, the same dollar amount, the same type of work, and you've only done maybe one? You're out right there."
- A different African American owner of a construction firm stated that contract restrictions are "a joke ... that's not needed, because all you're doing is weeding out people who can actually do ... the work. You're just screening out and making [it] more difficult" for them to get work.

The BBC study team explored several reasons why there were disparities for MBEs as prime contractors on City construction contracts, especially in light of past City efforts to open opportunities to City prime construction contracts through initiatives such as the SMP. The study team examined potential barriers regarding:

- Access to information on prime contract opportunities;
- Size of contracts; and
- The City's contracting process and prequalification process.

Access to information on prime contract opportunities. The City regularly advertises construction contracts with an estimated value of more than \$100,000. Procurement Services (formerly the Bureau of Purchases) advertises bids in the Portland edition of the Daily Journal of Commerce and on the Procurement Services Bid Web Page. Bidding resources such as Dodge Reports will also list City invitations to bid.

The City also sends notifications of bid opportunities to firms registered with the City. Once a firm registers as a vendor on the City website, it is notified when bids become available that may be of interest based on the firm's user profile.

Anecdotal information from in-depth personal interviews indicated that learning about City work is relatively easy. For example, one interviewee representing an MBE said, "it's pretty easy" to learn about work opportunities with the City and the Portland Development Commission (PDC). He said, "They (City and PDC) have it all. They have great websites. They come out in the community and ... pass the information along It's tough to not know what is going on."

BBC concludes that information concerning City construction prime contract opportunities is widely distributed and would not constitute a barrier to MBE/WBE participation as prime contractors on City construction contracts worth more than \$100,000.

The City is not required to publicly advertise construction contracts worth less than \$100,000. Most City prime construction contracts worth less than \$100,000 are awarded through:

- The SMP, which is limited to bids from MBEs, WBEs and ESBs; or
- Informal bidding procedures where the City actively solicits bids from MBEs and WBEs.

BBC did not identify disparities between the utilization and availability of MBEs or WBEs for either of the above sets of small construction contracts.

Size of prime contracts. BBC examined disparity results for different sizes of construction prime contracts. As explained below, contract size does not explain the observed disparities, but there is some evidence that MBE prime contractors may be more adversely affected by larger contract size than other firms.

Construction prime contracts under the GFE Program. City prime construction contracts under the GFE Program averaged \$3.3 million in size, so firms that only bid on smaller contracts might not be available for many of these construction contracts. However, BBC's availability analysis takes contract size into account — MBE availability was estimated to be 0.7 percent for these prime contract dollars. Even with the low MBE availability for these prime contracts, MBE utilization still fell below availability. It is clear, however, that MBE availability for larger contracts is limited, which indicates that past efforts by the City and others to develop MBE prime contractors that can perform larger construction contracts has had limited success. As discussed below, the prequalification requirements for construction contracts worth more than \$100,000 may also be contributing to the limited participation of MBE prime contractors on larger City projects.

Large prime construction contracts outside of the GFE Program. Chapter 6 also examined prime contractor participation in construction contracts worth more than \$100,000 for which the GFE Program did not apply. These contracts were typically emergency contracts or contracts for which the City did not identify substantial subcontracting opportunities. Even though they fit the definition of "large" contracts, the 76 contracts averaged \$185,000 — a size of contracts within the bid capacity of a greater number of prime contractors. BBC's availability analysis indicated that 4 percent of those prime contract dollars might be expected to go to MBEs, but MBE utilization was 1 percent (disparity index of 25 as shown in Figure L-15 in Appendix L). BBC's disparity analysis indicated that all MBE groups were substantially underutilized on relatively large prime contracts outside the GFE Program. WBE utilization (26%) exceeded availability.

Construction prime contracts worth less than \$1 million under the GFE Program. BBC examined utilization of MBE/WBE prime contractors on 124 contracts worth between \$100,000 and \$1 million for which the GFE Program applied (see Figure L-17 in Appendix L). Four contracts representing 3 percent of prime contract dollars went to MBE firms. WBE firms received 11 contracts accounting for 8 percent of dollars going to prime contractors.

The disparity analysis indicated that African American-, Hispanic American- and Asian-Pacific American-owned firms, as well as WBEs, were substantially underutilized on small contracts for which the GFE Program applied. In general, however, MBEs encountered more substantial disparities on larger prime construction projects, indicating that the size of prime contracts may be a greater barrier for MBEs than other firms attempting to contract with the City.

Prime contracts under the Sheltered Market Program and small informal contracts. The City encourages utilization of MBEs and WBEs as prime contractors for SMP contracts and its small, informally-bid contracts. BBC did not identify disparities between the utilization and availability of MBEs or WBEs as prime contractors for these contracts.

Potential barriers responding to a City request for bid. To obtain a large City construction contract (typically over \$100,000), a prime contractor must:

- Have a valid City business license or current exemption on file with the Revenue Bureau;
- Be registered as an Equal Employment Opportunity Firm with the City;
- Be licensed with the State of Oregon Construction Contractors Board or by the State Landscape Contractors Board;
- Have a bid bond and be able to obtain performance and payment bonds for the project;
- Meet minimum insurance levels set by the City;
- Be prequalified by the City (for the general type of work and the amount of the contract);
- In certain cases, meet additional City requirements for experience, expertise, or equipment; and
- For certain projects, attend a mandatory pre-offer conference held by the City.

A valid City business license and contractor's license is also required of subcontractors, but bonding, insurance and prequalification requirements do not apply.

As discussed in Chapter 4, there is quantitative and qualitative evidence that MBEs and WBEs face additional barriers to obtaining bonding and insurance. Bonding and insurance requirements, such as the City's, may affect opportunities for MBE/WBEs to work as prime contractors on City construction projects.

Bids submitted by MBE/WBE prime contractors. The City typically records and maintains information for all bids on construction projects worth \$100,000 or greater and some projects with values as low as \$25,000. BBC obtained the list of bidders and bid amounts for 287 contracts within the study period.

Was there any indication that the bid process presented barriers for MBE/WBE construction firms? As described in Chapter 6, BBC examined prime construction contracts by contract types, first looking at overall results and then differentiating between contracts awarded under certain programs. BBC found substantial disparities on large prime construction contracts (on contracts awarded under the GFE program and on contracts not awarded under the GFE program) but generally did not find substantial disparities on small prime construction contracts, including both informal and SMP contracts.

Large City prime construction contracts. BBC compared construction contract awards, bids received and availability for MBEs as prime contractors for large City construction contracts.

- MBEs won 2 percent of the large prime construction contracts examined (with or without GFE requirements).
- Of the 915 prime bids received for the 247 contracts (on contracts requiring GFE and on contracts not requiring GFE), 33 bids were from MBEs (4%).¹
- About 6 percent of the prime contractors BBC identified as available for City construction contracts worth more than \$100,000 were MBEs (based on the number of available firms determined through the availability data, but not dollar-weighted).

The above results indicate that MBEs are somewhat less likely to bid on the City's large construction contracts than what might be expected from the availability interviews, and that MBEs accounted for a small portion of contract awards given their number of bids.

Turning to WBEs, the share of bids from WBEs was less than what might be expected from the availability interviews, but the share of awards going to WBEs was in line with their share of total bids:

- WBEs were awarded 12 percent of large City construction contracts.
- WBEs submitted about 10 percent (94) of the 915 bids.
- WBEs accounted for 14 percent of the prime contractors identified as available for City prime contracts worth more than \$100,000.

The following analysis separately analyzes bids for City contracts awarded under the GFE program and large contracts not awarded under the GFE program.

¹ Of the 247 prime construction contracts considered, 32 contracts had MBE prime bidders and 62 had WBE prime bidders. Contracts were considered to have MBE or WBE prime bidders if the contract had at least one MBE or WBE prime bidder among all of the bidding firms.

City prime construction contracts requiring Good Faith Efforts. The BBC study team examined bids on 194 construction contracts requiring GFE. Of the 736 bids received for these contracts, 27 were from MBE firms (4%) and 56 were from WBE firms (8%).²

BBC calculated the “winning percentage” of bids from MBEs, WBEs and majority-owned firms (i.e., firms not owned by minorities or women). As illustrated in Figure 8-1, MBE firms won 19 percent of their bids on City construction contracts requiring GFE, whereas WBE and majority-owned firms won 27 percent of their bids.

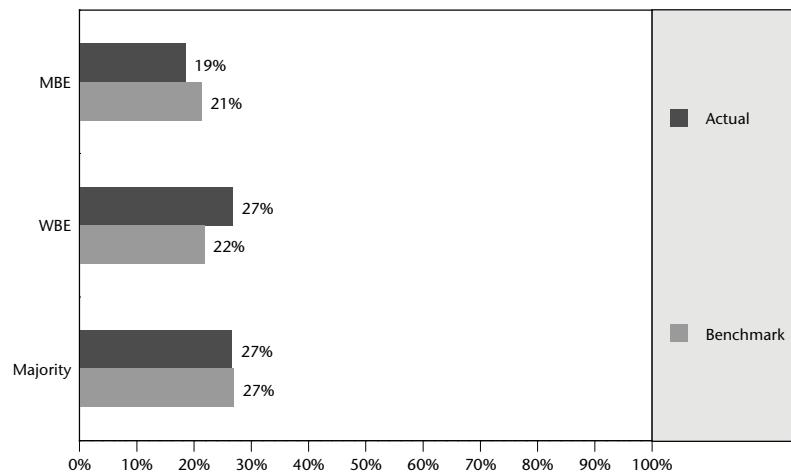
Part of the reason for the difference in win percentages between MBEs and other firms is that MBEs tended to bid on contracts that attracted more total bids. Therefore, each MBE bid was more likely to be competing with a large number of bids, thus lowering the chances of winning. To account for this factor, the study team calculated the overall chances of winning contracts for each group if there were any differences in the likelihood of success between these groups.³ The overall chances of an MBE bid being awarded a contract were 21 percent. Therefore, the percentage of bids from MBEs that were winning bids was only slightly below what might be expected through random chance in bid awards.

WBEs, on the other hand, won a higher percentage of their bids (27%) than expected based on the overall probability of a WBE being the winning bid (22%). Majority-owned firms won bids at a rate consistent with their expected rate of 27 percent.

Figure 8-1.
Win rate for bids on large
City construction contracts
requiring Good Faith
Efforts,
July 2004 – June 2009

Note:
 Based on a sample of 194 contracts and 736 total bids.

Source:
 BBC Research & Consulting from City of Portland data.



² Of the 194 contracts, 26 contracts had MBE bidders and 40 had WBE bidders.

³ BBC determined chances that a bid would be a winning bid for each contract. If there were 10 bids on a contract, for example, the probability of each bid winning the contract was 10 percent. If a contract had two bids, the chances for each bid were 50 percent. BBC calculated the overall probability of MBE bids being the winning bid by adding the probability of winning for each bid submitted by MBEs and dividing this total by the number of bids submitted by MBEs. Overall chances for WBEs and majority-owned firms were calculated in the same way. This methodology assumes no differences between groups in the likelihood of a successful bid.

Large City prime construction contracts not included in the Good Faith Efforts program or the Sheltered Market Program. BBC performed the same analysis for 53 large prime construction contracts not included in the GFE Program or the SMP. Of the 179 bids received for the 53 contracts, 6 were from MBE firms (3%) and 38 were from WBE firms (21%).⁴

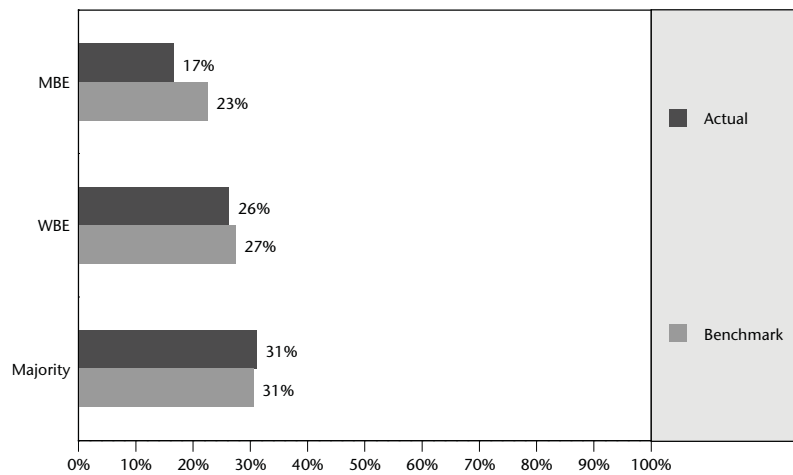
As shown in Figure 8-2, MBEs won 17 percent of their bids on these contracts, whereas WBEs won 26 percent of their bids and majority-owned firms won 31 percent of their bids. Again, analysis of the overall chances of winning bids explains some of the differences in winning percentages for MBEs. The number of bids from MBEs was also very small, making comparisons difficult.

WBEs and majority-owned firms won a percentage of their bids that might be expected from the number of bids submitted. In contrast, MBEs appeared to have won a smaller percentage of their bids compared to random chance in contract awards.

Figure 8-2.
Win rate for bids on large City construction contracts not requiring Good Faith Efforts, July 2004 – June 2009

Note:
 Based on a sample of 194 contracts and 736 total bids.

Source:
 BBC Research & Consulting from City of Portland data.



After examining prime construction contract bid data for large prime construction contracts (with and without GFE requirements), there is some evidence that MBEs are less successful in winning contracts than might be expected if bidders had equal chances of winning these contracts. WBEs fared better in the bid analysis than MBE firms, which is consistent with the disparity analysis presented in Chapter 6. Bids from MBEs and WBEs represent a smaller share of total bids than what might be expected based on the availability interviews. Finally, BBC’s analysis indicates that MBEs and WBEs less often bid on the largest of the “large contracts” considered above.

Analysis of low bids that were deemed non-responsive or not responsible. Generally, City construction contracts are awarded to the lowest responsive, responsible bidder. The “responsive, responsible” assessment of bids considers whether the bidder has bid the work specified in the bid documents; meets licensing, bonding, insurance and other requirements; complies with the GFE Program and other City programs; and meets other requirements for that bid. BBC examined whether MBE and WBE low bidders were more likely than majority-owned firms to not be awarded a contract because the firm or their bid was deemed non-responsive or not responsible.

⁴ Of the 53 contracts, six had MBE bidders and 23 had WBE bidders.

In the City construction contracts for which the BBC study team examined bid data, BBC identified 36 contract awards where the lowest bidder was not awarded the contract. One of these 36 low bidders was an MBE and three were WBEs. The number of bids and awards discussed above do not indicate that MBE and WBE low bidders were more likely than other firms to be deemed non-responsive or not responsible.

In addition, the City provided the study team 13 bid protest letters pertaining to 12 City construction projects within the study period. Of these 13 letters, nine protests related to whether the low bidder adequately complied with the GFE Program. One award was rescinded and subsequently awarded to the lowest bidder after reconsidering the GFE compliance of the firm. None of the protests originated from MBE or WBE firms. In the in-depth interviews with local business owners, however, an owner of a Native American firm stated that he did not protest City of Portland bid awards “because there’s always that fear that if you protest it, you’ll never get another job from that bureau again.”

Prequalification. The City requires prequalification of bidders on prime construction projects worth more than \$100,000 and bid through the formal bid process. Prequalified firms are eligible to bid on contracts that match the firm prequalification status in two aspects:

- Classes of work; and
- Contract size.

If the City’s bid prequalification limit for the firm is less than the City Engineer’s cost estimate for a project, the firm is not considered eligible to bid the project.

Staff within City bureaus set prequalification limits annually based on:

- Completed project history relevant to the class of work;
- Equipment owned or leased;
- Bonding capacity;
- Key personnel experience;
- Experience as prime contractor (on certain classes of work);
- Proof of licensing (on certain classes of work); and
- Length of time in business.

Prequalification does not necessarily carry over between City bureaus. Companies may be required to apply for prequalification in one bureau for similar work that the company is already prequalified to perform in another bureau of the City.

Why examine prequalification? Because City prequalification includes restrictions on the size of City contracts that a firm can perform, the prequalification process limits small firms’ access to large

City construction projects. To the extent that MBE/WBEs are smaller than majority-owned firms, prequalification affects more MBE and WBE firms.

During in-depth personal interviews with local construction firms, a number of firms expressed concern that the prequalification process impaired their ability to win work with the City.

- As summarized by a representative of an African-American-owned contracting firm, prequalification “in itself is a barrier, especially for a small business, especially for an underutilized business where you already lack the access, lack the opportunities to perform.”
- A representative of an African American-owned contracting firm said prequalification requirements “are a big barrier. I think it’s a joke, personally.” He asked, “How do they judge you to be prequalified? They want to see your financials. Big deal. That doesn’t make you qualified to do the work. To do the work, [agencies] should use past experience, and that should be good enough.”
- Another interviewee representing an apprentice preparation program reported that prequalification requirements are “definitely a barrier” for minority business owners. She said, “All of this is, ‘a policy is a policy,’ but the issue is that we are being [treated] differently in [the] requirements [minority business owners must meet].”
- One owner of a minority-owned construction firm reported that it can be difficult to retain prequalification for certain work classes. He reported, “Several times I have had issues with either not prequalifying or prequalifying with a significant reduction in the amount I am prequalified to bid because I have not done a job in a particular classification of work within the last 5 years. At the same time I may have done the same... work requirements in another category.”
- Some interviewees specifically mentioned that it is difficult to get experience without experience. For example, an interviewee representing an African American-owned specialty engineering firm stated, “Prequalification is a problem for minority companies, because in order to increase your prequalification to a specific number, like from \$400,000 to \$800,000, they want to see you perform at that upper level, and you can’t perform at that level until you get your qualifications increased; it’s a real Catch-22.”

Not all interviewees held these opinions, and some representatives of both MBE/WBEs and of majority-owned businesses reported that prequalification did not present a barrier to winning City work. However, the City’s prequalification process raises several issues concerning potential barriers for MBE/WBEs relative to majority-owned firms. The BBC study team examined whether MBE and WBE firms were disadvantaged by:

- Denial of prequalification;
- Limited number of work classes;
- Limited project sizes; and

- Inconsistencies between prequalification levels across work classes.

BBC obtained and analyzed City of Portland prequalification data as of November 2009. The City supplied the name and identifying characteristics of the firm as well as the work class and dollar amount of prequalification. Because of the confidentiality of firm financial information submitted as part of the prequalification process, the City did not provide additional prequalification data. BBC compared certain prequalification data for minority-, women-, and majority-owned firms with information collected as part of the BBC availability interviews with local contractors.

Were MBE/WBEs denied prequalification at different rates than majority-owned firms, and why?

Prequalification denial data from the City were not available to BBC. However, BBC did examine the representation of MBEs and WBEs among all prequalified firms:

- As of November 2009, there were 266 firms that had current prequalification for one or more types of City construction prime contracts.
- Sixty-one of those firms (23%) were MBEs or WBEs, only slightly less than would be expected given the representation of MBEs and WBEs among firms available for City prime construction contracts (25%).
 - Twenty-seven MBEs were prequalified for City prime construction contracts, representing 10 percent of the prequalified firms.⁵
 - The 34 WBEs that were prequalified accounted for 13 percent of prequalified firms.

There is no indication that MBE/WBEs overall represent a substantially smaller number of prequalified firms than might be expected from the availability interviews.

Is there any indication that the prequalification process unduly limited the number of industries for which MBE and WBE firms were prequalified? To bid on a specific City construction contract, a firm must be prequalified in the specific class of work pertaining to the contract. The City prequalifies firms in 33 different classes of work. To be prequalified in a class, firms must show a certain level of experience and capacity to act as prime contractors based on the evaluation of City staff.

MBE/WBEs were prequalified for fewer work classes, on average, than majority firms. The mean number of work classes for which MBE firms were prequalified was 3.0; WBE firms averaged 3.5 prequalified work classes per firm. Majority-owned firms were prequalified, on average, for 5.0 work classes per firm. Figure 8-3 illustrates these results.

⁵ Rates for MBEs were consistent with what might be expected (10%), and rates for WBEs were slightly lower than might be expected (16%), according to the BBC availability interviews.

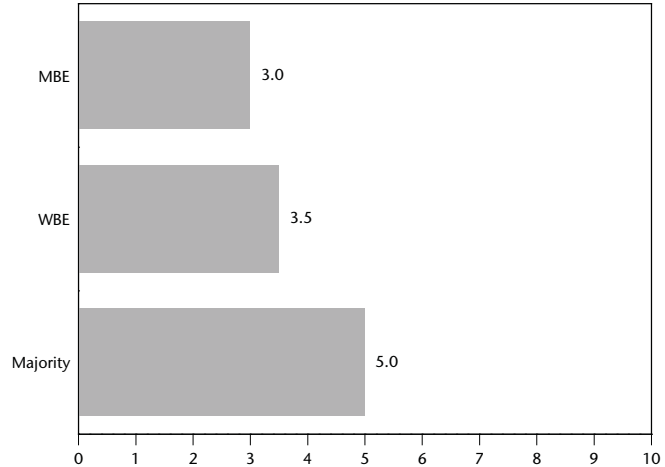
Figure 8-3.
Average number of
prequalified work classes
among firms prequalified for
City prime construction
contracts , November 2009

Note:

The City of Portland specifies 33 work classes in which companies may be prequalified. Number of firms examined in the prequalification analysis: MBE = 27, WBE = 34, Majority = 205.

Source:

BBC Research & Consulting from the City of Portland prequalification database, November 2009.



The smaller number of work classes in which MBEs and WBEs were prequalified might be explained by MBEs and WBEs performing fewer types of work. The study team compared the types of work that the City prequalified firms to perform with the types of work firms reported that they performed in the availability interviews. To make this comparison, BBC grouped the 33 City work classes into 13 broader subindustry categories used in the availability analysis.⁶

In the availability interviews, MBEs and WBEs reported performing work in fewer subindustries than majority-owned firms. However, the average number of subindustries in which MBE firms were prequalified (2.3) was slightly greater than the average number of subindustries in which the firms reported being available (2.0). Majority-owned firms exhibited similar prequalification figures (3.4 prequalified, 3.3 available).

On average, WBE firms were prequalified for slightly fewer subindustries (2.4) than the subindustries for which they reported being available (2.7), which might indicate that the work class aspect of the City’s prequalification process affected WBEs more than MBEs. Figure 8-4 presents these results.

⁶ City work classes sometimes overlap, with one bureau using one work class and another bureau using a different definition of work class for similar work. Even without the overlap in work classes, BBC’s analysis of prequalification required grouping certain work classes. BBC grouped City classes 19 and 20 into Building Construction; classes 9, 10, 12, 13, 14, 15 and 41 into Water and Sewer Facility Construction; classes 8, 11, 43, 44 and 45 into Water, Sewer and Utility Lines; classes 1, 2 and 42 into Asphalt Paving; class 5 into Bridge Construction and Repair; classes 3 and 4 into Concrete Work; classes 6 and 7 into Excavation; classes 16, 17 and 18 into Electrical Work; class 21 into Wrecking and Demolition; classes 23 and 24 into Plumbing and HVAC; class 22 into Painting; class 25 into Roofing; and classes 27, 29 and 30 into Landscaping.

Figure 8-4.
Average number of
subindustries for firms
prequalified for City prime
construction contracts,
November 2009

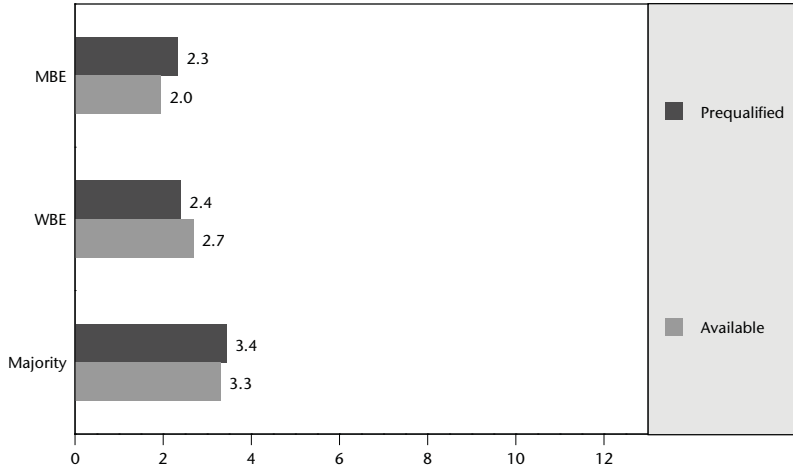
Notes:

City classes of work (33) were grouped into industry categories (13) used by BBC for the availability analysis.

Number of firms examined in the prequalification analysis: MBE = 27, WBE = 34, Majority = 205.

Source:

BBC Research & Consulting from City of Portland and 2010 survey data.



It appears that the smaller number of prequalified work classes for MBEs is largely explained by the fact that MBEs perform fewer types of work than majority-owned firms prequalified by the City. The smaller number of prequalified work classes for WBEs, however, is only partially explained by the number of work types performed.

Is there any indication that the prequalification size limits present greater barriers for MBEs and WBEs? BBC categorized each prequalified firm by the firm’s maximum prequalification limit, across all of its prequalified classes of work, according to ten dollar ranges of prequalification limits that correspond to the bid capacity categories used in BBC’s availability interviews.

Overall, the City was far more likely to prequalify MBE and WBE firms at lower prequalification limits when compared with majority-owned firms.

- Only 32 percent of MBEs were prequalified for contracts valued \$500,000 or more, while more than 82 percent of majority-owned firms were prequalified for contracts of \$500,000 or more.
- WBEs were also less likely than majority-owned firms to be prequalified for contracts of \$500,000 or more.
- When considering a higher prequalification level, MBEs and WBEs were considerably less likely than majority-owned firms to be prequalified for projects of \$2 million or more.

Figure 8-5 presents these results.

Figure 8-5.
Maximum prequalification
limits for firms prequalified
for City prime construction
contracts, November 2009

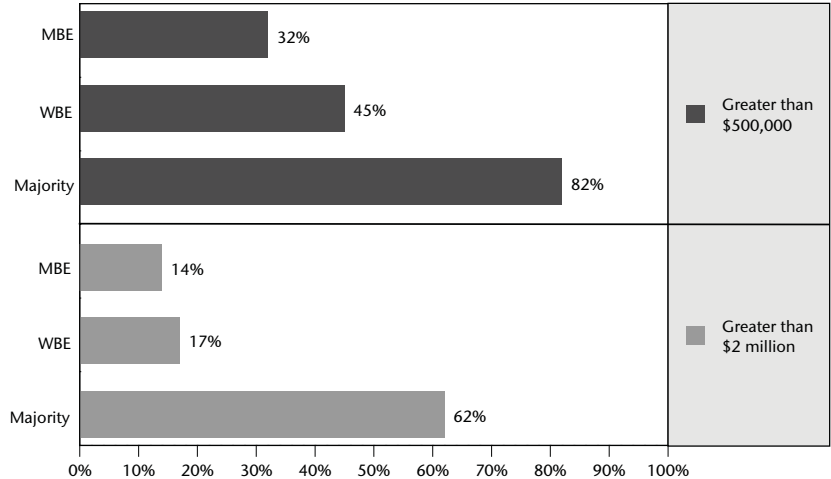
Notes:

Number of firms examined in the prequalification analysis: MBE = 27, WBE = 34, majority = 205.

Prequalification limits were categorized according to 10 dollar ranges that correspond to bid capacity categories used in the availability interviews.

Source:

BBC Research & Consulting from City of Portland data.



Differences in prequalification limits might be explained by MBE and WBE firms performing smaller contracts in general. In the availability interviews, the BBC study team asked firms the size of the largest contract or subcontract the company was awarded or bid on in the Portland area in the previous five years.⁷ BBC refers to the value, compiled in size ranges, as the firm’s “bid capacity.” The bid capacity results for MBE, WBE, and majority-owned firms are useful when analyzing differences in prequalification limits. Results are shown in Figure 8-6:

- The median City prequalification limit for MBE prime contractors was \$362,500, while MBE prime contractors reported a median bid capacity of \$500,000 in the availability interviews.
- WBE prime contractors were prequalified at median levels consistent with their bid capacity reported in the availability interviews.
- The median City prequalification level for majority-owned prime contractors was greater than their median bid capacity as reported in the availability interviews.

Therefore, only some of the difference in City prequalification limits between MBE/WBE firms and majority-owned firms can be explained by the bid capacity of firms as indicated in the availability interviews.

⁷ BBC asked firms to indicate the dollar range for the past project. The analysis of bid capacity uses the upper limit of each range as the bid capacity figure for each firm.

Figure 8-6.
Median prequalification limits and availability for firms prequalified for City prime construction contracts, November 2009

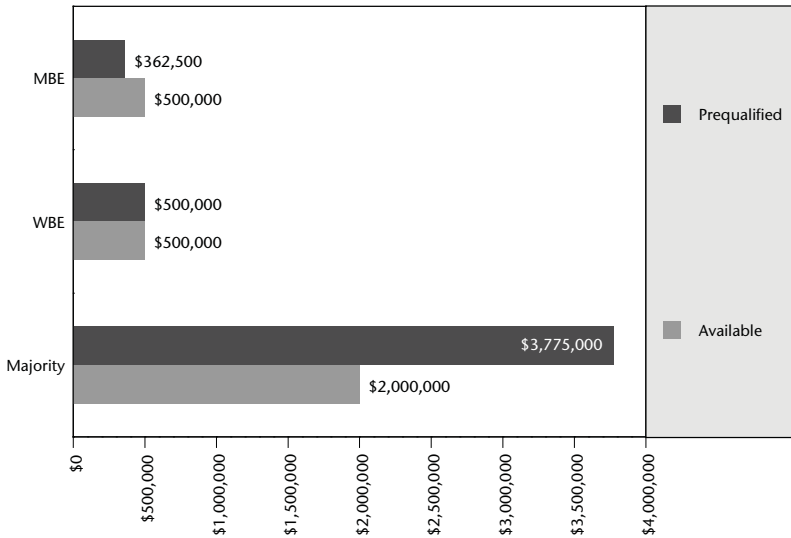
Notes:

Values are the medians of the greatest prequalification limit and the greatest availability value for each firm.

Number of firms examined in the prequalification analysis: MBE = 27, WBE = 34, Majority = 205.

Source:

BBC Research & Consulting from City of Portland and 2010 survey data.



Do firms experience inconsistencies in prequalification across related work classes? Individual City bureaus set prequalification limits, and there can be substantial differences in prequalification limits across work classes for a given firm. This variability can present a barrier for firms attempting to transfer experience gained in one work class to prime contract work in another class. Several examples are given below:

- One majority-owned firm with experience in concrete work was prequalified at \$1.5 million each for Street Improvements (Class 2), Bridge and Overcrossing Construction (Class 5), and Reinforced Concrete Construction (Class 4) but was limited to \$150,000 for Concrete Street Paving (Class 1) and \$500,000 for Concrete Flatwork (Class 3).
- A WBE with experience in electrical work was prequalified for \$440,000 in Electrical Wiring (Class 16), but was prequalified for only \$100,000 each in Traffic Signalization (Class 17) and Outdoor Illumination (Class 18).
- An MBE landscaping firm was prequalified for \$100,000 in Landscaping (Class 29), but was limited to \$25,000 for Park Improvements (Class 30) and \$60,000 for Irrigation & Sprinkling (Class 27).

These examples of differences in prequalification limits across work classes suggest that requirements to prequalify for work in different, but related, work classes could provide a barrier to any firm contracting with the City. The BBC study team identified examples of inconsistencies for minority-, women-, and majority-owned firms.

A minority-owned construction firm with experience in site development, excavation, sewer and water lines, and road construction stated in an availability survey, “The categories are narrow and prior jobs drop off a bidder’s list of prior jobs at the end of five years making small contractors who do not always do work in certain categories unable to count those jobs. For example, park construction requires the same equipment, people and experience as finishing slopes and road beds to

required plans and elevations. ... [A] bidder may be qualified to do the work but has not performed the work on a park job in several years.”

In summary, the City of Portland’s current prequalification process limits opportunities for City prime construction contracts for small firms, including MBE/WBEs. Because MBEs and WBEs tend to be smaller firms, the prequalification process may present a more substantial barrier to City construction prime contracts for those firms. There is also some indication that outcomes of the prequalification process differ for MBEs and WBEs compared with majority-owned firms that were not explained by factors such as breadth of work and BBC’s information concerning firms’ bid capacity.

B. Why are there disparities for certain City construction subcontracts?

Through its GFE Program, the City encourages participation of MBEs and WBEs as subcontractors on its construction contracts. At times, the City awarded construction contracts outside of the GFE Program because they were emergency contracts or contracts on which the City did not identify substantial subcontracting opportunities. The City’s SMP is a different initiative that encourages utilization of MBE, WBE and ESB firms as prime contractors, and is also operated outside of the GFE program. The SMP does not have a component that specifically encourages MBE/WBE participation as subcontractors.

As discussed in Chapter 6, MBE/WBEs were underutilized overall on subcontracts awarded outside of the GFE Program. Some MBE/WBE subcontractors interviewed as part of the disparity study indicated that they do not have the same opportunities to participate in subcontracts outside of goals or GFE-type programs (see, for example, discussion on Appendix J, page 52).

Is there an indication that barriers exist for MBE/WBEs in obtaining subcontracts on City construction contracts outside of the GFE program? BBC analyzed the size distribution and types of work involved for 99 subcontracts on the 76 construction contracts worth more than \$100,000 for which the GFE Program did not apply (and were not awarded under the SMP).

City data indicated 99 subcontracts, totaling \$1.8 million, on these contracts. MBE/WBEs obtained 28 of the 99 subcontracts outside of the GFE Program. MBE/WBE utilization — \$230,000 — represented about 13 percent of subcontract dollars, which was substantially below what might be expected based on BBC’s availability analysis for those subcontracts (about 20%). The disparity index was 64, as shown in Figure L-16 in Appendix L. The level of MBE/WBE participation as subcontractors on construction contracts without the GFE Program was about one-half of MBE/WBE participation as subcontractors when the GFE Program applied (24% as indicated in Figure 6-4).

BBC’s analysis of subcontract types and sizes on City construction contracts outside the GFE Program did not indicate neutral reasons for the low level of MBE/WBE participation.

- Subcontract sizes for contracts outside of the GFE Program averaged \$18,000 per contract, much smaller than the average contract size for subcontracts for which the GFE Program applied (\$166,000).

- BBC also examined the most frequent types of subcontracting work for non-GFE and GFE subcontracts. A large portion of the subcontract dollars for non-GFE and GFE subcontracts related to electrical work; highway and street construction; water, sewer and utility line construction; and “other” construction. It did not appear that the types of work for non-GFE subcontracts substantially differed from contracts for which the GFE program applied.
- The amount of subcontract dollars for City contracts outside the GFE program was relatively small, so there would be no merit to an argument that MBE/WBE subcontractors were unable to perform both the subcontracts under the GFE program and the subcontracts outside the GFE program.

Is there an indication that barriers exist for MBE/WBEs on construction subcontracts awarded under the Sheltered Market Program? Minority-owned businesses were also underutilized as subcontractors on SMP contracts, although the small number of subcontracts limits the analysis. Of the 33 subcontracts analyzed, MBEs received five for a value of \$24,000, substantially below what might be expected based upon BBC’s analysis of availability for these subcontracts. Neither size nor type of work involved in the subcontracts explained the disparity for MBEs.

C. Why are there disparities for certain City construction-related professional services prime contracts?

In Chapter 7, BBC examined MBE and WBE participation on City construction-related professional services contracts awarded between July 2004 and June 2009. When considered together, City utilization of MBEs and WBEs as prime consultants exceeded what might be expected from the availability analysis. When analyzed separately, however, WBE firms received about three-quarters of the dollars that they might be expected to receive based on availability (disparity index of 77). Overall MBE utilization exceeded availability. However, two firms accounted for more than 80 percent of MBE utilization. In addition, Asian-Pacific American-owned firms showed a disparity index of 21.

BBC explored bid scoring and on-call contract usage to examine why there were disparities for WBEs and Asian-Pacific American-owned firms as prime consultants on City construction-related professional services contracts. There were also disparities for MBE prime contracts, overall, on City standard contracts.

Number of proposals. BBC examined the number of proposals for construction-related professional services submitted by MBEs and WBEs. The study team examined 535 proposals submitted for nearly 300 construction-related professional services contracts during the study period.

- MBEs submitted 56 proposals, 10 percent of the total, which is higher than what might be expected (6%) from the proportion of MBE prime consultants available for City contracts (determined through BBC’s availability interviews); and
- WBEs submitted 46 proposals (9% of the total), which is lower than what might be expected (11%) from the availability interviews.

It appears that a lower rate of proposal submission by WBEs may have contributed to underutilization of those firms.

Proposal scoring. The City typically uses qualification-based evaluations to select consultants to perform construction-related professional services contracts. Firms are selected on their qualifications, with price as a negotiating point after the selection is made. Common categories of selection requirements include:

- Team qualifications;
- Project approach;
- Diversity;
- Proposed cost; and
- Supporting information (such as letters of recommendation).

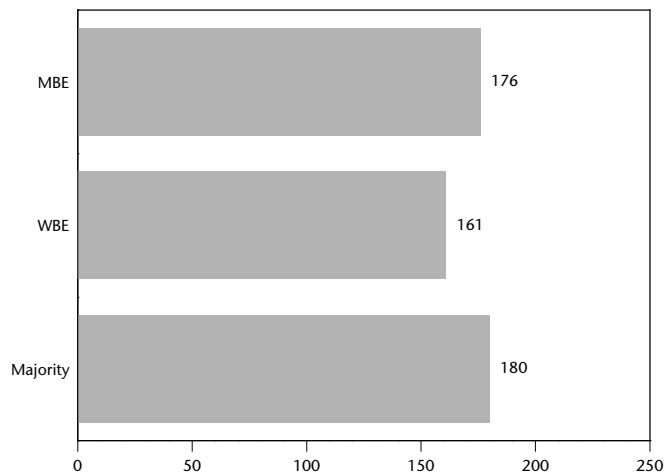
Does the proposal scoring process present a barrier for MBE/WBEs? The City provided documentation for the evaluation of proposals for nearly 300 contracts across the study period. BBC analyzed the scores the City gave to MBEs, WBEs and majority-owned firms to examine possible barriers for MBEs and WBEs.

Compared to majority-owned and MBEs, WBEs tended to score lower overall. Based on BBC's analysis of 535 proposals for construction-related professional services contracts, WBE firms received an average total score of 161 points compared with 176 points for MBEs and 180 points for majority-owned firms (see Figure 8-7).

Figure 8-7.
Average total scores of proposals submitted for City construction-related professional services contracts, July 2004 – June 2009

Note:
Number of diversity scores analyzed:
MBE = 56, WBE = 46, majority = 433.

Source:
BBC Research & Consulting from City of Portland data.



On average, WBE firms scored lower than majority-owned firms in team qualifications and project approach categories.

Scoring for diversity. In-depth personal interviews with construction-related professional services firms revealed some concerns regarding diversity points in the City's proposal scoring process. For example, an owner of a Native American-owned engineering firm stated that he was concerned that the process used to award diversity points as part of the City's bid selection process might be unfair. He recalled proposing as a prime for a contract and receiving fewer diversity points than those

awarded to the winning bidder. He stated, “Why wouldn’t [a minority prime contractor] get the same number of points? Something in the scoring process [contributes] to that unfairness.”

City evaluation guidelines address how evaluators should score firm diversity criteria. In general, MBE and WBE firms are not automatically given a high evaluation for diversity. Along with majority-owned firms, MBE and WBE firms are evaluated on:

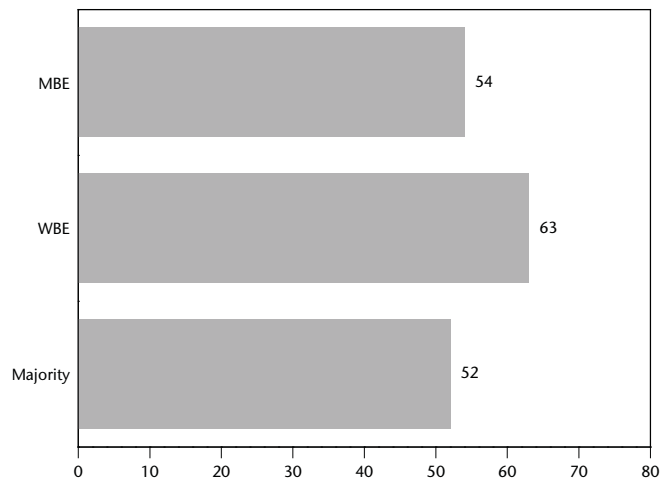
- Diversity in recruitment and employment opportunities; and
- Subcontracting and partnering efforts with State of Oregon-certified MBE, WBE and ESB businesses.

As shown in Figure 8-8, there was little difference in the average diversity scores awarded to minority-owned firms (54) and majority-owned firms (52). WBE firms tended to average the highest scores for diversity in employment and subcontracting, with an average diversity score of 63.

Figure 8-8.
Average diversity category scores for proposals submitted for City construction-related professional services contracts, July 2004 – June 2009

Note:
Number of diversity scores analyzed:
MBE = 41, WBE = 34, majority = 329.

Source:
BBC Research & Consulting from City of Portland data.



Task order (on-call) contract usage. The City periodically requests proposals from firms to receive task order, or “on-call,” contracts. Firms obtaining on-call contracts can be contacted by the City to perform small assignments during the contract period. The City can also request informal proposals for an assignment among firms that have on-call contracts. After the City selects a firm for an assignment under an on-call contract, it issues a task order to perform that work.

As reported in Chapter 7, BBC examined \$26 million of City on-call contracts during the study period. (BBC performed the disparity analysis based on invoices, not contract awards.) There were substantial disparities in the City’s use of WBEs as prime consultants on these contracts. No MBE group showed underutilization. In study team discussions with the Disparity Study Advisory Group, and during in-depth personal interviews, several individuals indicated that being awarded an on-call contract does not guarantee that the company will be utilized once a task order is issued.

- For example, an owner of an Hispanic-owned engineering firm reported, “Right now, the professional services are all qualifi[cation]-based. ... It is a big challenge. ... For instance, I have this contract [for which] we already got qualified ... we got selected. Well, we still have to be qualified in every task order we get, so, even though you’ve

been qualified, you still have to... submit proposals, so you may get nothing after... all the time spent writ[ing] proposals. It's very expensive... to prove that you're qualified."

- Additionally, an owner of an Asian-Pacific American engineering firm said, "The way on-call services are currently bid is a very big problem, as they should be reserved for smaller businesses, but the larger businesses compete against us and we don't get the opportunity to do what we do best." He stated that he wants to make sure that PDC and the City recognize that small businesses want to work with them, and that they need to do things that reach smaller companies.

Are MBEs and WBEs receiving on-call contracts less likely than majority-owned firms to receive work under these contracts? Each on-call contract specifies a dollar limit for assignments performed under that contract. BBC used City invoice data for a sample of 168 on-call contracts with award amounts under \$500,000 to determine the percentage of on-call contract awards that were actually paid out to firms.

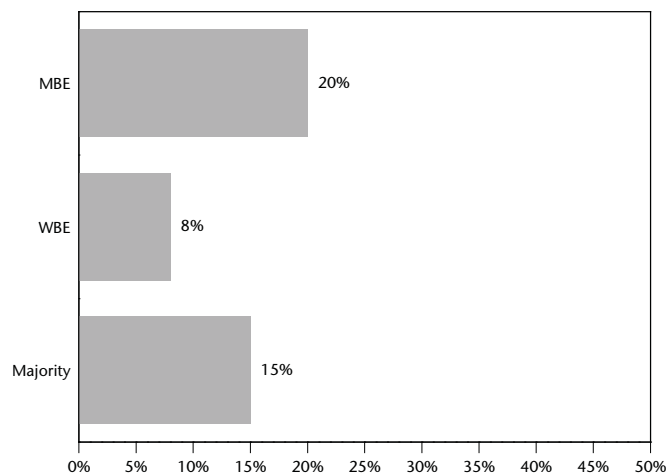
Of the \$19 million in on-call contracts examined (based on contract maximums), just \$3 million (or 15%) of the maximum value was actually paid out to the firms awarded these contracts. These data demonstrate that receiving an on-call contract does not mean that firms will receive task orders for a value close to the contract maximum.

The average on-call award to firms was \$100,000 for MBEs, \$100,000 for WBEs, and \$119,000 for majority firms. BBC's analysis of task order usage of firms indicated that MBEs averaged receipts of about \$20,000 per contract, or about 20 percent of the average contract value. WBE firms with on-call contracts experienced the lowest actual use, taking in under \$8,000 per project, or 8 percent of the average contract value. Majority-owned firms received an average of \$18,000 per project, or 15 percent of their average contract value.

Figure 8-9.
Task order payments as a percentage of contract maximum values for City on-call construction-related professional services contracts, July 2004 – June 2009

Note:
Number of on-call awards analyzed:
MBE = 20, WBE = 17, majority = 131.

Source:
BBC Research & Consulting from City of Portland invoice data.



BBC further explored the low rate of use under on-call contracts. More than three-quarters of WBEs appeared to receive no payments on their on-call contracts during the study period. In contrast, more than one-half of MBEs and majority-owned firms with on-call contracts received payments for task orders on those contracts. The low use of WBEs receiving on-call contracts is a key reason behind the disparities in the utilization of white women-owned firms on City on-call contracts for construction-

related professional services. It is possible that some City bureaus take credit for contract awards to WBEs but then use other firms for required work. The City should explore whether there is further evidence of discrimination against WBEs in its on-call system.

D. Use of MBE/WBEs as subconsultants on certain City construction-related professional services subcontracts

No disparities were found for any MBE/WBE group for construction-related professional services subcontracts. The study team found that two firms account for a substantial portion of MBE utilization on those subcontracts. However, even when excluding those subcontracts, utilization still exceeded availability. It appears that the system for awarding diversity points in evaluation of consultants' proposals for City work has been effective in encouraging utilization of MBE/WBE subconsultants on construction-related professional services contracts.

E. Summary

Chapters 6 and 7 identified disparities in the participation of MBE/WBEs in certain types of City construction and construction-related professional services work, especially when City programs to encourage MBE/WBE participation did not apply.

Further analysis in Chapter 8 found evidence that MBE prime contractors are less successful in winning construction contracts than might be expected if bidders had equal chances of winning these contracts. MBE and WBE firms bid more often on smaller contracts overall, even within the set of large contracts considered above (including contracts that required GFE and contracts that did not). The City's prequalification process for prime contractors on construction projects may adversely affect small business — especially WBE — opportunities to compete for this work.

MBE/WBEs experienced disparities in construction subcontracting when City programs to encourage MBE/WBE participation did not apply. BBC did not identify neutral explanations for these disparities.

City efforts to engage MBE/WBE participation as subconsultants on construction-related professional services contracts appear to be successful. This outcome was also true for MBE prime consultants but not for WBE prime consultants. Lower evaluation scores given for WBE proposals and low use of WBEs receiving on-call contracts are two of the reasons behind the disparities for WBE prime consultants on City construction-related professional services contracts. WBE prime consultants do not appear to have the same opportunities as MBEs and majority-owned firms on these contracts.

CHAPTER 9.

Summary of Evidence

The City of Portland (the “City”) encourages utilization of minority- and women-owned firms in City contracts as part of its fair contracting and small business support programs (including the City’s Good Faith Effort and Sheltered Market Programs). Chapter 9 presents key disparity study results in six sections:

- A. Marketplace analyses;
- B. Disparity analyses for prime construction contracts;
- C. Disparity analyses for construction subcontracts;
- D. Disparity analyses for construction-related professional services prime contracts;¹
- E. Disparity analyses for construction-related professional services subcontracts; and
- F. A brief summary of these sections.

BBC summarizes each area of results in the discussion below.

A. Marketplace Analyses

Key results from an examination of local marketplace conditions include the following:

- There is quantitative and qualitative evidence that availability of minority- and women-owned firms (MBE/WBEs) to perform City construction and construction-related professional services contracts is less than what might be expected if minorities and women had the same opportunities as non-minorities and men to enter and advance within those industries, and form and grow their businesses.
- Annual revenue of firms owned by certain minority groups and by women is lower than other firms in the Portland-area construction and construction-related professional services industries.
- There is evidence that minorities and women have greater disadvantages than other firm owners when seeking capital, bonding and insurance.
- There is also quantitative and qualitative evidence that minority- and women-owned firms face barriers to working as prime contractors and as subcontractors on local public sector contracts.

¹ The City’s construction-related professional services contracts are awarded through the Professional, Expert and Technical Services contracting process.

Chapter 4 and Appendices E, F, G and H present these analyses.

B. Disparity Analyses for Construction Prime Contracts

Overall, utilization of minority- and women-owned firms as prime contractors on City and Portland Development Commission (PDC) construction contracts was substantially below availability when programs to encourage MBE/WBE utilization did not apply.

Disparity analysis for City construction prime contracts. As discussed in Chapter 6, BBC identified disparities for MBEs and WBEs as prime contractors on City construction contracts on which programs to encourage MBE/WBE utilization did not apply.

- Utilization of MBE/WBEs as prime contractors on contracts awarded under the Good Faith Efforts (GFE) Program was 1.3 percent, below the 1.8 percent that those firms might be expected to receive based on availability (disparity index of 70). The focus of the GFE Program is to encourage utilization of MBE/WBEs as subcontractors.

Disparities were substantial for MBE prime contractors (disparity index of 42) but small for WBE prime contractors (disparity index of 89). There were substantial disparities for each MBE group except for Native American-owned firms.

- BBC also examined utilization of MBEs and WBEs on the 76 construction prime contracts over \$100,000 from July 2004 through June 2009 on which the GFE Program did not apply. MBEs obtained only one of those prime contracts. There were substantial disparities for prime contracts for each MBE group. In contrast, utilization of white women-owned firms exceeded what might be expected from the availability of those firms.

Effect of the Sheltered Market Program. There were no disparities overall for MBE/WBEs for prime contracts under the Sheltered Market Program (SMP) or for informal contracts (under \$100,000) for which SMP participants are the “first source” for contracting.

About 60 percent of prime contract dollars on construction contracts that the City awarded through the SMP went to minority- and women-owned firms, which is higher than what might be expected based on MBE/WBE availability. The program appears to be effective in encouraging MBE/WBE participation in City construction contracts worth less than \$200,000.

Because contracts under the SMP and informal construction contracts account for less than 2 percent of total City construction prime contract dollars, those programs do not eliminate disparities between MBE utilization and availability as prime contractors across all City construction contracts (disparity index of 64 for City construction prime contracts overall). There is no disparity in the City’s overall use of white women-owned firms as prime contractors on construction contracts (disparity index of 129).

Chapter 6 presents further details concerning these analyses.

Potential effect of City prequalification process. The City’s current prequalification process limits the opportunities for small firms to participate as prime contractors on City construction contracts. Because MBEs and WBEs tend to be smaller firms, the prequalification process may present a more substantial barrier for those firms to participate on City construction contracts as prime contractors. There is also some indication that outcomes of the prequalification process differ for MBEs and WBEs compared to majority-owned firms (i.e., firms not owned by minorities or women) that are not explained by factors such as breadth of work and firms’ bid capacity.

Chapter 8 presents further analysis of the City’s prequalification process.

Disparity analysis of PDC construction prime contracts. PDC contributes funding or land to many major construction contracts in Portland. These “sponsored” projects tend to be large, and prime contractors are selected by the developer or other project owner, and not PDC. No PDC programs to encourage utilization of MBE/WBEs as prime contractors apply to sponsored projects. When examining prime contract dollars for PDC-sponsored contracts, BBC found MBE/WBE utilization to be less than one-half of 1 percent. There were substantial disparities between the utilization and availability of MBEs (disparity index of 16) and WBEs (disparity index of 15). There were substantial disparities for each MBE group except for Subcontinent Asian American-owned firms.

Conclusions for construction prime contracts. There is strong evidence that minority- and women-owned firms are substantially underutilized on City and PDC construction prime contracts from contracts on which efforts to encourage MBE/WBE utilization as prime contractors did not apply. BBC identified some evidence of disparities for each MBE/WBE group.

C. Disparity Analyses for Construction Subcontracts

BBC also examined MBE/WBE participation as subcontractors on City and PDC construction contracts. Without City and PDC programs, and sometimes even with those programs, there were disparities in the use of MBE/WBE subcontractors.

Disparity analysis for subcontracts on City projects. Overall, the City’s GFE Program was effective in eliminating disparities between the utilization and availability of MBEs and WBEs as subcontractors on City construction contracts. Without the program, there was evidence of disparities for MBEs as subcontractors on City construction contracts. Chapter 6 presents a detailed analysis of these subcontracts.

Disparity analysis for subcontracts on PDC-sponsored projects. Prime contractors for certain PDC-sponsored projects must comply with the requirements specified in PDC’s Business Equity Program. Even with this program, overall MBE/WBE utilization was lower than availability for PDC-sponsored construction subcontracts (disparity index of 76). There were disparities for WBEs and certain MBE groups.

Conclusions for construction subcontracts. There is evidence that MBE/WBEs are substantially underutilized on City and PDC construction subcontracts from contracts on which efforts to encourage MBE/WBE utilization as subcontractors did not apply. There is some evidence of disparities for each MBE group. Even with the City’s GFE Program in place, there was substantial underutilization of Asian-Pacific American- and Native American-owned firms.

D. Disparity Analyses for Construction-related Professional Services Prime Contracts

Utilization of MBEs as prime consultants was relatively high on construction-related professional services contracts that the City and PDC awarded during the study period (referred to as “personal services” contracts for PDC). However, WBEs were substantially underutilized as prime consultants on City construction-related professional services contracts.

BBC also examined PDC-sponsored personal services contracts, which were financially supported but not awarded by PDC. There were substantial disparities in the utilization of MBE/WBE prime consultants on construction-related PDC-sponsored personal services contracts.

City prime contracts. MBEs received almost one-quarter of the total prime contract dollars for City construction-related professional services contracts during the study period. Overall, utilization of MBEs as prime consultants on City construction-related professional services contracts exceeded what those firms might be expected to receive based on availability. Utilization of MBEs as prime consultants was especially high for on-call contracts. However, there were disparities between the utilization and availability of MBEs as prime consultants on the City’s standard (i.e., non on-call) construction-related professional services contracts.

WBEs received about 5 percent of construction-related professional services prime contract dollars, which is lower than what those firms might be expected to receive based on availability. As discussed in Chapter 8, two of the reasons behind the disparities for WBEs on City construction-related professional services contracts were: 1) relatively low evaluation scores given for WBE proposals; and 2) relatively low use of WBEs that were awarded on-call contracts.

Chapter 7 examines utilization and disparity results for City construction-related professional services prime contracts.

PDC-owned prime contracts. MBEs received 10 percent and WBEs received 11 percent of personal services contract dollars that were awarded directly by PDC (i.e., “PDC-owned” contracts). Overall, there were no disparities in the utilization of MBE/WBEs as prime consultants on PDC-owned personal services contracts. However, there were disparities in the utilization of African American- and Native American-owned construction-related personal services firms.

PDC-sponsored prime contracts. BBC examined PDC personal services contracts that were awarded by developers or other parties, but also had some PDC financial support. Only 1.5 percent of prime consultant dollars on those contracts went to MBE/WBEs, substantially below what those firms might be expected to receive based on their availability for that work. There were disparities for WBEs and each MBE group except for African American-owned firms.

Conclusions for construction-related professional services prime contracts. The City’s and PDC’s efforts to open construction-related professional services and personal services contract opportunities to MBE/WBE prime consultants appear to be somewhat successful. However, the disparities in the utilization of WBEs on City construction-related professional services prime contracts merit further review and monitoring, especially concerning the scoring of WBE proposals and the process by which firms winning on-call contracts are selected for task orders.

There is evidence of substantial disparities in MBE/WBE utilization as prime consultants on personal services contracts supported but not awarded by PDC. Where City and PDC efforts to open prime consultant opportunities are absent, utilization of MBE/WBEs as prime consultants appears to be minimal.

E. Disparity Analysis for Subcontracts on Construction-related Professional Services Contracts

On City construction-related professional services and PDC personal services contracts on which MBE/WBE participation was encouraged, there were no disparities overall for MBE/WBE subconsultants. However, there were disparities for MBE/WBE subconsultants on PDC-sponsored personal services contracts.

City construction-related professional services contracts. MBE/WBEs received 45 percent of the subcontract dollars on City construction-related professional services contracts. There were no disparities, overall, for MBE/WBEs as subconsultants, as discussed in Chapter 7.

PDC-owned personal services contracts. MBEs received 13 percent of the subcontract dollars on personal services contracts that PDC awarded. WBEs received 1 percent of those subcontract dollars. There was a substantial disparity in the utilization of WBE subconsultants and certain MBE groups on these contracts.

PDC-sponsored personal services contracts. MBE/WBEs received 1 percent of subcontract dollars on PDC-sponsored personal services contracts. There were substantial disparities between utilization and availability for every MBE/WBE group.

Conclusions for construction-related professional services subcontracts. The City's efforts to encourage opportunities for MBE/WBEs as subconsultants on construction-related professional services subcontract opportunities appear to be effective. In contrast, there is evidence of minimal utilization of MBE/WBEs as subconsultants on PDC-sponsored personal services contracts. These results suggest that, without its programs, the City might also have substantial underutilization of MBE/WBEs as subconsultants on its construction-related professional services contracts.

F. Summary

There appears to be a continued need for City efforts to open construction and construction-related professional services contract opportunities to MBE/WBEs. Without such programs, there is evidence of disparities in the utilization of those businesses.

Chapter 10 outlines program options the City might consider.

CHAPTER 10.

Contracting Practices and Business Assistance Programs

The disparity study shows evidence of potential barriers that minority- and women-owned firms (MBE/WBEs) face in doing work in the Portland area, including attempting to obtain work with the City of Portland (the “City”) (for a summary, see Chapter 9). Chapter 10 explores options for race- and gender-neutral measures and other programs that the City might consider to address some of the barriers that the study team observed for MBE/WBEs in various business areas. The City has already implemented a number of these programs.

The following program options include initiatives that address entry and advancement, business assistance, bonding and financing, and small business development:

- A. Efforts to remove barriers to entry and advancement into the local construction and construction-related professional services industries;¹
- B. Business assistance efforts;
- C. Changes or additions to City contracting policies and procedures;
- D. Changes to the Sheltered Market Program;
- E. New joint-venture program for larger contracts;
- F. Changes to the Good Faith Efforts Program;
- G. Other City programs; and
- H. Other program options.

A. Efforts to Remove Barriers to Entry and Advancement

Although the disparity study did not focus on employment practices within the local construction, professional services, and related industries, BBC identified barriers to entry and advancement of certain minority groups and women within those industries. Current availability of minority- and women-owned firms for City construction and construction-related professional services contracts is affected by barriers to entry and advancement within these local industries.

The City, other government agencies, local unions and other groups have implemented programs that focus on entry and advancement of minorities and women in the construction industry. For example, the City and Portland Development Commission’s (PDC’s) Workforce Training and Hiring Program

¹ The City’s construction-related professional services contracts are awarded through the Professional, Expert and Technical Services contracting process.

works to increase the number of women and minorities in the construction trades through apprenticeship opportunities. This program requires firms receiving prime contracts worth more than \$200,000 and subcontracts worth more than \$100,000 to allocate 20 percent of labor hours per trade to state-registered apprentices. Many of those apprentices are minorities and women.

Information from the disparity study indicates that there is a continuing need for such efforts, although the City may wish to collaborate with others to better understand the effectiveness of existing initiatives and whether additional programs are needed.

B. Business Assistance Efforts

The City works closely with local organizations and other public agencies to offer business assistance to Portland businesses. Appendix K provides a more comprehensive review of business assistance efforts in the Portland area.

Technical assistance. Technical assistance programs are readily available throughout the Portland area, and many involve the City. These programs primarily provide general information and assistance for business start-ups and growing businesses. Examples range from Small Business Development Centers (SBDC) that serve all groups to more targeted programs for minorities and women through minority chambers of commerce. The programs focus on business planning; marketing; training workshops and financial management; understanding the procurement process; and other business topics. Other technical assistance programs provide business advice and mentoring, including services offered by the Service Corps of Retired Executives (SCORE) and the Turner School of Construction. The City currently sponsors, attends and refers businesses to a number of these programs.

The City informs businesses about technical assistance opportunities through emails sent to MBE/WBE and Emerging Small Business (ESB) databases including the Sheltered Market Program (SMP) and Oregon Association of Minority Entrepreneurs (OAME) outreach databases. Technical assistance opportunities are also sent to a network of business assistance and trade associations.

The City also provides one-on-one counseling and assistance to small businesses, including MBE/WBEs. Counseling that the City and PDC provide covers various business topics such as M/W/ESB certification and understanding and navigating the procurement and contracting process. The City employs a pool of private consultants to assist with technical assistance efforts. MBEs, WBEs and ESBs are eligible to apply for assistance from private consultants related to specific business areas. Approval for use of a technical assistance consultant is at the discretion of City and PDC project managers.

In addition to sponsoring other organizations and associations to facilitate technical assistance, the City also sponsors M/W/ESB firms to enroll in business assistance classes at Portland Community College.

The City should consider continuing its support of technical assistance services for local business.

Small business liaison. The City’s Small Business Liaison program offers information and assistance to all Portland businesses including MBE/WBEs. Business information and assistance includes:

- How to operate a business from home;
- How to start food establishments and vending carts;
- Small business loan assistance; and
- Change of occupancy, exterior signs, development costs, permitting, inspections, and approval process.

Although this program does not directly relate to construction and construction-related professional services firms, it may be beneficial to those businesses. The City should consider continued support for this program.

Mentor-protégé programs. The Port of Portland (the “Port”) launched its mentor-protégé program in the mid-1990s to increase the number of MBE/WBEs and Disadvantaged Business Enterprises (DBEs) in the local construction industry and to help expand their capabilities. The Port’s mentor-protégé program is the only formal program of its kind in the Portland area at this time. Firms are selected based on their qualifications and are required to participate in the program for three years. The cost of each mentor-protégé relationship is \$15,000 and is sponsored by other agencies in the Portland area, including the City, Oregon Department of Transportation (Oregon DOT), the Association of General Contractors (AGC) and Multnomah County. The Port graduates about 15 participants each cycle.

The Oregon DOT, SCORE and several minority chambers offer less formal mentor-protégé programs to help develop emerging businesses, including MBE/WBEs. Those programs help emerging businesses increase their capabilities and competitiveness by providing business mentoring, peer advisement and technical assistance.

Some individuals interviewed as a part of the study were in support of the Port’s program whereas others reported that the Port’s mentor-protégé program had little positive impact on MBE/WBEs. The City might consider whether it should continue to support the Port’s program or whether a new mentor-protégé program might be beneficial.

Small business finance and capital assistance. Small business financing, counseling and related services are available through several local agencies in the Portland area. For example, the Albina Community Bank and Shorebank Pacific Bank provide low interest loans, matched savings accounts and microenterprise lending for the startup and expansion of small businesses ranging in amounts from \$500 to \$50,000. Other organizations such as Mercy Corps Northwest, Microenterprise of Oregon, TriMet and the OAME offer a variety of business lending programs using federal and private funds.

Examples of federally-funded and -managed finance programs include the U.S. Department of Transportation (USDOT) Office of Small and Disadvantaged Business Short Term Lending Program for certified DBE firms and the U.S. Small Business Administration (SBA) guaranteed loans programs.

Local organizations providing training on how to obtain financing include the Portland State University Business Outreach Program, Microenterprise of Oregon, SBDC and the Hispanic Chamber of Commerce. The City should be aware of current small business finance and capital assistance programs offered within the local marketplace and help refer firms to the appropriate organization for assistance.

Networking, outreach and advocacy. A number of agencies serve as advocates for small businesses, including MBE/WBEs, working to eliminate barriers to participation on public and private sector projects. These organizations sponsor focus sessions, seminars, training workshops and networking events to highlight small businesses and encourage their use for local projects. Active local organizations include:

- Portland Business Alliance;
- The Minority Chambers of Commerce;
- National Association of Minority Contractors Oregon (NAMCO);
- The Oregon Native American Business & Entrepreneurial Network (ONABEN);
- The Oregon Association of Minority Entrepreneurs (OAME);
- Women Entrepreneurs of Oregon (WEO)
- The Oregon Microenterprise Network (OEN); and
- The Metropolitan Contractor Improvement Partnership (MCIP).

The City supports many of these organizations by attending events, sponsoring programs and holding training sessions on how to do business with the City. The City should consider continued support for local organizations by attending events, referring businesses and sponsoring programs.

Business incubators. Several organizations throughout the Portland area administer business incubator programs offering entrepreneurial firms hands-on management assistance, shared office services, equipment and technology. Examples of local organizations that operate business incubators include the OAME, Avita & Associates, the City of Beaverton and the Metropolitan Contractor Improvement Partnership (MCIP). The City currently supports OAME by providing a procurement specialist once a week for small business support and guidance.

The City should be aware of programs provided by each of these incubators and be able to refer firms to these resources. The City might also consider financially supporting one or more business incubators.

C. Changes or Additions to City Contracting Policies and Procedures

There are several other race- and gender-neutral program elements the City might consider, as discussed below. Potential neutral initiatives include:

- Subcontracting minimum;
- Segmentation of large contracts into smaller contracts;
- Alternative bid evaluation for construction contracts;
- Prompt payment of subcontractors;
- Comprehensive collection of subcontract information from prime consultants;
- Notification of bid opportunities and City resources;
- Training partnerships with other local agencies and private firms;
- On-line training;
- Changes to City prequalification system for construction contracts; and
- Increased flexibility in City bonding and insurance requirements and other bonding and insurance programs.

Subcontracting minimum. The City might consider a measure that would encourage more subcontracting on its contracts. The City's neutral efforts appear to be effective in encouraging subcontracting. About 27 percent of City-funded construction contract dollars went to subcontractors (see Figures L-4 and L-2 in Appendix L). Subcontracts represented 41 percent of the City's construction-related professional services contract dollars (see Figure M-4 and M-2 in Appendix M).

A subcontracting minimum program might increase the amount of subcontractor participation beyond the average for City construction contracts. The City might consider an initiative similar to the City of Los Angeles' Mandatory Subcontracting Minimum (MSM) program.

- For each contract above a certain dollar amount, the City would set a percentage to be subcontracted based on an analysis of the work to be performed and past experience with similar contracts (different types of projects would involve greater or smaller amounts of subcontracting). For some contracts, the City could set no MSM.
- Prime contractors bidding on the contract would need to subcontract a percentage of the work equal to or exceeding the minimum for their bids to be deemed responsive.
- The program would need to be flexible, including the opportunity for the prime contractor to request a waiver (preferably before time of bid so that the waiver would apply to each prime).

The City would need to consider whether the program described here is permitted under local and state law.

Segmentation of large contracts into smaller contracts. Especially when the SMP or informal contracting procedures apply, utilization of MBE/WBEs as prime contractors on City construction contracts is relatively high. The City should continue to evaluate when contracts can be divided into multiple smaller contracts. The City may consider letting work in phases to support the implementation of this strategy.

Alternative bid evaluation for construction contracts. Alternative bid evaluation allows the City to consider factors other than price when awarding contracts. The City has used an alternative bid evaluation for several Bureau of Environmental Services projects including Balch Creek Conduit and East Side CSO. This alternative method of evaluation might encourage opportunities for small MBE/WBEs.

The City might track the projects to which this evaluation process is applied to better evaluate the impact of the alternative bid evaluation process on small businesses, including MBE/WBEs.

Prompt payment of subcontractors. Some small MBE/WBEs interviewed as a part of the study reported difficulty with receiving timely payments from prime contractors. The City has policies in place to address this issue:

- Oregon state law requires construction contractors to pay subcontractors within 10 days of receipt of payment from the agency.
- The City goes beyond state law to require prime construction contractors to make payments to their subcontractors twice per month.

The City should review the effectiveness and current enforcement efforts of prompt payments to subcontractors.

Comprehensive collection of subcontract information from prime consultants. BBC was able to collect subcontract data for the City's construction-related professional services contracts worth \$100,000 or more. For future studies and evaluation, and to ensure accountability of prime contractors and consultants, the City should consider improving its data collection and tracking for all construction-related professional services contracts. Efforts should be made to address the following:

- Collect and maintain subcontract utilization data for construction-related professional services contracts regardless of contract type and size; and
- Collect utilization data for all subconsultants, regardless of race, gender or certification status.

Although subcontractor data were available for most construction projects, the City may consider using the above recommendations to review its tracking and data collection processes for construction projects as well.

Notification of bid opportunities and City resources. The City participates in many outreach and advocacy events that include information about technical assistance, marketing, the MBE/WBE certification process, doing business with the City and available bid opportunities. Although firms interviewed as part of the disparity study did not report challenges with the City's notification or outreach efforts, the City might consider the following:

- Provide the opportunity for businesses to electronically register as a vendor when applying for business licenses through the City. This would better allow the City to populate vendor information and to notify firms of bid opportunities. The City might also ask for race and gender indicators at that time to better understand the demographic profile of the City's business community.
- Provide City-specific purchasing training to local service providers including chambers of commerce, advocacy groups and private consultants so that they can better educate local businesses on how to do business with the City.

Training partnerships with other local agencies and private firms. Similar to the Turner School of Construction Management, the City might consider partnering with other local government agencies and private firms to host a construction management or engineering institute. The multi-week course would be designed to improve the technical, administrative and managerial skills of small businesses. The course would be facilitated by City and other local government staff, industry professionals and private firms.

The institute would be open to all firms, regardless of race or gender. In addition, assistance opportunities would be tailored specifically to the needs of the construction and construction-related professional services industries and might include:

- Estimating;
- Project identification & matching;
- Bid preparation;
- Management assistance;
- Finance and accounting;
- Training in the use of computers and the Internet; and
- Training in industry software.

Online training. The City might consider launching an online training program for firms to access 24 hours a day, seven days a week. This would offer electronic step-by-step instructions on how to do business with the City. The training might include information on how to bid on City work, how to fill out required forms and how to meet the City's insurance and bonding requirements. The program could also provide links to other assistance providers. BBC has worked with the City of San José, California to develop a similar system.

Changes to City prequalification system for construction contracts. BBC identified the City's prequalification process as a barrier for small firms seeking City construction prime contracts. The City might consider the following options:

- Increase the contract dollar level at which firms are required to be prequalified. Small construction contracts are currently exempt from the prequalification requirements. The City could consider increasing this threshold to \$500,000 or \$1 million.
- Simplify the prequalification system to fewer work categories.
- Centralize the prequalification review within the City.
- Expand the dollar ranges, or eliminate them.
- Discontinue prequalification as standard practice and only apply it on a contract-by-contract basis, as needed.

There are advantages and disadvantages with these options that the City would need to explore. In general, however, many local governments in Oregon and other states procure construction services without a prequalification system. Other factors, including licensing and bonding as well as debarment or suspension of contractors for poor work on previous contracts, would still be considered.

Increased flexibility in City bonding and insurance requirements, and other bonding and insurance programs. BBC's marketplace analyses identified disparities in access to capital, bonding and insurance for certain MBE/WBE groups (see Chapter 4 for a summary). The AGC and OAME distributed a "whitepaper" in April 2001 also reporting the challenges of bonding for small contractors. The City might consider the following options:

- **Referrals.** The City refers businesses to local technical assistance programs and advocacy organizations, but the City might also consider exploring ways to better connect its contractors and consultants with available insurance and bonding programs.
- **Business insurance assistance.** Business insurance is required to work on most City construction and construction-related professional services contracts. Information from the study team's in-depth personal interviews indicated that small firms, including minority- and women-owned firms, may face barriers obtaining insurance. The City could explore more ways to explain how to obtain needed insurance and ensure that small contractors and consultants have access to business insurance experts.
- **Review insurance requirements on small contracts.** The City might consider relaxing insurance requirements for small businesses or eliminating blanket insurance requirements and conduct a contract-by-contract analysis of insurance needs for smaller contracts. This measure may help small MBE/WBEs successfully pursue work with the City.

- **Bonding programs.** Chapter 4 of the report summarizes barriers that MBE/WBEs face in obtaining bonding. The City might explore how it could better match small firms that require bonding assistance with local organizations that provide that assistance, such as the SBA and the AGC.

Some transportation agencies such as the San Diego County Regional Airport Authority have created programs to directly provide bonding to small companies bidding on agency contracts, whereas other agencies waive bonding requirements for smaller contracts. The City might consider one or a combination of these efforts.

The City could also review the extent to which it could waive bonding requirements on smaller contracts.

D. Changes to the Sheltered Market Program

The City implemented the SMP in 1998 to improve opportunities and build capacity for state-certified M/W/ESBs to compete as prime contractors in the local construction industry. The City facilitates the SMP, while other public agencies — including PDC — utilize SMP contacts and resources.

To be eligible to participate in the SMP, firms must:

- Be certified by the State of Oregon as an MBE, WBE or ESB firm;
- Have average annual gross receipts for the last three years of less than \$1 million;
- Perform a commercially useful function;
- Be in business at least two years;
- Commit to participating in technical assistance training provided by the City; and
- Have participated in the program for no longer than five years.²

The SMP allows up to one-half of all new formal construction projects ranging from \$100,000 to \$200,000 to be bid by program participants. In addition, SMP firms are the first source for City informal contracts with a dollar value ranging from \$5,000 to \$100,000.

The SMP has about 100 participants listed in multiple industries according to the City's database. Participants receive technical assistance and business development training at no cost. The SMP also offers construction and business courses at Portland Community College and other institutions at no cost.

² At the end of three years in the SMP, firms are reviewed for early graduation. Early graduation occurs if a firm's gross receipts exceed \$3,000,000 during each year for a two-year period.

The SMP is marketed through the City's outreach to community organizations including trade associations and minority chambers of commerce. Opportunities to apply for the SMP are also advertised through local newspapers.

The City recently reviewed operational components and possible improvements to the SMP.³ If the City chooses to retain the SMP, it may need to evaluate past criticisms of SMP operation and implement appropriate changes to the program.

Operational issues aside, the City will need to consider whether the SMP should be continued as is, should be substantially modified or should be discontinued. Options for consideration include:

- **Continue with current structure.** Based upon BBC's review of contracts from July 2004 through June 2009, the SMP was important in eliminating disparities in the overall utilization of WBEs as prime contractors on City construction contracts, and helped to reduce disparities in the utilization of MBEs as prime contractors. Although operation of the program might be improved, it has been effective in encouraging utilization of MBE/WBE prime contractors on small City construction contracts (i.e., those construction contracts worth less than \$200,000).
- **Increase the dollar limits for contracts that can be awarded through SMP.** The City currently limits the Sheltered Market Program to contracts of \$100,000 to \$200,000. The City might consider raising the dollar limit from \$200,000 to \$500,000 or \$1 million and including contracts of that size in the SMP when they appear suitable.
- **Require ESB certification for program eligibility.** Firms certified as MBEs and WBEs are eligible for the SMP if they meet other eligibility criteria, including revenue caps. A path for eligibility through MBE and WBE certification creates some confusion as to whether the program is completely race- and gender-neutral. If the City intends to operate the SMP as a race- and gender-neutral program, it might consider requiring ESB certification to be eligible. Certified MBEs and WBEs would only be eligible if they were also certified as ESBs (and met other SMP eligibility criteria).
- **Change the program to focus on MBE/WBEs, or just MBEs, and increase the revenue limits for eligibility.** There are reasons to limit the SMP to just certified MBEs and WBEs, or just certified MBEs. When examining utilization and availability of prime contractors for City construction contracts outside of SMP contracts and other small contracts, BBC identified substantial disparities in the utilization of MBEs. The SMP also appears to have had limited long-term impact on the overall availability of MBE and WBE prime contractors for larger City construction contracts.

There is evidence that inclusion of majority-owned ESBs (i.e., those not owned by minorities or women) in the program dilutes its effectiveness in addressing disparities in City utilization of MBEs as prime contractors and long-term development of MBE and WBE prime contractors. More than 40 percent of SMP prime contract dollars went to

³ See, for example, City of Portland Office of the City Auditor, Sheltered Market Program: Need for Clearer Focus and Stronger Management, January 2010.

majority-owned firms from July 2004 through June 2009. The City might also consider increasing the \$1 million annual revenue size limit for program entry to allow larger firms into the program. This measure might help the program cultivate MBE/WBE contractors that can eventually compete for larger City prime contracts.

E. New Joint-venture Program for Larger Contracts

Joint ventures between majority-owned firms and MBE/WBE firms might be one avenue for smaller MBE/WBEs to gain experience working as prime contractors on larger construction projects. Such a program may provide MBE/WBEs access to prime contracts on which they could otherwise not bid due to bonding and prequalification constraints, or because of their lack of experience. The City does not currently employ a joint venture program.

Program summary. Joint ventures between DBEs and non-DBEs are one way to meet DBE contract goals under the Federal DBE Program; however, no such program exists at the City.

Starting in 2001, the OAME and the AGC explored different avenues to open larger prime contract opportunities to MBE/WBEs. One of the options that they considered was joint ventures with majority-owned contractors.⁴ Although the efforts of OAME and AGC point out complexities and potential problems with joint ventures, it can be an effective strategy to open prime contract opportunities for MBE/WBEs and, over a number of years, build stronger prime contractors.

Options for the City to consider. The City of Atlanta has operated a joint venture program for a number of years. Based on the scope of work, value (only projects worth more than \$5 million are eligible) and market availability for a project, the City of Atlanta's Office of Contract Compliance determines whether to require a joint venture or good faith efforts to enter into a joint venture. A qualifying joint venture is comprised of member businesses with different race ownership, different gender ownership, or both different race and gender ownership. The joint venture agreement must include agreements pertaining to:

- The initial capital investment of each partner;
- Allocation of profits and losses to each partner;
- Sharing of the right to control the ownership and management of the joint venture;
- Participation of the partners on the project;
- Responsibility for accounting;
- Method for dispute resolution; and
- Any other information required in the bid documents.

Joint ventures must submit for pre-approval at least 14 calendar days prior to the bid submission date.

⁴ OAME/AGC. OAME/AGC Issue Collaboration #2. *Formal and Informal Methods to Grow M/W/ESB Capacity*. Accessed at http://www.agc-oregon.org/public/board_councils/sbgo/jv_whitepaper_final.pdf

A joint venture program such as the City of Atlanta's, if deemed feasible to implement and not prohibited by state or local statute, would assist the smaller partner in gaining project management experience for large projects that would typically be beyond their ability. The structure of such a program, with requirements for partners of different race or gender, may likely be considered a race- and gender-conscious program. The City might consider implementation of a joint venture program for firms certified as ESBs, including minority- and women-owned ESBs.

F. Good Faith Efforts Program

The City should consider the future of its current Good Faith Efforts (GFE) program for certain City construction contracts. It appears that the program is effective in eliminating overall disparities in the utilization of MBE/WBEs on City construction contracts.

Program summary. The City initiated the GFE program in 1993. Although the City establishes an annual aspirational goal for participation of M/W/ESBs, it does not set contract goals.

The City applies the GFE program to most construction contracts worth more than \$200,000, and some contracts worth between \$100,000 and \$200,000 if the City determines there are substantial subcontracting opportunities.

For each contract to which the GFE program applies, the City identifies types of work that will provide the greatest opportunity for subcontracting. The City then provides potential bidders a list of state-certified M/W/ESB firms for those types of work. If a prime contractor decides against self-performance for a particular type of work required for the contract, the contractor must:

- Contact a minimum of five M/W/ESB firms from the list of state-certified firms; and
- Contact each of the M/W/ESB firms that specialize in that work type and attend the pre-bid meeting for the project.

There is no requirement that prime contractors utilize MBE/WBE subcontractors or meet the City's overall annual aspirational goal for the percentage of subcontract dollars going to MBE/WBEs.

Future of the GFE Program. The GFE Program appears to effectively address potential disparities in the use of MBEs and WBEs as subcontractors on City construction contracts, and eliminates overall disparities in the use of MBE/WBEs in City construction contracts. There is evidence of disparities in the use of MBE/WBEs as subcontractors on City construction contracts without the GFE Program. There is also evidence of disparities in prime contractors' use of MBE/WBEs as subcontractors for construction projects sponsored by PDC (i.e., PDC-sponsored projects), even with application of PDC's Business Equity Program.

The City might evaluate the following options:

- **Continue the program with current structure.** As described above, the current program appears to be effective. It does not appear that inclusion of majority-owned ESBs in the City’s GFE Program substantially dilutes the effectiveness of the program at this time.
- **Continue the program, but require all firms to be certified as ESBs.** Certification criteria for ESBs include employment and revenue size restrictions. These limits do not apply for MBE and WBE certification. Because of the differences in eligibility for ESB and MBE/WBE certification, one might argue that the current GFE Program is race- and gender-based. The City could operate a program that is clearly race- and gender-neutral if it required all firms to be certified as ESBs.
- **Change the program to focus on MBE/WBEs.** If the City determined that inclusion of ESBs in the GFE Program diluted the effectiveness of the program in addressing potential disparities in the utilization of MBE/WBE subcontractors, or was an unnecessary burden on prime contractors, it could consider removing the requirements to contact ESBs from the program.
- **Change the program to become a contract goal program, with a good faith efforts compliance option.** Recipients of USDOT funds, such as the Oregon DOT, operate DBE contract goals programs. DBE goals are set for each USDOT-funded contract and prime contractors can meet the goals or show good faith efforts to do so. The City might consider changing its program to a traditional contract goals program (with individual or combined MBE/WBE contract goals, or with individual or combined M/W/ESB contract goals).

The City and County of Denver operates such a program, setting combined MBE/WBE contract goals on certain construction and professional design contracts. If the prime contractor is unable to meet an MBE/WBE contract goal on a Denver project, it can show good faith efforts to do so through means similar to the components of the City of Portland GFE Program.⁵

- **Add a subcontracting minimum to the current GFE Program.** The current GFE Program allows prime contractors to self-perform potentially subcontracted items. Only if it intends to subcontract a work item does the prime contractor need to show that it has contacted M/W/ESBs. The GFE Program does not explicitly encourage subcontracting of work items and has the potential to encourage self-performance of work.

The City might consider adding a program component that would encourage more subcontracting on City contracts. The City might consider an initiative similar to the City of Los Angeles’ Mandatory Subcontracting Minimum (MSM) program. For each

⁵ <http://www.denvergov.org/web/candr/City-Ordinance/2006/20060760ord.pdf>

contract above a certain dollar amount, the City of Portland would set a percentage to be subcontracted based on an analysis of the work to be performed and past experience with similar contracts (different types of projects would involve greater or smaller amounts of subcontracting). For some contracts, the City could set no MSM. Prime contractors bidding on the contract would need to subcontract a percentage of the work equal to or exceeding the minimum for their bids to be deemed responsive. The program would need to be flexible, including the opportunity for the prime contractor to request a waiver (preferably before time of bid so that the waiver would apply to each prime).⁶ The City would need to consider whether the program described here is permitted under local and state law. The City might add this program element to any of the program options listed above.

G. Other City Programs

The City operates other programs related to construction and construction-related professional services contracts as well. Several programs were created in 2009.

Minority Evaluator Program. Portland's City Council passed an ordinance in 2009 to include at least one person of color from the private sector and local community on RFP evaluation panels. This person must be vetted by the Alliance of Minority Chambers, a group with representatives from each of the minority chambers of commerce. Both the City and PDC have adopted the Minority Evaluator Program to encourage the inclusion of people of color in making recommendations regarding awards for professional services contracts.

BBC did not have sufficient information to assess the effect of the program, as the study period for the disparity analysis largely predated its implementation.

Fair Contracting Practices Committee. The City has coordinated a Fair Contracting Practices Committee at the advisement of the City's mayor. The committee was started in 2009 and has 20 participants. The committee meets quarterly and is comprised of community members, trade associations, small businesses and advocacy. The committee helps to identify issues and barriers to the success of MBE/WBEs and to serve as an advisory team to offer recommendations to encourage the utilization of those firms.

BBC did not have sufficient information to assess the effect of the program, as the study period for the disparity analysis largely predated its implementation.

Professional services marketing and outreach efforts. The City's professional services office conducts outreach activities targeted towards small businesses including MBE/WBE professional services firms. The professional services division hosts an annual workshop guiding local MBE and WBEs on how to develop a successful RFP. The workshop is available to all businesses including MBE, WBE and ESB professional service firms and attracts between 40 and 50 participants annually. The City's purchasing staff facilitates this effort.

⁶ A minimum subcontracting program corresponds to a neutral remedy listed in the Federal Disadvantaged Business Enterprise (DBE) Program, which suggests that agencies could promote participation of all small businesses, including MBE/WBEs, by "requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces." See 40 CFR Section 26.51 (b) (1).

Other professional service outreach efforts include:

- Presentations to various professional organizations and trade associations;
- Hosting exhibits at tradeshow, fairs and conventions;
- Providing one-on-one business orientations; and
- Advertising in media targeted to small businesses and MBE/WBEs.

These workshops and other outreach efforts are marketed through local newspapers, community organizations and partners and the email distribution list including SMP participants.

This program may have contributed to the high participation of MBEs in the City's construction-related professional services contracts. More might be done to encourage participation of WBEs in these contracts.

H. Other Program Options

The above options are not exhaustive, and the City should review the complete disparity study and other information to identify other possible ways to continue to remove barriers and encourage participation of MBE/WBEs in its construction and construction-related professional services contracts.

The City will need to ensure that any race- and gender-conscious programs it operates meet court requirements for such programs, including narrow-tailoring of those programs.

APPENDIX A.

Definitions of Terms

This appendix provides explanations and definitions useful to understanding the City of Portland and the Portland Development Commission disparity study reports. These definitions are only relevant in the context of these reports.

Anecdotal evidence. Includes personal accounts and perceptions of incidents, including of discrimination, told from an individual’s perspective.

Availability analysis. Examination of the relative number of minority- and women-owned firms ready, willing and able to perform work for the City of Portland or Portland Development Commission.

Business. A for-profit company, including all of its establishments (equivalent to “firm”).

Business listing. A record in the Dun & Bradstreet database of businesses (or other database). A D&B record is just a “listing” until the study team determines it to actually be a business establishment with a working phone number.

Business equity program. The PDC program adopted in 2008 to encourage utilization of minority- and women-owned businesses.

Business establishment. A place of business with an address and working phone number. One firm can have many business establishments (same as “establishment”).

Certified MBE/WBE. A firm certified with the State of Oregon as a minority- or women-owned firm. To become certified, a firm must be owned and controlled by one or more people who are members of a minority group (defined by OMWESB as Black American, Hispanic American, Native American, Asian Pacific American and Subcontinent Asian American) or who are women. Those individuals must have made a “real and substantial contribution of capital or expertise to the business.”¹ The firms must be independent and not exceed the small business size standards set by the Small Business Administration.

Contract. A legally binding relationship between the seller of goods or services and a buyer.

Contractor. A firm performing a contract. Also used to refer to a construction firm.

Controlled. Exercising management and executive authority for a company, per federal and state regulations, including Oregon Administrative Rule 445-050-0005.

¹ Oregon Administrative Rules, chapter 400, division 050, rule 0005.

Disparity. A difference or gap between an actual outcome and a reference point. For example, a difference between an outcome for one race/ethnic group and an outcome for non-Hispanic whites may constitute a disparity. Similarly, a difference between an outcome and a benchmark may constitute a disparity.

Disparity analysis. Comparisons of actual outcomes with what might be expected based on other data. Analysis of whether there is a “disparity” between minority- and women-owned business utilization and availability is one tool in examining whether there is evidence consistent with discrimination against minority- and women-owned businesses.

Disparity index. Computed by dividing percentage utilization by percentage availability and then multiplying the result by 100. A disparity index of 100 indicates “parity.” Smaller disparity indices indicated greater disparities.

Diversity programs (PDC). Programs used by PDC during the study period to encourage participation of minority- and women-owned businesses.

Dun & Bradstreet. The leading firm in the United States and abroad that provides lists of business establishments and other business information (see www.dnb.com).

Emerging small business (ESB). Emerging small business as defined by the OMWESB. These businesses must have their principal place of business in Oregon, be properly licensed, have a business name registered with Oregon Corporations Division and be independently owned. ESBs are classified in two tiers based on size. For the purposes of the disparity study, the study team did not differentiate between first tier and second tier ESBs. The size restrictions are adjusted for inflation each year in accordance with Oregon Administrative Rule 445-050-0115. Most firms may be certified for a maximum of 12 years.

Employer firms. Firms with paid employees other than the business owner and family members.

Enterprise. An economic unit that could be a for-profit firm or establishment, not-for-profit organization or public sector organization.

Establishment. See “business establishment.”

Fair contracting programs (City). See “Good Faith Efforts Program” and “Sheltered Market Program.”

Flexible services (PDC). PDC term for personal services contracts administered on a task order or on-call basis.

Firm. See “business.”

Good Faith Efforts (GFE) Program (City). The City of Portland operates a Good Faith Efforts Program that applies to most construction contracts over \$200,000, and some contracts between \$100,000 and \$200,000 if the City determines there are substantial subcontracting opportunities. This program requires prime contractors to make an effort to provide subcontracting opportunities to state certified MWESB firms.

Industry. A broad grouping of firms providing related goods or services.

Majority-owned businesses. For-profit firms not owned and controlled by minorities or women (see definition of “minorities” below).

Minorities. Racial and ethnic groups identified in the federal regulations in Oregon Administrative Rule 445-050-0005:

- Black Americans (or “African Americans” in this study), which includes persons having origins in any of the black racial groups of Africa;
- Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- Native Americans, which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
- Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the United States Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirabati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong; and
- Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.

Minority business enterprise (MBE). A firm with at least 51 percent ownership and control by minorities. Minority groups are defined according to federal regulations, as outlined above. For purposes of this study, a firm need not be certified to be counted as a minority-owned firm. Firms owned by minority women are counted as MBEs in this study (where that information is available).

NAICS code. North American Industry Classification System code that identifies the primary line of business of an enterprise. See <http://www.census.gov/epcd/www/naics.html>.

Non-response bias. Occurs when the observed value to a survey question differs from what would be obtained if all individuals in a population, including non-respondents, answered the question.

Office of Minority, Women and Emerging Small Business (OMWESB). The office that administers the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), Women Business Enterprise (WBE) and Emerging Small Business (ESB) certification programs for the State of Oregon.

Owned. Ownership of at least 51 percent of a company. For example, a “minority-owned” firm is at least 51 percent owned by one or more minorities. (For MBE certification, additional regulations are set forth in Oregon Administrative Rule 445-050-0030.)

Owned project (PDC). A project where the prime contract is administered directly by PDC.

PDC. Refers to the Portland Development Commission.

Personal services (PDC). PDC term for professional services contracts.

Prime consultant. The professional services firm performing a contract for an end user, such as the City of Portland.

Prime contract. The contract between the seller and end user, such as the City of Portland.

Prime contractor. The firm performing a prime contract for an end user, such as the City of Portland.

Professional, expert and technical services (PTE) (City). City of Portland label for professional services contracts. Please note that the disparity study covered construction-related PTE contracts (e.g. architecture, engineering and surveying).

Race-and gender-based measures. Remedies or measures that apply to individuals or firms that include some races and ethnicities and not others, or includes women and not men. This term is equivalent to “race- and gender-conscious.” An MBE contract goal is one example of a race- and gender-based measure. Note that this term is more accurately “race-,” “*ethnicity*-” and “gender-” based. For ease of communication, the study team has shortened this to “race- and gender-conscious” or “race- and gender-based” measures.

Race- and gender-neutral measures. Remedies or measures that apply to individuals or firms that are not classified based on race, ethnicity or gender. Note that this term is more accurately “race-,” “*ethnicity*-” and “gender-” neutral. For ease of communication, the study team has shortened this to “race- and gender-neutral.”

Race- and gender-neutral measures may include assistance in overcoming bonding and financing obstacles, simplifying bidding procedures, providing technical assistance, establishing programs to assist start-up firms, and other methods open to all firms or any disadvantaged firm regardless of race or gender.

Relevant geographic market area. The geographic area that contains most establishments receiving City of Portland or Portland Development Commission work, based on dollars. It is also referred to as the “local marketplace.” Case law related to MBE/WBE programs requires disparity analyses to focus on the “relevant geographic market area.”²

Remedy. A program element designed to address barriers to full participation for a particular group.

Sheltered Market Program (SMP) (City). The City of Portland’s Sheltered Market Program (SMP) was established in 1997 to provide opportunities for state-certified MBE/WBE/ESBs in the regional market area. The program allows the City to limit bidders on certain construction contracts to SMP program participants. The City can designate to the SMP program up to one-half of its construction contracts between \$100,000 and \$200,000. Additionally, SMP participants are the first source for the City’s informal contracts ranging from \$5,000 to \$100,000.

² See, e.g., Croson, 448 U.S. at 509; 49 C.F.R. § 26.35; Rothe, 545 F.3d at 1041-1042; N. Contracting, 473 F.3d at 718, 722-23; Western States Paving, 407 F.3d at 995.

Small business. In general, a firm with low revenues or employment size relative to other firms in the industry. “Small business” does not necessarily mean that the firm is certified as such.

Small Business Administration (SBA). The U.S. Small Business Administration, which is an independent agency of the United States government.

Sponsored project (PDC). In contrast to “owned” projects, a project that is not directly administered by PDC but is financially supported by PDC (including projects for which PDC provides land).

Standard contracts. When referring to City PTE contracts or PDC personal services contracts, those contracts that are not on-call or task order based.

Statistically significant difference. A difference in which chance in the sampling process can be eliminated as a reasonable explanation at the 95 percent confidence level (meaning that chance in the sampling process could still explain the difference in no more than 5 out of 100 cases).

Subconsultant. A professional services firm performing a service for the prime consultant as part of a larger contract.

Subcontract. The contract between a prime contractor and another firm selling goods or services to the prime contractor.

Subcontractor. A firm performing a service for a prime contractor as part of a larger project.

Supplier. A firm selling supplies to a firm as part of a larger project.

Utilization. Percentage of total dollars of a type of work going to MBE/WBEs (or another group).

White women-owned business. See WBE.

Women business enterprise(WBE). A firm with at least 51 percent ownership and control by women. For this study, a firm need not be certified as a WBE or DBE to be counted as a woman-owned firm. In addition, firms owned and controlled by minority women are counted as minority-owned firms. Therefore, WBEs principally refer to firms owned by white women.

APPENDIX B.

Legal Framework and Analysis

Appendix B provides the legal framework and analysis for the City of Portland and Portland Development Commission disparity studies. A table of contents for Appendix B is provided on the following pages.

Table of Contents

A.	Introduction	1
B.	U.S. Supreme Court Cases	3
	1. <u>City of Richmond v. J.A. Croson Co.</u> , 488 U.S. 469 (1989).....	3
	2. <u>Adarand Constructors, Inc. v. Pena</u> (“Adarand I”), 515 U.S. 200 (1995)	4
C.	The Legal Framework	5
	1. Strict Scrutiny Analysis	5
	a. The Compelling Governmental Interest Requirement	6
	b. The Narrow Tailoring Requirement	100
	2. Intermediate Scrutiny Analysis.....	14
D.	Recent Decisions Involving State or Local Government MBE/WBE Programs and the Federal DBE Program In The Ninth Circuit.....	166
	1. <u>Western States Paving Co. v. Washington State DOT</u> , 407 F.3d 983 (9th Cir. 2005), <u>cert. denied</u> , 546 U.S. 1170 (2006)	166
	2. <u>Western States Paving Co. v. Washington DOT, US DOT & FHWA</u> , 2006 WL 1734163 (W.D. Wash. June 23, 2006) (unpublished opinion).....	200
	3. <u>Monterey Mechanical v. Wilson</u> , 125 F.3d 702 (9th Cir. 1997)	211
	4. <u>Associated Gen. Contractors of California, Inc. v. Coalition for Econ. Equity (“AGCC”)</u> , 950 F.2d 1401 (9th Cir. 1991).....	222
	5. <u>Coral Construction Co. v. King County</u> , 941 F.2d 910 (9th Cir. 1991).....	255
E.	Recent Decisions Involving State or Local Government MBE/WBE Programs in Other Jurisdictions	29
	Recent Decisions in Federal Circuit Courts of Appeal	29
	1. <u>H. B. Rowe Co., Inc. v. W. Lyndo Tippett, NCDOT, et al</u> , F.3d 2010 WL 2871076 (4th Cir. July 22, 2010).....	29
	2. <u>Rapid Test Prods., Inc. v. Durham Sch. Servs., Inc.</u> , 460 F.3d 859 (7th Cir. 2006)	39
	3. <u>Jana-Rock Construction, Inc. v. New York State Dept. of Economic Development</u> , 438 F.3d 195 (2d Cir. 2006).....	40
	4. <u>Virdi v. DeKalb County School District</u> , 135 Fed. Appx. 262, 2005 WL 138942 (11th Cir. 2005) (unpublished opinion)	41
	5. <u>Concrete Works of Colorado, Inc. v. City and County of Denver</u> , 321 F.3d 950 (10th Cir. 2003), <u>cert. denied</u> , 540 U.S. 1027, 124 S. Ct. 556 (2003) (Scalia, Justice with whom the Chief Justice Rehnquist, joined, dissenting from the denial of certiorari).....	433
	6. <u>In re City of Memphis</u> , 293 F. 3d 345 (6th Cir. 2002)	555
	7. <u>Builders Ass’n of Greater Chicago v. County of Cook, Chicago</u> , 256 F.3d 642 (7th Cir. 2001)	555
	8. <u>Associated Gen. Contractors v. Drabik</u> , 214 F.3d 730 (6th Cir. 2000), <u>aff’g</u> Case No. C2-98-943, 998 WL 812241 (S.D. Ohio 1998)	577

9.	<u>W.H. Scott Constr. Co. v. City of Jackson</u> , 199 F.3d 206 (5th Cir. 1999)	577
10.	<u>Eng'g Contractors Ass'n of S. Florida v. Metropolitan Dade County</u> 122 F.3d 895 (11th Cir. 1997).....	58
	Recent District Court Decisions	69
11.	<u>H.B. Rowe Corp., Inc. v. W. Lyndo Tippet</u> , North Carolina DOT, et al; 589 F. Supp. 2d 587 (E.D.N.C. 2008), <u>aff'd in part and rev'd in part</u> , F.3d 2010 WL 2871076 (4th Cir. July 22, 2010)	69
12.	<u>Thomas v. City of Saint Paul</u> , 526 F. Supp. 2d 959 (D. Minn 2007), affirmed, 321 Fed. Appx. 541, 2009 WL 777932 (8th Cir. March 26, 2009) (unpublished opinion), <u>cert. denied</u> , S.Ct. 2009 WL 2496325 (U.S. October 13, 2009).	744
13.	<u>Thompson Building Wrecking Co. v. Augusta, Georgia</u> , No. 1:07CV019, 2007 WL 926153 (S.D. Ga. Mar. 14, 2007)(Slip. Op.)	766
14.	<u>Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County</u> , 333 F. Supp. 2d 1305 (S.D. Fla. 2004)	78
15.	<u>Florida A.G.C. Council, Inc. v. State of Florida</u> , 303 F. Supp. 2d 1307 (N.D. Fla. 2004)	833
16.	<u>The Builders Ass'n of Greater Chicago v. The City of Chicago</u> , 298 F. Supp. 2d 725 (N.D. Ill. 2003)	844
17.	<u>Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore</u> , 218 F. Supp. 2d 749 (D. Md. 2002).....	855
18.	<u>Kornhass Construction, Inc. v. State of Oklahoma, Department of Central Services</u> , 140 F.Supp.2d 1232 (W.D. OK. 2001)	866
19.	<u>Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore</u> , 83 F. Supp. 2d 613 (D. Md. 2000).....	911
20.	<u>Webster v. Fulton County</u> , 51 F. Supp. 2d 1354 (N.D. Ga. 1999), <u>a'ffd per curiam</u> 218 F.3d 1267 (11th Cir. 2000).....	911
21.	<u>Associated Gen. Contractors v. Drabik</u> , 50 F. Supp. 2d 741 (S.D. Ohio 1999).....	944
22.	<u>Phillips & Jordan, Inc. v. Watts</u> , 13 F. Supp. 2d 1308 (N.D. Fla. 1998)	955
	Recent State Court Decisions	955
23.	<u>Cleveland Constr., Inc. v. City of Cincinnati</u> , 169 Ohio App. 3d 627, 864 N.E.2d 116 (2006), <u>cert. denied</u> 128 S. Ct. 379 (U.S. 2007).....	955
24.	<u>Cleveland Constr., Inc. v. City of Cincinnati</u> , Case No. A042683, WL 4880918 (Ohio Court of Common Pleas, July 13, 2005 and August 29, 2005).....	977
F.	Recent Decisions Involving the Federal DBE Program and Federally-Funded Projects in Other Jurisdictions	98
1.	<u>Northern Contracting, Inc. v. Illinois</u> , 473 F.3d 715 (7th Cir. 2007).	98
2.	<u>Northern Contracting, Inc. v. Illinois</u> , 2005 WL 2230195 (N.D. Ill. Sept. 8, 2005), <u>aff'd</u> 473 F.3d 715 (7th Cir. 2007).....	1000
3.	<u>Northern Contracting, Inc. v. State of Illinois, Illinois DOT, and USDOT</u> , 2004 WL 422704 (N.D. Ill. March 3, 2004)	1055
4.	<u>Sherbrooke Turf, Inc. v. Minnesota DOT, and Gross Seed Company v. Nebraska Department of Road</u> , 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004) 10707	

5.	<u>Sherbrooke Turf, Inc. v. Minnesota DOT</u> , 2001 WL 1502841, No. 00-CV-1026 (D. Minn. 2001) (unpublished opinion), <u>aff'd</u> 345 F.3d 964 (8th Cir. 2003).....	1111
6.	<u>Gross Seed Co. v. Nebraska Department of Roads</u> , Civil Action File No. 4:00CV3073 (D. Neb. May 6, 2002), <u>aff'd</u> 345 F. 3d 964 (8th Cir. 2003).....	1122
7.	<u>Adarand Constructors, Inc. v. Slater</u> , 228 F.3d 1147 (10th Cir. 2000) cert. granted then dismissed as improvidently granted sub nom. <u>Adarand Constructors, Inc. v. Mineta</u> , 532 U.S. 941, 534 U.S. 103 (2001).....	1133
8.	<u>Geod Corporation v. New Jersey Transit Corporation</u> , et. seq. F.Supp. 2d 2009 WL 2595607 (D.N.J. August 20, 2009).....	11515
9.	<u>Klaver Construction, Inc. v. Kansas DOT</u> , 211 F. Supp. 2d 1296 (D. Kan. 2002)	11818
G.	Recent Decisions and Authorities Involving Federal Procurement That May Impact MBE/WBE and DBE Programs.....	11919
1.	<u>Rothe Development Corp. v. U.S. Department of Defense</u> , 545 F.3d 1023 (Fed. Cir. 2008)	11919
2.	<u>Dynalantic Corp. v. United States Dept. of Defense</u> , 503 F. Supp. 2d 262 (D.D.C. 2007).....	12828
3.	“Federal Procurement After Adarand” (USCCR Report September, 2005).....	12929

APPENDIX B.

Legal Framework and Analysis

A. Introduction

In this section Holland & Knight LLP analyzes recent cases and materials regarding state and local Minority and Women Business Enterprise (“MBE/WBE”)¹ and Disadvantaged Business Enterprise (“DBE”) programs to provide a summary of the legal framework for the disparity study as applicable to the City of Portland and the Portland Development Commission (“Portland and PDC”) contracting and procurement. This section begins with a brief review of the landmark United States Supreme Court decision in City of Richmond v. J.A. Croson.² Croson sets forth the strict scrutiny constitutional analysis applicable in the legal framework for conducting a disparity study.

This section notes the United States Supreme Court decision in Adarand Constructors, Inc. v. Peña,³ (“Adarand I”) which applied the strict scrutiny analysis set forth in Croson to federal programs that impact state government recipients of federal financial assistance.

The legal framework then analyzes and applies significant recent court decisions that have followed, interpreted and applied Croson and Adarand I to the present and are applicable to the disparity study and the strict scrutiny analysis. In particular, the legal framework analyzes and focuses upon recent federal cases in the Ninth Circuit Court of Appeals, which is the federal appellate court controlling on Portland and the PDC, and recent decisions from other federal courts in this area of the law. In addition, the framework analyzes recent cases that consider and rule on the validity of the United States Department of Transportation Regulations promulgated to implement the Transportation Equity Act for the 21st Century,⁴ known as the Federal Disadvantaged Business Enterprise (“DBE”) Program⁵ and its implementation by local and state government recipients of federal funds, which are instructive to the legal framework for state and local government DBE or MBE/WBE programs (independent of the Federal DBE Program).⁶

¹ Some of the case law and materials included herein also utilize the term M/WBE, or Minority- and female-owned Business Enterprise, or M/FBE. The terms MBE/WBE, M/WBE and M/FBE are used interchangeably throughout this section.

² 488 U.S. 469 (1989).

³ 515 U.S. 200 (1995).

⁴ Pub L. 109-59, Title I, § 1101(b), August 10, 2005, 119 Stat. 1156; preceded by Pub L. 105-178, Title I, § 1101(b), June 9, 1998, 112 Stat. 107.

⁵ 49 C.F.R. Part 26 (Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs (“Federal DBE Program”).

⁶ See Northern Contracting, Inc. v. Illinois DOT, 473 F.3d 715 (7th Cir. 2007); Western States Paving Co. v. Washington State DOT, 407 F.3d 983 (9 Cir. 2005); Sherbrooke Turf, Inc. v. Minn. DOT, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004); Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000) (“Adarand VII”); Geod Corporation v. New Jersey Transit Corporation, et seq., ___ F.Supp. 2d ___, 2009 WL2595607 (D.N.J. August 20, 2009).

The analyses of these court decisions are instructive to the City of Portland and the PDC and the disparity study because they include the most recent and significant decisions by courts construing the validity of government programs involving MBE/WBEs and DBEs, setting forth the legal framework applied to the strict scrutiny analysis, applying the compelling interest and narrow tailoring tests, and considering disparity studies. They also are instructive in terms of the preparation of any legislation or programs by Portland and the PDC in this area concerning contracting and procurement and providing a non-discriminatory equal business opportunity for contractors, vendors, and suppliers.

B. U.S. Supreme Court Cases

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

In Croson, the U.S. Supreme Court struck down the City of Richmond's "set-aside" program as unconstitutional because it did not satisfy the strict scrutiny analysis applied to "race-based" governmental programs. J.A. Croson Co. ("Croson") challenged the City of Richmond's minority contracting preference plan, which required prime contractors to subcontract at least 30 percent of the dollar amount of contracts to one or more minority business enterprises ("MBE"). In enacting the plan, the City cited past discrimination and an intent to increase minority business participation in construction projects as motivating factors.

The Supreme Court held the City of Richmond's "set-aside" action plan violated the Equal Protection Clause of the Fourteenth Amendment. The Court applied the "strict scrutiny" standard, generally applicable to any race-based classification, which requires a governmental entity to have a "compelling governmental interest" in remedying past identified discrimination and that any program adopted by a local or state government must be "narrowly tailored" to achieve the goal of remedying the identified discrimination.

The Court determined that the plan neither served a "compelling governmental interest" nor offered a "narrowly tailored" remedy to past discrimination. The Court found no "compelling governmental interest" because the City had not provided "a strong basis in evidence for its conclusion that [race-based] remedial action was necessary." The Court held the City presented no direct evidence of any race discrimination on its part in awarding construction contracts or any evidence that the City's prime contractors had discriminated against minority-owned subcontractors. The Court also found there were only generalized allegations of societal and industry discrimination coupled with positive legislative motives. The Court concluded that this was insufficient evidence to demonstrate a compelling interest in awarding public contracts on the basis of race.

Similarly, the Court held the City failed to demonstrate that the plan was "narrowly tailored" for several reasons, including because there did not appear to have been any consideration of race-neutral means to increase minority business participation in city contracting, and because of the over inclusiveness of certain minorities in the "preference" program (for example, Aleuts) without any evidence they suffered discrimination in Richmond.

The Court further found "if the City could show that it had essentially become a 'passive participant' in a system of racial exclusion practiced by elements of the local construction industry ... [i]t could take affirmative steps to dismantle such a system." The Court held that "[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise." The Supreme Court noted that it did not intend its decision to preclude a state or local government from "taking action to rectify the effects of identified discrimination within its jurisdiction."

2. Adarand Constructors, Inc. v. Pena (“Adarand I”), 515 U.S. 200 (1995)

In Adarand I, the U.S. Supreme Court extended the holding in Croson and ruled that all federal government programs that use racial or ethnic criteria as factors in procurement decisions must pass a test of strict scrutiny in order to survive constitutional muster. The cases interpreting Adarand I and Croson are the most recent and significant decisions by federal courts setting forth the legal framework for disparity studies as well as the predicate for the constitutional strict scrutiny standard of review, which applies to the analysis by a local government in evaluating whether or not there is a compelling governmental interest for an MBE/WBE/DBE type program, and if so, whether the program is narrowly tailored.

C. The Legal Framework

The following provides an analysis for the legal framework focusing on recent key cases regarding state and local MBE/WBE and DBE programs and their implications for a disparity study.

The recent decisions reviewed involving the Federal DBE Program and its implementation by state and local governments are instructive to Portland and the PDC and the disparity study because they are some of the most recent cases in this area of the law, and they concern the strict scrutiny analysis, disparity studies, and challenges to government programs involving MBEs, WBEs and DBEs.

After the Adarand decision, the U.S. Department of Justice in 1996 conducted a study of evidence on the issue of discrimination in government construction procurement contracts, which Congress relied upon as documenting a compelling governmental interest to have a federal program to remedy the effects of current and past discrimination in the transportation contracting industry for federally-funded contracts.⁷ Subsequently, in 1998, Congress passed the Transportation Equity Act for the 21st Century (“TEA-21”), which authorized the United States Department of Transportation to expend funds for federal highway programs for 1998 - 2003. Pub.L. 105-178, Title I, § 1101(b), 112 Stat. 107, 113 (1998). The USDOT promulgated new regulations in 1999 contained at 49 C.F.R. Part 26 to establish the current Federal DBE Program. The TEA-21 was subsequently extended in both 2003 and 2005. The reauthorization of TEA-21 in 2005 was for a five year period from 2005 to 2009. Pub.L. 109-59, Title I, § 1101(b), August 10, 2005, 119 Stat. 1153-57 (“SAFETEA-LU”).

The federal government determined that there is a compelling governmental interest for race- and gender-based programs at the national level, and that the program is narrowly tailored because of the federal regulations, including the flexibility in implementation provided to individual federal aid recipients, such as state and local governments, by the regulations. State and local governments engage in disparity studies in part to provide information that they may consider along with other information in determining whether or not there is a compelling governmental interest for certain types of contracting and procurement programs at the state or local level, and to narrowly tailor appropriate legislation to achieve their objectives.

1. Strict Scrutiny Analysis

A race- and ethnicity-based program implemented by a state or local government is subject to the strict scrutiny constitutional analysis.⁸ The strict scrutiny analysis is comprised of two prongs:

- The program must serve an established compelling governmental interest; and
- The program must be narrowly tailored to achieve that compelling government interest.⁹

⁷ Appendix-The Compelling Interest for Affirmative Action in Federal Procurement, 61 Fed. Reg. 26,050, 26,051-63 & nn. 1-136 (May 23, 1996) (hereinafter “The Compelling Interest”); see Adarand VII, 228 F.3d at 1167-1176, citing The Compelling Interest.

⁸ Croson, 448 U.S. at 493.

⁹ N. Contracting, 473 F.3d at 721; Western States Paving, 407 F.3d at 991; Sherbrooke Turf, 345 F.3d at 969; Adarand VII, 228 F.3d at 1176.; Associated Gen. Contractors of Ohio, Inc. v. Drabik (“Drabik II”), 214 F.3d 730 (6th Cir. 2000); Eng’g Constructors Ass’n of South Florida, Inc. v. Metropolitan Dade County, 122 F.3d 895 (11th Cir. 1997); Monterey

a. The Compelling Governmental Interest Requirement

The first prong of the strict scrutiny analysis requires a governmental entity to have a “**compelling governmental interest**” in remedying past identified discrimination in order to implement a race- and ethnicity-based program. State and local governments cannot rely on national statistics of discrimination in an industry to draw conclusions about the prevailing market conditions in their own regions.¹⁰ Rather, state and local governments must measure discrimination in their state or local market.¹¹

The federal courts have held that, with respect to the Federal DBE Program, recipients of federal funds do not need to independently satisfy this prong because Congress has satisfied the compelling interest test of the strict scrutiny analysis.¹² The federal courts have found that Congress had ample evidence of discrimination in the transportation contracting industry to justify the Federal DBE Program (TEA-21), and the federal regulations implementing the program (49 C.F.R. Part 26).¹³ Specifically, the federal courts found Congress “spent decades compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority-owned construction businesses, and of barriers to entry.”¹⁴ The evidence found to satisfy the compelling interest standard included numerous congressional investigations and hearings, and outside studies of statistical and anecdotal evidence (e.g., disparity studies).¹⁵

Mechanical Col v. Wilson, 125 F.3d 702, 711-713 (9th Cir. 1997); Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”), 6 F.3d 990 (3d Cir. 1993); Associated General Contractors of California, Inc. v. Coalition for Economic Equity, 950 F.2d 1401, 1412-1413 (9th Cir. 1991).

¹⁰ See e.g., Western States Paving, 407 F.3d at 997-998, 1003; Monterey Mechanical Co. v. Wilson, 125 F.3d 702, 711-713 (9th Cir. 1997) Concrete Works, Inc. v. City and County of Denver (“Concrete Works I”), 36 F.3d 1513, 1520 (10th Cir. 1994); AGC of California v. Coalition of Economic Equity, 950 F.2d at 1413.

¹¹ Id.

¹² N. Contracting, 473 F.3d at 721; Western States Paving, 407 F.3d at 991; Sherbrooke Turf, 345 F.3d at 969; Adarand VII, 228 F.3d at 1176.

¹³ Id. In the case of Rothe Dev. Corp. v. U.S. Dept. of Defense, 545 F.3d 1023 (Fed. Cir. 2008), the Federal Circuit Court of Appeals pointed out it had questioned in its earlier decision whether the evidence of discrimination before Congress was in fact so “outdated” so as to provide an insufficient basis in evidence for the Department of Defense program (i.e., whether a compelling interest was satisfied). 413 F.3d 1327 (Fed. Cir. 2005). The Federal Circuit Court of Appeals after its 2005 decision remanded the case to the district court to rule on this issue. Rothe considered the validity of race- and gender-conscious Department of Defense (“DOD”) regulations (2006 Reauthorization of the 1207 Program). The decisions in N. Contracting, Sherbrooke Turf, Adarand VII, and Western States Paving held the evidence of discrimination nationwide in transportation contracting was sufficient to find the Federal DBE Program on its face was constitutional. On remand, the district court in Rothe on August 10, 2007 issued its order denying plaintiff Rothe’s Motion for Summary Judgment and granting Defendant United States Department of Defense’s Cross-Motion for Summary Judgment, holding the 2006 Reauthorization of the 1207 DOD Program constitutional. Rothe Devel. Corp. v. U.S. Dept. of Defense, 499 F.Supp.2d 775 (W.D.Tex. Aug 10, 2007). The district court found the data contained in the Appendix (The Compelling Interest, 61 Fed. Reg. 26050 (1996)), the Urban Institute Report, and the Benchmark Study — relied upon in part by the courts in Sherbrooke Turf, Adarand VII, and Western States Paving in upholding the constitutionality of the Federal DBE Program — was “stale” as applied to and for purposes of the 2006 Reauthorization of the 1207 DOD Program. This district court finding was not appealed or considered by the Federal Circuit Court of Appeals. 545 F.3d 1023, 1037. See the discussion of the recent 2008 Federal Circuit Court of Appeals decision in Rothe below in Section VII.

¹⁴ Sherbrooke Turf, 345 F.3d at 970, (citing Adarand VII, 228 F.3d at 1167–76); Western States Paving, 407 F.3d at 992–93.

¹⁵ See, e.g., Adarand VII, 228 F.3d at 1167–76; see also Western States Paving, 407 F.3d at 992 (Congress “explicitly relied upon” the Department of Justice study that “documented the discriminatory hurdles that minorities must overcome to secure federally-funded contracts”).

The evidentiary basis on which Congress relied to support its finding of discrimination is instructive for the disparity study and includes:

- **Barriers to minority business formation.** Congress found that discrimination by prime contractors, unions, and lenders has woefully impeded the formation of qualified minority business enterprises in the subcontracting market nationwide, noting the existence of “old boy” networks, from which minority firms have traditionally been excluded, and the race-based denial of access to capital, which affects the formation of minority subcontracting enterprise.¹⁶
- **Barriers to competition for existing minority enterprises.** Congress found evidence showing systematic exclusion and discrimination by prime contractors, private sector customers, business networks, suppliers, and bonding companies precluding minority enterprises from opportunities to bid. When minority firms are permitted to bid on subcontracts, prime contractors often resist working with them. Congress found evidence of the same prime contractor using a minority business enterprise on a government contract not using that minority business enterprise on a private contract, despite being satisfied with that subcontractor’s work. Congress found that informal, racially exclusionary business networks dominate the subcontracting construction industry.¹⁷
- **Local disparity studies.** Congress found that local studies throughout the country tend to show a disparity between utilization and availability of minority-owned firms, raising an inference of discrimination.¹⁸
- **Results of removing affirmative action programs.** Congress found evidence that when race-conscious public contracting programs are struck down or discontinued, minority business participation in the relevant market drops sharply or even disappears, which courts have found strongly supports the government’s claim that there are significant barriers to minority competition, raising the specter of discrimination.¹⁹

Burden of proof. Under the strict scrutiny analysis, and to the extent a state or local governmental entity has implemented a race- and gender-conscious program, the governmental entity has the initial burden of showing a strong basis in evidence (including statistical and anecdotal evidence) to support its remedial action.²⁰ If the government makes its initial showing, the burden shifts to the challenger

¹⁶ Adarand VII, 228 F.3d at 1168-70; Western States Paving, 407 F.3d at 992.

¹⁷ Adarand VII, at 1170-72.

¹⁸ Id. at 1172-74.

¹⁹ Id. at 1174-75.

²⁰ See Rothe Development Corp. v. Department of Defense, 545 F.3d 1023, 1036 (Fed. Cir. 2008); N. Contracting, Inc. v. Illinois DOT, 473 F.3d at 715, 721 (7th Cir. 2007) (Federal DBE Program); Western States Paving Co. v. Washington State DOT, 407 F.3d 983, 991 (9th Cir. 2005) (Federal DBE Program); Sherbrooke Turf, Inc. v. Minnesota DOT, 345 F.3d 964, 969 (8th Cir. 2003) (Federal DBE Program); Adarand Constructors Inc. v. Slater (“Adarand VII”), 228 F.3d 1147, 1166 (10th Cir. 2000) (Federal DBE Program); Monterey Mechanical, 125 F.3d at 713; Eng’g Contractors Ass’n, 122 F.3d at 916; Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, 333 F. Supp. 2d 1305, 1316 (S.D. Fla. 2004).

to rebut that showing.²¹ The challenger bears the ultimate burden of showing that the governmental entity's evidence "did not support an inference of prior discrimination."²²

Statistical evidence. Statistical evidence of discrimination is a primary method used to determine whether or not a strong basis in evidence exists to develop, adopt and support a remedial program (i.e., to prove a compelling governmental interest).²³ "Where gross statistical disparities can be shown, they alone in a proper case may constitute *prima facie* proof of a pattern or practice of discrimination."²⁴

One form of statistical evidence is the comparison of a government's utilization of MBE/WBEs compared to the relative availability of qualified, willing and able MBE/WBEs.²⁵ The federal courts have held that a disparity between utilization and availability of minority- and women-owned firms may raise an inference of discriminatory exclusion.²⁶ However, a small statistical disparity, standing alone, may be insufficient to establish discrimination.²⁷

Other considerations regarding statistical evidence include:

- **Availability analysis.** A disparity index requires an availability analysis. MBE/WBE and DBE availability measures the relative number of MBE/WBEs and DBEs among all firms ready, willing and able to perform a certain type of work within a particular geographic market area.²⁸ There is authority that measures of availability may be approached with different levels of specificity and the practicality of various approaches must be considered.²⁹ "An analysis is not devoid of probative value simply because it may theoretically be possible to adopt a more refined approach."³⁰
- **Utilization analysis.** Courts have accepted measuring utilization based on the proportion of an agency's contract dollars going to MBE/WBEs and DBEs.³¹

²¹ Adarand VII, 228 F.3d at 1166; Eng'g Contractors Ass'n, 122 F.3d at 916.

²² See, e.g., Adarand VII, 228 F.3d at 1166; Eng'g Contractors Ass'n, 122 F.3d at 916; see also Sherbrooke Turf, 345 F.3d at 971; N. Contracting, 473 F.3d at 721.

²³ See, e.g., Croson, 488 U.S. at 509; N. Contracting, 473 F.3d at 718-19, 723-24; Western States Paving, 407 F.3d at 991; Adarand VII, 228 F.3d at 1166.

²⁴ Croson, 488 U.S. at 501, quoting Hazelwood School Dist. v. United States, 433 U.S. 299, 307-08 (1977).

²⁵ Croson, 448 U.S. at 509; see Rothe, 545 F.3d at 1041-1042; Concrete Works of Colo., Inc. v. City and County of Denver ("Concrete Works II"), 321 F.3d 950, 959 (10th Cir. 2003); Drabik II, 214 F.3d 730, 734-736.

²⁶ See, e.g., Croson, 488 U.S. at 509; Rothe, 545 F.3d at 1041; Concrete Works II, 321 F.3d at 970; see Western States Paving, 407 F.3d at 1001.

²⁷ Western States Paving, 407 F.3d at 1001.

²⁸ See, e.g., Croson, 448 U.S. at 509; 49 C.F.R. § 26.35; Rothe, 545 F.3d at 1041-1042; N. Contracting, 473 F.3d at 718, 722-23; Western States Paving, 407 F.3d at 995.

²⁹ Contractors Ass'n of Eastern Pennsylvania, Inc. v. City of Philadelphia ("CAEP II"), 91 F.3d 586, 603 (3d Cir. 1996).

³⁰ Id.

³¹ See Eng'g Contractors Ass'n, 122 F.3d at 912; N. Contracting, 473 F.3d at 717-720; Sherbrooke Turf, 345 F.3d at 973.

- **Disparity index.** An important component of statistical evidence is the “disparity index.”³² A disparity index is defined as the ratio of the percentage utilization to the percentage availability times 100. A disparity index below 80 has been accepted as evidence of adverse impact. This has been referred to as “The Rule of Thumb” or “The 80 Percent Rule.”³³
- **Two standard deviation test.** The standard deviation figure describes the probability that the measured disparity is the result of mere chance. Some courts have held that a statistical disparity corresponding to a standard deviation of less than two is not considered statistically significant evidence of discrimination.³⁴

Anecdotal evidence. Anecdotal evidence includes personal accounts of incidents, including of discrimination, told from the witness’ perspective. Anecdotal evidence of discrimination, standing alone, generally is insufficient to show a systematic pattern of discrimination.³⁵ But personal accounts of actual discrimination may complement empirical evidence and play an important role in bolstering statistical evidence.³⁶ It has been held that anecdotal evidence of a local or state government’s institutional practices that exacerbate discriminatory market conditions are often particularly probative.³⁷

Examples of anecdotal evidence may include:

- Testimony of MBE/WBE or DBE owners regarding whether they face difficulties or barriers;
- Descriptions of instances in which MBE/WBE or DBE owners believe they were treated unfairly or were discriminated against based on their race, ethnicity, or gender or believe they were treated fairly without regard to race, ethnicity, or gender;

³² Eng’g Contractors Ass’n, 122 F.3d at 914; W.H. Scott Constr. Co. v. City of Jackson, 199 F.3d 206, 218 (5th Cir. 1999); Contractors Ass’n of Eastern Pennsylvania, Inc. v. City of Philadelphia, 6 F.3d 990 at 1005 (3rd Cir. 1993).

³³ See, e.g., Ricci v. DeStefano, ___ U.S. ___, 129 S.Ct. 2658, 2009 WL 1835138 at 18, 77 USLW 4639 (June 29, 2009); Rothe, 545 F.3d at 1041; Eng’g Contractors Ass’n, 122 F.3d at 914, 923; Concrete Works I, 36 F.3d at 1524.

³⁴ Eng’g Contractors Ass’n, 122 F.3d at 914, 917, 923. The Eleventh Circuit found that a disparity greater than two or three standard deviations has been held to be statistically significant and may create a presumption of discriminatory conduct.; Peightal v. Metropolitan Eng’g Contractors Ass’n, 26 F.3d 1545, 1556 (11th Cir. 1994). The Seventh Circuit Court of Appeals in Kadas v. MCI Systemhouse Corp., 255 F.3d 359 (7th Cir. 2001), raised questions as to the use of the standard deviation test alone as a controlling factor in determining the admissibility of statistical evidence to show discrimination. Rather, the Court concluded it is for the judge to say, on the basis of the statistical evidence, whether a particular significance level, in the context of a particular study in a particular case, is too low to make the study worth the consideration of judge or jury. 255 F.3d at 363.

³⁵ Eng’g Contractors Ass’n, 122 F.3d at 924-25; Coral Constr. Co. v. King County, 941 F.2d 910, 919 (9th Cir. 1991); O’Donnel Constr. Co. v. District of Columbia, 963 F.2d 420, 427 (D.C. Cir. 1992).

³⁶ See, e.g., Eng’g Contractors Ass’n, 122 F.3d at 925-26; Concrete Works, 36 F.3d at 1520; Contractors Ass’n, 6 F.3d at 1003; AGC of California v. Coalition for Economic Equity, 950 F.2d at 1414-1415; Coral Construction Co. v. King County, 941 F.2d 910, 919 (9th Cir. 1991).

³⁷ Concrete Works I, 36 F.3d at 1520.

- Statements regarding whether firms solicit, or fail to solicit, bids or price quotes from MBE/WBE's or DBEs on non-goal projects; and
- Statements regarding whether there are instances of discrimination in bidding on specific contracts and in the financing and insurance markets.³⁸

Courts have accepted and recognize that anecdotal evidence is the witness' narrative of incidents told from his or her perspective, including the witness' thoughts, feelings, and perceptions, and thus anecdotal evidence need not be verified.³⁹

b. The Narrow Tailoring Requirement

The second prong of the strict scrutiny analysis requires that a race- or ethnicity-based program or legislation implemented to remedy past identified discrimination in the relevant market be “narrowly tailored” to reach that objective.

The narrow tailoring requirement has several components and the courts analyze several criteria or factors in determining whether a program or legislation satisfies this requirement including:

- The necessity for the relief and the efficacy of alternative race-, ethnicity-, and gender-neutral remedies;
- The flexibility and duration of the relief, including the availability of waiver provisions;
- The relationship of numerical goals to the relevant labor market; and
- The impact of a race-, ethnicity-, or gender-conscious remedy on the rights of third parties.⁴⁰

The second prong of the strict scrutiny analysis requires the implementation of the Program be “narrowly tailored” to remedy identified discrimination in the particular government's contracting and procurement market.⁴¹ The narrow tailoring requirement has several components.

According to the Ninth Circuit in Western States Paving, there must be evidence of discrimination within the government's own contracting and procurement marketplace in order to determine

³⁸ See, Northern Contracting, 2005 WL 2230195, at 13-15 (N.D. Ill. 2005), affirmed, 473 F.3d 715 (7th Cir. 2007); e.g., Concrete Works, 321 F.3d at 989; Adarand VII, 228 F.3d at 1166-76. For additional examples of anecdotal evidence, see Eng'g Contractors Ass'n, 122 F.3d at 924; Florida A.G.C. Council, Inc. v. State of Florida, 303 F. Supp. 2d 1307, 1325 (N.D. Fla. 2004); Webster v. Fulton County, Georgia, 51 F. Supp. 2d 1354, 1379 (N.D. Ga. 1999), aff'd per curiam 218 F.3d 1267 (11th Cir. 2000); Concrete Works, 36 F.3d at 1520; AGC of California v. Coalition for Economic Equity, 950 F.2d 1414-1415; Coral Construction, 941 F.2d at 919; Cone Corp. v. Hillsborough County, 908 F.2d 908, 915 (11th Cir. 1990).

³⁹ See, e.g., Concrete Works II, 321 F.3d at 989; Eng'g Contractors Ass'n, 122 F.3d at 924-26; Cone Corp., 908 F.2d at 915; Northern Contracting, Inc. v. Illinois, 2005 WL 2230195 at *21, N. 32 (N.D. Ill. Sept. 8, 2005), aff'd 473 F.3d 715 (7th Cir. 2007).

⁴⁰ See, e.g., Rothe, 545 F.3d at 1036; Eng'g Contractors Ass'n, 122 F.3d at 927 (internal quotations and citations omitted); see AGC of California v. Coalition for Economic Equity, 950 F.2d 1414-1415; Coral Construction, 941 F.2d at 919

⁴¹ Western States Paving, 407 F.3d at 995-998; Sherbrooke Turf, 345 F.3d at 970-71; AGC of California v. Coalition for Economic Equity, 950 F.2d 1414-1415; Coral Construction, 941 F.2d at 919.

whether or not there is the need for race-, ethnicity-, or gender-conscious remedial action.⁴² In Western States Paving, the court found that even where evidence of discrimination is present, a narrowly tailored program must apply only to those minority groups who have actually suffered discrimination.⁴³

To satisfy the narrowly tailored prong of the strict scrutiny analysis in the context of an MBE/WBE or DBE type Program, the federal courts, which evaluated MBE/WBE or DBE Programs, have held the following factors are pertinent:

- Evidence of discrimination or its effects in the relevant geographic market;
- Flexibility and duration of a race- or ethnicity-conscious remedy;
- Relationship of any numerical MBE/WBE or DBE goals to the relevant market;
- Effectiveness of alternative race- and ethnicity-neutral remedies;
- Impact of a race- or ethnicity-conscious remedy on third parties; and
- Application of any race- or ethnicity-conscious program to only those minority groups who have actually suffered discrimination.⁴⁴

The Eleventh Circuit described the “the essence of the ‘narrowly tailored’ inquiry [as] the notion that explicitly racial preferences ... must only be a ‘last resort’ option.”⁴⁵ Courts have found that “[w]hile narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, it does require serious, good faith consideration of whether such alternatives could serve the governmental interest at stake.”⁴⁶

Similarly, the Sixth Circuit Court of Appeals in Associated Gen. Contractors v. Drabik (“Drabik II”), stated: “Adarand teaches that a court called upon to address the question of narrow tailoring must ask, ‘for example, whether there was ‘any consideration of the use of race-neutral means to increase minority business participation’ in government contracting ... or whether the program was appropriately limited such that it ‘will not last longer than the discriminatory effects it is designed to eliminate.’”⁴⁷

⁴² Western States Paving, 407 F.3d at 997-98, 1002-03; see AGC of California v. Coalition for Economic Equity, 950 F.2d 1414-1415; Coral Construction, 941 F.2d at 919.

⁴³ 407 F.3d at 998; Monterey Mechanical Co. v. Wilson, 125 F.3d 702, 712-714 (9th Cir. 1997); AGC of California v. Coalition for Economic Equity, 950 F.2d at 1417.

⁴⁴ See, e.g., Western States Paving, 407 F.3d at 998; Sherbrooke Turf, 345 F.3d at 971; Adarand VII, 228 F.3d at 1181; Monterey Mechanical, 125 F.3d at 712-714; AGC of California v. Coalition for Economic Equity, 950 F.2d at 1414-15; Coral Construction, 941 F.2d at 919.

⁴⁵ Eng’g Contractors Ass’n, 122 F.3d at 926 (internal citations omitted); see also Viridi v. DeKalb County School District, 135 Fed. Appx. 262, 264, 2005 WL 138942 (11th Cir. 2005) (unpublished opinion); Webster v. Fulton County, 51 F. Supp. 2d 1354, 1380 (N.D. Ga. 1999), aff’d per curiam 218 F.3d 1267 (11th Cir. 2000).

⁴⁶ See Grutter v. Bollinger, 539 U.S. 306, 339 (2003), and Richmond v. J.A. Croson Co., 488 U.S. 469, 509-10 (1989).

⁴⁷ Associated Gen. Contractors of Ohio, Inc. v. Drabik (“Drabik II”), 214 F.3d 730, 738 (6th Cir. 2000); AGC of California v. Coalition for Economic Equity, 950 F.2d 1414-1415; Coral Construction, 941 F.2d at 919.

Recently, the Supreme Court in Parents Involved in Community Schools v. Seattle School District⁴⁸ also found that race- and ethnicity-based measures should be employed as a last resort. The majority opinion stated: “Narrow tailoring requires ‘serious, good faith consideration of workable race-neutral alternatives,’ and yet in Seattle several alternative assignment plans — many of which would not have used express racial classifications — were rejected with little or no consideration.”⁴⁹ The Court found that the District failed to show it seriously considered race-neutral measures.

The “narrowly tailored” analysis is instructive in terms of developing any potential legislation or programs that involve MBE/WBEs and DBEs, or in connection with determining appropriate remedial measures to achieve legislative objectives.

Race-, ethnicity-, and gender-neutral measures. To the extent a “strong basis in evidence” exists concerning discrimination in a local or state government’s relevant contracting and procurement market, the courts analyze several criteria or factors to determine whether a state’s implementation of a race- or ethnicity-conscious program is necessary and thus narrowly tailored to achieve remedying identified discrimination. One of the key factors discussed above is consideration of race-, ethnicity- and gender-neutral measures.

The courts require that a local or state government seriously consider race-, ethnicity- and gender-neutral efforts to remedy identified discrimination.⁵⁰ And the courts have held unconstitutional those race- and ethnicity-conscious programs implemented without consideration of race- and ethnicity-neutral alternatives to increase minority business participation in state and local contracting.⁵¹

The Court in Croson followed by decisions from federal courts of appeal found that local and state governments 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.”⁵²

Examples of race-, ethnicity-, and gender-neutral alternatives include, but are not limited to, the following:

- Providing assistance in overcoming bonding and financing obstacles;
- Relaxation of bonding requirements;
- Providing technical, managerial and financial assistance;

⁴⁸ 127 S.Ct. 2738, 2760-61 (2007).

⁴⁹ Id. at 2743, 2760-61. The court cited to the concurring opinion of Justice Kennedy in Croson that racial classifications should be used as a “last resort.” Id. at 2760-61; see also id. at 2792 (Kennedy, J., concurring in part and concurring in judgment, citing his concurring opinion in Croson, at 519, 109 S.Ct. 706) (stating that racial classifications “may be considered legitimate only if they are a last resort to achieve a compelling interest”); Grutter v. Bollinger, 539 U.S. 306, 339 (2003).

⁵⁰ See, e.g., Western States Paving, 407 F.3d at 993; Sherbrooke Turf, 345 F.3d at 972; Adarand VII, 228 F.3d at 1179; Eng’g Contractors Ass’n, 122 F.3d at 927; Coral Construction, 941 F.2d at 923.

⁵¹ See Croson, 488 U.S. at 507; Drabik I, 214 F.3d at 738 (citations and internal quotations omitted); see also Eng’g Contractors Ass’n, 122 F.3d at 927; Virdi, 135 Fed. Appx. At 268.

⁵² Croson, 488 U.S. at 509-510.

- Establishing programs to assist start-up firms;
- Simplification of bidding procedures;
- Training and financial aid for all disadvantaged entrepreneurs;
- Non-discrimination provisions in contracts and in state law;
- Mentor-protégé programs and mentoring;
- Efforts to address prompt payments to smaller businesses;
- Small contract solicitations to make contracts more accessible to smaller businesses;
- Expansion of advertisement of business opportunities;
- Outreach programs and efforts;
- “How to do business” seminars;
- Sponsoring networking sessions throughout the state acquaint small firms with large firms;
- Creation and distribution of MBE/WBE and DBE directories; and
- Streamlining and improving the accessibility of contracts to increase small business participation.⁵³

The courts have held that while the narrow tailoring analysis does not require a governmental entity to exhaust every possible race-, ethnicity-, and gender-neutral alternative, it does “require serious, good faith consideration of workable race-neutral alternatives.”⁵⁴

Additional factors considered under narrow tailoring. In addition to the required consideration of the necessity for the relief and the efficacy of alternative remedies (race- and ethnicity-neutral efforts), the courts require evaluation of additional factors as listed above.⁵⁵ For example, to be considered narrowly tailored, courts have held that a MBE/WBE- or DBE-type program should include: (1) built-in flexibility;⁵⁶ (2) a good faith efforts provisions;⁵⁷ (3) waiver

⁵³ See, e.g., Croson, 488 U.S. at 509-510; N. Contracting, 473 F.3d at 724; Adarand VII, 228 F.3d 1179; 49 C.F.R. § 26.51(b); Eng’g Contractors Ass’n, 122 F.3d at 927-29; see also 49 C.F.R. § 26.51(b).

⁵⁴ Western States Paving, 407 F.3d at 993; see, Grutter v. Bollinger, 539 U.S. 306, 339 (2003); AGC of California v. Coalition for Economic Equity, 950 F.2d at 1417; Coral Construction v. King County, 941 F.2d at 923.

⁵⁵ Eng’g Contractors Ass’n, 122 F.3d at 927.

⁵⁶ CAEP I, 6 F.3d at 1009; Associated Gen. Contractors of Ca., Inc. v. Coalition for Economic Equity (“AGC of Ca.”), 950 F.2d 1401, 1417 (9th Cir. 1991); Coral Constr. Co. v. King County, 941 F.2d 910, 923 (9th Cir. 1991); Cone Corp. v. Hillsborough County, 908 F.2d 908, 917 (11th Cir. 1990).

⁵⁷ CAEP I, 6 F.3d at 1019; Cone Corp., 908 F.2d at 917.

provisions;⁵⁸ (4) a rational basis for goals;⁵⁹ (5) graduation provisions;⁶⁰ (6) remedies only for groups for which there were findings of discrimination;⁶¹ (7) sunset provisions;⁶² and (8) limitation in its geographical scope to the boundaries of the enacting jurisdiction.⁶³

2. Intermediate Scrutiny Analysis

Certain Federal Courts of Appeal apply intermediate scrutiny to gender-conscious programs.⁶⁴ The courts have interpreted this standard to require that gender-based classifications be:

1. Supported by both “sufficient probative” evidence or “exceedingly persuasive justification” in support of the stated rationale for the program; and
2. Substantially related to the achievement of that underlying objective.⁶⁵

Under the traditional intermediate scrutiny standard, the court reviews a gender-conscious program by analyzing whether the state actor has established a sufficient factual predicate for the claim that female-owned businesses have suffered discrimination, and whether the gender-conscious remedy is an appropriate response to such discrimination. This standard requires the state actor to present “sufficient probative” evidence in support of its stated rationale for the program.⁶⁶

Intermediate scrutiny, as interpreted by certain federal circuit courts of appeal, requires a direct, substantial relationship between the objective of the gender preference and the means chosen to accomplish the objective. The measure of evidence required to satisfy intermediate scrutiny is less than that necessary to satisfy strict scrutiny. Unlike strict scrutiny, the intermediate scrutiny standard it has been held does not require a showing of government involvement, active or passive, in the discrimination it seeks to remedy.⁶⁷ And the Eleventh Circuit has held that “[w]hen a gender-conscious affirmative action program rests on sufficient evidentiary foundation, the government is not required to implement the program only as a last resort ... Additionally, under intermediate scrutiny, a gender-conscious program need not closely tie its numerical goals to the proportion of qualified women in the market.”⁶⁸

⁵⁸ CAEP I, 6 F.3d at 1009; AGC of Ca., 950 F.2d at 1417 (9th Cir. 1991); Cone Corp., 908 F.2d at 917.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Western States Paving, 407 F.3d at 998; AGC of Ca., 950 F.2d at 1417 (9th Cir. 1991).

⁶² Peightal, 26 F.3d at 1559.

⁶³ Coral Construction, 941 F.2d at 925.

⁶⁴ See generally, Western States Paving, 407 F.3d at 990 n. 6 (9th Cir. 2005); Equal Found. v. City of Cincinnati, 128 F.3d 289 (6th Cir. 1997); Monterey Mechanical, 125 F.3d at 712-13 (9th Cir. 1997); Eng’g Contractors Ass’n, 122 F.3d at 905, 908, 910; Ensley Branch N.A.A.C.P. v. Seibels, 31 F.3d 1548 (11th Cir. 1994); Coral Construction Co., 941 F.2d at 931-932 (9th Cir. 1991); see also U.S. v. Virginia, 518 U.S. 515, 532 and n.6 (1996) (“exceedingly persuasive justification.”)

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ See Eng’g Contractors Ass’n, 122 F.3d at 910.

⁶⁸ Id. at 929 (internal citations omitted.)

The Seventh Circuit Court of Appeals, however, in Builders Ass'n of Greater Chicago v. County of Cook, Chicago,⁶⁹ did not hold there is a different level of scrutiny for gender discrimination or gender based programs.⁷⁰ The court in Cook County rejected the distinction applied by the Eleventh Circuit in Engineering Contractors.

Ongoing review. The above represents a brief summary of the legal framework pertinent to implementation of MBE/WBE, DBE, or race-, ethnicity-, or gender-neutral programs. Because this is a dynamic area of the law, the framework is subject to ongoing review as the law continues to evolve. The following provides more detailed summaries of key recent decisions.

⁶⁹ 256 F.3d 642 (7th Cir. 2001).

⁷⁰ 256 F.3d at 644-645.

D. Recent Decisions Involving State or Local Government MBE/WBE Programs and the Federal DBE Program In The Ninth Circuit.

1. Western States Paving Co. v. Washington State DOT, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006)

This case out of the Ninth Circuit struck down a state's implementation of the Federal DBE Program for failure to pass constitutional muster. In Western States, the Ninth Circuit held that the State of Washington's implementation of the Federal DBE Program was unconstitutional because it did not satisfy the narrow tailoring element of the constitutional test. The Ninth Circuit held that the State must present its own evidence of past discrimination within its own boundaries in order to survive constitutional muster and could not merely rely upon data supplied by Congress. The United States Supreme Court denied certiorari. The analysis in the decision also is instructive in particular as to the application of the narrowly tailored prong of the strict scrutiny test.

Plaintiff Western States Paving Co. ("plaintiff") was a white male-owned asphalt and paving company. 407 F.3d 983, 987 (9th Cir. 2005). In July of 2000, plaintiff submitted a bid for a project for the City of Vancouver; the project was financed with federal funds provided to the Washington State DOT ("WSDOT") under the Transportation Act for the 21st Century ("TEA-21"). Id.

Congress enacted TEA-21 in 1991 and after multiple renewals, it was set to expire on May 31, 2004. Id. at 988. TEA-21 established minimum minority-owned business participation requirements (10%) for certain federally-funded projects. Id. The regulations require each state accepting federal transportation funds to implement a DBE program that comports with the TEA-21. Id. TEA-21 indicates the 10 percent DBE utilization requirement is "aspirational," and the statutory goal "does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent." Id.

TEA-21 sets forth a two-step process for a state to determine its own DBE utilization goal: (1) the state must calculate the relative availability of DBEs in its local transportation contracting industry (one way to do this is to divide the number of ready, willing and able DBEs in a state by the total number of ready, willing and able firms); and (2) the state is required to "adjust this base figure upward or downward to reflect the proven capacity of DBEs to perform work (as measured by the volume of work allocated to DBEs in recent years) and evidence of discrimination against DBEs obtained from statistical disparity studies." Id. at 989 (citing regulation). A state is also permitted to consider discrimination in the bonding and financing industries and the present effects of past discrimination. Id. (citing regulation). TEA-21 requires a generalized, "undifferentiated" minority goal and a state is prohibited from apportioning their DBE utilization goal among different minority groups (e.g., between Hispanics, blacks, and women). Id. at 990 (citing regulation).

"A state must meet the maximum feasible portion of this goal through race- [and gender-] neutral means, including informational and instructional programs targeted toward all small businesses." Id. (citing regulation). Race- and sex-conscious contract goals must be used to achieve any portion of the contract goals not achievable through race- and gender-neutral measures. Id. (citing regulation). However, TEA-21 does not require that DBE participation goals be used on every contract or at the

same level on every contract in which they are used; rather, the overall effect must be to “obtain that portion of the requisite DBE participation that cannot be achieved through race- [and gender-] neutral means.” Id. (citing regulation).

A prime contractor must use “good faith efforts” to satisfy a contract’s DBE utilization goal. Id. (citing regulation). However, a state is prohibited from enacting rigid quotas that do not contemplate such good faith efforts. Id. (citing regulation).

Under the TEA-21 minority utilization requirements, the City set a goal of 14 percent minority participation on the first project plaintiff bid on; the prime contractor thus rejected plaintiff’s bid in favor of a higher bidding minority-owned subcontracting firm. Id. at 987. In September of 2000, plaintiff again submitted a bid on project financed with TEA-21 funds and was again rejected in favor of a higher bidding minority-owned subcontracting firm. Id. The prime contractor expressly stated that he rejected plaintiff’s bid due to the minority utilization requirement. Id.

Plaintiff filed suit against the WSDOT, Clark County, and the City, challenging the minority preference requirements of TEA-21 as unconstitutional both facially and as applied. Id. The district court rejected both of plaintiff’s challenges. The district court held the program was facially constitutional because it found that Congress had identified significant evidence of discrimination in the transportation contracting industry and the TEA-21 was narrowly tailored to remedy such discrimination. Id. at 988. The district court rejected the as-applied challenge concluding that Washington’s implementation of the program comported with the federal requirements and the state was not required to demonstrate that its minority preference program independently satisfied strict scrutiny. Id. Plaintiff appealed to the Ninth Circuit Court of Appeals. Id.

The Ninth Circuit considered whether the TEA-21, which authorizes the use of race- and gender-based preferences in federally-funded transportation contracts, violated equal protection, either on its face or as applied by the State of Washington.

The court applied a strict scrutiny analysis to both the facial and as-applied challenges to TEA-21. Id. at 990-91. The court did not apply a separate intermediate scrutiny analysis to the gender-based classifications because it determined that it “would not yield a different result.” Id. at 990, n. 6.

Facial challenge (Federal Government). The court first noted that the federal government has a compelling interest in “ensuring that its funding is not distributed in a manner that perpetuates the effects of either public or private discrimination within the transportation contracting industry.” Id. at 991, citing City of Richmond v. J.A. Croson Co., 488 U.S. 469, 492 (1989) and Adarand Constructors, Inc. v. Slater (“Adarand VII”), 228 F.3d 1147, 1176 (10th Cir. 2000). The court found that “[b]oth statistical and anecdotal evidence are relevant in identifying the existence of discrimination.” Id. at 991. The court found that although Congress did not have evidence of discrimination against minorities in every state, such evidence was unnecessary for the enactment of nationwide legislation. Id. However, citing both the Eighth and Tenth Circuits, the court found that Congress had ample evidence of discrimination in the transportation contracting industry to justify TEA-21. Id. The court also found that because TEA-21 set forth flexible race-conscious measures to be used only when race-neutral efforts were unsuccessful, the program was narrowly tailored and thus satisfied strict scrutiny. Id. at 992-93. The court accordingly rejected plaintiff’s facial challenge. Id.

As-applied challenge (State of Washington). Plaintiff alleged TEA-21 was unconstitutional as-applied because there was no evidence of discrimination in Washington’s transportation contracting industry. *Id.* at 995. The State alleged that it was not required to independently demonstrate that its application of TEA-21 satisfied strict scrutiny. *Id.* The United States intervened to defend TEA-21’s facial constitutionality, and “unambiguously conceded that TEA-21’s race conscious measures can be constitutionally applied only in those states where the effects of discrimination are present.” *Id.* at 996; see also *Br. for the United States* at 28 (April 19, 2004) (“DOT’s regulations ... are designed to assist States in ensuring that race-conscious remedies are limited to *only* those jurisdictions where discrimination or its effects are a problem and *only* as a last resort when race-neutral relief is insufficient.” (emphasis in original)).

The court found that the Eighth Circuit was the only other court to consider an as-applied challenge to TEA-21 in *Sherbrooke Turf, Inc. v. Minnesota DOT*, 345 F.3d 964 (8th Cir. 2003), *cert. denied* 124 S. Ct. 2158 (2004). *Id.* at 996. The Eighth Circuit did not require Minnesota and Nebraska to identify a compelling purpose for their programs independent of Congress’s nationwide remedial objective. *Id.* However, the Eighth Circuit did consider whether the states’ implementation of TEA-21 was narrowly tailored to achieve Congress’s remedial objective. *Id.* The Eighth Circuit thus looked to the states’ independent evidence of discrimination because “to be narrowly tailored, a *national* program must be limited to those parts of the country where its race-based measures are demonstrably needed.” *Id.* (internal citations omitted). The Eighth Circuit relied on the states’ statistical analyses of the availability and capacity of DBEs in their local markets conducted by outside consulting firms to conclude that the states satisfied the narrow tailoring requirement. *Id.* at 997.

The court concurred with the Eighth Circuit and found that Washington did not need to demonstrate a compelling interest for its DBE program, independent from the compelling nationwide interest identified by Congress. *Id.* However, the court determined that the district court erred in holding that mere compliance with the federal program satisfied strict scrutiny. *Id.* Rather, the court held that whether Washington’s DBE program was narrowly tailored was dependent on the presence or absence of discrimination in Washington’s transportation contracting industry. *Id.* at 997-98. “If no such discrimination is present in Washington, then the State’s DBE program does not serve a remedial purpose; it instead provides an unconstitutional windfall to minority contractors solely on the basis of their race or sex.” *Id.* at 998. The court held that a Sixth Circuit decision to the contrary, *Tennessee Asphalt Co. v. Farris*, 942 F.2d 969, 970 (6th Cir. 1991), misinterpreted earlier case law. *Id.* at 997, n. 9.

The court found that moreover, even where discrimination is present in a state, a program is narrowly tailored only if it applies only to those minority groups who have actually suffered discrimination. *Id.* at 998, citing *Croson*, 488 U.S. at 478. The court also found that in *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702, 713 (9th Cir. 1997), it had “previously expressed similar concerns about the haphazard inclusion of minority groups in affirmative action programs ostensibly designed to remedy the effects of discrimination.” *Id.* In *Monterey Mechanical*, the court held that “the overly inclusive designation of benefited minority groups was a ‘red flag signaling that the statute is not, as the Equal Protection Clause requires, narrowly tailored.’” *Id.*, citing *Monterey Mechanical*, 125 F.3d at 714. The court found that other courts are in accord. *Id.* at 998-99, citing *Builders Ass’n of Greater Chi. v. County of Cook*, 256 F.3d 642, 647 (7th Cir. 2001); *Associated Gen. Contractors*

of Ohio, Inc. v. Drabik, 214 F.3d 730, 737 (6th Cir. 2000); O'Donnell Constr. Co. v. District of Columbia, 963 F.2d 420, 427 (D.C. Cir. 1992). Accordingly, the court found that each of the principal minority groups benefited by Washington's DBE program must have suffered discrimination within the State. Id. at 999.

The court found that Washington's program closely tracked the sample USDOT DBE program. Id. WSDOT calculated its DBE participation goal by first calculating the availability of ready, willing and able DBEs in the State (dividing the number of transportation contracting firms in the Washington State Office of Minority, Women and Disadvantaged Business Enterprises Directory by the total number of transportation contracting firms listed in the Census Bureau's Washington database, which equaled 11.17%). Id. WSDOT then upwardly adjusted the 11.17 percent base figure to 14 percent "to account for the proven capacity of DBEs to perform work, as reflected by the volume of work performed by DBEs [during a certain time period]." Id. Although DBEs performed 18 percent of work on State projects during the prescribed time period, Washington set the final adjusted figure at 14 percent because TEA-21 reduced the number of eligible DBEs in Washington by imposing more stringent certification requirements. Id. at 999, n. 11. WSDOT did not make an adjustment to account for discriminatory barriers in obtaining bonding and financing. Id. WSDOT similarly did not make any adjustment to reflect present or past discrimination "because it lacked any statistical studies evidencing such discrimination." Id.

WSDOT then determined that it needed to achieve 5 percent of its 14 percent goal through race-conscious means based on a 9 percent DBE participation rate on state-funded contracts that did not include affirmative action components (i.e., 9% participation could be achieved through race-neutral means). Id. at 1000. The USDOT approved WSDOT goal-setting program and the totality of its 2000 DBE program. Id.

Washington conceded that it did not have statistical studies to establish the existence of past or present discrimination. Id. It argued, however, that it had evidence of discrimination because minority-owned firms had the capacity to perform 14 percent of the State's transportation contracts in 2000 but received only 9 percent of the subcontracting funds on contracts that did not include an affirmative actions component. Id. The court found that the State's methodology was flawed because the 14 percent figure was based on the earlier 18 percent figure, discussed supra, which included contracts with affirmative action components. Id. The court concluded that the 14 percent figure did not accurately reflect the performance capacity of DBEs in a race-neutral market. Id. The court also found the State conceded as much to the district court. Id.

The court held that a disparity between DBE performance on contracts with an affirmative action component and those without "does not provide any evidence of discrimination against DBEs." Id. The court found that the only evidence upon which Washington could rely was the disparity between the proportion of DBE firms in the State (11.17%) and the percentage of contracts awarded to DBEs on race-neutral grounds (9%). Id. However, the court determined that such evidence was entitled to "little weight" because it did not take into account a multitude of other factors such as firm size. Id.

Moreover, the court found that the minimal statistical evidence was insufficient evidence, standing alone, of discrimination in the transportation contracting industry. Id. at 1001. The court found that WSDOT did not present any anecdotal evidence. Id. The court rejected the State's argument that the DBE applications themselves constituted evidence of past discrimination because the applications

were not properly in the record, and because the applicants were not required to certify that they had been victims of discrimination in the contracting industry. *Id.* Accordingly, the court held that because the State failed to proffer evidence of discrimination within its own transportation contracting market, its DBE program was not narrowly tailored to Congress’s compelling remedial interest. *Id.* at 1002-03.

The court affirmed the district court’s grant on summary judgment to the United States regarding the facial constitutionality of TEA-21, reversed the grant of summary judgment to Washington on the as-applied challenge, and remanded to determine the State’s liability for damages.

The dissent argued that where the State complied with TEA-21 in implementing its DBE program, it was not susceptible to an as-applied challenge.

2. Western States Paving Co. v. Washington DOT, US DOT & FHWA, 2006 WL 1734163 (W.D. Wash. June 23, 2006) (unpublished opinion)

This case was before the district court pursuant to the Ninth Circuit’s remand order in Western States Paving Co. v. Washington DOT, US DOT, and FHWA, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006). In this decision, the district court adjudicated cross Motions for Summary Judgment on plaintiff’s claim for injunction and for damages under 42 U.S.C. §§1981, 1983, and §2000d.

Because the Washington Department of Transportation (“WSDOT”) voluntarily discontinued its DBE program after the Ninth Circuit decision, supra, the district court dismissed plaintiff’s claim for injunctive relief as moot. The court found “it is absolutely clear in this case that WSDOT will not resume or continue the activity the Ninth Circuit found unlawful in Western States,” and cited specifically to the informational letters WSDOT sent to contractors informing them of the termination of the program.

Second, the court dismissed Western States’ claims under 42 U.S.C. §§ 1981, 1983, and 2000d against Clark County and the City of Vancouver holding neither the City or the County acted with the requisite discriminatory intent. The court held the County and the City were merely implementing the WSDOT’s unlawful DBE program and their actions in this respect were involuntary and required no independent activity. The court also noted that the County and the City were not parties to the precise discriminatory actions at issue in the case, which occurred due to the conduct of the “State defendants.” Specifically, the WSDOT — and not the County or the City — developed the DBE program without sufficient anecdotal and statistical and evidence, and improperly relied on the affidavits of contractors seeking DBE certification “who averred that they had been subject to ‘general societal discrimination.’”

Third, the court dismissed plaintiff’s 42 U.S.C. §§ 1981 and 1983 claims against WSDOT, finding them barred by the Eleventh Amendment sovereign immunity doctrine. However, the court allowed plaintiff’s 42 U.S.C. §2000d claim to proceed against WSDOT because it was not similarly barred. The court held that Congress had conditioned the receipt of federal highway funds on compliance with Title VI (42 U.S.C. § 2000d et seq.) and the waiver of sovereign immunity from claims arising under Title VI. Section 2001 specifically provides that “a State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a

violation of ... Title VI.” The court held that this language put the WSDOT on notice that it faced private causes of action in the event of noncompliance.

The court held that WSDOT’s DBE program was not narrowly tailored to serve a compelling government interest. The court stressed that discriminatory intent is an essential element of a plaintiff’s claim under Title VI. The WSDOT argued that even if sovereign immunity did not bar plaintiff’s §2000d claim, WSDOT could be held liable for damages because there was no evidence that WSDOT staff knew of or consciously considered plaintiff’s race when calculating the annual utilization goal. The court held that since the policy was not “facially neutral” — and was in fact “specifically race conscious” — any resulting discrimination was therefore intentional, whether the reason for the classification was benign or its purpose remedial. As such, WSDOT’s program was subject to strict scrutiny.

In order for the court to uphold the DBE program as constitutional, WSDOT had to show that the program served a compelling interest and was narrowly tailored to achieve that goal. The court found that the Ninth Circuit had already concluded that the program was not narrowly tailored and the record was devoid of any evidence suggesting that minorities currently suffer or have suffered discrimination in the Washington transportation contracting industry. The court therefore denied WSDOT’s Motion for Summary Judgment on the §2000d claim. The remedy available to Western States remains for further adjudication and the case is currently pending.

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

This case is instructive in that the Ninth Circuit analyzed and held invalid the enforcement of a MBE/WBE-type program. Although the program at issue utilized the term “goals” as opposed to “quotas,” the Ninth Circuit rejected such a distinction, holding “[t]he relevant question is not whether a statute requires the use of such measures, but whether it authorizes or encourages them.” The case also is instructive because it found the use of “goals” and the application of “good faith efforts” in connection with achieving goals to trigger strict scrutiny.

Monterey Mechanical Co. (the “plaintiff”) submitted the low bid for a construction project for the California Polytechnic State University (the “University”). 125 F.3d 702, 704 (9th Cir. 1994). The University rejected the plaintiff’s bid because the plaintiff failed to comply with a state statute requiring prime contractors on such construction projects to subcontract 23 percent of the work to MBE/WBEs or, alternatively, demonstrate good faith outreach efforts. *Id.* The plaintiff conducted good faith outreach efforts but failed to provide the requisite documentation; the awardee prime contractor did not subcontract any portion of the work to MBE/WBEs but did include documentation of good faith outreach efforts. *Id.*

Importantly, the University did not conduct a disparity study, and instead argued that because “the ‘goal requirements’ of the scheme [did] not involve racial or gender quotas, set-asides or preferences,” the University did not need a disparity study. *Id.* at 705. The plaintiff protested the contract award and sued the University’s trustees, and a number of other individuals (collectively the “defendants”) alleging the state law was violative of the Equal Protection Clause. *Id.* The district court denied the plaintiff’s motion for an interlocutory injunction and the plaintiff appealed to the Ninth Circuit Court of Appeals. *Id.*

The defendants first argued that the statute was constitutional because it treated all general contractors alike, by requiring all to comply with the MBE/WBE participation goals. Id. at 708. The court held, however, that a minority or women business enterprise could satisfy the participation goals by allocating the requisite percentage of work to itself. Id. at 709. The court held that contrary to the district court's finding, such a difference was not *de minimis*. Id.

The defendant's also argued that the statute was not subject to strict scrutiny because the statute did not impose rigid quotas, but rather only required good faith outreach efforts. Id. at 710. The court rejected the argument finding that although the statute permitted awards to bidders who did not meet the percentage goals, "they are rigid in requiring precisely described and monitored efforts to attain those goals." Id. The court cited its own earlier precedent to hold that "the provisions are not immunized from scrutiny because they purport to establish goals rather than quotas ... [T]he relevant question is not whether a statute requires the use of such measures, but whether it authorizes or encourages them." Id. at 710-11 (internal citations and quotations omitted). The court found that the statute encouraged set asides and cited Concrete Works of Colorado v. Denver, 36 F.3d 1512 (10th Cir. 1994), as analogous support for the proposition. Id. at 711.

The court found that the statute treated contractors differently based upon their race, ethnicity and gender, and although "worded in terms of goals and good faith, the statute imposes mandatory requirements with concreteness." Id. The court also noted that the statute may impose additional compliance expenses upon non-MBE/WBE firms who are required to make good faith outreach efforts (e.g., advertising) to MBE/WBE firms. Id. at 712.

The court then conducted strict scrutiny (race), and an intermediate scrutiny (gender) analyses. Id. at 712-13. The court found the University presented "no evidence" to justify the race- and gender-based classifications and thus did not consider additional issues of proof. Id. at 713. The court found that the statute was not narrowly tailored because the definition of "minority" was overbroad (e.g., inclusion of Aleuts). Id. at 714, citing Wygant v. Jackson Board of Education, 476 U.S. 267, 284, n. 13 (1986) and City of Richmond v. J.A. Croson, Co., 488 U.S. 469, 505-06 (1989). The court found "[a] broad program that sweeps in all minorities with a remedy that is in no way related to past harms cannot survive constitutional scrutiny." Id. at 714, citing Hopwood v. State of Texas, 78 F.3d 932, 951 (5th Cir. 1996). The court held that the statute violated the Equal Protection Clause.

4. Associated Gen. Contractors of California, Inc. v. Coalition for Econ. Equity ("AGCC"), 950 F.2d 1401 (9th Cir. 1991)

In Associated Gen. Contractors of California, Inc. v. Coalition for Econ. Equity ("AGCC"), the Ninth Circuit Court of Appeals denied plaintiff's request for preliminary injunction to enjoin enforcement of the city's bid preference program. 950 F.2d 1401 (9th Cir. 1991). Although an older case, AGCC is instructive as to the analysis conducted by the Ninth Circuit. The court discussed the utilization of statistical evidence and anecdotal evidence in the context of the strict scrutiny analysis. Id. at 1413-18.

The City of San Francisco adopted an ordinance in 1989 providing bid preferences to prime contractors who were members of groups found disadvantaged by previous bidding practices, and specifically provided a 5 percent bid preference for LBEs, WBEs and MBEs. 950 F.2d at 1405. Local MBEs and WBEs were eligible for a 10 percent total bid preference, representing the cumulative total

of the 5 percent preference given LBEs and the 5 percent preference given MBEs and WBEs. Id. The ordinance defined “MBE” as an economically disadvantaged business that was owned and controlled by one or more minority persons, which included Asians, blacks and Latinos. “WBE” was defined as an economically disadvantaged business that was owned and controlled by one or more women. Economically disadvantaged was defined as a business with average gross annual receipts that did not exceed \$14 million. Id.

The Motion for Preliminary Injunction challenged the constitutionality of the MBE provisions of the 1989 Ordinance insofar as it pertained to Public Works construction contracts. Id. at 1405. The district court denied the Motion for Preliminary Injunction on the AGC’s constitutional claim on the ground that AGC failed to demonstrate a likelihood of success on the merits. Id. at 1412.

The Ninth Circuit Court of Appeals applied the strict scrutiny analysis following the decision of the U.S. Supreme Court in City of Richmond v. Croson. The court stated that according to the U.S. Supreme Court in Croson, a municipality has a compelling interest in redressing not only discrimination committed by the municipality itself, but also discrimination committed by private parties within the municipality legislative jurisdiction, so long as the municipality in some way perpetuated the discrimination to be remedied by the program. Id. at 1412-13, citing Croson at 488 U.S. at 491-92, 537-38. To satisfy this requirement, “the governmental actor need not be an active perpetrator of such discrimination; passive participation will satisfy this sub-part of strict scrutiny review.” Id. at 1413, quoting Coral Construction Company v. King County, 941 F.2d 910 at 916 (9th Cir. 1991). In addition, the [m]ere infusion of tax dollars into a discriminatory industry may be sufficient governmental involvement to satisfy this prong.” Id. at 1413 quoting Coral Construction, 941 F.2d at 916.

The court pointed out that the City had made detailed findings of prior discrimination in construction and building within its borders, had testimony taken at more than ten public hearings and received numerous written submissions from the public as part of its anecdotal evidence. Id. at 1414. The city departments continued to discriminate against MBEs and WBEs and continued to operate under the “old boy network” in awarding contracts, thereby disadvantaging MBEs and WBEs. Id. And, the City found that large statistical disparities existed between the percentage of contracts awarded to MBEs and the percentage of available MBEs. 950 F.2d at 1414. The court stated the City also found “discrimination in the private sector against MBEs and WBEs that is manifested in and exacerbated by the City’s procurement practices.” Id. at 1414.

The Ninth Circuit found the study commissioned by the City indicated the existence of large disparities between the award of city contracts to available non-minority businesses and to MBEs. Id. at 1414. Using the City and County of San Francisco as the “relevant market,” the study compared the number of available MBE prime construction contractors in San Francisco with the amount of contract dollars awarded by the City to San Francisco-based MBEs for a particular year. Id. at 1414. The study found that available MBEs received far fewer city contracts in proportion to their numbers than their available non-minority counterparts. Id. Specifically, the study found that with respect to prime construction contracting, disparities between the number of available local Asian-, black- and Hispanic-owned firms and the number of contracts awarded to such firms were statistically significant and supported an inference of discrimination. Id. For example, in prime contracting for construction, although MBE availability was determined to be at 49.5 percent, MBE dollar

participation was only 11.1 percent. Id. The Ninth Circuit stated that in its decision in Coral Construction, it emphasized that such statistical disparities are “an invaluable tool and demonstrating the discrimination necessary to establish a compelling interest. Id. at 1414, citing to Coral Construction, 941 F.2d at 918 and Croson, 488 U.S. at 509.

The court noted that the record documents a vast number of individual accounts of discrimination, which bring “the cold numbers convincingly to life. Id. at 1414, quoting Coral Construction, 941 F.2d at 919. These accounts include numerous reports of MBEs being denied contracts despite being the low bidder, MBEs being told they were not qualified although they were later found qualified when evaluated by outside parties, MBEs being refused work even after they were awarded contracts as low bidder, and MBEs being harrassed by city personnel to discourage them from bidding on city contracts. Id. at 1415. The City pointed to numerous individual accounts of discrimination, that an “old boy network” still exists, and that racial discrimination is still prevalent within the San Francisco construction industry. Id. The court found that such a “combination of convincing anecdotal and statistical evidence is potent.” Id. at 1415 quoting Coral Construction, 941 F.2d at 919.

The court also stated that the 1989 Ordinance applies only to resident MBEs. The City, therefore, according to the court, appropriately confined its study to the city limits in order to focus on those whom the preference scheme targeted. Id. at 1415. The court noted that the statistics relied upon by the City to demonstrate discrimination in its contracting processes considered only MBEs located within the City of San Francisco. Id.

The court pointed out the City’s findings were based upon dozens of specific instances of discrimination that are laid out with particularity in the record, as well as the significant statistical disparities in the award of contracts. The court noted that the City must simply demonstrate the existence of past discrimination with specificity, but there is no requirement that the legislative findings specifically detail each and every incidence that the legislative body has relied upon in support of this decision that affirmative action is necessary. Id. at 1416.

In its analysis of the “narrowly tailored” requirement, the court focused on three characteristics identified by the decision in Croson as indicative of narrow tailoring. First, an MBE program should be instituted either after, or in conjunction with, race-neutral means of increasing minority business participation in public contracting. Id. at 1416. Second, the plan should avoid the use of “rigid numerical quotas.” Id. According to the Supreme Court, systems that permit waiver in appropriate cases and therefore require some individualized consideration of the applicants pose a lesser danger of offending the Constitution. Id. Mechanisms that introduce flexibility into the system also prevent the imposition of a disproportionate burden on a few individuals. Id. Third, “an MBE program must be limited in its effective scope to the boundaries of the enacting jurisdiction. Id. at 1416 quoting Coral Construction, 941 F.2d at 922.

The court found that the record showed the City considered, but rejected as not viable, specific race-neutral alternatives including a fund to assist newly established MBEs in meeting bonding requirements. The court stated that “while strict scrutiny requires serious, good faith consideration of race-neutral alternatives, strict scrutiny does not require exhaustion of every possible such alternative ... however irrational, costly, unreasonable, and unlikely to succeed such alternative may be.” Id. at 1417 quoting Coral Construction, 941 F.2d at 923. The court found the City ten years before had attempted to eradicate discrimination in city contracting through passage of a race-neutral ordinance

that prohibited city contractors from discriminating against their employees on the basis of race and required contractors to take steps to integrate their work force; and that the City made and continues to make efforts to enforce the anti-discrimination ordinance. *Id.* at 1417. The court stated inclusion of such race-neutral measures is one factor suggesting that an MBE plan is narrowly tailored. *Id.* at 1417.

The court also found that the Ordinance possessed the requisite flexibility. Rather than a rigid quota system, the City adopted a more modest system according to the court, that of bid preferences. *Id.* at 1417. The court pointed out that there were no goals, quotas, or set-asides and moreover, the plan remedies only specifically identified discrimination: the City provides preferences only to those minority groups found to have previously received a lower percentage of specific types of contracts than their availability to perform such work would suggest. *Id.* at 1417.

The court rejected the argument of AGCC that to pass constitutional muster any remedy must provide redress only to specific individuals who have been identified as victims of discrimination. *Id.* at 1417, n. 12. The Ninth Circuit agreed with the district court that an iron-clad requirement limiting any remedy to individuals personally proven to have suffered prior discrimination would render any race-conscious remedy “superfluous,” and would thwart the Supreme Court’s directive in *Croson* that race-conscious remedies may be permitted in some circumstances. *Id.* at 1417, n.12. The court also found that the burdens of the bid preferences on those not entitled to them appear “relatively light and well distributed.” *Id.* at 1417. The court stated that the Ordinance was “limited in its geographical scope to the boundaries of the enacting jurisdiction. *Id.* at 1418, quoting *Coral Construction*, 941 F.2d at 925. The court found that San Francisco had carefully limited the ordinance to benefit only those MBEs located within the City’s borders. *Id.* 1418.

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

In *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991), the Ninth Circuit examined the constitutionality of King County, Washington’s minority and women business set-aside program in light of the standard set forth in *City of Richmond v. J.A. Croson Co.* The court held that although the County presented ample anecdotal evidence of disparate treatment of MBE contractors and subcontractors, the total absence of pre-program enactment statistical evidence was problematic to the compelling government interest component of the strict scrutiny analysis. The court remanded to the district court for a determination of whether the post-program enactment studies constituted a sufficient compelling government interest. Per the narrow tailoring prong of the strict scrutiny test, the court found that although the program included race-neutral alternative measures and was flexible (i.e., included a waiver provision), the over breadth of the program to include MBEs outside of King County was fatal to the narrow tailoring analysis.

The court also remanded on the issue of whether the plaintiffs were entitled to damages under 42 U.S.C. §§ 1981 and 1983, and in particular to determine whether evidence of causation existed. With respect to the WBE program, the court held the plaintiff had standing to challenge the program, and applying the intermediate scrutiny analysis, held the WBE program survived the facial challenge.

In finding the absence of any statistical data in support of the County’s MBE Program, the court made it clear that statistical analyses have served and will continue to serve an important role in cases

in which the existence of discrimination is a disputed issue. 941 F.2d at 918. The court noted that it has repeatedly approved the use of statistical proof to establish a prima facie case of discrimination. *Id.* The court pointed out that the U.S. Supreme Court in Croson held that where “gross statistical disparities can be shown, they alone may in a proper case constitute prima facie proof of a pattern or practice of discrimination.” *Id.* at 918, quoting Hazelwood School Dist. v. United States, 433 U.S. 299, 307-08, and Croson, 488 U.S. at 501.

The court points out that statistical evidence may not fully account for the complex factors and motivations guiding employment decisions, many of which may be entirely race-neutral. *Id.* at 919. The court noted that the record contained a plethora of anecdotal evidence, but that anecdotal evidence, standing alone, suffers the same flaws as statistical evidence. *Id.* at 919. While anecdotal evidence may suffice to prove individual claims of discrimination, rarely, according to the court, if ever, can such evidence show a systemic pattern of discrimination necessary for the adoption of an affirmative action plan. *Id.*

Nonetheless, the court held that the combination of convincing anecdotal and statistical evidence is potent. *Id.* at 919. The court pointed out that individuals who testified about their personal experiences brought the cold numbers of statistics “convincingly to life.” *Id.* at 919, quoting International Brotherhood of Teamsters v. United States, 431 U.S. 324, 339 (1977). The court also pointed out that the Eleventh Circuit Court of Appeals, in passing upon a minority set aside program similar to the one in King County, concluded that the testimony regarding complaints of discrimination combined with the gross statistical disparities uncovered by the County studies provided more than enough evidence on the question of prior discrimination and need for racial classification to justify the denial of a Motion for Summary Judgment. *Id.* at 919, citing Cone Corp. v. Hillsborough County, 908 F.2d 908, 916 (11th Cir. 1990).

The court found that the MBE Program of the County could not stand without a proper statistical foundation. *Id.* at 919. The court addressed whether post-enactment studies done by the County of a statistical foundation could be considered by the court in connection with determining the validity of the County MBE Program. The court held that a municipality must have *some* concrete evidence of discrimination in a particular industry before it may adopt a remedial program. *Id.* at 920. However, the court said this requirement of *some* evidence does not mean that a program will be automatically struck down if the evidence before the municipality at the time of enactment does not completely fulfill both prongs of the strict scrutiny test. *Id.* Rather, the court held, the factual predicate for the program should be evaluated based upon all evidence presented to the district court, whether such evidence was adduced before or after enactment of the MBE Program. *Id.* Therefore, the court adopted a rule that a municipality should have before it some evidence of discrimination before adopting a race-conscious program, while allowing post-adoption evidence to be considered in passing on the constitutionality of the program. *Id.*

The court, therefore, remanded the case to the district court for determination of whether the consultant studies that were performed after the enactment of the MBE Program could provide an adequate factual justification to establish a “propelling government interest” for King County’s adopting the MBE Program. *Id.* at 922.

The court also found that Croson does not require a showing of active discrimination by the enacting agency, and that passive participation, such as the infusion of tax dollars into a discriminatory

industry, suffices. Id. at 922, citing Croson, 488 U.S. at 492. The court pointed out that the Supreme Court in Croson concluded that if the City had evidence before it, that non-minority contractors were systematically excluding minority businesses from subcontracting opportunities, it could take action to end the discriminatory exclusion. Id. at 922. The court points out that if the record ultimately supported a finding of systemic discrimination, the County adequately limited its program to those businesses that receive tax dollars, and the program imposed obligations upon only those businesses which voluntarily sought King County tax dollars by contracting with the County. Id.

The court addressed several factors in terms of the narrowly tailored analysis, and found that first, an MBE program should be instituted either after, or in conjunction with, race-neutral means of increasing minority business participation and public contracting. Id. at 922, citing Croson, 488 U.S. at 507. The second characteristic of the narrowly-tailored program, according to the court, is the use of minority utilization goals on a case-by-case basis, rather than upon a system of rigid numerical quotas. Id. Finally, the court stated that an MBE program must be limited in its effective scope to the boundaries of the enacting jurisdiction. Id.

Among the various narrowly tailored requirements, the court held consideration of race-neutral alternatives is among the most important. Id. at 922. Nevertheless, the court stated that while strict scrutiny requires serious, good faith consideration of race-neutral alternatives, strict scrutiny does not require exhaustion of every possible such alternative. Id. at 923. The court noted that it does not intend a government entity exhaust *every* alternative, however irrational, costly, unreasonable, and unlikely to succeed such alternative might be. Id. Thus, the court required only that a state exhausts race-neutral measures that the state is authorized to enact, and that have a reasonable possibility of being effective. Id. The court noted in this case the County considered alternatives, but determined that they were not available as a matter of law. Id. The County cannot be required to engage in conduct that may be illegal, nor can it be compelled to expend precious tax dollars on projects where potential for success is marginal at best. Id.

The court noted that King County had adopted some race-neutral measures in conjunction with the MBE Program, for example, hosting one or two training sessions for small businesses, covering such topics as doing business with the government, small business management, and accounting techniques. Id. at 923. In addition, the County provided information on assessing Small Business Assistance Programs. Id. The court found that King County fulfilled its burden of considering race-neutral alternative programs. Id.

A second indicator of program's narrowly tailoring is program flexibility. Id. at 924. The court found that an important means of achieving such flexibility is through use of case-by-case utilization goals, rather than rigid numerical quotas or goals. Id. at 924. The court pointed out that King County used a "percentage preference" method, which is not a quota, and while the preference is locked at five percent, such a fixed preference is not unduly rigid in light of the waiver provisions. The court found that a valid MBE Program should include a waiver system that accounts for both the availability of qualified MBEs and whether the qualified MBEs have suffered from the effects of past discrimination by the County or prime contractors. Id. at 924. The court found that King County's program provided waivers in both instances, including where neither minority nor a woman's business is

available to provide needed goods or services and where available minority and/or women's businesses have given price quotes that are unreasonably high. Id.

The court also pointed out other attributes of the narrowly tailored and flexible MBE program, including a bidder that does not meet planned goals, may nonetheless be awarded the contract by demonstrating a good faith effort to comply. Id. The actual percentages of required MBE participation are determined on a case-by-case basis. Levels of participation may be reduced if the prescribed levels are not feasible, if qualified MBEs are unavailable, or if MBE price quotes are not competitive. Id.

The court concluded that an MBE program must also be limited in its geographical scope to the boundaries of the enacting jurisdiction. Id. at 925. Here the court held that King County's MBE program fails this third portion of "narrowly tailored" requirement. The court found the definition of "minority business" included in the Program indicated that a minority-owned business may qualify for preferential treatment if the business has been discriminated against in the particular geographical areas in which it operates. The court held this definition as overly broad. Id. at 925. The court held that the County should ask the question whether a business has been discriminated against in King County. Id. This determination, according to the court, is not an insurmountable burden for the County, as the rule does not require finding specific instances of discriminatory exclusion for each MBE. Id. Rather, if the County successfully proves malignant discrimination within the King County business community, an MBE would be presumptively eligible for relief if it had previously sought to do business in the County. Id.

In other words, if systemic discrimination in the County is shown, then it is fair to presume that an MBE was victimized by the discrimination. Id. at 925. For the presumption to attach to the MBE, however, it must be established that the MBE is, or attempted to become, an active participant in the County's business community. Id. Because King County's program permitted MBE participation even by MBEs that have no prior contact with King County, the program was overbroad to that extent. Id. Therefore, the court reversed the grant of summary judgment to King County on the MBE program on the basis that it was geographically overbroad.

The court considered the gender-specific aspect of the MBE program. The court determined the degree of judicial scrutiny afforded gender-conscious programs was intermediate scrutiny, rather than strict scrutiny. Id. at 930. Under intermediate scrutiny, gender-based classification must serve an important governmental objective, and there must be a direct, substantial relationship between the objective and the means chosen to accomplish the objective. Id. at 931.

In this case, the court concluded, that King County's WBE preference survived a facial challenge. Id. at 932. The court found that King County had a legitimate and important interest in remedying the many disadvantages that confront women business owners and that the means chosen in the program were substantially related to the objective. Id. The court found the record adequately indicated discrimination against women in the King County construction industry, noting the anecdotal evidence including an affidavit of the president of a consulting engineering firm. Id. at 933. Therefore, the court upheld the WBE portion of the MBE program and affirmed the district court's grant of summary judgment to King County for the WBE program.

E. Recent Decisions Involving State or Local Government MBE/WBE Programs in Other Jurisdictions

Recent Decisions in Federal Circuit Courts of Appeal

1. H. B. Rowe Co., Inc. v. W. Lyndo Tippet, NCDOT, et al, F.3d 2010 WL 2871076 (4th Cir. July 22, 2010)

The State of North Carolina enacted statutory legislation that required prime contractors to engage in good faith efforts to satisfy participation goals for minority and women subcontractors on state-funded projects. (See facts as detailed in the decision of the United States District Court for the Eastern District of North Carolina discussed below.) The plaintiff, a prime contractor, brought this action after being denied a contract because of its failure to demonstrate good faith efforts to meet the participation goals set on a particular contract that it was seeking an award to perform work with NCDOT. Plaintiff asserted that the participation goals violated the Equal Protection Clause and sought injunctive relief and money damages.

After a bench trial, the district court held the challenged statutory scheme constitutional both on its face and as applied, and the plaintiff prime contractor appealed. 2010 WL 2871076 at *1. The Court of Appeals held that the State did not meet its burden of proof in all respects to uphold the validity of the state legislation. But, the Court agreed with the district court that the State produced a strong basis in evidence justifying the statutory scheme on its face, and as applied to African American and Native American subcontractors, and that the State demonstrated that the legislative scheme is narrowly tailored to serve its compelling interest in remedying discrimination against these racial groups. The Court thus affirmed the decision of the district court in part, reversed it in part and remanded for further proceedings consistent with the opinion. Id.

The Court found that the North Carolina statutory scheme “largely mirrored the federal Disadvantaged Business Enterprise (‘DBE’) program, with which every state must comply in awarding highway construction contracts that utilize federal funds.’ 2010 WL 2871076 at *1. The Court also noted that federal courts of appeal “have uniformly upheld the federal DBE program against equal-protection challenges.” Id., at footnote 1, citing, Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000).

In 2004, the State retained a consultant to prepare and issue a third study of subcontractors employed in North Carolina's highway construction industry. The study, according to the Court, marshaled evidence to conclude that disparities in the utilization of minority subcontractors persisted. 2010 WL 2871076 at *3. The Court pointed out that in response to the study, the North Carolina General Assembly substantially amended state legislation section 136-28.4 and the new law went into effect in 2006. The new statute modified the previous statutory scheme, according to the Court in five important respects. Id.

First, the amended statute expressly conditions implementation of any participation goals on the findings of the 2004 study. Second, the amended statute eliminates the 5 and 10 percent annual goals that were set in the predecessor statute. Id. at *3–*4. Instead, as amended, the statute requires the NCDOT to “establish annual aspirational goals, not mandatory goals, ... for the overall participation in contracts by disadvantaged minority-owned and women-owned businesses ... [that] shall not be applied rigidly on specific contracts or projects.” Id. at *4, quoting, N.C. Gen.Stat. § 136-

28.4(b)(2010). The statute further mandates that the NCDOT set “contract-specific goals or project-specific goals ... for each disadvantaged minority-owned and women-owned business category that has demonstrated significant disparity in contract utilization” based on availability, as determined by the study. *Id.*

Third, the amended statute narrowed the definition of “minority” to encompass only those groups that have suffered discrimination. *Id.* at *4. The amended statute replaced a list of defined minorities to any certain groups by defining “minority” as “only those racial or ethnicity classifications identified by [the study] ... that have been subjected to discrimination in the relevant marketplace and that have been adversely affected in their ability to obtain contracts with the Department.” *Id.* at *4 quoting section 136-28.4(c)(2)(2010).

Fourth, the amended statute required the Department to reevaluate the Program over time and respond to changing conditions. *Id.* Accordingly, the NCDOT must conduct a study similar to the 2004 study at least every five years. *Id.* § 136-28.4(b). Finally, the amended statute contained a sunset provision which was set to expire on August 31, 2009, but the General Assembly subsequently extended the sunset provision to August 31, 2010. *Id.* Section 136-28.4(e) (2010).

The Court also noted that the statute required only good faith efforts by the prime contractors to utilize subcontractors, and that the good faith requirement, the Court found, proved permissive in practice: prime contractors satisfied the requirement in 98.5 percent of cases, failing to do so in only 13 of 878 attempts. *Id.* at *5.

Strict scrutiny. The Court stated the strict scrutiny standard was applicable to justify a race-conscious measure, and that it is a substantial burden but not automatically “fatal in fact.” *Id.* at *6. The Court pointed out that “[t]he unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it.” *Id.* at *6 quoting *Alexander v. Estep*, 95 F.3d 312, 315 (4th Cir. 1996). In so acting, a governmental entity must demonstrate it had a compelling interest in “remedying the effects of past or present racial discrimination.” *Id.* at *6, quoting *Shaw v. Hunt*, 517 U.S. 899, 909 (1996).

Thus, the Court found that to justify a race-conscious measure, a state must identify that discrimination, public or private, with some specificity, and must have a strong basis in evidence for its conclusion that remedial action is necessary. *Id.* at *6 quoting *Croson*, 488 U.S. at 504 and *Wygant v. Jackson Board of Education*, 476 U.S. 267, 277 (1986)(plurality opinion).

The Court significantly noted that: “There is no ‘precise mathematical formula to assess the quantum of evidence that rises to the *Croson* ‘strong basis in evidence’ benchmark.” *Id.* at *6, quoting *Rothe Dev. Corp. v. Department of Defense*, 545 F.3d 1023, 1049 (Fed.Cir. 2008). The Court stated that the sufficiency of the State’s evidence of discrimination “must be evaluated on a case-by-case basis.” *Id.* at *6. (internal quotation marks omitted).

The Court held that a state “need not conclusively prove the existence of past or present racial discrimination to establish a strong basis in evidence for concluding that remedial action is necessary.” *Id.* at *6, citing *Concrete Works*, 321 F.3d at 958. Instead, a state may meet its burden by relying on “a significant statistical disparity” between the availability of qualified, willing, and able

minority subcontractors and the utilization of such subcontractors by the governmental entity or its prime contractors. *Id.* at *6, citing Croson, 488 U.S. at 509 (plurality opinion). The Court stated that “we further require that such evidence be ‘corroborated by significant anecdotal evidence of racial discrimination.’” *Id.* at *6, quoting Maryland Troopers Association, Inc. v. Evans, 993 F.2d 1072, 1077 (4th Cir. 1993).

The Court pointed out that those challenging race-based remedial measures must “introduce credible, particularized evidence to rebut” the state’s showing of a strong basis in evidence for the necessity for remedial action. *Id.* at *6, citing Concrete Works, 321 F.3d at 959. Challengers may offer a neutral explanation for the state’s evidence, present contrasting statistical data, or demonstrate that the evidence is flawed, insignificant, or not actionable. *Id.* at *6 (citations omitted). However, the Court stated “that mere speculation that the state’s evidence is insufficient or methodologically flawed does not suffice to rebut a state’s showing.” *Id.* at *6, citing Concrete Works, 321 F.3d at 991.

The Court held that to satisfy strict scrutiny, the state's statutory scheme must also be “narrowly tailored” to serve the state’s compelling interest in not financing private discrimination with public funds. *Id.* at *7, citing Alexander, 95 F.3d at 315 (citing Adarand, 515 U.S. at 227).

Intermediate scrutiny. The Court held that courts apply “intermediate scrutiny” to statutes that classify on the basis of gender. *Id.* at *7. The Court found that a defender of a statute that classifies on the basis of gender meets this intermediate scrutiny burden “by showing at least that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” *Id.* at *7, quoting Mississippi University for Women v. Hogan, 458 U.S. 718, 724 (1982). The Court noted that intermediate scrutiny requires less of a showing than does “the most exacting” strict scrutiny standard of review. *Id.* at *7.

The Court found that its “sister circuits” provide guidance in formulating a governing evidentiary standard for intermediate scrutiny. These courts agree that such a measure “can rest safely on something less than the ‘strong basis in evidence’ required to bear the weight of a race- or ethnicity-conscious program.” *Id.* at *7, quoting Engineering Contractors, 122 F.3d at 909 (other citations omitted).

In defining what constitutes “something less” than a “strong basis in evidence,” the courts also agree that the party defending the statute must “present ... sufficient probative evidence in support of its stated rationale for enacting a gender preference, i.e., ... the evidence [must be] sufficient to show that the preference rests on evidence-informed analysis rather than on stereotypical generalizations.” *Id.* at *7 quoting Engineering Contractors, 122 F.3d at 910 and Concrete Works, 321 F.3d at 959. The gender-based measures must be based on “reasoned analysis rather than on the mechanical application of traditional, often inaccurate, assumptions.” *Id.* at *7 quoting Hogan, 458 U.S. at 726.

Plaintiff's burden. The Court found that when a plaintiff alleges that a statute violates the Equal Protection Clause as applied and on its face, the plaintiff bears a heavy burden. In its facial challenge, the Court held that a plaintiff “has a very heavy burden to carry, and must show that [a statutory scheme] cannot operate constitutionally under any circumstance.” *Id.* at *7, quoting West Virginia v. U.S. Department of Health & Human Services, 289 F.3d 281, 292 (4th Cir. 2002).

Statistical evidence. The Court examined the State's statistical evidence of discrimination in public-sector subcontracting, including its disparity evidence and regression analysis. The Court noted that the statistical analysis analyzed the difference or disparity between the amount of subcontracting dollars minority- and women-owned businesses actually won in a market and the amount of subcontracting dollars they would be expected to win given their presence in that market. *Id.* at *8. The Court found that the study grounded its analysis in the “disparity index,” which measures the participation of a given racial, ethnic, or gender group engaged in subcontracting. *Id.* In calculating a disparity index, the study divided the percentage of total subcontracting dollars that a particular group won by the percent that group represents in the available labor pool, and multiplied the result by 100. *Id.* The closer the resulting index is to 100, the greater that group's participation. *Id.*

The Court held that after Croson, a number of our sister circuits have recognized the utility of the disparity index in determining statistical disparities in the utilization of minority- and women-owned businesses. *Id.* (Citations to multiple federal circuit court decisions omitted.) The Court also found that generally “courts consider a disparity index lower than 80 as an indication of discrimination.” *Id.* Accordingly, the study considered only a disparity index lower than 80 as warranting further investigation. *Id.*

The Court pointed out that after calculating the disparity index for each relevant racial or gender group, the consultant tested for the statistical significance of the results by conducting standard deviation analysis through the use of t-tests. The Court noted that standard deviation analysis “describes the probability that the measured disparity is the result of mere chance.” *Id.* at *9, quoting Eng’g Contractors, 122 F.3d at 914. The consultant considered the finding of two standard deviations to demonstrate “with 95 percent certainty that disparity, as represented by either overutilization or underutilization, is actually present.” *Id.* *9, citing Eng’g Contractors, 122 F.3d at 914.

The study analyzed the participation of minority and women subcontractors in construction contracts awarded and managed from the central Department office in Raleigh, North Carolina. *Id.* *9. To determine utilization of minority and women subcontractors, the consultant developed a master list of contracts mainly from State-maintained electronic databases and hard copy files; then selected from that list a statistically valid sample of contracts, and calculated the percentage of subcontracting dollars awarded to minority- and women-owned businesses during the 5-year period ending in June 2003. (The study was published in 2004). *Id.* at *9.

The Court found that the use of data for centrally-awarded contracts was sufficient for its analysis. It was noted that data from construction contracts awarded and managed from the department divisions across the state and from preconstruction contracts, which involve work from engineering firms and architectural firms on the design of highways, was incomplete and not accurate. *Id.* at *9, n.6. These data were not relied upon in forming the opinions relating to the study. *Id.* at *9, n. 6.

To estimate availability, which the Court defined as the percentage of a particular group in the relevant market area, the consultant created a vendor list comprising: (1) subcontractors approved by the department to perform subcontract work on state-funded projects, (2) subcontractors that performed such work during the study period, and (3) contractors qualified to perform prime construction work on state-funded contracts. Id. at *9. The Court noted that prime construction work on state-funded contracts was included based on the testimony by the consultant that prime contractors are qualified to perform subcontracting work and often do perform such work. Id. The Court also noted that the consultant submitted its master list to the Department for verification. Id.

Based on the utilization and availability figures, the study prepared the disparity analysis comparing the utilization based on the percentage of subcontracting dollars over the five year period, determining the availability in numbers of firms and their percentage of the labor pool, a disparity index which is the percentage of utilization in dollars divided by the percentage of availability multiplied by 100, and a T Value. Id.

The Court concluded that the figures demonstrated prime contractors underutilized all of the minority subcontractor classifications on state-funded construction contracts during the study period. Id. at *10. The disparity index for each group was less than 80 and, thus, the Court found warranted further investigation. Id. The t-test results, however, demonstrated marked underutilization only of African American and Native American subcontractors. Id. For African Americans the t-value fell outside of two standard deviations from the mean and, therefore, was statistically significant at a 95 percent confidence level. Id. The Court found there was at least a 95 percent probability that prime contractors' underutilization of African American subcontractors was *not* the result of mere chance. Id.

For Native American subcontractors, the t-value of 1.41 was significant at a confidence level of approximately 85 percent. Id. The t-values for Hispanic American and Asian American subcontractors, demonstrated significance at a confidence level of approximately 60 percent. The disparity index for women subcontractors found that they were overutilized during the study period. The overutilization was statistically significant at a 95 percent confidence level. Id.

The consultant also conducted a regression analysis studying the influence of certain company and business characteristics — with a particular focus on owner race and gender — on a firm's gross revenues. Id. The consultant obtained the data from a telephone survey of firms that conducted or attempted to conduct business with the Department. The survey pool consisted of a random sample of such firms. Id.

The consultant used the firms' gross revenues as the dependent variable in the regression analysis to test the effect of other variables, including company age and number of full-time employees, and the owners' years of experience, level of education, race, ethnicity, and gender. Id. at *10. The analysis revealed that minority and women ownership universally had a negative effect on revenue, and African American ownership of a firm had the largest negative effect on that firm's gross revenue of all the independent variables included in the regression model. Id. These findings led to the conclusion that for African Americans the disparity in firm revenue was not due to capacity-related or managerial characteristics alone. Id.

The Court rejected the arguments by the plaintiffs attacking the availability estimates. The Court rejected the plaintiff's expert, Dr. George LaNoue, who testified that bidder data — reflecting the number of subcontractors that actually bid on Department subcontracts — estimates availability better than “vendor data.” *Id.* at *11. Dr. LaNoue conceded, however, that the State does not compile bidder data and that bidder data actually reflects skewed availability in the context of a goals program that urges prime contractors to solicit bids from minority and women subcontractors. *Id.* The Court found that the plaintiff's expert did not demonstrate that the vendor data used in the study was unreliable, or that the bidder data would have yielded less support for the conclusions reached. In sum, the Court held that the plaintiff's challenge to the availability estimate failed because it could not demonstrate that the 2004 study's availability estimate was inadequate. *Id.* at *11. The Court cited Concrete Works, 321 F.3d at 991 for the proposition that a challenger cannot meet its burden of proof through conjecture and unsupported criticisms of the state's evidence,” and that the plaintiff Rowe presented no viable alternative for determining availability. *Id.* at *11, citing Concrete Works, 321 F.3d 991 and Sherbrooke Turf, Inc. v. Minn. Department of Transportation, 345 F.3d 964, 973 (8th Cir. 2003).

The Court also rejected the plaintiff's argument that minority subcontractors participated on state-funded projects at a level consistent with their availability in the relevant labor pool, based on the state's response that evidence as to the *number* of minority subcontractors working with state-funded projects does not effectively rebut the evidence of discrimination in terms of subcontracting *dollars*. *Id.* at *11. The State pointed to evidence indicating that prime contractors used minority businesses for low-value work in order to comply with the goals, and that African American ownership had a significant negative impact on firm revenue unrelated to firm capacity or experience. *Id.* The Court concluded plaintiff did not offer any contrary evidence. *Id.*

The Court found that the State bolstered its position by presenting evidence that minority subcontractors have the capacity to perform higher-value work. *Id.* at *12. The study concluded, based on a sample of subcontracts and reports of annual firm revenue, that exclusion of minority subcontractors from contracts under \$500,000 was not a function of capacity. *Id.* at *12. Further, the State showed that over 90 percent of the Department's subcontracts were valued at \$500,000 or less, and that capacity constraints do not operate with the same force on subcontracts as they may on prime contracts because subcontracts tend to be relatively small. *Id.* at *12. The Court pointed out that the Court in Rothe II, 545 F.3d at 1042-45, faulted disparity analyses of total construction dollars, including prime contracts, for failing to account for the relative capacity of firms in that case. *Id.* at *12.

The Court pointed out that in addition to the statistical evidence, the State also presented evidence demonstrating that from 1991 to 1993, during the Program's suspension, prime contractors awarded substantially less subcontracting dollars to minority and women subcontractors on state-funded projects. The Court rejected the plaintiff's argument that evidence of a decline in utilization does not raise an inference of discrimination. *Id.* at *12. The Court held that the very significant decline in utilization of minority and women-subcontractors — nearly 38 percent — “surely provides a basis for a fact finder to infer that discrimination played some role in prime contractors' reduced utilization of these groups during the suspension.” *Id.* at *12, citing Adarand v. Slater, 228 F.3d at 1174 (finding that evidence of declining minority utilization after a program has been discontinued “strongly supports the government's claim that there are significant barriers to minority competition in the

public subcontracting market, raising the specter of racial discrimination.”) The Court found such an inference is particularly compelling for minority-owned businesses because, even during the study period, prime contractors continue to underutilize them on state-funded road projects. *Id.* at *12.

Anecdotal evidence. The State additionally relied on three sources of anecdotal evidence contained in the study: a telephone survey, personal interviews, and focus groups. The Court found the anecdotal evidence showed an informal “good old boy” network of white contractors that discriminated against minority subcontractors. *Id.* at *12. The Court noted that three-quarters of African American respondents to the telephone survey agreed that an informal network of prime and subcontractors existed in the state, as did the majority of other minorities, and that more than half of African American respondents believed the network excluded their companies from bidding or awarding a contract, as did many of the other minorities. *Id.* at *12. The Court found that nearly half of non-minority male respondents corroborated the existence of an informal network; however, only 17 percent of them believed that the network excluded their companies from bidding or winning contracts. *Id.*

Anecdotal evidence also showed a large majority of African American respondents reported that double standards in qualifications and performance made it more difficult for them to win bids and contracts, that prime contractors view minority firms as being less competent than nonminority firms, and that nonminority firms change their bids when not required to hire minority firms. *Id.* at *13. In addition, the anecdotal evidence showed African American and Native American respondents believed that prime contractors sometimes dropped minority subcontractors after winning contracts. *Id.* at *13. The Court found that interview and focus-group responses echoed and underscored these reports. *Id.*

The anecdotal evidence indicated that prime contractors already know who they will use on the contract before they solicit bids; that the “good old boy network” affects business because prime contractors just pick up the phone and call their buddies, which excludes others from that market completely; that prime contractors prefer to use other less qualified minority-owned firms to avoid subcontracting with African American-owned firms; and that prime contractors use their preferred subcontractor regardless of the bid price. *Id.* at 13. Several minority subcontractors reported that prime contractors do not treat minority firms fairly, pointing to instances in which prime contractors solicited quotes the day before bids were due, did not respond to bids from minority subcontractors, refused to negotiate prices with them, or gave minority subcontractors insufficient information regarding the project. *Id.* at *13.

The Court rejected the plaintiffs’ contention that the anecdotal data was flawed because the study did not verify the anecdotal data and that the consultant oversampled minority subcontractors in collecting the data. The Court stated that the plaintiffs offered no rationale as to why a fact finder could not rely on the State’s “unverified” anecdotal data, and pointed out that a fact finder could very well conclude that anecdotal evidence need not — and indeed cannot — be verified because it “is nothing more than a witness’s narrative of an incident told from the witness’s perspective and including the witness’s perceptions.” *Id.* at *13, quoting *Concrete Works*, 321 F.3d at 989.

The Court held that anecdotal evidence simply supplements statistical evidence of discrimination. *Id.* at *13. The Court rejected plaintiffs’ argument that the study oversampled representatives from minority groups, and found that surveying more non-minority men would not have advanced the

inquiry. *Id.* at *13. It was noted that the samples of the minority groups were randomly selected. *Id.* The Court found the state had compelling anecdotal evidence that minority subcontractors face race-based obstacles to successful bidding. *Id.* at *14.

Strong basis in evidence that the minority participation goals were necessary to remedy discrimination. The Court held that the State presented a “strong basis in evidence” for its conclusion that minority participation goals were necessary to remedy discrimination against African American and Native American subcontractors. *Id.* at *14. Therefore, the Court held that the State satisfied the strict scrutiny test. The Court found that the State’s data demonstrated that prime contractors grossly underutilized African American and Native American subcontractors in public sector subcontracting during the study. *Id.* at *14. The Court noted that these findings have particular resonance because since 1983, North Carolina has encouraged minority participation in state-funded highway projects, and yet African American and Native American subcontractors continue to be underutilized on such projects. *Id.* at *14.

In addition, the Court found the disparity index in the study demonstrated statistically significant underutilization of African American subcontractors at a 95 percent confidence level, and of Native American subcontractors at a confidence level of approximately 85 percent. *Id.* at *15. The Court concluded the State bolstered the disparity evidence with regression analysis demonstrating that African American ownership correlated with a significant, negative impact on firm revenue, and demonstrated there was a dramatic decline in the utilization of minority subcontractors during the suspension of the program in the 1990s. *Id.*

Thus, the Court held the State’s evidence showing a gross statistical disparity between the availability of qualified African American and Native American subcontractors and the amount of subcontracting dollars they win on public sector contracts established the necessary statistical foundation for upholding the minority participation goals with respect to these groups. *Id.* at *15. The Court then found that the State’s anecdotal evidence of discrimination against these two groups sufficiently supplemented the State’s statistical showing. *Id.* The survey in the study exposed an informal, racially exclusive network that systemically disadvantaged minority subcontractors. *Id.* at *15. The Court held that the State could conclude with good reason that such networks exert a chronic and pernicious influence on the marketplace that calls for remedial action. *Id.* The Court found the anecdotal evidence indicated that racial discrimination is a critical factor underlying the gross statistical disparities presented in the study. *Id.* at *15. Thus, the Court held that the State presented substantial statistical evidence of gross disparity, corroborated by “disturbing” anecdotal evidence.

The Court held in circumstances like these, the Supreme Court has made it abundantly clear a state can remedy a public contracting system that withholds opportunities from minority groups because of their race. *Id.* at *16.

Narrowly tailored. The Court then addressed whether the North Carolina statutory scheme was narrowly tailored to achieve the State’s compelling interest in remedying discrimination against African American and Native American subcontractors in public-sector subcontracting. The following factors were considered in determining whether the statutory scheme was narrowly tailored.

Neutral measures. The Court held that narrowly tailoring requires “serious, good faith consideration of workable race-neutral alternatives,” but a state need not “exhaust ... every conceivable race-neutral

alternative.” *Id.* at *16 quoting *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003). The Court found that the study details numerous alternative race-neutral measures aimed at enhancing the development and competitiveness of small or otherwise disadvantaged businesses in North Carolina. *Id.* at *16. The Court pointed out various race-neutral alternatives and measures, including a Small Business Enterprise Program; waiving institutional barriers of bonding and licensing requirements on certain small business contracts of \$500,000 or less; and the Department contracts for support services to assist disadvantaged business enterprises with bookkeeping and accounting, taxes, marketing, bidding, negotiation, and other aspects of entrepreneurial development. *Id.* at *16.

The Court found that plaintiff identified no viable race-neutral alternatives that North Carolina had failed to consider and adopt. The Court also found that the State had undertaken most of the race-neutral alternatives identified by the U.S. Department of Transportation in its regulations governing the Federal DBE Program. *Id.* at *16, citing 49 C.F.R. § 26.51(b). The Court concluded that the State gave serious good faith consideration to race-neutral alternatives prior to adopting the statutory scheme. *Id.*

The Court concluded that despite these race-neutral efforts, the study demonstrated disparities continue to exist in the utilization of African American and Native American subcontractors in state-funded highway construction subcontracting, and that these “persistent disparities indicate the necessity of a race-conscious remedy.” *Id.* at *17.

Duration. The Court agreed with the district court that the program was narrowly tailored in that it set a specific expiration date and required a new disparity study every five years. *Id.* at *17. The Court found that the program’s inherent time limit and provisions requiring regular reevaluation ensure it is carefully designed to endure only until the discriminatory impact has been eliminated. *Id.* at *17, citing *Adarand Constructors v. Slater*, 228 F.3d at 1179 (quoting *United States v. Paradise*, 480 U.S. 149, 178 (1987)).

Program’s goals related to percentage of minority subcontractors. The Court concluded that the State had demonstrated that the Program’s participation goals are related to the percentage of minority subcontractors in the relevant markets in the State. *Id.* at *17. The Court found that the Department had taken concrete steps to ensure that these goals accurately reflect the availability of minority-owned businesses on a project-by-project basis. *Id.*

Flexibility. The Court held that the Program was flexible and thus satisfied this indicator of narrow tailoring. *Id.* at *17. The Program contemplated a waiver of project-specific goals when prime contractors make good faith efforts to meet those goals, and that the good faith efforts essentially require only that the prime contractor solicit and consider bids from minorities. *Id.* The State does not require or expect the prime contractor to accept any bid from an unqualified bidder, or any bid that is not the lowest bid. *Id.* The Court found there was a lenient standard and flexibility of the “good faith” requirement, and noted the evidence showed only 13 of 878 good faith submissions failed to demonstrate good faith efforts. *Id.*

Burden on non-MWBE/DBEs. The Court rejected the two arguments presented by plaintiff that the Program created onerous solicitation and follow-up requirements, finding that there was no need for additional employees dedicated to the task of running the solicitation program to obtain MBE/WBEs, and that there was no evidence to support the claim that plaintiff was required to

subcontract millions of dollars of work that it could perform itself for less money. Id. at *18. The State offered evidence from the study that prime contractors need not submit subcontract work that they can self-perform. Id.

Overinclusive. The Court found by its own terms the statutory scheme is not overinclusive because it limited relief to only those racial or ethnicity classifications that have been subjected to discrimination in the relevant marketplace and that had been adversely affected in their ability to obtain contracts with the Department. Id. at *18. The Court concluded that in tailoring the remedy this way, the legislature did not randomly include racial groups that may never have suffered from discrimination in the construction industry, but rather, contemplated participation goals only for those groups shown to have suffered discrimination. Id.

In sum, the Court held that the statutory scheme is narrowly tailored to achieve the State’s compelling interest in remedying discrimination in public-sector subcontracting against African American and Native American subcontractors. Id. at *18.

Women-owned businesses overutilized. The study’s public-sector disparity analysis demonstrated that women-owned businesses won far more than their expected share of subcontracting dollars during the study period. Id. at *18. In other words, the Court concluded that prime contractors substantially overutilized women subcontractors on public road construction projects. Id. The Court found the public-sector evidence did not evince the “exceedingly persuasive justification” the Supreme Court requires. Id. at *18.

The Court noted that the State relied heavily on private-sector data from the study attempting to demonstrate that prime contractors significantly underutilized women subcontractors in the general construction industry statewide and in the Charlotte, North Carolina area. Id. at *19. However, because the study did not provide a t-test analysis on the private sector disparity figures to calculate statistical significance, the Court could not determine whether this private underutilization was “the result of mere chance.” Id. at *19. The Court found troubling the “evidentiary gap” that there was no evidence indicating the extent to which women-owned businesses competing on public sector road projects vied for private sector subcontracts in the general construction industry. Id. at *19. The Court also found that the State did not present any anecdotal evidence indicating that women subcontractors successfully bidding on State contracts faced private-sector discrimination. Id. In addition, the Court found missing any evidence prime contractors that discriminate against women subcontractors in the private sector nevertheless win public-sector contracts. Id.

The Court pointed out that it did not suggest that the proponent of a gender-conscious program “must always tie private discrimination to public action.” Id. at *19, FN. 11. But the Court held that where, as here, there existed substantial probative evidence of overutilization in the relevant public sector, a state must present something more than generalized private sector data unsupported by compelling anecdotal evidence to justify a gender-conscious program. Id. at *19, n. 11.

Moreover, the Court found the State failed to establish the amount of overlap between general construction and road construction subcontracting. Id. at *19. The Court said that the dearth of evidence as to the correlation between public road construction subcontracting and private general construction subcontracting severely limits the private data’s probative value in this case. Id.

Thus, the Court held that the State could not overcome the strong evidence of overutilization in the public sector in terms of gender participation goals, and that the proffered private sector data failed to establish discrimination in the particular field in question. *Id.* at *20. Further, the anecdotal evidence, the Court concluded, indicated that most women subcontractors do not experience discrimination. *Id.* Thus, the Court held that the State failed to present sufficient evidence to support the Program's current inclusion of women subcontractors in setting participation goals. *Id.*

Holding. The Court held that the state legislature had crafted legislation that withstood the constitutional scrutiny. *Id.* at *21. The Court concluded that in light of the statutory scheme's flexibility and responsiveness to the realities of the marketplace, and given the State's strong evidence of discrimination against African American and Native American subcontractors in public-sector subcontracting, the State's application of the statute to these groups is constitutional. *Id.* at *21. However, the Court also held that because the State failed to justify its application of the statutory scheme to women, Asian American, and Hispanic American subcontractors, the Court found those applications were not constitutional.

Therefore, the Court affirmed the judgment of the district court with regard to the facial validity of the statute, and with regard to its application to African American and Native American subcontractors. *Id.* at *21. The Court reversed the district court's judgment insofar as it upheld the constitutionality of the state legislature as applied to women, Asian American and Hispanic American subcontractors. *Id.* The Court thus remanded the case to the district court to fashion an appropriate remedy consistent with the opinion. *Id.*

Concurring opinions. It should be pointed out that there were two concurring opinions by the three Judge panel: one judge concurred in the judgment, and the other judge concurred fully in the majority opinion and the judgment.

2. Rapid Test Prods., Inc. v. Durham Sch. Servs., Inc., 460 F.3d 859 (7th Cir. 2006)

In Rapid Test Products, Inc. v. Durham School Services Inc., the Seventh Circuit Court of Appeals held that 42 U.S.C. § 1981 (the federal anti-discrimination law) did not provide an "entitlement" in disadvantaged businesses to receive contracts subject to set aside programs; rather, § 1981 provided a remedy for individuals who were subject to discrimination.

Durham School Services, Inc. ("Durham"), a prime contractor, submitted a bid for and won a contract with an Illinois school district. The contract was subject to a set-aside program reserving some of the subcontracts for disadvantaged business enterprises (a race- and gender-conscious program). Prior to bidding, Durham negotiated with Rapid Test Products, Inc. ("Rapid Test"), made one payment to Rapid Test as an advance, and included Rapid Test in its final bid. Rapid Test believed it had received the subcontract. However, after the school district awarded the contract to Durham, Durham gave the subcontract to one of Rapid Test's competitor's, a business owned by an Asian male. The school district agreed to the substitution. Rapid Test brought suit against Durham under 42 U.S.C. § 1981 alleging that Durham discriminated against it because Rapid's owner was a black woman.

The district court granted summary judgment in favor of Durham holding the parties' dealing had been too indefinite to create a contract. On appeal, the Seventh Circuit Court of Appeals stated that "§ 1981 establishes a rule against discrimination in contracting and does not create any entitlement to be the beneficiary of a contract reserved for firms owned by specified racial, sexual, ethnic, or religious groups. Arguments that a particular set-aside program is a lawful remedy for prior discrimination may or may not prevail if a potential subcontractor claims to have been excluded, but it is to victims of discrimination rather than frustrated beneficiaries that § 1981 assigns the right to litigate."

The court held that if race or sex discrimination is the reason why Durham did not award the subcontract to Rapid Test, then § 1981 provides relief. Having failed to address this issue, the Seventh Circuit Court of Appeals remanded the case to the district court to determine whether Rapid Test had evidence to back up its claim that race and sex discrimination, rather than a nondiscriminatory reason such as inability to perform the services Durham wanted, accounted for Durham's decision to hire Rapid Test's competitor.

3. Jana-Rock Construction, Inc. v. New York State Dept. of Economic Development, 438 F.3d 195 (2d Cir. 2006)

This recent case is instructive in connection with the determination of the groups that may be included in a MBE/WBE-type program, and the standard of analysis utilized to evaluate a local government's non-inclusion of certain groups. In this case, the Second Circuit Court of Appeals held racial classifications that are challenged as "under-inclusive" (i.e., those that exclude persons from a particular racial classification) are subject to a "rational basis" review, not strict scrutiny.

Plaintiff Luiere, a 70 percent shareholder of Jana-Rock Construction, Inc. ("Jana Rock") and the "son of a Spanish mother whose parents were born in Spain," challenged the constitutionality of the State of New York's definition of "Hispanic" under its local minority-owned business program. 438 F.3d 195, 199-200 (2d Cir. 2006). Under the U.S. Department of Transportation regulations, 49 C.F.R. § 26.5, "Hispanic Americans" are defined as "persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race." *Id.* at 201. Upon proper application, Jana-Rock was certified by the New York Department of Transportation as a Disadvantaged Business Enterprise ("DBE") under the federal regulations. *Id.*

However, unlike the federal regulations, the State of New York's local minority-owned business program included in its definition of minorities "Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race." The definition did not include all persons from, or descendants of persons from, Spain or Portugal. *Id.* Accordingly, Jana-Rock was denied MBE certification under the local program; Jana-Rock filed suit alleging a violation of the Equal Protection Clause. *Id.* at 202-03. The plaintiff conceded that the overall minority-owned business program satisfied the requisite strict scrutiny, but argued that the definition of "Hispanic" was fatally under-inclusive. *Id.* at 205.

The Second Circuit found that the narrow-tailoring prong of the strict scrutiny analysis "allows New York to identify which groups it is prepared to prove are in need of affirmative action without demonstrating that no other groups merit consideration for the program." *Id.* at 206. The court found that evaluating under-inclusiveness as an element of the strict scrutiny analysis was at odds

with the United States Supreme Court decision in City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) which required that affirmative action programs be no broader than necessary. Id. at 207-08. The court similarly rejected the argument that the state should mirror the federal definition of “Hispanic,” finding that Congress has more leeway than the states to make broader classifications because Congress is making such classifications on the national level. Id. at 209.

The court opined — without deciding — that it may be impermissible for New York to simply adopt the “federal USDOT definition of Hispanic without at least making an independent assessment of discrimination against Hispanics of Spanish Origin in New York.” Id. Additionally, finding that the plaintiff failed to point to any discriminatory purpose by New York in failing to include persons of Spanish or Portuguese descent, the court determined that the rational basis analysis was appropriate. Id. at 213.

The court held that the plaintiff failed the rational basis test for three reasons: (1) because it was not irrational nor did it display animus to exclude persons of Spanish and Portuguese descent from the definition of Hispanic; (2) because the fact the plaintiff could demonstrate evidence of discrimination that he personally had suffered did not render New York’s decision to exclude persons of Spanish and Portuguese descent irrational; and (3) because the fact New York may have relied on Census data including a small percentage of Hispanics of Spanish descent did not mean that it was irrational to conclude that Hispanics of Latin American origin were in greater need of remedial legislation. Id. at 213-14. Thus, the Second Circuit affirmed the conclusion that New York had a rational basis for its definition to not include persons of Spanish and Portuguese descent, and thus affirmed the district court decision upholding the constitutionality of the challenged definition.

4. Viridi v. DeKalb County School District, 135 Fed. Appx. 262, 2005 WL 138942 (11th Cir. 2005) (unpublished opinion)

Although it is an unpublished opinion, Viridi v. DeKalb County School District is a recent Eleventh Circuit decision reviewing a challenge to a local government MBE/WBE-type program, which is instructive to the disparity study. In Viridi, the Eleventh Circuit struck down a MBE/WBE goal program that the court held contained racial classifications. The court based its ruling primarily on the failure of the DeKalb County School District (the “District”) to seriously consider and implement a race-neutral program and to the infinite duration of the program.

Plaintiff Viridi, an Asian American architect of Indian descent, filed suit against the District, members of the DeKalb County Board of Education (both individually and in their official capacities) (the “Board”) and the Superintendent (both individually and in his official capacity) (collectively “defendants”) pursuant to 42 U.S.C. §§ 1981 and 1983 and the Fourteenth Amendment alleging that they discriminated against him on the basis of race when awarding architectural contracts. 135 Fed. Appx. 262, 264 (11th Cir. 2005). Viridi also alleged the school district’s Minority Vendor Involvement Program was facially unconstitutional. Id.

The district court initially granted the defendants’ Motions for Summary Judgment on all of Viridi’s claims and the Eleventh Circuit Court of Appeals reversed in part, vacated in part, and remanded. Id. On remand, the district court granted the defendants’ Motion for Partial Summary Judgment on the facial challenge, and then granted the defendants’ motion for a judgment as a matter of law on the remaining claims at the close of Viridi’s case. Id.

In 1989, the Board appointed the Tillman Committee (the “Committee”) to study participation of female- and minority-owned businesses with the District. *Id.* The Committee met with various District departments and a number of minority contractors who claimed they had unsuccessfully attempted to solicit business with the District. *Id.* Based upon a “general feeling” that minorities were under-represented, the Committee issued the Tillman Report (the “Report”) stating “the Committee’s impression that ‘[m]inorities ha[d] not participated in school board purchases and contracting in a ratio reflecting the minority make-up of the community.” *Id.* The Report contained no specific evidence of past discrimination nor any factual findings of discrimination. *Id.*

The Report recommended that the District: (1) Advertise bids and purchasing opportunities in newspapers targeting minorities, (2) conduct periodic seminars to educate minorities on doing business with the District, (3) notify organizations representing minority firms regarding bidding and purchasing opportunities, and (4) publish a “how to” booklet to be made available to any business interested in doing business with the District.

Id. The Report also recommended that the District adopt annual, aspirational participation goals for women- and minority-owned businesses. *Id.* The Report contained statements indicating the selection process should remain neutral and recommended that the Board adopt a non-discrimination statement. *Id.*

In 1991, the Board adopted the Report and implemented several of the recommendations, including advertising in the AJC, conducting seminars, and publishing the “how to” booklet. *Id.* The Board also implemented the Minority Vendor Involvement Program (the “MVP”) which adopted the participation goals set forth in the Report. *Id.* at 265.

The Board delegated the responsibility of selecting architects to the Superintendent. *Id.* Virdi sent a letter to the District in October 1991 expressing interest in obtaining architectural contracts. *Id.* Virdi sent the letter to the District Manager and sent follow-up literature; he re-contacted the District Manager in 1992 and 1993. *Id.* In August 1994, Virdi sent a letter and a qualifications package to a project manager employed by Heery International. *Id.* In a follow-up conversation, the project manager allegedly told Virdi that his firm was not selected not based upon his qualifications, but because the “District was only looking for ‘black-owned firms.’” *Id.* Virdi sent a letter to the project manager requesting confirmation of his statement in writing and the project manager forwarded the letter to the District. *Id.*

After a series of meetings with District officials, in 1997, Virdi met with the newly hired Executive Director. *Id.* at 266. Upon request of the Executive Director, Virdi re-submitted his qualifications but was informed that he would be considered only for future projects (Phase III SPLOST projects). *Id.* Virdi then filed suit before any Phase III SPLOST projects were awarded. *Id.*

The Eleventh Circuit considered whether the MVP was facially unconstitutional and whether the defendants intentionally discriminated against Virdi on the basis of his race. The court held that strict scrutiny applies to all racial classifications and is not limited to merely set-asides or mandatory quotas; therefore, the MVP was subject to strict scrutiny because it contained racial classifications. *Id.* at 267. The court first questioned whether the identified government interest was compelling. *Id.* at 268. However, the court declined to reach that issue because it found the race-based participation goals were not narrowly tailored to achieving the identified government interest. *Id.*

The court held the MVP was not narrowly tailored for two reasons. *Id.* First, because no evidence existed that the District considered race-neutral alternatives to “avoid unwitting discrimination.” The court found that “[w]hile narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, it does require serious, good faith consideration of whether such alternatives could serve the governmental interest at stake.” *Id.*, citing *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003), and *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509-10 (1989). The court found that District could have engaged in any number of equally effective race-neutral alternatives, including using its outreach procedure and tracking the participation and success of minority-owned business as compared to non-minority-owned businesses. *Id.* at 268, n.8. Accordingly, the court held the MVP was not narrowly tailored. *Id.* at 268.

Second, the court held that the unlimited duration of the MVP’s racial goals negated a finding of narrow tailoring. *Id.* “[R]ace conscious ... policies must be limited in time.” *Id.*, citing *Grutter*, 539 U.S. at 342, and *Walker v. City of Mequite, TX*, 169 F.3d 973, 982 (5th Cir. 1999). The court held that because the government interest could have been achieved utilizing race-neutral measures, and because the racial goals were not temporally limited, the MVP could not withstand strict scrutiny and was unconstitutional on its face. *Id.* at 268.

With respect to Viridi’s claims of intentional discrimination, the court held that although the MVP was facially unconstitutional, no evidence existed that the MVP or its unconstitutionality caused Viridi to lose a contract that he would have otherwise received. *Id.* Thus, because Viridi failed to establish a causal connection between the unconstitutional aspect of the MVP and his own injuries, the court affirmed the district court’s grant of judgment on that issue. *Id.* at 269. Similarly, the court found that Viridi presented insufficient evidence to sustain his claims against the Superintendent for intentional discrimination. *Id.*

The court reversed the district court’s order pertaining to the facial constitutionality of the MVP’s racial goals, and affirmed the district court’s order granting defendants’ motion on the issue of intentional discrimination against Viridi. *Id.* at 270.

5. Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003), cert. denied, 540 U.S. 1027, 124 S. Ct. 556 (2003) (Scalia, Justice with whom the Chief Justice Rehnquist, joined, dissenting from the denial of certiorari)

This case is instructive to the disparity study because it is one of the only recent decisions to uphold the validity of a local government MBE/WBE program. It is significant to note that the Tenth Circuit did not apply the narrowly tailored test and thus did not rule on an application of the narrowly tailored test, instead finding that the plaintiff had waived that challenge in one of the earlier decisions in the case. This case also is one of the only cases to have found private sector marketplace discrimination as a basis to uphold an MBE/WBE-type program.

In *Concrete Works* the United States Court of Appeals for the Tenth Circuit held that the City and County of Denver had a compelling interest in limiting race discrimination in the construction industry, that the City had an important governmental interest in remedying gender discrimination in the construction industry, and found that the City and County of Denver had established a compelling governmental interest to have a race- and gender-based program. In *Concrete Works*, the

Court of Appeals did not address the issue of whether the MWBE Ordinance was narrowly tailored because it held the district court was barred under the law of the case doctrine from considering that issue since it was not raised on appeal by the plaintiff construction companies after they had lost that issue on summary judgment in an earlier decision. Therefore, the Court of Appeals did not reach a decision as to narrowly tailoring or consider that issue in the case.

Case history. Plaintiff, Concrete Works of Colorado, Inc. (“CWC”) challenged the constitutionality of an “affirmative action” ordinance enacted by the City and County of Denver (hereinafter the “City” or “Denver”). 321 F.3d 950, 954 (10th Cir. 2003). The ordinance established participation goals for racial minorities and women on certain City construction and professional design projects. Id.

The City enacted an Ordinance No. 513 (“1990 Ordinance”) containing annual goals for MBE/WBE utilization on all competitively bid projects. Id. at 956. A prime contractor could also satisfy the 1990 Ordinance requirements by using “good faith efforts.” Id. In 1996, the City replaced the 1990 Ordinance with Ordinance No. 304 (the “1996 Ordinance”). The district court stated that the 1996 Ordinance differed from the 1990 Ordinance by expanding the definition of covered contracts to include some privately financed contracts on City-owned land; added updated information and findings to the statement of factual support for continuing the program; refined the requirements for W/MBE certification and graduation; mandated the use of MBEs and WBEs on change orders; and expanded sanctions for improper behavior by MBEs, WBEs or majority-owned contractors in failing to perform the affirmative action commitments made on City projects. Id. at 956-57.

The 1996 Ordinance was amended in 1998 by Ordinance No. 948 (the “1998 Ordinance”). The 1998 Ordinance reduced annual percentage goals and prohibited an MBE or a WBE, acting as a bidder, from counting self-performed work toward project goals. Id. at 957.

CWC filed suit challenging the constitutionality of the 1990 Ordinance. Id. The district court conducted a bench trial on the constitutionality of the three ordinances. Id. The district court ruled in favor of CWC and concluded that the ordinances violated the Fourteenth Amendment. Id. The City then appealed to the Tenth Circuit Court of Appeals. Id. The Court of Appeals reversed and remanded. Id. at 954.

The Court of Appeals applied strict scrutiny to race-based measures and intermediate scrutiny to the gender-based measures. Id. at 957-58, 959. The Court of Appeals also cited Richmond v. J.A. Croson Co., for the proposition that a governmental entity “can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment.” 488 U.S. 469, 492 (1989) (plurality opinion). Because “an effort to alleviate the effects of *societal* discrimination is not a compelling interest,” the Court of Appeals held that Denver could demonstrate that its interest is compelling only if it (1) identified the past or present discrimination “with some specificity,” and (2) demonstrated that a “strong basis in evidence” supports its conclusion that remedial action is necessary. Id. at 958, quoting Shaw v. Hunt, 517 U.S. 899, 909-10 (1996).

The court held that Denver could meet its burden without conclusively proving the existence of past or present racial discrimination. Id. Rather, Denver could rely on “empirical evidence that

demonstrates ‘a significant statistical disparity between the number of qualified minority contractors ... and the number of such contractors actually engaged by the locality or the locality’s prime contractors.’” Id., quoting Croson, 488 U.S. at 509 (plurality opinion). Furthermore, the Court of Appeals held that Denver could rely on statistical evidence gathered from the six-county Denver Metropolitan Statistical Area (MSA) and could supplement the statistical evidence with anecdotal evidence of public and private discrimination. Id.

The Court of Appeals held that Denver could establish its compelling interest by presenting evidence of its own direct participation in racial discrimination or its passive participation in private discrimination. Id. The Court of Appeals held that once Denver met its burden, CWC had to introduce “credible, particularized evidence to rebut [Denver’s] initial showing of the existence of a compelling interest, which could consist of a neutral explanation for the statistical disparities.” Id. (internal citations and quotations omitted). The Court of Appeals held that CWC could also rebut Denver’s statistical evidence “by (1) showing that the statistics are flawed; (2) demonstrating that the disparities shown by the statistics are not significant or actionable; or (3) presenting contrasting statistical data.” Id. (internal citations and quotations omitted). The Court of Appeals held that the burden of proof at all times remained with CWC to demonstrate the unconstitutionality of the ordinances. Id. at 960.

The Court of Appeals held that to meet its burden of demonstrating an important governmental interest per the intermediate scrutiny analysis, Denver must show that the gender-based measures in the ordinances were based on “reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions.” Id., quoting Miss. Univ. for Women v. Hogan, 458 U.S. 718, 726 (1982).

The studies. Denver presented historical, statistical and anecdotal evidence in support of its MBE/WBE programs. Denver commissioned a number of studies to assess its MBE/WBE programs. Id. at 962. The consulting firm hired by Denver utilized disparity indices in part. Id. at 962. The 1990 Study also examined MBE and WBE utilization in the overall Denver MSA construction market, both public and private. Id. at 963.

The consulting firm also interviewed representatives of MBEs, WBEs, majority-owned construction firms, and government officials. Id. Based on this information, the 1990 Study concluded that, despite Denver’s efforts to increase MBE and WBE participation in DPW projects, some Denver employees and private contractors engaged in conduct designed to circumvent the goals program. Id. After reviewing the statistical and anecdotal evidence contained in the 1990 Study, the City Council enacted the 1990 Ordinance. Id.

After the Tenth Circuit decided Concrete Works II, Denver commissioned another study (the “1995 Study”). Id. at 963. Using 1987 Census Bureau data, the 1995 Study again examined utilization of MBEs and WBEs in the construction and professional design industries within the Denver MSA. Id. The 1995 Study concluded that MBEs and WBEs were more likely to be one-person or family-run businesses. The Study concluded that Hispanic-owned firms were less likely to have paid employees than white-owned firms but that Asian/Native American-owned firms were more likely to have paid employees than white- or other minority-owed firms. To determine whether these factors explained overall market disparities, the 1995 Study used the Census data to calculate disparity indices for all

firms in the Denver MSA construction industry and separately calculated disparity indices for firms with paid employees and firms with no paid employees. Id. at 964.

The Census Bureau information was also used to examine average revenues per employee for Denver MSA construction firms with paid employees. Hispanic-, Asian-, Native American-, and women-owned firms with paid employees all reported lower revenues per employee than majority-owned firms. The 1995 Study also used 1990 Census data to calculate rates of self-employment within the Denver MSA construction industry. The Study concluded that the disparities in the rates of self-employment for blacks, Hispanics, and women persisted even after controlling for education and length of work experience. The 1995 Study controlled for these variables and reported that blacks and Hispanics working in the Denver MSA construction industry were less than half as likely to own their own businesses as were whites of comparable education and experience. Id.

In late 1994 and early 1995, a telephone survey of construction firms doing business in the Denver MSA was conducted. Id. at 965. Based on information obtained from the survey, the consultant calculated percentage utilization and percentage availability of MBEs and WBEs. Percentage utilization was calculated from revenue information provided by the responding firms. Percentage availability was calculated based on the number of MBEs and WBEs that responded to the survey question regarding revenues. Using these utilization and availability percentages, the 1995 Study showed disparity indices of 0.64 for MBEs and 0.70 for WBEs in the construction industry. In the professional design industry, disparity indices were 0.67 for MBEs and 0.69 for WBEs. The 1995 Study concluded that the disparity indices obtained from the telephone survey data were more accurate than those obtained from the 1987 Census data because the data obtained from the telephone survey were more recent, had a narrower focus, and included data on C corporations. Additionally, it was possible to calculate disparity indices for professional design firms from the survey data. Id.

In 1997, the City conducted another study to estimate the availability of MBEs and WBEs and to examine, *inter alia*, whether race and gender discrimination limited the participation of MBEs and WBEs in construction projects of the type typically undertaken by the City (the “1997 Study”). Id. at 966. The 1997 Study used geographic and specialization information to calculate MBE/WBE availability. Availability was defined as “the ratio of MBE/WBE firms to the total number of firms in the four-digit SIC codes and geographic market area relevant to the City’s contracts.” Id.

The 1997 Study compared MBE/WBE availability and utilization in the Colorado construction industry. Id. The statewide market was used because necessary information was unavailable for the Denver MSA. Id. at 967. Additionally, data collected in 1987 by the Census Bureau was used because more current data was unavailable. The Study calculated disparity indices for the statewide construction market in Colorado as follows: 0.41 for African American firms, 0.40 for Hispanic firms, 0.14 for Asian and other minorities, and 0.74 for women-owned firms. Id.

The 1997 Study also contained an analysis of whether African Americans, Hispanics, or Asian Americans working in the construction industry are less likely to be self-employed than similarly situated whites. Id. Using data from the Public Use Microdata Samples (“PUMS”) of the 1990 Census of Population and Housing, the Study used a sample of individuals working in the construction industry. The Study concluded that in both Colorado and the Denver MSA, African

Americans, Hispanics, and Native Americans working in the construction industry had lower self-employment rates than whites. Asian Americans had higher self-employment rates than whites.

Using the availability figures calculated earlier in the Study, the Study then compared the actual availability of MBE/WBEs in the Denver MSA with the potential availability of MBE/WBEs if they formed businesses at the same rate as whites with the same characteristics. Id. Finally, the Study examined whether self-employed minorities and women in the construction industry have lower earnings than white males with similar characteristics. Id. at 968. Using linear regression analysis, the Study compared business owners with similar years of education, of similar age, doing business in the same geographic area, and having other similar demographic characteristics. Even after controlling for several factors, the results showed that self-employed African Americans, Hispanics, Native Americans, and women had lower earnings than white males. Id.

The 1997 Study also conducted a mail survey of both MBE/WBEs and non-MBE/WBEs to obtain information on their experiences in the construction industry. Of the MBE/WBEs who responded, 35 percent indicated that they had experienced at least one incident of disparate treatment within the last five years while engaged in business activities. The survey also posed the following question: “How often do prime contractors who use your firm as a subcontractor on public sector projects with [MBE/WBE] goals or requirements ... also use your firm on public sector or private sector projects without [MBE/WBE] goals or requirements?” Fifty-eight percent of minorities and 41 percent of white women who responded to this question indicated they were “seldom or never” used on non-goals projects. Id.

MBE/WBEs were also asked whether the following aspects of procurement made it more difficult or impossible to obtain construction contracts: (1) bonding requirements, (2) insurance requirements, (3) large project size, (4) cost of completing proposals, (5) obtaining working capital, (6) length of notification for bid deadlines, (7) prequalification requirements, and (8) previous dealings with an agency. This question was also asked of non-MBE/WBEs in a separate survey. With one exception, MBE/WBEs considered each aspect of procurement more problematic than non-MBE/WBEs. To determine whether a firm’s size or experience explained the different responses, a regression analysis was conducted that controlled for age of the firm, number of employees, and level of revenues. The results again showed that with the same, single exception, MBE/WBEs had more difficulties than non-MBE/WBEs with the same characteristics. Id. at 968-69.

After the 1997 Study was completed, the City enacted the 1998 Ordinance. The 1998 Ordinance reduced the annual goals to 10 percent for both MBEs and WBEs and eliminated a provision which previously allowed MBE/WBEs to count their own work toward project goals. Id. at 969.

The anecdotal evidence included the testimony of the senior vice-president of a large, majority-owned construction firm who stated that when he worked in Denver, he received credible complaints from minority and women-owned construction firms that they were subject to different work rules than majority-owned firms. Id. He also testified that he frequently observed graffiti containing racial or gender epithets written on job sites in the Denver metropolitan area. Further, he stated that he believed, based on his personal experiences, that many majority-owned firms refused to hire minority- or women-owned subcontractors because they believed those firms were not competent. Id.

Several MBE/WBE witnesses testified that they experienced difficulty prequalifying for private sector projects and projects with the City and other governmental entities in Colorado. One individual testified that her company was required to prequalify for a private sector project while no similar requirement was imposed on majority-owned firms. Several others testified that they attempted to prequalify for projects but their applications were denied even though they met the prequalification requirements. Id.

Other MBE/WBEs testified that their bids were rejected even when they were the lowest bidder; that they believed they were paid more slowly than majority-owned firms on both City projects and private sector projects; that they were charged more for supplies and materials; that they were required to do additional work not part of the subcontracting arrangement; and that they found it difficult to join unions and trade associations. Id. There was testimony detailing the difficulties MBE/WBEs experienced in obtaining lines of credit. One WBE testified that she was given a false explanation of why her loan was declined; another testified that the lending institution required the co-signature of her husband even though her husband, who also owned a construction firm, was not required to obtain her co-signature; a third testified that the bank required her father to be involved in the lending negotiations. Id.

The court also pointed out anecdotal testimony involving recitations of racially- and gender-motivated harassment experienced by MBE/WBEs at work sites. There was testimony that minority and female employees working on construction projects were physically assaulted and fondled, spat upon with chewing tobacco, and pelted with two-inch bolts thrown by males from a height of 80 feet. Id. at 969-70.

The legal framework applied by the court. The court held that the district court incorrectly believed Denver was required to prove the existence of discrimination. Instead of considering whether Denver had demonstrated strong evidence from which an inference of past or present discrimination could be drawn, the district court analyzed whether Denver's evidence showed that there is pervasive discrimination. Id. at 970. The court, quoting *Concrete Works II*, stated that "the Fourteenth Amendment does not require a court to make an ultimate finding of discrimination before a municipality may take affirmative steps to eradicate discrimination." Id. at 970, quoting *Concrete Works II*, 36 F.3d 1513, 1522 (10th Cir. 1994). Denver's initial burden was to demonstrate that strong evidence of discrimination supported its conclusion that remedial measures were necessary. Strong evidence is that "approaching a prima facie case of a constitutional or statutory violation," not irrefutable or definitive proof of discrimination. Id. at 97, quoting *Croson*, 488 U.S. at 500. The burden of proof at all times remained with the contractor plaintiff to prove by a preponderance of the evidence that Denver's "evidence did not support an inference of prior discrimination and thus a remedial purpose." Id., quoting *Adarand VII*, 228 F.3d at 1176.

Denver, the court held, did introduce evidence of discrimination against each group included in the ordinances. Id. at 971. Thus, Denver's evidence did not suffer from the problem discussed by the court in Croson. The court held the district court erroneously concluded that Denver must demonstrate that the private firms directly engaged in any discrimination in which Denver passively participates do so intentionally, with the purpose of disadvantaging minorities and women. The Croson majority concluded that a "city would have a compelling interest in preventing its tax dollars from assisting [local trade] organizations in maintaining a racially segregated construction market."

Id. at 971, quoting Croson, 488 U.S. 503. Thus, the court held Denver’s burden was to introduce evidence which raised the inference of discriminatory exclusion in the local construction industry and linked its spending to that discrimination. Id.

The court noted the Supreme Court has stated that the inference of discriminatory exclusion can arise from statistical disparities. Id., citing Croson, 488 U.S. at 503. Accordingly, it concluded that Denver could meet its burden through the introduction of statistical and anecdotal evidence. To the extent the district court required Denver to introduce additional evidence to show discriminatory motive or intent on the part of private construction firms, the district court erred. Denver, according to the court, was under no burden to identify any specific practice or policy that resulted in discrimination. Neither was Denver required to demonstrate that the purpose of any such practice or policy was to disadvantage women or minorities. Id. at 972.

The court found Denver’s statistical and anecdotal evidence relevant because it identifies discrimination in the local construction industry, not simply discrimination in society. The court held the genesis of the identified discrimination is irrelevant and the district court erred when it discounted Denver’s evidence on that basis. Id.

The court held the district court erroneously rejected the evidence Denver presented on marketplace discrimination. Id. at 973. The court rejected the district court’s erroneous legal conclusion that a municipality may only remedy its own discrimination. The court stated this conclusion is contrary to the holdings in Concrete Works II and the plurality opinion in Croson. Id. The court held it previously recognized in this case that “a municipality has a compelling interest in taking affirmative steps to remedy both public *and private* discrimination specifically identified in its area.” Id., quoting Concrete Works II, 36 F.3d at 1529 (emphasis added). In Concrete Works II, the court stated that “we do not read Croson as requiring the municipality to identify an exact linkage between its award of public contracts and private discrimination.” Id., quoting Concrete Works II, 36 F.3d at 1529.

The court stated that Denver could meet its burden of demonstrating its compelling interest with evidence of private discrimination in the local construction industry coupled with evidence that it has become a passive participant in that discrimination. Id. at 973. Thus, Denver was not required to demonstrate that it is “guilty of prohibited discrimination” to meet its initial burden. Id.

Additionally, the court had previously concluded that Denver’s statistical studies, which compared utilization of MBE/WBEs to availability, supported the inference that “local prime contractors” are engaged in racial and gender discrimination. Id. at 974, quoting Concrete Works II, 36 F.3d at 1529. Thus, the court held Denver’s disparity studies should not have been discounted because they failed to specifically identify those individuals or firms responsible for the discrimination. Id.

The Court’s rejection of CWC’s arguments and the district court findings

Use of marketplace data. The court held the district court, inter alia, erroneously concluded that the disparity studies upon which Denver relied were significantly flawed because they measured discrimination in the overall Denver MSA construction industry, not discrimination by the City itself. Id. at 974. The court found that the district court’s conclusion was directly contrary to the holding in Adarand VII that evidence of both public and private discrimination in the construction industry is relevant. Id., citing Adarand VII, 228 F.3d at 1166-67).

The court held the conclusion reached by the majority in Croson that marketplace data are relevant in equal protection challenges to affirmative action programs was consistent with the approach later taken by the court in Shaw v. Hunt. Id. at 975. In Shaw, a majority of the court relied on the majority opinion in Croson for the broad proposition that a governmental entity’s “interest in remedying the effects of past or present racial discrimination may in the proper case justify a government’s use of racial distinctions.” Id., quoting Shaw, 517 U.S. at 909. 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 that must be met for the governmental entity to show a compelling interest. “First, the discrimination must be identified discrimination.” Id. at 976, quoting Shaw, 517 U.S. at 910. The City can satisfy this condition by identifying the discrimination, “‘*public or private*, with some specificity.’” Id. at 976, citing Shaw, 517 U.S. at 910, quoting Croson, 488 U.S. at 504 (emphasis added). The governmental entity must also have a “strong basis in evidence to conclude that remedial action was necessary.” Id. Thus, the court concluded Shaw specifically stated that evidence of either public or private discrimination could be used to satisfy the municipality’s burden of producing strong evidence. Id. at 976.

In Adarand VII, the court noted it concluded that evidence of marketplace discrimination can be used to support a compelling interest in remedying past or present discrimination through the use of affirmative action legislation. Id., citing Adarand VII, 228 F.3d at 1166-67 (“[W]e may consider public and private discrimination not only in the specific area of government procurement contracts but also in the construction industry generally; thus *any findings Congress has made as to the entire construction industry are relevant.*” (emphasis added)). Further, the court pointed out in this case it earlier rejected the argument CWC reasserted here that marketplace data are irrelevant and remanded the case to the district court to determine whether Denver could link its public spending to “the Denver MSA evidence of industry-wide discrimination.” Id., quoting Concrete Works II, 36 F.3d at 1529. The court stated that evidence explaining “the Denver government’s role in contributing to the underutilization of MBEs and WBEs in the *private construction market in the Denver MSA*” was relevant to Denver’s burden of producing strong evidence. Id., quoting Concrete Works II, 36 F.3d at 1530 (emphasis added).

Consistent with the court’s mandate in Concrete Works II, the City attempted to show at trial that it “indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against MBE and/or WBE subcontractors in other private portions of their business.” Id. The City can demonstrate that it is a “‘passive participant’ in a system of racial exclusion practiced by elements of the local construction industry” by compiling evidence of marketplace discrimination and then linking its spending practices to the private discrimination. Id., quoting Croson, 488 U.S. at 492.

The court rejected CWC’s argument that the lending discrimination studies and business formation studies presented by Denver were irrelevant. In Adarand VII, the court concluded that evidence of discriminatory barriers to the formation of businesses by minorities and women and fair competition between MBE/WBEs and majority-owned construction firms shows a “strong link” between a government’s “disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination.” Id. at 977, quoting Adarand VII, 228 F.3d at 1167-68. The court found that evidence that private discrimination resulted in barriers to business formation is

relevant because it demonstrates that MBE/WBEs are precluded *at the outset* from competing for public construction contracts. The court also found that evidence of barriers to fair competition is relevant because it again demonstrates that *existing* MBE/WBEs are precluded from competing for public contracts. Thus, like the studies measuring disparities in the utilization of MBE/WBEs in the Denver MSA construction industry, studies showing that discriminatory barriers to business formation exist in the Denver construction industry are relevant to the City's showing that it indirectly participates in industry discrimination. *Id.* at 977.

The City presented evidence of lending discrimination to support its position that MBE/WBEs in the Denver MSA construction industry face discriminatory barriers to business formation. Denver introduced a disparity study prepared in 1996 and sponsored by the Denver Community Reinvestment Alliance, Colorado Capital Initiatives, and the City. The Study ultimately concluded that “despite the fact that loan applicants of three different racial/ethnic backgrounds in this sample were not appreciably different as businesspeople, they were ultimately treated differently by the lenders on the crucial issue of loan approval or denial.” *Id.* at 977-78. In *Adarand VII*, the court concluded that this study, among other evidence, “strongly support[ed] an initial showing of discrimination in lending.” *Id.* at 978, quoting, *Adarand VII*, 228 F.3d at 1170, n. 13 (“Lending discrimination alone of course does not justify action in the construction market. However, the persistence of such discrimination ... supports the assertion that the formation, as well as utilization, of minority-owned construction enterprises has been impeded.”). The City also introduced anecdotal evidence of lending discrimination in the Denver construction industry.

CWC did not present any evidence that undermined the reliability of the lending discrimination evidence but simply repeated the argument, foreclosed by circuit precedent, that it is irrelevant. The court rejected the district court criticism of the evidence because it failed to determine whether the discrimination resulted from discriminatory attitudes or from the neutral application of banking regulations. The court concluded, that discriminatory motive can be inferred from the results shown in disparity studies. The court held the district court's criticism did not undermine the study's reliability as an indicator that the City is passively participating in marketplace discrimination. The court noted that, in *Adarand VII* it took “judicial notice of the obvious causal connection between access to capital and ability to implement public works construction projects.” *Id.* at 978, quoting *Adarand VII*, 228 F.3d at 1170.

Denver also introduced evidence of discriminatory barriers to competition faced by MBE/WBEs in the form of business formation studies. The 1990 Study and the 1995 Study both showed that all minority groups in the Denver MSA formed their own construction firms at rates lower than the total population but that women formed construction firms at higher rates. The 1997 Study examined self-employment rates and controlled for gender, marital status, education, availability of capital, and personal/family variables. As discussed, *supra*, the Study concluded that African Americans, Hispanics, and Native Americans working in the construction industry have lower rates of self-employment than similarly situated whites. Asian Americans had higher rates. The 1997 Study also concluded that minority and female business owners in the construction industry, with the exception of Asian American owners, have lower earnings than white male owners. This conclusion was reached after controlling for education, age, marital status, and disabilities. *Id.* at 978.

The court held that the district court's conclusion that the business formation studies could not be used to justify the ordinances conflicts with its holding in Adarand VII. "[T]he existence of evidence indicating that the number of [MBEs] would be significantly (but unquantifiably) higher but for such barriers is nevertheless relevant to the assessment of whether a disparity is sufficiently significant to give rise to an inference of discriminatory exclusion." Id. at 979, quoting Adarand VII, 228 F.3d at 1174.

In sum, the court held the district court erred when it refused to consider or give sufficient weight to the lending discrimination study, the business formation studies, and the studies measuring marketplace discrimination. That evidence was legally relevant to the City's burden of demonstrating a strong basis in evidence to support its conclusion that remedial legislation was necessary. Id. at 979-80.

Variables. CWC challenged Denver's disparity studies as unreliable because the disparities shown in the studies may be attributable to firm size and experience rather than discrimination. Denver countered, however, that a firm's size has little effect on its qualifications or its ability to provide construction services and that MBE/WBEs, like all construction firms, can perform most services either by hiring additional employees or by employing subcontractors. CWC responded that elasticity itself is relative to size and experience; MBE/WBEs are less capable of expanding because they are smaller and less experienced. Id. at 980.

The court concluded that even if it assumed that MBE/WBEs are less able to expand because of their smaller size and more limited experience, CWC did not respond to Denver's argument and the evidence it presented showing that experience and size are not race- and gender-neutral variables and that MBE/WBE construction firms are generally smaller and less experienced *because* of industry discrimination. Id. at 981. The lending discrimination and business formation studies, according to the court, both strongly supported Denver's argument that MBE/WBEs are smaller and less experienced because of marketplace and industry discrimination. In addition, Denver's expert testified that discrimination by banks or bonding companies would reduce a firm's revenue and the number of employees it could hire. Id.

Denver also argued its Studies controlled for size and the 1995 Study controlled for experience. It asserted that the 1990 Study measured revenues per employee for construction for MBE/WBEs and concluded that the resulting disparities, "suggest[] that even among firms of the same employment size, industry utilization of MBEs and WBEs was lower than that of non-minority male-owned firms." Id. at 982. Similarly, the 1995 Study controlled for size, calculating, *inter alia*, disparity indices for firms with no paid employees which presumably are the same size.

Based on the uncontroverted evidence presented at trial, the court concluded that the district court did not give sufficient weight to Denver's disparity studies because of its erroneous conclusion that the studies failed to adequately control for size and experience. The court held that Denver is permitted to make assumptions about capacity and qualification of MBE/WBEs to perform construction services if it can support those assumptions. The court found the assumptions made in this case were consistent with the evidence presented at trial and supported the City's position that a firm's size does not affect its qualifications, willingness, or ability to perform construction services and that the smaller size and lesser experience of MBE/WBEs are, themselves, the result of industry discrimination. Further, the court pointed out CWC did not conduct its own disparity study using

marketplace data and thus did not demonstrate that the disparities shown in Denver's studies would decrease or disappear if the studies controlled for size and experience to CWC's satisfaction. Consequently, the court held CWC's rebuttal evidence was insufficient to meet its burden of discrediting Denver's disparity studies on the issue of size and experience. Id. at 982.

Specialization. The district court also faulted Denver's disparity studies because they did not control for firm specialization. The court noted the district court's criticism would be appropriate only if there was evidence that MBE/WBEs are more likely to specialize in certain construction fields. Id. at 982.

The court found there was no identified evidence showing that certain construction specializations require skills less likely to be possessed by MBE/WBEs. The court found relevant the testimony of the City's expert, that the data he reviewed showed that MBEs were represented "widely across the different [construction] specializations." Id. at 982-83. There was no contrary testimony that aggregation bias caused the disparities shown in Denver's studies. Id. at 983.

The court held that CWC failed to demonstrate that the disparities shown in Denver's studies are eliminated when there is control for firm specialization. In contrast, one of the Denver studies, which controlled for SIC-code subspecialty and still showed disparities, provided support for Denver's argument that firm specialization does not explain the disparities. Id. at 983.

The court pointed out that disparity studies may make assumptions about availability as long as the same assumptions can be made for all firms. Id. at 983.

Utilization of MBE/WBEs on City projects. CWC argued that Denver could not demonstrate a compelling interest because it overutilized MBE/WBEs on City construction projects. This argument, according to the court, was an extension of CWC's argument that Denver could justify the ordinances only by presenting evidence of discrimination by the City itself or by contractors while working on City projects. Because the court concluded that Denver could satisfy its burden by showing that it is an indirect participant in industry discrimination, CWC's argument relating to the utilization of MBE/WBEs on City projects goes only to the weight of Denver's evidence. Id. at 984.

Consistent with the court's mandate in Concrete Works II, at trial Denver sought to demonstrate that the utilization data from projects subject to the goals program were tainted by the program and "reflect[ed] the intended remedial effect on MBE and WBE utilization." Id. at 984, quoting Concrete Works II, 36 F.3d at 1526. Denver argued that the non-goals data were the better indicator of past discrimination in public contracting than the data on all City construction projects. Id. at 984-85. The court concluded that Denver presented ample evidence to support the conclusion that the evidence showing MBE/WBE utilization on City projects not subject to the ordinances or the goals programs is the better indicator of discrimination in City contracting. Id. at 985.

The court rejected CWC's argument that the marketplace data were irrelevant but agreed that the non-goals data were also relevant to Denver's burden. The court noted that Denver did not rely heavily on the non-goals data at trial but focused primarily on the marketplace studies to support its burden. Id. at 985.

In sum, the court held Denver demonstrated that the utilization of MBE/WBEs on City projects had been affected by the affirmative action programs that had been in place in one form or another since 1977. Thus, the non-goals data were the better indicator of discrimination in public contracting. The court concluded that, on balance, the non-goals data provided some support for Denver's position that racial and gender discrimination existed in public contracting before the enactment of the ordinances. Id. at 987-88.

Anecdotal evidence. The anecdotal evidence, according to the court, included several incidents involving profoundly disturbing behavior on the part of lenders, majority-owned firms, and individual employees. Id. at 989. The court found that the anecdotal testimony revealed behavior that was not merely sophomoric or insensitive, but which resulted in real economic or physical harm. While CWC also argued that all new or small contractors have difficulty obtaining credit and that treatment the witnesses characterized as discriminatory is experienced by all contractors, Denver's witnesses specifically testified that they believed the incidents they experienced were motivated by race or gender discrimination. The court found they supported those beliefs with testimony that majority-owned firms were not subject to the same requirements imposed on them. Id.

The court held there was no merit to CWC's argument that the witnesses' accounts must be verified to provide support for Denver's burden. The court stated that anecdotal evidence is nothing more than a witness' narrative of an incident told from the witness' perspective and including the witness' perceptions. Id.

After considering Denver's anecdotal evidence, the district court found that the evidence "shows that race, ethnicity and gender affect the construction industry and those who work in it" and that the egregious mistreatment of minority and women employees "had direct financial consequences" on construction firms. Id. at 989, quoting Concrete Works III, 86 F. Supp. 2d at 1074, 1073. Based on the district court's findings regarding Denver's anecdotal evidence and its review of the record, the court concluded that the anecdotal evidence provided persuasive, un rebutted support for Denver's initial burden. Id. at 989-90, citing Int'l Bhd. of Teamsters v. United States, 431 U.S. 324, 339 (1977) (concluding that anecdotal evidence presented in a pattern or practice discrimination case was persuasive because it "brought the cold [statistics] convincingly to life").

Summary. The court held the record contained extensive evidence supporting Denver's position that it had a strong basis in evidence for concluding that the 1990 Ordinance and the 1998 Ordinance were necessary to remediate discrimination against both MBEs and WBEs. Id. at 990. The information available to Denver and upon which the ordinances were predicated, according to the court, indicated that discrimination was persistent in the local construction industry and that Denver was, at least, an indirect participant in that discrimination.

To rebut Denver's evidence, the court stated CWC was required to "establish that Denver's evidence did not constitute strong evidence of such discrimination." Id. at 991, quoting Concrete Works II, 36 F.3d at 1523. CWC could not meet its burden of proof through conjecture and unsupported criticisms of Denver's evidence. Rather, it must present "credible, particularized evidence." Id., quoting Adarand VII, 228 F.3d at 1175. The court held that CWC did not meet its burden. CWC *hypothesized* that the disparities shown in the studies on which Denver relies could be explained by any number of factors other than racial discrimination. However, the court found it did not conduct its own marketplace

disparity study controlling for the disputed variables and presented no other evidence from which the court could conclude that such variables explain the disparities. *Id.* at 991-92.

Narrow tailoring. Having concluded that Denver demonstrated a compelling interest in the race-based measures and an important governmental interest in the gender-based measures, the court held it must examine whether the ordinances were narrowly tailored to serve the compelling interest and are substantially related to the achievement of the important governmental interest. *Id.* at 992.

The court stated it had previously concluded in its earlier decisions that Denver's program was narrowly tailored. CWC appealed the grant of summary judgment and that appeal culminated in the decision in *Concrete Works II*. The court reversed the grant of summary judgment on the compelling-interest issue and concluded that CWC had waived any challenge to the narrow tailoring conclusion reached by the district court. Because the court found *Concrete Works* did not challenge the district court's conclusion with respect to the second prong of *Croson's* strict scrutiny standard — i.e., that the Ordinance is narrowly tailored to remedy past and present discrimination — the court held it need not address this issue. *Id.* at 992, citing *Concrete Works II*, 36 F.3d at 1531, n. 24.

The court concluded that the district court lacked authority to address the narrow tailoring issue on remand because none of the exceptions to the law of the case doctrine are applicable. The district court's earlier determination that Denver's affirmative-action measures were narrowly tailored is law of the case and binding on the parties.

6. In re City of Memphis, 293 F. 3d 345 (6th Cir. 2002)

This case is instructive to the disparity study in particular based on its holding that a local government may be prohibited from utilizing post-enactment evidence in support of a MBE/WBE-type program. The United States Court of Appeals for Sixth Circuit held that pre-enactment evidence was required to justify the City of Memphis' MBE/WBE Program. The Sixth Circuit held that a government must have had sufficient evidentiary justification for a racially conscious statute in advance of its passage. The district court had ruled that the City could not introduce the post-enactment study as evidence of a compelling interest to justify its MBE/WBE Program. The Sixth Circuit denied the City's application for an interlocutory appeal on the district court's order and refused to grant the City's request to appeal this issue.

7. Builders Ass'n of Greater Chicago v. County of Cook, Chicago, 256 F.3d 642 (7th Cir. 2001)

This case is instructive to the disparity study because of its analysis of the Cook County MBE/WBE program and the evidence used to support that program. The decision emphasizes the need for any race-conscious program to be based upon credible evidence of discrimination by the local government against MBE/WBEs and to be narrowly tailored to remedy only that identified discrimination.

In *Builders Ass'n of Greater Chicago v. County of Cook, Chicago*, 256 F.3d 642 (7th Cir. 2001) the United States Court of Appeals for the Seventh Circuit held the Cook County, Chicago MBE/WBE Program was unconstitutional. The court concluded there was insufficient evidence of a compelling interest. The court held there was no credible evidence that Cook County in the award of construction contracts discriminated against any of the groups "favored" by the Program. The court

also found that the Program was not “narrowly tailored” to remedy the wrong sought to be redressed, in part because it was over-inclusive in the definition of minorities. The court noted the list of minorities included groups that have not been subject to discrimination by Cook County.

The court considered as an unresolved issue whether a different, and specifically a more permissive, standard than strict scrutiny is applicable to preferential treatment on the basis of sex, rather than race or ethnicity. 256 F.3d at 644. The court noted that the United States Supreme Court in United States v. Virginia (“VMI”), 518 U.S. 515, 532 and n.6 (1996), held racial discrimination to a stricter standard than sex discrimination, although the court in Cook County stated the difference between the applicable standards has become “vanishingly small.” Id. The court pointed out that the Supreme Court said in the VMI case, that “parties who seek to defend gender-based government action must demonstrate an ‘exceedingly persuasive’ justification for that action ...” and, realistically, the law can ask no more of race-based remedies either.” 256 F.3d at 644, quoting in part VMI, 518 U.S. at 533. The court indicated that the Eleventh Circuit Court of Appeals in the Engineering Contract Association of South Florida, Inc. v. Metropolitan Dade County, 122 F.3d 895, 910 (11th Cir. 1997) decision created the “paradox that a public agency can provide stronger remedies for sex discrimination than for race discrimination; it is difficult to see what sense that makes.” 256 F.3d at 644. But, since Cook County did not argue for a different standard for the minority and women’s “set aside programs,” the women’s program the court determined must clear the same “hurdles” as the minority program.” 256 F.3d at 644-645.

The court found that since the ordinance requires prime contractors on public projects to reserve a substantial portion of the subcontracts for minority contractors, which is inapplicable to private projects, it is “to be expected that there would be more soliciting of these contractors on public than on private projects.” Id. Therefore, the court did not find persuasive that there was discrimination based on this difference alone. 256 F.3d at 645. The court pointed out the County “conceded that [it] had no specific evidence of pre-enactment discrimination to support the ordinance.” 256 F.3d at 645 quoting the district court decision, 123 F.Supp. 2d at 1093. The court held that a “public agency must have a strong evidentiary basis for thinking a discriminatory remedy appropriate *before* it adopts the remedy.” 256 F.3d at 645 (emphasis in original).

The court stated that minority enterprises in the construction industry “tend to be subcontractors, moreover, because as the district court found not clearly erroneously, 123 F.Supp. 2d at 1115, they tend to be new and therefore small and relatively untested — factors not shown to be attributable to discrimination by the County.” 256 F.3d at 645. The court held that there was no basis for attributing to the County any discrimination that prime contractors may have engaged in. Id. The court noted that “[i]f prime contractors on County projects were discriminating against minorities and this was known to the County, whose funding of the contracts thus knowingly perpetuated the discrimination, the County might be deemed sufficiently complicit ... to be entitled to take remedial action.” Id. But, the court found “of that there is no evidence either.” Id.

The court stated that if the County had been complicit in discrimination by prime contractors, it found “puzzling” to try to remedy that discrimination by requiring discrimination in favor of minority stockholders, as distinct from employees. 256 F.3d at 646. The court held that even if the record made a case for remedial action of the general sort found in the MWBE ordinance by the County, it would “flunk the constitutional test” by not being carefully designed to achieve the

ostensible remedial aim and no more. 256 F.3d at 646. The court held that a state and local government that has discriminated just against blacks may not by way of remedy discriminate in favor of blacks and Asian Americans and women. *Id.* Nor, the court stated, may it discriminate more than is necessary to cure the effects of the earlier discrimination. *Id.* “Nor may it continue the remedy in force indefinitely, with no effort to determine whether, the remedial purpose attained, continued enforcement of the remedy would be a gratuitous discrimination against nonminority persons.” *Id.* The court, therefore, held that the ordinance was not “narrowly tailored” to the wrong that it seeks to correct. *Id.*

The court thus found that the County both failed to establish the premise for a racial remedy, and also that the remedy goes further than is necessary to eliminate the evil against which it is directed. 256 F.3d at 647. The court held that the list of “favored minorities” includes groups that have never been subject to significant discrimination by Cook County. *Id.* The court found it unreasonable to “presume” discrimination against certain groups merely on the basis of having an ancestor who had been born in a particular country. *Id.* Therefore, the court held the ordinance was overinclusive.

The court found that the County did not make any effort to show that, were it not for a history of discrimination, minorities would have 30 percent, and women 10 percent, of County construction contracts. 256 F.3d at 647. The court also rejected the proposition advanced by the County in this case -- “that a comparison of the fraction of minority subcontractors on public and private projects established discrimination against minorities by prime contractors on the latter type of project.” 256 F.3d at 647-648.

8. Associated Gen. Contractors v. Drabik, 214 F.3d 730 (6th Cir. 2000), affirming Case No. C2-98-943, 998 WL 812241 (S.D. Ohio 1998)

This case is instructive to the disparity study based on the analysis applied in finding the evidence insufficient to justify an MBE/WBE program, and the application of the narrowly tailored test. The Sixth Circuit Court of Appeals enjoined the enforcement of the state MBE program, and in so doing reversed state court precedent finding the program constitutional. This case affirmed a district court decision enjoining the award of a “set-aside” contract based on the State of Ohio’s MBE program with the award of construction contracts. The court held, among other things, that the mere existence of societal discrimination was insufficient to support a racial classification. The court found that the economic data were insufficient and too outdated. The court held the State could not establish a compelling governmental interest and that the statute was not narrowly tailored. The court held, among other things, the statute failed the narrow tailoring test because there was no evidence that the State had considered race-neutral remedies.

The court was mindful of the fact that it was striking down an entire class of programs by declaring the State of Ohio MBE statute in question unconstitutional, and noted that its decision was “not reconcilable” with the Ohio Supreme Court’s decision in Ritchie Produce, 707 N.E.2d 871 (Ohio 1999) (upholding the Ohio State MBE Program).

9. W.H. Scott Constr. Co. v. City of Jackson, 199 F.3d 206 (5th Cir. 1999)

This case is instructive to the disparity study because the decision highlights the evidentiary burden imposed by the courts necessary to support a local MBE/WBE program. In addition, the Fifth Circuit permitted the aggrieved contractor to recover lost profits from the City of Jackson,

Mississippi due to the City's enforcement of the MBE/WBE program that the court held was unconstitutional.

The Fifth Circuit, applying strict scrutiny, held that the City of Jackson, Mississippi failed to establish a compelling governmental interest to justify its policy placing 15 percent minority participation goals for City construction contracts. In addition, the court held the evidence upon which the City relied was faulty for several reasons, including because it was restricted to the letting of prime contracts by the City under the City's Program, and it did not include an analysis of the availability and utilization of qualified minority subcontractors, the relevant statistical pool in the City's construction projects. Significantly, the court also held that the plaintiff in this case could recover lost profits against the City as damages as a result of being denied a bid award based on the application of the MBE/WBE program.

10. Eng'g Contractors Ass'n of S. Florida v. Metropolitan Dade County, 122 F.3d 895 (11th Cir. 1997)

Engineering Contractors Association of South Florida v. Metropolitan Engineering Contractors Association is a paramount case in the Eleventh Circuit and is instructive to the disparity study. This decision has been cited and applied by the courts in various circuits that have addressed MBE/WBE-type programs or legislation involving local government contracting and procurement.

In Engineering Contractors Association, six trade organizations (the "plaintiffs") filed suit in the district court for the Southern District of Florida, challenging three affirmative action programs administered by Engineering Contractors Association, Florida, (the "County") as violative of the Equal Protection Clause. 122 F.3d 895, 900 (11th Cir. 1997). The three affirmative action programs challenged were the Black Business Enterprise program ("BBE"), the Hispanic Business Enterprise program ("HBE"), and the Woman Business Enterprise program, ("WBE"), (collectively "MWBE" programs). Id. The plaintiffs challenged the application of the program to County construction contracts. Id.

For certain classes of construction contracts valued over \$25,000, the County set participation goals of 15 percent for BBEs, 19 percent for HBEs, and 11 percent for WBEs. Id. at 901. The County established five "contract measures" to reach the participation goals: (1) set asides, (2) subcontractor goals, (3) project goals, (4) bid preferences, and (5) selection factors. Once a contract was identified as covered by a participation goal, a review committee would determine whether a contract measure should be utilized. Id. The County Commission would make the final determination and its decision was appealable to the County Manager. Id. The County reviewed the efficacy of the MWBE programs annually, and reevaluated the continuing viability of the MWBE programs every five years. Id.

In a bench trial, the district court applied strict scrutiny to the BBE and HBE programs and held that the County lacked the requisite "strong basis in evidence" to support the race- and ethnicity-conscious measures. Id. at 902. The district court applied intermediate scrutiny to the WBE program and found that the "County had presented insufficient probative evidence to support its stated rationale for implementing a gender preference." Id. Therefore, the County had failed to demonstrate a "compelling interest" necessary to support the BBE and HBE programs, and failed to demonstrate an "important interest" necessary to support the WBE program. Id. The district court assumed the

existence of a sufficient evidentiary basis to support the existence of the MWBE programs but held the BBE and HBE programs were not narrowly tailored to the interests they purported to serve; the district court held the WBE program was not substantially related to an important government interest. Id. The district court entered a final judgment enjoining the County from continuing to operate the MWBE programs and the County appealed. The Eleventh Circuit Court of Appeals affirmed. Id. at 900, 903.

On appeal, the Eleventh Circuit considered four major issues:

1. Whether the plaintiffs had standing. [The Eleventh Circuit answered this in the affirmative and that portion of the opinion is omitted from this summary];
2. Whether the district court erred in finding the County lacked a “strong basis in evidence” to justify the existence of the BBE and HBE programs;
3. Whether the district court erred in finding the County lacked a “sufficient probative basis in evidence” to justify the existence of the WBE program; and
4. Whether the MWBE programs were narrowly tailored to the interests they were purported to serve.

Id. at 903.

The Eleventh Circuit held that the BBE and HBE programs were subject to the strict scrutiny standard enunciated by the U.S. Supreme Court in City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989). Id. at 906. Under this standard, “an affirmative action program must be based upon a ‘compelling government interest’ and must be ‘narrowly tailored’ to achieve that interest.” Id. The Eleventh Circuit further noted:

In practice, the interest that is alleged in support of racial preferences is almost always the same — remedying past or present discrimination. That interest is widely accepted as compelling. As a result, the true test of an affirmative action program is usually not the nature of the government’s interest, but rather the adequacy of the evidence of discrimination offered to show that interest.

Id. (internal citations omitted).

Therefore, strict scrutiny requires a finding of a “‘strong basis in evidence’ to support the conclusion that remedial action is necessary.” Id., citing Croson, 488 U.S. at 500). The requisite “‘strong basis in evidence’ cannot rest on ‘an amorphous claim of societal discrimination, on simple legislative assurances of good intention, or on congressional findings of discrimination in the national economy.’” Id. at 907, citing Ensley Branch, NAACP v. Seibels, 31 F.3d 1548, 1565 (11th Cir. 1994) (citing and applying Croson). However, the Eleventh Circuit found that a governmental entity can “justify affirmative action by demonstrating ‘gross statistical disparities’ between the proportion of minorities hired ... and the proportion of minorities willing and able to do the work

... Anecdotal evidence may also be used to document discrimination, especially if buttressed by relevant statistical evidence.” Id. (internal citations omitted).

Notwithstanding the “exceedingly persuasive justification” language utilized by the Supreme Court in United States v. Virginia, 116 S. Ct. 2264 (1996) (evaluating gender-based government action), the Eleventh Circuit held that the WBE program was subject to traditional intermediate scrutiny. Id. at 908. Under this standard, the government must provide “sufficient probative evidence” of discrimination, which is a lesser standard than the “strong basis in evidence” under strict scrutiny. Id. at 910.

The County provided two types of evidence in support of the MWBE programs: (1) statistical evidence, and (2) non-statistical “anecdotal” evidence. Id. at 911. As an initial matter, the Eleventh Circuit found that in support of the BBE program, the County permissibly relied on substantially “post-enactment” evidence (i.e., evidence based on data related to years following the initial enactment of the BBE program). Id. However, “such evidence carries with it the hazard that the program at issue may itself be masking discrimination that might otherwise be occurring in the relevant market.” Id. at 912. A district court should not “speculate about what the data *might* have shown had the BBE program never been enacted.” Id.

The statistical evidence. The County presented five basic categories of statistical evidence: (1) County contracting statistics; (2) County subcontracting statistics; (3) marketplace data statistics; (4) The Wainwright Study; and (5) The Brimmer Study. Id. In summary, the Eleventh Circuit held that the County’s statistical evidence (described more fully below) was subject to more than one interpretation. Id. at 924. The district court found that the evidence was “insufficient to form the requisite strong basis in evidence for implementing a racial or ethnic preference, and that it was insufficiently probative to support the County’s stated rationale for imposing a gender preference.” Id. The district court’s view of the evidence was a permissible one. Id.

County contracting statistics. The County presented a study comparing three factors for County non-procurement construction contracts over two time periods (1981-1991 and 1993): (1) the percentage of bidders that were MWBE firms; (2) the percentage of awardees that were MWBE firms; and (3) the proportion of County contract dollars that had been awarded to MWBE firms. Id. at 912.

The Eleventh Circuit found that notably, for the BBE and HBE statistics, generally there were no “consistently negative disparities between the bidder and awardee percentages. In fact, by 1993, the BBE and HBE bidders are being awarded *more* than their proportionate ‘share’ ... when the bidder percentages are used as the baseline.” Id. at 913. For the WBE statistics, the bidder/awardee statistics were “decidedly mixed” as across the range of County construction contracts. Id.

The County then refined those statistics by adding in the total percentage of annual County construction dollars awarded to MBE/WBEs, by calculating “disparity indices” for each program and classification of construction contract. The Eleventh Circuit explained:

[A] disparity index compares the amount of contract awards a group actually got to the amount we would have expected it to get based on that group’s bidding activity and awardee success rate.

More specifically, a disparity index measures the participation of a group in County contracting dollars by dividing that group's contract dollar percentage by the related bidder or awardee percentage, and multiplying that number by 100 percent.

Id. at 914. "The utility of disparity indices or similar measures ... has been recognized by a number of federal circuit courts." Id.

The Eleventh Circuit found that "[i]n general ... disparity indices of 80 percent or greater, which are close to full participation, are not considered indications of discrimination." Id. The Eleventh Circuit noted that "the EEOC's disparate impact guidelines use the 80 percent test as the boundary line for determining a prima facie case of discrimination." Id., citing 29 C.F.R. § 1607.4D. In addition, no circuit that has "explicitly endorsed the use of disparity indices [has] indicated that an index of 80 percent or greater might be probative of discrimination." Id., citing Concrete Works v. City & County of Denver, 36 F.3d 1513, 1524 (10th Cir. 1994) (crediting disparity indices ranging from 0% to 3.8%); Contractors Ass'n v. City of Philadelphia, 6 F.3d 990 (3d Cir. 1993) (crediting disparity index of 4%).

After calculation of the disparity indices, the County applied a standard deviation analysis to test the statistical significance of the results. Id. at 914. "The standard deviation figure describes the probability that the measured disparity is the result of mere chance." Id. The Eleventh Circuit had previously recognized "[s]ocial scientists consider a finding of two standard deviations significant, meaning there is about one chance in 20 that the explanation for the deviation could be random and the deviation must be accounted for by some factor other than chance." Id.

The statistics presented by the County indicated "statistically significant underutilization of BBEs in County construction contracting." Id. at 916. The results were "less dramatic" for HBEs and mixed as between favorable and unfavorable for WBEs. Id.

The Eleventh Circuit then explained the burden of proof:

[O]nce the proponent of affirmative action introduces its statistical proof as evidence of its remedial purpose, thereby supplying the [district] court with the means for determining that [it] had a firm basis for concluding that remedial action was appropriate, it is incumbent upon the [plaintiff] to prove their case; they continue to bear the ultimate burden of persuading the [district] court that the [defendant'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.'

Id. (internal citations omitted).

The Eleventh Circuit noted that a plaintiff has at least three methods to rebut the inference of discrimination with a "neutral explanation" by: "(1) showing that the statistics are flawed; (2) demonstrating that the disparities shown by the statistics are not significant or actionable; or (3)

presenting contrasting statistical data.” Id. (internal quotations and citations omitted). The Eleventh Circuit held that the plaintiffs produced “sufficient evidence to establish a neutral explanation for the disparities.” Id.

The plaintiffs alleged that the disparities were “better explained by firm size than by discrimination ... [because] minority and female-owned firms tend to be smaller, and that it stands to reason smaller firms will win smaller contracts.” Id. at 916-17. The plaintiffs produced Census data indicating, on average, minority- and female-owned construction firms in Engineering Contractors Association were smaller than non-MBE/WBE firms. Id. at 917. The Eleventh Circuit found that the plaintiff’s explanation of the disparities was a “plausible one, in light of the uncontroverted evidence that MBE/WBE construction firms tend to be substantially smaller than non-MBE/WBE firms.” Id.

Additionally, the Eleventh Circuit noted that the County’s own expert admitted that “firm size plays a significant role in determining which firms win contracts.” Id. The expert stated:

The size of the firm has got to be a major determinant because of course some firms are going to be larger, are going to be better prepared, are going to be in a greater natural capacity to be able to work on some of the contracts while others simply by virtue of their small size simply would not be able to do it. Id.

The Eleventh Circuit then summarized:

Because they are bigger, bigger firms have a bigger chance to win bigger contracts. It follows that, all other factors being equal and in a perfectly nondiscriminatory market, one would expect the bigger (on average) non-MWBE firms to get a disproportionately higher percentage of total construction dollars awarded than the smaller MWBE firms. Id.

In an anticipation of such an argument, the County conducted a regression analysis to control for firm size. Id. A regression analysis is “a statistical procedure for determining the relationship between a dependent and independent variable, e.g., the dollar value of a contract award and firm size.” Id. (internal citations omitted). The purpose of the regression analysis is “to determine whether the relationship between the two variables is statistically meaningful.” Id.

The County’s regression analysis sought to identify disparities that could not be explained by firm size, and theoretically instead based on another factor, such as discrimination. Id. The County conducted two regression analyses using two different proxies for firm size: (1) total awarded value of all contracts bid on; and (2) largest single contract awarded. Id. The regression analyses accounted for most of the negative disparities regarding MBE/WBE participation in County construction contracts (i.e., most of the unfavorable disparities became statistically insignificant, corresponding to standard deviation values less than two). Id.

Based on an evaluation of the regression analysis, the district court held that the demonstrated disparities were attributable to firm size as opposed to discrimination. Id. at 918. The district court concluded that the few unexplained disparities that remained after regressing for firm size were

insufficient to provide the requisite “strong basis in evidence” of discrimination of BBEs and HBEs. Id. The Eleventh Circuit held that this decision was not clearly erroneous. Id.

With respect to the BBE statistics, the regression analysis explained all but one negative disparity, for one type of construction contract between 1989-1991. Id. The Eleventh Circuit held the district court permissibly found that this did not constitute a “strong basis in evidence” of discrimination. Id.

With respect to the HBE statistics, one of the regression methods failed to explain the unfavorable disparity for one type of contract between 1989-1991, and both regression methods failed to explain the unfavorable disparity for another type of contract during that same time period. Id. However, by 1993, both regression methods accounted for all of the unfavorable disparities, and one of the disparities for one type of contract was actually favorable for HBEs. Id. The Eleventh Circuit held the district court permissibly found that this did not constitute a “strong basis in evidence” of discrimination. Id.

Finally, with respect to the WBE statistics, the regression analysis explained all but one negative disparity, for one type of construction contract in the 1993 period. Id. The regression analysis explained all of the other negative disparities, and in the 1993 period, a disparity for one type of contract was actually favorable to WBEs. Id. The Eleventh Circuit held the district court permissibly found that this evidence was not “sufficiently probative of discrimination.” Id.

The County argued that the district court erroneously relied on the disaggregated data (i.e., broken down by contract type) as opposed to the consolidated statistics. Id. at 919. The district court declined to assign dispositive weight to the aggregated data for the BBE statistics for 1989-1991 because (1) the aggregated data for 1993 did not show negative disparities when regressed for firm size, (2) the BBE disaggregated data left only one unexplained negative disparity for one type of contract for 1989-1991 when regressed for firm size, and (3) “the County’s own expert testified as to the utility of examining the disaggregated data ‘insofar as they reflect different kinds of work, different bidding practices, perhaps a variety of other factors that could make them heterogeneous with one another.’” Id.

Additionally, the district court noted, and the Eleventh Circuit found that “the aggregation of disparity statistics for nonheterogenous data populations can give rise to a statistical phenomenon known as ‘Simpson’s Paradox,’ which leads to illusory disparities in improperly aggregated data that disappear when the data are disaggregated.” Id. at 919, n. 4 (internal citations omitted). “Under those circumstances,” the Eleventh Circuit held that the district court did not err in assigning less weight to the aggregated data, in finding the aggregated data for BBEs for 1989-1991 did not provide a “strong basis in evidence” of discrimination, or in finding that the disaggregated data formed an insufficient basis of support for any of the MBE/WBE programs given the applicable constitutional requirements. Id. at 919.

County subcontracting statistics. The County performed a subcontracting study to measure MBE/WBE participation in the County’s subcontracting businesses. For each MBE/WBE category (BBE, HBE, and WBE), “the study compared the proportion of the designated group that filed a subcontractor’s release of lien on a County construction project between 1991 and 1994 with the proportion of sales and receipt dollars that the same group received during the same time period.” Id.

The district court found the statistical evidence insufficient to support the use of race- and ethnicity-conscious measures, noting problems with some of the data measures. Id. at 920.

Most notably, the denominator used in the calculation of the MWBE sales and receipts percentages is based upon the total sales and receipts from all sources for the firm filing a subcontractor's release of lien with the County. That means, for instance, that if a nationwide non-MWBE company performing 99 percent of its business outside of Dade County filed a single subcontractor's release of lien with the County during the relevant time frame, all of its sales and receipts for that time frame would be counted in the denominator against which MWBE sales and receipts are compared. As the district court pointed out, that is not a reasonable way to measure Dade County subcontracting participation.

Id. The County's argument that a strong majority (72%) of the subcontractors were located in Dade County did not render the district court's decision to fail to credit the study erroneous. Id.

Marketplace data statistics. The County conducted another statistical study "to see what the differences are in the marketplace and what the relationships are in the marketplace." Id. The study was based on a sample of 568 contractors, from a pool of 10,462 firms, that had filed a "certificate of competency" with Dade County as of January 1995. Id. The selected firms participated in a telephone survey inquiring about the race, ethnicity, and gender of the firm's owner, and asked for information on the firm's total sales and receipts from all sources. Id. The County's expert then studied the data to determine "whether meaningful relationships existed between (1) the race, ethnicity, and gender of the surveyed firm owners, and (2) the reported sales and receipts of that firm." Id. The expert's hypothesis was that unfavorable disparities may be attributable to marketplace discrimination. The expert performed a regression analysis using the number of employees as a proxy for size. Id.

The Eleventh Circuit first noted that the statistical pool used by the County was substantially larger than the actual number of firms, willing, able, and qualified to do the work as the statistical pool represented all those firms merely licensed as a construction contractor. Id. Although this factor did not render the study meaningless, the district court was entitled to consider that in evaluating the weight of the study. Id. at 921. The Eleventh Circuit quoted the Supreme Court for the following proposition: "[w]hen special qualifications are required to fill particular jobs, comparisons to the general population (rather than to the smaller group of individuals who possess the necessary qualifications) may have little probative value." Id., quoting Croson, 488 U.S. at 501, quoting Hazelwood Sch. Dist. v. United States, 433 U.S. 299, 308 n. 13 (1977).

The Eleventh Circuit found that after regressing for firm size, neither the BBE nor WBE data showed statistically significant unfavorable disparities. Id. Although the marketplace data did reveal unfavorable disparities even after a regression analysis, the district court was not required to assign those disparities controlling weight, especially in light of the dissimilar results of the County Contracting Statistics, discussed supra. Id.

The Wainwright Study. The County also introduced a statistical analysis prepared by Jon Wainwright, analyzing “the personal and financial characteristics of self-employed persons working full-time in the Dade County construction industry, based on data from the 1990 Public Use Microdata Sample database” (derived from the decennial census). Id. The study “(1) compared construction business ownership rates of MBE/WBEs to those of non-MBE/WBEs, and (2) analyzed disparities in personal income between MBE/WBE and non-MBE/WBE business owners.” Id. “The study concluded that blacks, Hispanics, and women are less likely to own construction businesses than similarly situated white males, and MBE/WBEs that do enter the construction business earn less money than similarly situated white males.” Id.

With respect to the first conclusion, Wainwright controlled for “human capital” variables (education, years of labor market experience, marital status, and English proficiency) and “financial capital” variables (interest and dividend income, and home ownership). Id. The analysis indicated that blacks, Hispanics and women enter the construction business at lower rates than would be expected, once numerosity, and identified human and financial capital are controlled for. Id. The disparities for blacks and women (but not Hispanics) were substantial and statistically significant. Id. at 922. The underlying theory of this business ownership component of the study is that any significant disparities remaining after control of variables are due to the ongoing effects of past and present discrimination. Id.

The Eleventh Circuit held, in light of Croson, the district court need not have accepted this theory. Id. The Eleventh Circuit quoted Croson, in which the Supreme Court responded to a similar argument advanced by the plaintiffs in that case: “There are numerous explanations for this dearth of minority participation, including past societal discrimination in education and economic opportunities *as well as both black and white career and entrepreneurial choices. Blacks may be disproportionately attracted to industries other than construction.*” Id., quoting Croson, 488 U.S. at 503. Following the Supreme Court in Croson, the Eleventh Circuit held “the disproportionate attraction of a minority group to non-construction industries does not mean that discrimination in the construction industry is the reason.” Id., quoting Croson, 488 U.S. at 503. Additionally, the district court had evidence that between 1982 and 1987, there was a substantial growth rate of MBE/WBE firms as opposed to non-MBE/WBE firms, which would further negate the proposition that the construction industry was discriminating against minority- and women-owned firms. Id. at 922.

With respect to the personal income component of the Wainwright study, after regression analyses were conducted, only the BBE statistics indicated a statistically significant disparity ratio. Id. at 923. However, the Eleventh Circuit held the district court was not required to assign the disparity controlling weight because the study did not regress for firm size, and in light of the conflicting statistical evidence in the County Contracting Statistics and Marketplace Data Statistics, discussed *supra*, which did regress for firm size. Id.

The Brimmer Study. The final study presented by the County was conducted under the supervision of Dr. Andrew F. Brimmer and concerned only black-owned firms. Id. The key component of the study was an analysis of the business receipts of black-owned construction firms for the years of 1977, 1982 and 1987, based on the Census Bureau’s Survey of Minority- and Women-Owned Businesses, produced every five years. Id. The study sought to determine the existence of

disparities between sales and receipts of black-owned firms in Dade County compared to the sales and receipts of all construction firms in Dade County. Id.

The study indicated substantial disparities in 1977 and 1987 but not 1982. Id. The County alleged that the absence of disparity in 1982 was due to substantial race-conscious measures for a major construction contract (Metrorail project), and not due to a lack of discrimination in the industry. Id. However, the study made no attempt to filter for the Metrorail project and “complete[ly] fail[ed]” to account for firm size. Id. Accordingly, the Eleventh Circuit found the district court permissibly discounted the results of the Brimmer study. Id. at 924.

Anecdotal evidence. In addition, the County presented a substantial amount of anecdotal evidence of perceived discrimination against BBEs, a small amount of similar anecdotal evidence pertaining to WBEs, and no anecdotal evidence pertaining to HBEs. Id. The County presented three basic forms of anecdotal evidence: “(1) the testimony of two County employees responsible for administering the MBE/WBE programs; (2) the testimony, primarily by affidavit, of twenty-three MBE/WBE contractors and subcontractors; and (3) a survey of black-owned construction firms.” Id.

The County employees testified that the decentralized structure of the County construction contracting system affords great discretion to County employees, which in turn creates the opportunity for discrimination to infect the system. Id. They also testified to specific incidents of discrimination, for example, that MBE/WBEs complained of receiving lengthier punch lists than their non-MBE/WBE counterparts. Id. They also testified that MBE/WBEs encounter difficulties in obtaining bonding and financing. Id.

The MBE/WBE contractors and subcontractors testified to numerous incidents of perceived discrimination in the Dade County construction market, including:

Situations in which a project foreman would refuse to deal directly with a black or female firm owner, instead preferring to deal with a white employee; instances in which an MWBE owner knew itself to be the low bidder on a subcontracting project, but was not awarded the job; instances in which a low bid by an MWBE was “shopped” to solicit even lower bids from non-MWBE firms; instances in which an MWBE owner received an invitation to bid on a subcontract within a day of the bid due date, together with a “letter of unavailability” for the MWBE owner to sign in order to obtain a waiver from the County; and instances in which an MWBE subcontractor was hired by a prime contractor, but subsequently was replaced with a non-MWBE subcontractor within days of starting work on the project.

Id. at 924-25.

Finally, the County submitted a study prepared by Dr. Joe E. Feagin, comprised of interviews of 78 certified black-owned construction firms. Id. at 925. The interviewees reported similar instances of perceived discrimination, including: “difficulty in securing bonding and financing; slow payment by general contractors; unfair performance evaluations that were tainted by racial stereotypes; difficulty

in obtaining information from the County on contracting processes; and higher prices on equipment and supplies than were being charged to non-MBE/WBE firms.” Id.

The Eleventh Circuit found that numerous black- and some female-owned construction firms in Dade County perceived that they were the victims of discrimination and two County employees also believed that discrimination could taint the County’s construction contracting process. Id. However, such anecdotal evidence is helpful “only when it [is] combined with and reinforced by sufficiently probative statistical evidence.” Id. In her plurality opinion in Croson, Justice O’Connor found 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.” Id., quoting Croson, 488 U.S. at 509 (emphasis added by the Eleventh Circuit). Accordingly, the Eleventh Circuit held that “anecdotal evidence can play an important role in bolstering statistical evidence, but that only in the rare case will anecdotal evidence suffice standing alone.” Id. at 925. The Eleventh Circuit also cited to opinions from the Third, Ninth and Tenth Circuits as supporting the same proposition. Id. at 926. The Eleventh Circuit affirmed the decision of the district court enjoining the continued operation of the MBE/WBE programs because they did not rest on a “constitutionally sufficient evidentiary foundation.” Id.

Although the Eleventh Circuit determined that the MBE/WBE program did not survive constitutional muster due to the absence of a sufficient evidentiary foundation, the Eleventh Circuit proceeded with the second prong of the strict scrutiny analysis of determining whether the MBE/WBE programs were narrowly tailored (BBE and HBE programs) or substantially related (WBE program) to the legitimate government interest they purported to serve, i.e., “remedying the effects of present and past discrimination against blacks, Hispanics, and women in the Dade County construction market.” Id.

Narrow tailoring. “The essence of the ‘narrowly tailored’ inquiry is the notion that explicitly racial preferences ... must only be a ‘last resort’ option.” Id., quoting Hayes v. North Side Law Enforcement Officers Ass’n, 10 F.3d 207, 217 (4th Cir. 1993) and citing Croson, 488 U.S. at 519 (Kennedy, J., concurring in part and concurring in the judgment) (“[T]he strict scrutiny standard ... forbids the use of even narrowly drawn racial classifications except as a last resort.”).

The Eleventh Circuit has identified four factors to evaluate whether a race- or ethnicity-conscious affirmative action program is narrowly tailored: (1) “the necessity for the relief and the efficacy of alternative remedies; (2) the flexibility and duration of the relief; (3) the relationship of numerical goals to the relevant labor market; and (4) the impact of the relief on the rights of innocent third parties.” Id. at 927, citing Ensley Branch, 31 F.3d at 1569. The four factors provide “a useful analytical structure.” Id. at 927. The Eleventh Circuit focused only on the first factor in the present case “because that is where the County’s MBE/WBE programs are most problematic.” Id.

The Eleventh Circuit

flatly reject[ed] the County’s assertion that ‘given a strong basis in evidence of a race-based problem, a race-based remedy is necessary.’ That is simply not the law. If a race-neutral remedy is sufficient to cure a race-based problem, then a race-conscious remedy can never be narrowly tailored to that problem.” Id., citing Croson, 488 U.S.

at 507 (holding that affirmative action program was not narrowly tailored where “there does not appear to have been any consideration of the use of race-neutral means to increase minority business participation in city contracting”) ... Supreme Court decisions teach that a race-conscious remedy is not merely one of many equally acceptable medications the government may use to treat a race-based problem. Instead, it is the strongest of medicines, with many potential side effects, and must be reserved for those severe cases that are highly resistant to conventional treatment.

Id. at 927.

The Eleventh Circuit held that the County “clearly failed to give serious and good faith consideration to the use of race- and ethnicity-neutral measures.” Id. Rather, the determination of the necessity to establish the MWBE programs was based upon a conclusory legislative statement as to its necessity, which in turn was based upon an “equally conclusory analysis” in the Brimmer study, and a report that the SBA only was able to direct 5 percent of SBA financing to black-owned businesses between 1968-1980. Id.

The County admitted, and the Eleventh Circuit concluded, that the County failed to give any consideration to any alternative to the HBE affirmative action program. Id. at 928. Moreover, the Eleventh Circuit found that the testimony of the County’s own witnesses indicated the viability of race- and ethnicity-neutral measures to remedy many of the problems facing black- and Hispanic-owned construction firms. Id. The County employees identified problems, virtually all of which were related to the County’s own processes and procedures, including: “the decentralized County contracting system, which affords a high level of discretion to County employees; the complexity of County contract specifications; difficulty in obtaining bonding; difficulty in obtaining financing; unnecessary bid restrictions; inefficient payment procedures; and insufficient or inefficient exchange of information.” Id. The Eleventh Circuit found that the problems facing MBE/WBE contractors were “institutional barriers” to entry facing every new entrant into the construction market, and were perhaps affecting the MBE/WBE contractors disproportionately due to the “institutional youth” of black- and Hispanic-owned construction firms. Id. “It follows that those firms should be helped the most by dismantling those barriers, something the County could do at least in substantial part.” Id.

The Eleventh Circuit noted that the race- and ethnicity-neutral options available to the County mirrored those available and cited by Justice O’Connor in Croson:

[T]he city has at its disposal a whole array of race-neutral measures to increase the accessibility of city contracting opportunities to small entrepreneurs of all races. Simplification of bidding procedures, relaxation of bonding requirements, and training and financial aid for disadvantaged entrepreneurs of all races would open the public contracting market to all those who have suffered the effects of past societal discrimination and neglect ... The city may also act to prohibit discrimination in the provision of credit or bonding by local suppliers and banks.

Id., quoting Croson, 488 U.S. at 509-10. The Eleventh Circuit found that except for some “half-hearted programs” consisting of “limited technical and financial aid that might benefit BBEs and HBEs,” the County had not “seriously considered” or tried most of the race- and ethnicity-neutral alternatives available. Id. at 928. “Most notably ... the County has not taken any action whatsoever to ferret out and respond to instances of discrimination if and when they have occurred in the County’s own contracting process.” Id.

The Eleventh Circuit found that the County had taken no steps to “inform, educate, discipline, or penalize” discriminatory misconduct by its own employees. Id. at 929. Nor had the County passed any local ordinances expressly prohibiting discrimination by local contractors, subcontractors, suppliers, bankers, or insurers. Id. “Instead of turning to race- and ethnicity-conscious remedies as a last resort, the County has turned to them as a first resort.” Accordingly, the Eleventh Circuit held that even if the BBE and HBE programs were supported by the requisite evidentiary foundation, they violated the Equal Protection Clause because they were not narrowly tailored. Id.

Substantial relationship. The Eleventh Circuit held that due to the relaxed “substantial relationship” standard for gender-conscious programs, if the WBE program rested upon a sufficient evidentiary foundation, it could pass the substantial relationship requirement. Id. However, because it did not rest upon a sufficient evidentiary foundation, the WBE program could not pass constitutional muster. Id.

For all of the foregoing reasons, the Eleventh Circuit affirmed the decision of the district court declaring the MBE/WBE programs unconstitutional and enjoining their continued operation.

Recent District Court Decisions

11. H.B. Rowe Corp., Inc. v. W. Lyndo Tippett, North Carolina DOT, et al; 589 F. Supp. 2d 587 (E.D.N.C. 2008), aff’d in part and rev’d in part, F.3d 2010 WL 2871076 (4th Cir. July 22, 2010)

In H.B. Rowe Company v. Tippett, North Carolina Department of Transportation, et al. (“Rowe”), the United States District Court for the Eastern District of North Carolina, Western Division, heard a challenge to the State of North Carolina Minority Business Enterprise and Woman Business Enterprise Program (“MBE Program” or “WBE Program”), which is a State of North Carolina “affirmative action” program administered by the North Carolina DOT (“NCDOT”). The NCDOT MWBE Program challenged in Rowe involves projects funded solely by the State of North Carolina and not funded by the Federal Department of Transportation. 589 F.Supp. 2d 587.

Background. In this case plaintiff, a family-owned road construction business, bid on a NCDOT initiated state-funded project. NCDOT rejected plaintiff’s bid in favor of the next low bid that had proposed higher minority participation on the project as part of its bid. According to NCDOT, plaintiff’s bid was rejected because of plaintiff’s failure to demonstrate “good faith efforts” to obtain pre-designated levels of minority participation on the project.

As a prime contractor, plaintiff Rowe was obligated under the MWBE Program to either obtain participation of specified levels of minority business enterprise and women business enterprise participation as subcontractors, or to demonstrate good faith efforts to do so. For this particular project, NCDOT had set MBE and WBE subcontractor participation goals of 10 percent and 5

percent, respectively. Plaintiff's bid included 6.6 percent WBE participation, but no MBE participation. The bid was rejected after a review of plaintiff's good faith efforts to obtain MBE participation. The next lowest bidder submitted a bid including 3.3 percent MBE participation and 9.3 percent WBE participation, and although not obtaining a specified level of MBE participation, it was determined to have made good faith efforts to do so. (Order of the District Court, dated March 29, 2007).

North Carolina's MWBE Program "largely mirrors" the Federal Disadvantage Business Enterprise ("DBE") Program, which NCDOT is required to comply with in awarding construction contracts that utilize Federal funds. (589 F.Supp. 2d 587; Order of the District Court, dated September 28, 2007). Like the Federal DBE Program, under North Carolina's MWBE Program, the goals for minority and female participation are aspirational rather than mandatory. *Id.* An individual target for MBE participation was set for each project. *Id.*

Historically, NCDOT had engaged in several disparity studies. The most recent study was done in 2004. *Id.* The 2004 Study, which followed the study in 1998, concluded that disparities in utilization of MBEs persist and that a basis remains for continuation of the MWBE Program. The new statute as revised was approved in 2006, which modified the previous MBE statute by eliminating the 10 percent and 5 percent goals and establishing a fixed expiration date of 2009.

Plaintiff filed its complaint in this case in 2003 against the NCDOT and individuals associated with the NCDOT, including the Secretary of NCDOT, W. Lyndo Tippett. In its complaint, plaintiff alleged that the MWBE statute for NCDOT was unconstitutional on its face and as applied. 589 F.Supp. 2d 587.

March 29, 2007 Order of the District Court. The matter came before the district court initially on several motions, including the defendants' Motion to Dismiss or for Partial Summary Judgment, defendants' Motion to Dismiss the Claim for Mootness and plaintiff's Motion for Summary Judgment. The court in its October 2007 Order granted in part and denied in part defendants' Motion to Dismiss or for partial summary judgment; denied defendants' Motion to Dismiss the Claim for Mootness; and dismissed without prejudice plaintiff's Motion for Summary Judgment.

The court held the Eleventh Amendment to the United States Constitution bars plaintiff from obtaining any relief against defendant NCDOT, and from obtaining a retrospective damages award against any of the individual defendants in their official capacities. The court ruled that plaintiff's claims for relief against the NCDOT were barred by the Eleventh Amendment, and the NCDOT was dismissed from the case as a defendant. Plaintiff's claims for interest, actual damages, compensatory damages and punitive damages against the individual defendants sued in their official capacities also was held barred by the Eleventh Amendment and were dismissed. But, the court held that plaintiff was entitled to sue for an injunction to prevent state officers from violating a federal law, and under the *Ex Parte Young* exception, plaintiff's claim for declaratory and injunctive relief was permitted to go forward as against the individual defendants who were acting in an official capacity with the NCDOT. The court also held that the individual defendants were entitled to qualified immunity, and therefore dismissed plaintiff's claim for money damages against the individual defendants in their individual capacities. Order of the District Court, dated March 29, 2007.

Defendants argued that the recent amendment to the MWBE statute rendered plaintiff's claim for declaratory injunctive relief moot. The new MWBE statute adopted in 2006, according to the court, does away with many of the alleged shortcomings argued by the plaintiff in this lawsuit. The court found the amended statute has a sunset date in 2009; specific aspirational participation goals by women and minorities are eliminated; defines "minority" as including only those racial groups which disparity studies identify as subject to underutilization in state road construction contracts; explicitly references the findings of the 2004 Disparity Study and requires similar studies to be conducted at least once every five years; and directs NCDOT to enact regulations targeting discrimination identified in the 2004 and future studies.

The court held, however, that the 2004 Disparity Study and amended MWBE statute do not remedy the primary problem which the plaintiff complained of: the use of remedial race- and gender- based preferences allegedly without valid evidence of past racial and gender discrimination. In that sense, the court held the amended MWBE statute continued to present a live case or controversy, and accordingly denied the defendants' Motion to Dismiss Claim for Mootness as to plaintiff's suit for prospective injunctive relief. Order of the District Court, dated March 29, 2007.

The court also held that since there had been no analysis of the MWBE statute apart from the briefs regarding mootness, plaintiff's pending Motion for Summary Judgment was dismissed without prejudice. Order of the District Court, dated March 29, 2007.

September 28, 2007 Order of the District Court. On September 28, 2007, the district court issued a new order in which it denied both the plaintiff's and the defendants' Motions for Summary Judgment. Plaintiff claimed that the 2004 Disparity Study is the sole basis of the MWBE statute, that the study is flawed, and therefore it does not satisfy the first prong of strict scrutiny review. Plaintiff also argued that the 2004 Study tends to prove non-discrimination in the case of women; and finally the MWBE Program fails the second prong of strict scrutiny review in that it is not narrowly tailored.

The court found summary judgment was inappropriate for either party and that there are genuine issues of material fact for trial. The first and foremost issue of material fact, according to the court, was the adequacy of the 2004 Disparity Study as used to justify the MWBE Program. Therefore, because the court found there was a genuine issue of material fact regarding the 2004 Study, summary judgment was denied on this issue.

The court also held there was confusion as to the basis of the MWBE Program, and whether it was based solely on the 2004 Study or also on the 1993 and 1998 Disparity Studies. Therefore, the court held a genuine issue of material fact existed on this issue and denied summary judgment. Order of the District Court, dated September 28, 2007.

December 9, 2008 Order of the District Court (589 F.Supp. 2d 587). The district court on December 9, 2008, after a bench trial, issued an Order that found as a fact and concluded as a matter of law that plaintiff failed to satisfy its burden of proof that the North Carolina Minority and Women's Business Enterprise program, enacted by the state legislature to affect the awarding of contracts and subcontracts in state highway construction, violated the United States Constitution.

Plaintiff, in its complaint filed against the NCDOT alleged that N.C. Gen. St. § 136-28.4 is unconstitutional on its face and as applied, and that the NCDOT while administering the MWBE

program violated plaintiff's rights under the federal law and the United States Constitution. Plaintiff requested a declaratory judgment that the MWBE program is invalid and sought actual and punitive damages.

As a prime contractor, plaintiff was obligated under the MWBE program to either obtain participation of specified levels of MBE and WBE subcontractors, or to demonstrate that good faith efforts were made to do so. Following a review of plaintiff's good faith efforts to obtain minority participation on the particular contract that was the subject of plaintiff's bid, the bid was rejected. Plaintiff's bid was rejected in favor of the next lowest bid, which had proposed higher minority participation on the project as part of its bid. According to NCDOT, plaintiff's bid was rejected because of plaintiff's failure to demonstrate good faith efforts to obtain pre-designated levels of minority participation on the project. 589 F.Supp. 2d 587.

North Carolina's MWBE program. The MWBE program was implemented following amendments to N.C. Gen. Stat. §136-28.4. Pursuant to the directives of the statute, the NCDOT promulgated regulations governing administration of the MWBE program. See N.C. Admin. Code tit. 19A, § 2D.1101, et seq. The regulations had been amended several times and provide that NCDOT shall ensure that MBEs and WBEs have the maximum opportunity to participate in the performance of contracts financed with non-Federal funds. N.C. Admin. Code Tit. 19A § 2D.1101.

North Carolina's MWBE program, which affected only highway bids and contracts funded solely with state money, according to the district court, largely mirrored the Federal DBE Program which NCDOT is required to comply with in awarding construction contracts that utilize federal funds. 589 F.Supp. 2d 587. Like the Federal DBE Program, under North Carolina's MWBE program, the targets for minority and female participation were aspirational rather than mandatory, and individual targets for disadvantaged business participation were set for each individual project. N.C. Admin. Code tit. 19A § 2D.1108. In determining what level of MBE and WBE participation was appropriate for each project, NCDOT would take into account "the approximate dollar value of the contract, the geographical location of the proposed work, a number of the eligible funds in the geographical area, and the anticipated value of the items of work to be included in the contract." *Id.* NCDOT would also consider "the annual goals mandated by Congress and the North Carolina General Assembly." *Id.*

A firm could be certified as a MBE or WBE by showing NCDOT that it is "owner controlled by one or more socially and economically disadvantaged individuals." NC Admin. Code tit. 1980, § 2D.1102.

The district court stated the MWBE program did not directly discriminate in favor of minority and women contractors, but rather "encouraged prime contractors to favor MBEs and WBEs in subcontracting before submitting bids to NCDOT." 589 F.Supp. 2d 587. In determining whether the lowest bidder is "responsible," NCDOT would consider whether the bidder obtained the level of certified MBE and WBE participation previously specified in the NCDOT project proposal. If not, NCDOT would consider whether the bidder made good faith efforts to solicit MBE and WBE participation. N.C. Admin. Code tit. 19A§ 2D.1108.

There were multiple studies produced and presented to the North Carolina General Assembly in the years 1993, 1998 and 2004. The 1998 and 2004 studies concluded that disparities in the utilization

of minority and women contractors persist, and that there remains a basis for continuation of the MWBE program. The MWBE program as amended after the 2004 Study includes provisions that eliminated the 10 percent and 5 percent goals and instead replaced them with contract-specific participation goals created by NCDOT; established a sunset provision that has the statute expiring on August 31, 2009; and provides reliance on a disparity study produced in 2004.

The MWBE program, as it stood at the time of this decision, provides that NCDOT “dictates to prime contractors the express goal of MBE and WBE subcontractors to be used on a given project. However, instead of the state hiring the MBE and WBE subcontractors itself, the NCDOT makes the prime contractor solely responsible for vetting and hiring these subcontractors. If a prime contractor fails to hire the goal amount, it must submit efforts of ‘good faith’ attempts to do so.” 589 F.Supp. 2d 587.

Compelling interest. The district court held that NCDOT established a compelling governmental interest to have the MWBE program. The court noted that the United States Supreme Court in Croson made clear that a state legislature has a compelling interest in eradicating and remedying private discrimination in the private subcontracting inherent in the letting of road construction contracts. 589 F.Supp. 2d 587, citing Croson, 488 U.S. at 492. The district court found that the North Carolina Legislature established it relied upon a strong basis of evidence in concluding that prior race discrimination in North Carolina’s road construction industry existed so as to require remedial action.

The court held that the 2004 disparity study demonstrated the existence of previous discrimination in the specific industry and locality at issue. The court stated that disparity ratios provided for in the 2004 disparity study highlighted the underutilization of MBEs by prime contractors bidding on state funded highway projects. In addition, the court found that evidence relied upon by the legislature demonstrated a dramatic decline in the utilization of MBEs during the program’s suspension in 1991. The court also found that anecdotal support relied upon by the legislature confirmed and reinforced the general data demonstrating the underutilization of MBEs. The court held that the NCDOT established that, “based upon a clear and strong inference raised by this Study, they concluded minority contractors suffer from the lingering effects of racial discrimination.” 589 F.Supp. 2d 587.

With regard to WBEs, the court applied a different standard of review. The court held the legislative scheme as it relates to MWBEs must serve an important governmental interest and must be substantially related to the achievement of those objectives. The court found that NCDOT established an important governmental interest. The 2004 disparity study provided that the average contracts awarded WBEs are significantly smaller than those awarded non-WBEs. The court held that NCDOT established based upon a clear and strong inference raised by the Study, women contractors suffer from past gender discrimination in the road construction industry.

Narrowly tailored. The district court noted that the Fourth Circuit of Appeals lists a number of factors to consider in analyzing a statute for narrow tailoring: (1) the necessity of the policy and the efficacy of alternative race neutral policies; (2) the planned duration of the policy; (3) the relationship between the numerical goal and the percentage of minority group members in the relevant population; (4) the flexibility of the policy, including the provision of waivers if the goal cannot be

met; and (5) the burden of the policy on innocent third parties. 589 F.Supp. 2d 587, quoting Belk v. Charlotte-Mecklenburg Board of Education, 269 F.3d 305, 344 (4th Cir. 2001).

The district court held that the legislative scheme in N.C. Gen. Stat. § 136-28.4 is narrowly tailored to remedy private discrimination of minorities and women in the private subcontracting inherent in the letting of road construction contracts. The district court's analysis focused on narrowly tailoring factors (2) and (4) above, namely the duration of the policy and the flexibility of the policy. With respect to the former, the court held the legislative scheme provides the program be reviewed at least every five years to revisit the issue of utilization of MWBEs in the road construction industry. N.C. Gen. Stat. §136-28.4(b). Further, the legislative scheme includes a sunset provision so that the program will expire on August 31, 2009, unless renewed by an act of the legislature. Id. at § 136-28.4(e). The court held these provisions ensured the legislative scheme last no longer than necessary.

The court also found that the legislative scheme enacted by the North Carolina legislature provides flexibility insofar as the participation goals for a given contract or determined on a project by project basis. § 136-28.4(b)(1). Additionally, the court found the legislative scheme in question is not overbroad because the statute applies only to “those racial or ethnicity classifications identified by a study conducted in accordance with this section that had been subjected to discrimination in a relevant marketplace and that had been adversely affected in their ability to obtain contracts with the Department.” § 136-28.4(c)(2). The court found that plaintiff failed to provide any evidence that indicates minorities from non-relevant racial groups had been awarded contracts as a result of the statute.

The court held that the legislative scheme is narrowly tailored to remedy private discrimination of minorities and women in the private subcontracting inherent in the letting of road construction contracts, and therefore found that § 136-28.4 is constitutional.

The decision of the district court was appealed to the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit affirmed in part and reversed in part the decision of the District Court. H. B. Rowe Co., Inc. v. W. Lyndo Tippet, NCDOT, et al, F.3d 2010 WL 2871076 (4th Cir. July 22, 2010) discussed above.

12. Thomas v. City of Saint Paul, 526 F. Supp. 2d 959 (D. Minn 2007), affirmed, 321 Fed. Appx. 541, 2009 WL 777932 (8th Cir. March 26, 2009) (unpublished opinion), cert. denied, ___S.Ct. ____, 2009 WL 2496325 (U.S. October 13, 2009).

In Thomas v. City of Saint Paul, the plaintiffs are African American business owners who brought this lawsuit claiming that the City of Saint Paul, Minnesota discriminated against them in awarding publicly-funded contracts. The City moved for summary judgment, which the United States District Court granted and issued an order dismissing the plaintiff's lawsuit in December 2007.

The background of the case involves the adoption by the City of Saint Paul of a Vendor Outreach Program (the “VOP”) that was designed to assist minority and other small business owners in competing for City contracts. Plaintiffs were VOP-certified minority business owners. Plaintiffs contended that the City engaged in racially discriminatory illegal conduct in awarding City contracts for publicly-funded projects. Plaintiff Thomas claimed that the City denied him opportunities to

work on projects because of his race arguing that the City failed to invite him to bid on certain projects, the City failed to award him contracts and the fact independent developers had not contracted with his company. 526 F. Supp. 2d at 962. The City contended that Thomas was provided opportunities to bid for the City's work.

Plaintiff Brian Conover owned a trucking firm, and he claimed that none of his bids as a subcontractor, on 22 different projects to various independent developers were accepted. 526 F. Supp. 2d at 962. The court found that after years of discovery, plaintiff Conover offered no admissible evidence to support his claim, had not identified the subcontractors whose bids were accepted, and did not offer any comparison showing the accepted bid and the bid he submitted. *Id.* Plaintiff Conover also complained that he received bidding invitations only a few days before a bid was due, which did not allow him adequate time to prepare a competitive bid. *Id.* The court found, however, he failed to identify any particular project for which he had only a single day of bid, and did not identify any similarly situated person of any race who was afforded a longer period of time in which to submit a bid. *Id.* at 963. Plaintiff Newell claimed he submitted numerous bids on the City's projects all of which were rejected. *Id.* The court found, however, that he provided no specifics about why he did not receive the work. *Id.*

The VOP. Under the VOP, the City sets annual bench marks or levels of participation for the targeted minorities groups. *Id.* at 963. The VOP prohibits quotas and imposes various "good faith" requirements on prime contractors who bid for City projects. *Id.* at 964. In particular, the VOP requires that when a prime contractor rejects a bid from a VOP-certified business, the contractor must give the City its basis for the rejection, and evidence that the rejection was justified. *Id.* The VOP further imposes obligations on the City with respect to vendor contracts. *Id.* The court found the City must seek where possible and lawful to award a portion of vendor contracts to VOP-certified businesses. *Id.* The City contract manager must solicit these bids by phone, advertisement in a local newspaper or other means. Where applicable, the contract manager may assist interested VOP participants in obtaining bonds, lines of credit or insurance required to perform under the contract. *Id.* The VOP ordinance provides that when the contract manager engages in one or more possible outreach efforts, he or she is in compliance with the ordinance. *Id.*

Analysis and Order of the Court. The district court found that the City is entitled to summary judgment because plaintiffs lack standing to bring these claims and that no genuine issue of material fact remains. *Id.* at 965. The court held that the plaintiffs had no standing to challenge the VOP because they failed to show they were deprived of an opportunity to compete, or that their inability to obtain any contract resulted from an act of discrimination. *Id.* The court found they failed to show any instance in which their race was a determinant in the denial of any contract. *Id.* at 966. As a result, the court held plaintiffs failed to demonstrate the City engaged in discriminatory conduct or policy which prevented plaintiffs from competing. *Id.* at 965-966.

The court held that in the absence of any showing of intentional discrimination based on race, the mere fact the City did not award any contracts to plaintiffs does not furnish that causal nexus necessary to establish standing. *Id.* at 966. The court held the law does not require the City to voluntarily adopt "aggressive race-based affirmative action programs" in order to award specific groups publicly-funded contracts. *Id.* at 966. The court found that plaintiffs had failed to show a violation of the VOP ordinance, or any illegal policy or action on the part of the City. *Id.*

The court stated that the plaintiffs must identify a discriminatory policy in effect. Id. at 966. The court noted, for example, even assuming the City failed to give plaintiffs more than one day's notice to enter a bid, such a failure is not, per se, illegal. Id. The court found the plaintiffs offered no evidence that anyone else of any other race received an earlier notice, or that he was given this allegedly tardy notice as a result of his race. Id.

The court concluded that even if plaintiffs may not have been hired as a subcontractor to work for prime contractors receiving City contracts, these were independent developers and the City is not required to defend the alleged bad acts of others. Id. Therefore, the court held plaintiffs had no standing to challenge the VOP. Id. at 966.

Plaintiffs claims. The court found that even assuming plaintiffs possessed standing, they failed to establish facts which demonstrated a need for a trial, primarily because each theory of recovery is viable only if the City "intentionally" treated plaintiffs unfavorably because of their race. Id. at 967. The court held to establish a prima facie violation of the equal protection clause, there must be state action. Id. Plaintiffs must offer facts and evidence that constitute proof of "racially discriminatory intent or purpose." Id. at 967. Here, the court found that plaintiff failed to allege any single instance showing the City "intentionally" rejected VOP bids based on their race. Id.

The court also found that plaintiffs offered no evidence of a specific time when any one of them submitted the lowest bid for a contract or a subcontract, or showed any case where their bids were rejected on the basis of race. Id. The court held the alleged failure to place minority contractors in a preferred position, without more, is insufficient to support a finding that the City failed to treat them equally based upon their race. Id.

The City rejected the plaintiffs claims of discrimination because the plaintiffs did not establish by evidence that the City "intentionally" rejected their bid due to race or that the City "intentionally" discriminated against these plaintiffs. Id. at 967-968. The court held that the plaintiffs did not establish a single instance showing the City deprived them of their rights, and the plaintiffs did not produce evidence of a "discriminatory motive." Id. at 968. The court concluded that plaintiffs had failed to show that the City's actions were "racially motivated." Id.

The Eight Circuit Court of Appeals recently affirmed the ruling of the district court. Thomas v. City of Saint Paul, 2009 WL 777932 (8th Cir. March 26, 2009)(unpublished opinion). The Eighth Circuit affirmed based on the decision of the district court and finding no reversible error.

13. Thompson Building Wrecking Co. v. Augusta, Georgia, No. 1:07CV019, 2007 WL 926153 (S.D. Ga. Mar. 14, 2007)(Slip. Op.)

This case considered the validity of the City of Augusta's local minority disadvantaged business enterprise ("DBE") program. The district court enjoined the City from favoring any contract bid on the basis of racial classification and based its decision principally upon the outdated and insufficient data proffered by the City in support of its program. 2007 WL 926153 at *9-10.

The City of Augusta enacted a local DBE program based upon the results of a disparity study completed in 1994. The disparity study examined the disparity in socioeconomic status among races, compared black-owned businesses in Augusta with those in other regions and those owned by other

racial groups, examined “Georgia’s racist history” in contracting and procurement, and examined certain data related to Augusta’s contracting and procurement. Id. at *1-4. The plaintiff contractors and subcontractors challenged the constitutionality of the DBE program and sought to extend a temporary injunction enjoining the City’s implementation of racial preferences in public bidding and procurement.

The City defended the DBE program arguing that it did not utilize racial classifications because it only required vendors to make a “good faith effort” to ensure DBE participation. Id. at *6. The court rejected this argument noting that bidders were required to submit a “Proposed DBE Participation” form and that bids containing DBE participation were treated more favorably than those bids without DBE participation. The court stated: “Because a person’s business can qualify for the favorable treatment based on that person’s race, while a similarly situated person of another race would not qualify, the program contains a racial classification.” Id.

The court noted that the DBE program harmed subcontractors in two ways: first, because prime contractors will discriminate between DBE and non-DBE subcontractors and a bid with a DBE subcontractor would be treated more favorably; and second, because the City would favor a bid containing DBE participation over an equal or even superior bid containing no DBE participation. Id.

The court applied the strict scrutiny standard set forth in Croson and Engineering Contractors Association to determine whether the City had a compelling interest for its program and whether the program was narrowly tailored to that end. The court noted that pursuant to Croson, the City would have a compelling interest in assuring that tax dollars would not perpetuate private prejudice. But, the court found (citing to Croson), that a state or local government must identify that discrimination, “public or private, with some specificity before they may use race-conscious relief.” The court cited the Eleventh Circuit’s position that “‘gross statistical disparities’ between the proportion of minorities hired by the public employer and the proportion of minorities hired by the public employer and the proportion of minorities willing and able to work” may justify an affirmative action program. Id. at *7. The court also stated that anecdotal evidence is relevant to the analysis.

The court determined that while the City’s disparity study showed some statistical disparities buttressed by anecdotal evidence, the study suffered from multiple issues. Id. at *7-8. Specifically, the court found that those portions of the study examining discrimination outside the area of subcontracting (e.g., socioeconomic status of racial groups in the Augusta area) were irrelevant for purposes of showing a compelling interest. The court also cited the failure of the study to differentiate between different minority races as well as the improper aggregation of race- and gender-based discrimination referred to as Simpson’s Paradox.

The court assumed for purposes of its analysis that the City could show a compelling interest but concluded that the program was not narrowly tailored and thus could not satisfy strict scrutiny. The court found that it need look no further beyond the fact of the thirteen-year duration of the program absent further investigation, and the absence of a sunset or expiration provision, to conclude that the DBE program was not narrowly tailored. Id. at *8. Noting that affirmative action is permitted only sparingly, the court found: “[i]t would be impossible for Augusta to argue that, 13 years after last studying the issue, racial discrimination is so rampant in the Augusta contracting industry that the City must affirmatively act to avoid being complicit.” Id. The court held in conclusion, that the

plaintiffs were “substantially likely to succeed in proving that, when the City requests bids with minority participation and in fact favors bids with such, the plaintiffs will suffer racial discrimination in violation of the Equal Protection Clause.” Id. at *9.

In a subsequent Order dated September 5, 2007, the court denied the City’s motion to continue plaintiff’s Motion for Summary Judgment, denied the City’s Rule 12(b)(6) motion to dismiss, and stayed the action for 30 days pending mediation between the parties. Importantly, in this Order, the court reiterated that the female- and locally-owned business components of the program (challenged in plaintiff’s Motion for Summary Judgment) would be subject to intermediate scrutiny and rational basis scrutiny, respectively. The court also reiterated its rejection of the City’s challenge to the plaintiffs’ standing. The court noted that under Adarand, preventing a contractor from competing on an equal footing satisfies the particularized injury prong of standing. And showing that the contractor will sometime in the future bid on a City contract “that offers financial incentives to a prime contractor for hiring disadvantaged subcontractors” satisfies the second requirement that the particularized injury be actual or imminent. Accordingly, the court concluded that the plaintiffs have standing to pursue this action.

14. Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, 333 F. Supp. 2d 1305 (S.D. Fla. 2004)

The decision in Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, is significant to the disparity study because it applied and followed the Engineering Contractors Association decision in the context of contracting and procurement for goods and services (including architect and engineer services). Many of the other cases focused on construction, and thus Hershell Gill is instructive as to the analysis relating to architect and engineering services. The decision in Hershell Gill also involved a district court in the Eleventh Circuit imposing compensatory and punitive damages upon individual County Commissioners due to the district court’s finding of their willful failure to abrogate an unconstitutional MBE/WBE Program. In addition, the case is noteworthy because the district court refused to follow the 2003 Tenth Circuit Court of Appeals decision in Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003). See discussion, infra.

Six years after the decision in Engineering Contractors Association, two white male-owned engineering firms (the “plaintiffs”) brought suit against Engineering Contractors Association (the “County”), the former County Manager, and various current County Commissioners (the “Commissioners”) in their official and personal capacities (collectively the “defendants”), seeking to enjoin the same “participation goals” in the same MWBE program deemed to violate the Fourteenth Amendment in the earlier case. 333 F. Supp. 1305, 1310 (S.D. Fla. 2004). After the Eleventh Circuit’s decision in Engineering Contractors Association striking down the MWBE programs as applied to construction contracts, the County enacted a Community Small Business Enterprise (CSBE) program for construction contracts, “but continued to apply racial, ethnic, and gender criteria to its purchases of goods and services in other areas, including its procurement of A&E services.” Id. at 1311.

The plaintiffs brought suit challenging the Black Business Enterprise (BBE) program, the Hispanic Business Enterprise (HBE) program, and the Women Business Enterprise (WBE) program (collectively “MBE/WBE”). Id. The MBE/WBE programs applied to A&E contracts in excess of \$25,000. Id. at 1312. The County established five “contract measures” to reach the participation

goals: (1) set asides, (2) subcontractor goals, (3) project goals, (4) bid preferences, and (5) selection factors. Id. Once a contract was identified as covered by a participation goal, a review committee would determine whether a contract measure should be utilized. Id. The County was required to review the efficacy of the MBE/WBE programs annually, and reevaluated the continuing viability of the MBE/WBE programs every five years. Id. at 1313. However, the district court found “the participation goals for the three MBE/WBE programs challenged . . . remained unchanged since 1994.” Id.

In 1998, counsel for plaintiffs contacted the County Commissioners requesting the discontinuation of contract measures on A&E contracts. Id. at 1314. Upon request of the Commissioners, the county manager then made two reports (an original and a follow-up) measuring parity in terms of dollars awarded and dollars paid in the areas of A&E for blacks, Hispanics, and women, and concluded both times that the “County has reached parity for black, Hispanic, and Women-owned firms in the areas of [A&E] services.” The final report further stated “Based on all the analyses that have been performed, the County does not have a basis for the establishment of participation goals which would allow staff to apply contract measures.” Id. at 1315. The district court also found that the Commissioners were informed that “there was even less evidence to support [the MBE/WBE] programs as applied to architects and engineers than there was in contract construction.” Id. Nonetheless, the Commissioners voted to continue the MBE/WBE participation goals at their previous levels. Id.

In May of 2000 (18 months after the lawsuit was filed), the County commissioned Dr. Manuel J. Carvajal, an econometrician, to study architects and engineers in the county. His final report had four parts:

(1) data identification and collection of methodology for displaying the research results; (2) presentation and discussion of tables pertaining to architecture, civil engineering, structural engineering, and awards of contracts in those areas; (3) analysis of the structure and empirical estimates of various sets of regression equations, the calculation of corresponding indices, and an assessment of their importance; and (4) a conclusion that there is discrimination against women and Hispanics — but not against blacks — in the fields of architecture and engineering.

Id. The district court issued a preliminary injunction enjoining the use of the MBE/WBE programs for A&E contracts, pending the United States Supreme Court decisions in Gratz v. Bollinger, 539 U.S. 244 (2003) and Grutter v. Bollinger, 539 U.S. 306 (2003). Id. at 1316.

The court considered whether the MBE/WBE programs were violative of Title VII of the Civil Rights Act, and whether the County and the County Commissioners were liable for compensatory and punitive damages.

The district court found that the Supreme Court decisions in Gratz and Grutter did not alter the constitutional analysis as set forth in Adarand and Croson. Id. at 1317. Accordingly, the race- and ethnicity-based classifications were subject to strict scrutiny, meaning the County must present “a strong basis of evidence” indicating the MBE/WBE program was necessary and that it was narrowly tailored to its purported purpose. Id. at 1316. The gender-based classifications were subject to intermediate scrutiny, requiring the County to show the “gender-based classification serves an important governmental objective, and that it is substantially related to the achievement of that

objective.” Id. at 1317 (internal citations omitted). The court found that the proponent of a gender-based affirmative action program must present “sufficient probative evidence” of discrimination. Id. (internal citations omitted). The court found that under the intermediate scrutiny analysis, the County must (1) demonstrate past discrimination against women but not necessarily at the hands of the County, and (2) that the gender-conscious affirmative action program need not be used only as a “last resort.” Id.

The County presented both statistical and anecdotal evidence. Id. at 1318. The statistical evidence consisted of Dr. Carvajal’s report, most of which consisted of “post-enactment” evidence. Id. Dr. Carvajal’s analysis sought to discover the existence of racial, ethnic and gender disparities in the A&E industry, and then to determine whether any such disparities could be attributed to discrimination. Id. The study used four data sets: three were designed to establish the marketplace availability of firms (architecture, structural engineering, and civil engineering), and the fourth focused on awards issued by the County. Id. Dr. Carvajal used the phone book, a list compiled by infoUSA, and a list of firms registered for technical certification with the County’s Department of Public Works to compile a list of the “universe” of firms competing in the market. Id. For the architectural firms only, he also used a list of firms that had been issued an architecture professional license. Id.

Dr. Carvajal then conducted a phone survey of the identified firms. Based on his data, Dr. Carvajal concluded that disparities existed between the percentage of A&E firms owned by blacks, Hispanics, and women, and the percentage of annual business they received. Id. Dr. Carvajal conducted regression analyses “in order to determine the effect a firm owner’s gender or race had on certain dependent variables.” Id. Dr. Carvajal used the firm’s annual volume of business as a dependent variable and determined the disparities were due in each case to the firm’s gender and/or ethnic classification. Id. at 1320. He also performed variants to the equations including: (1) using certification rather than survey data for the experience / capacity indicators, (2) with the outliers deleted, (3) with publicly-owned firms deleted, (4) with the dummy variables reversed, and (5) using only currently certified firms.” Id. Dr. Carvajal’s results remained substantially unchanged. Id.

Based on his analysis of the marketplace data, Dr. Carvajal concluded that the “gross statistical disparities” in the annual business volume for Hispanic- and women-owned firms could be attributed to discrimination; he “did not find sufficient evidence of discrimination against blacks.” Id.

The court held that Dr. Carvajal’s study constituted neither a “strong basis in evidence” of discrimination necessary to justify race- and ethnicity-conscious measures, nor did it constitute “sufficient probative evidence” necessary to justify the gender-conscious measures. Id. The court made an initial finding that no disparity existed to indicate underutilization of MBE/WBEs in the award of A&E contracts by the County, nor was there underutilization of MBE/WBEs in the contracts they were awarded. Id. The court found that an analysis of the award data indicated, “[i]f anything, the data indicates an overutilization of minority-owned firms by the County in relation to their numbers in the marketplace.” Id.

With respect to the marketplace data, the County conceded that there was insufficient evidence of discrimination against blacks to support the BBE program. Id. at 1321. With respect to the marketplace data for Hispanics and women, the court found it “unreliable and inaccurate” for three reasons: (1) the data failed to properly measure the geographic market, (2) the data failed to properly measure the product market, and (3) the marketplace data survey was unreliable. Id. at 1321-25.

The court ruled that it would not follow the Tenth Circuit decision of Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003), as the burden of proof enunciated by the Tenth Circuit conflicts with that of the Eleventh Circuit, and the “Tenth Circuit’s decision is flawed for the reasons articulated by Justice Scalia in his dissent from the denial of certiorari.” Id. at 1325 (internal citations omitted).

The defendant intervenors presented anecdotal evidence pertaining only to discrimination against women in the County’s A&E industry. Id. The anecdotal evidence consisted of the testimony of three A&E professional women, “nearly all” of which was related to discrimination in the award of County contracts. Id. at 1326. However, the district court found that the anecdotal evidence contradicted Dr. Carvajal’s study indicating that no disparity existed with respect to the award of County A&E contracts. Id.

The court quoted the Eleventh Circuit in Engineering Contractors Association for the proposition “that only in the rare case will anecdotal evidence suffice standing alone.” Id. (internal citations omitted). The court held that “[t]his is not one of those rare cases.” The district court concluded that the statistical evidence was “unreliable and fail[ed] to establish the existence of discrimination,” and the anecdotal evidence was insufficient as it did not even reach the level of anecdotal evidence in Engineering Contractors Association where the County employees themselves testified. Id.

The court made an initial finding that a number of minority groups provided preferential treatment were in fact majorities in the County in terms of population, voting capacity, and representation on the County Commission. Id. at 1326-1329. For purposes only of conducting the strict scrutiny analysis, the court then assumed that Dr. Carvajal’s report demonstrated discrimination against Hispanics (note the County had conceded it had insufficient evidence of discrimination against blacks) and sought to determine whether the HBE program was narrowly tailored to remedying that discrimination. Id. at 1330. However, the court found that because the study failed to “identify who is engaging in the discrimination, what form the discrimination might take, at what stage in the process it is taking place, or how the discrimination is accomplished ... it is virtually impossible to narrowly tailor any remedy, and the HBE program fails on this fact alone.” Id.

The court found that even after the County Managers informed the Commissioners that the County had reached parity in the A&E industry, the Commissioners declined to enact a CSBE ordinance, a race-neutral measure utilized in the construction industry after Engineering Contractors Association. Id. Instead, the Commissioners voted to continue the HBE program. Id. The court held that the County’s failure to even explore a program similar to the CSBE ordinance indicated that the HBE program was not narrowly tailored. Id. at 1331.

The court also found that the County enacted a broad anti-discrimination ordinance imposing harsh penalties for a violation thereof. Id. However, “not a single witness at trial knew of any instance of a complaint being brought under this ordinance concerning the A&E industry,” leading the court to conclude that the ordinance was either not being enforced, or no discrimination existed. Id. Under either scenario, the HBE program could not be narrowly tailored. Id.

The court found the waiver provisions in the HBE program inflexible in practice. Id. Additionally, the court found the County had failed to comply with the provisions in the HBE program requiring adjustment of participation goals based on annual studies, because the County had not in fact

conducted annual studies for several years. Id. The court found this even “more problematic” because the HBE program did not have a built-in durational limit, and thus blatantly violated Supreme Court jurisprudence requiring that racial and ethnic preferences “must be limited in time.” Id. at 1332, citing Grutter, 123 S. Ct. at 2346. For the foregoing reasons, the court concluded the HBE program was not narrowly tailored. Id. at 1332.

With respect to the WBE program, the court found that “the failure of the County to identify who is discriminating and where in the process the discrimination is taking place indicates (though not conclusively) that the WBE program is not substantially related to eliminating that discrimination.” Id. at 1333. The court found that the existence of the anti-discrimination ordinance, the refusal to enact a small business enterprise ordinance, and the inflexibility in setting the participation goals rendered the WBE unable to satisfy the substantial relationship test. Id.

The court held that the County was liable for any compensatory damages. Id. at 1333-34. The court held that the Commissioners had absolute immunity for their legislative actions; however, they were not entitled to qualified immunity for their actions in voting to apply the race-, ethnicity-, and gender-conscious measures of the MBE/WBE programs if their actions violated “clearly established statutory or constitutional rights of which a reasonable person would have known ... Accordingly, the question is whether the state of the law at the time the Commissioners voted to apply [race-, ethnicity-, and gender-conscious measures] gave them ‘fair warning’ that their actions were unconstitutional.” Id. at 1335-36 (internal citations omitted).

The court held that the Commissioners were not entitled to qualified immunity because they “had before them at least three cases that gave them fair warning that their application of the MBE/WBE programs ... were unconstitutional: Croson, Adarand and [Engineering Contractors Association].” Id. at 1137. The court found that the Commissioners voted to apply the contract measures after the Supreme Court decided both Croson and Adarand. Id. Moreover, the Eleventh Circuit had already struck down the construction provisions of the same MBE/WBE programs. Id. Thus, the case law was “clearly established” and gave the Commissioners fair warning that the MBE/WBE programs were unconstitutional. Id.

The court also found the Commissioners had specific information from the County Manager and other internal studies indicating the problems with the MBE/WBE programs and indicating that parity had been achieved. Id. at 1338. Additionally, the Commissioners did not conduct the annual studies mandated by the MBE/WBE ordinance itself. Id. For all the foregoing reasons, the court held the Commissioners were subject to individual liability for any compensatory and punitive damages.

The district court enjoined the County, the Commissioners, and the County Manager from using, or requiring the use of, gender, racial, or ethnic criteria in deciding (1) whether a response to an RFP submitted for A&E work is responsive, (2) whether such a response will be considered, and (3) whether a contract will be awarded to a consultant submitting such a response. The court awarded the plaintiffs \$100 each in nominal damages and reasonable attorneys’ fees and costs, for which it held the County and the Commissioners jointly and severally liable.

15. Florida A.G.C. Council, Inc. v. State of Florida, 303 F. Supp. 2d 1307 (N.D. Fla. 2004)

This case is instructive to the disparity study as to the manner in which district courts within the Eleventh Circuit are interpreting and applying Engineering Contractors Association. It is also instructive in terms of the type of legislation to be considered by the local and state governments as to what the courts consider to be a “race-conscious” program and/or legislation, as well as to the significance of the implementation of the legislation to the analysis.

The plaintiffs, A.G.C. Council, Inc. and the South Florida Chapter of the Associated General Contractors brought this case challenging the constitutionality of certain provisions of a Florida statute (Section 287.09451, *et seq.*). The plaintiffs contended that the statute violated the Equal Protection Clause of the Fourteenth Amendment by instituting race- and gender-conscious “preferences” in order to increase the numeric representation of minority business enterprises (“MBEs”) in certain industries.

According to the court, the Florida Statute enacted race-conscious and gender-conscious remedial programs to ensure minority participation in state contracts for the purchase of commodities and in construction contracts. The State created the Office of Supplier Diversity (“OSD”) to assist MBEs to become suppliers of commodities, services and construction to the state government. The OSD had certain responsibilities, including adopting rules meant to assess whether state agencies have made good faith efforts to solicit business from MBEs, and to monitor whether contractors have made good faith efforts to comply with the objective of greater overall MBE participation.

The statute enumerated measures that contractors should undertake, such as minority-centered recruitment in advertising as a means of advancing the statute’s purpose. The statute provided that each State agency is “encouraged” to spend 21 percent of the monies actually expended for construction contracts, 25 percent of the monies actually expended for architectural and engineering contracts, 24 percent of the monies actually expended for commodities and 50.5 percent of the monies actually expended for contractual services during the fiscal year for the purpose of entering into contracts with certified MBEs. The statute also provided that state agencies are allowed to allocate certain percentages for black Americans, Hispanic Americans and for American women, and the goals are broken down by construction contracts, architectural and engineering contracts, commodities and contractual services.

The State took the position that the spending goals were “precatory.” The court found that the plaintiffs had standing to maintain the action and to pursue prospective relief. The court held that the statute was unconstitutional based on the finding that the spending goals were not narrowly tailored to achieve a governmental interest. The court did not specifically address whether the articulated reasons for the goals contained in the statute had sufficient evidence, but instead found that the articulated reason would, “if true,” constitute a compelling governmental interest necessitating race-conscious remedies. Rather than explore the evidence, the court focused on the narrowly tailored requirement and held that it was not satisfied by the State.

The court found that there was no evidence in the record that the State contemplated race-neutral means to accomplish the objectives set forth in Section 287.09451 *et seq.*, such as “simplification of bidding procedures, relaxation of bonding requirements, training or financial aid for disadvantaged

entrepreneurs of all races [which] would open the public contracting market to all those who have suffered the effects of past discrimination.” Florida A.G.C. Council, 303 F.Supp.2d at 1315, quoting Eng’g Contractors Ass’n, 122 F.3d at 928, quoting Croson, 488 U.S. at 509-10.

The court noted that defendants did not seem to disagree with the report issued by the State of Florida Senate that concluded there was little evidence to support the spending goals outlined in the statute. Rather, the State of Florida argued that the statute is “permissive.” The court, however, held that “there is no distinction between a statute that is precatory versus one that is compulsory when the challenged statute ‘induces an employer to hire with an eye toward meeting ... [a] numerical target.’ Florida A.G.C. Council, 303 F.Supp.2d at 1316.

The court found that the State applies pressure to State agencies to meet the legislative objectives of the statute extending beyond simple outreach efforts. The State agencies, according to the court, were required to coordinate their MBE procurement activities with the OSD, which includes adopting a MBE utilization plan. If the State agency deviated from the Utilization Plan in two consecutive and three out of five total fiscal years, then the OSD could review any and all solicitations and contract awards of the agency as deemed necessary until such time as the agency met its utilization plan. The court held that based on these factors, although alleged to be “permissive,” the statute textually was not.

Therefore, the court found that the statute was not narrowly tailored to serve a compelling governmental interest, and consequently violated the Equal Protection Clause of the Fourteenth Amendment.

16. The Builders Ass’n of Greater Chicago v. The City of Chicago, 298 F. Supp. 2d 725 (N.D. Ill. 2003)

This case is instructive because of the court’s focus and analysis on whether the City of Chicago’s MBE/WBE program was narrowly tailored. The basis of the court’s holding that the program was not narrowly tailored is instructive for any program considered because of the reasons provided as to why the program did not pass muster.

The plaintiff, the Builders Association of Greater Chicago, brought this suit challenging the constitutionality of the City of Chicago’s construction Minority- and Women-Owned Business (“MWBE”) Program. The court held that the City of Chicago’s MWBE program was unconstitutional because it did not satisfy the requirement that it be narrowly tailored to achieve a compelling governmental interest. The court held that it was not narrowly tailored for several reasons, including because there was no “meaningful individualized review” of MBE/WBEs; it had no termination date nor did it have any means for determining a termination; the “graduation” revenue amount for firms to graduate out of the program was very high, \$27,500,000 and in fact very few firms graduated; there was no net worth threshold; and, waivers were rarely or never granted on construction contracts. The court found that the City program was a “rigid numerical quota,” a quota related not to the number of available, willing and able firms. Formulistic percentages, the court held, could not survive the strict scrutiny.

The court held that the goals plan did not address issues raised as to discrimination regarding market access and credit. The court found that a goals program does not directly impact prime contractor’s

selection of subcontractors on non-goals private projects. The court found that a set-aside or goals program does not directly impact difficulties in accessing credit, and does not address discriminatory loan denials or higher interest rates. The court found the City has not sought to attack discrimination by primes directly, “but it could.” 298 F.2d 725. “To monitor possible discriminatory conduct it could maintain its certification list and require those contracting with the City to consider unsolicited bids, to maintain bidding records, and to justify rejection of any certified firm submitting the lowest bid. It could also require firms seeking City work to post private jobs above a certain minimum on a website or otherwise provide public notice ...” *Id.*

The court concluded that other race-neutral means were available to impact credit, high interest rates, and other potential marketplace discrimination. The court pointed to race-neutral means including linked deposits, with the City banking at institutions making loans to startup and smaller firms. Other race-neutral programs referenced included quick pay and contract downsizing; restricting self-performance by prime contractors; a direct loan program; waiver of bonds on contracts under \$100,000; a bank participation loan program; a 2 percent local business preference; outreach programs and technical assistance and workshops; and seminars presented to new construction firms.

The court held that race and ethnicity do matter, but that racial and ethnical classifications are highly suspect, can be used only as a last resort, and cannot be made by some mechanical formulation. Therefore, the court concluded the City’s MWBE Program could not stand in its present guise. The court held that the present program was not narrowly tailored to remedy past discrimination and the discrimination demonstrated to now exist.

The court entered an injunction, but delayed the effective date for six months from the date of its Order, December 29, 2003. The court held that the City had a “compelling interest in not having its construction projects slip back to near monopoly domination by white male firms.” The court ruled a brief continuation of the program for six months was appropriate “as the City rethinks the many tools of redress it has available.” Subsequently, the court declared unconstitutional the City’s MWBE Program with respect to construction contracts and permanently enjoined the City from enforcing the Program. 2004 WL 757697 (N.D. Ill 2004).

17. Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore, 218 F. Supp. 2d 749 (D. Md. 2002)

This case is instructive because the court found the Executive Order of the Mayor of the City of Baltimore was precatory in nature (creating no legal obligation or duty) and contained no enforcement mechanism or penalties for noncompliance and imposed no substantial restrictions; the Executive Order announced goals that were found to be aspirational only.

The Associated Utility Contractors of Maryland, Inc. (“AUC”) sued the City of Baltimore challenging its ordinance providing for minority and women-owned business enterprise (“MWBE”) participation in city contracts. Previously, an earlier City of Baltimore MWBE program was declared unconstitutional. Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore, 83 F. Supp. 2d 613 (D. Md. 2000). The City adopted a new ordinance that provided for the establishment of MWBE participation goals on a contract-by-contract basis, and made several other changes from the previous MWBE program declared unconstitutional in the earlier case.

In addition, the Mayor of the City of Baltimore issued an Executive Order that announced a goal of awarding 35 percent of all City contracting dollars to MBE/WBEs. The court found this goal of 35 percent participation was aspirational only and the Executive Order contained no enforcement mechanism or penalties for noncompliance. The Executive Order also specified many “noncoercive” outreach measures to be taken by the City agencies relating to increasing participation of MBE/WBEs. These measures were found to be merely aspirational and no enforcement mechanism was provided.

The court addressed in this case only a motion to dismiss filed by the City of Baltimore arguing that the Associated Utility Contractors had no standing. The court denied the motion to dismiss holding that the association had standing to challenge the new MBE/WBE ordinance, although the court noted that it had significant issues with the AUC having representational standing because of the nature of the MBE/WBE plan and the fact the AUC did not have any of its individual members named in the suit. The court also held that the AUC was entitled to bring an as applied challenge to the Executive Order of the Mayor, but rejected it having standing to bring a facial challenge based on a finding that it imposes no requirement, creates no sanctions, and does not inflict an injury upon any member of the AUC in any concrete way. Therefore, the Executive Order did not create a “case or controversy” in connection with a facial attack. The court found the wording of the Executive Order to be precatory and imposing no substantive restrictions.

After this decision the City of Baltimore and the AUC entered into a settlement agreement and a dismissal with prejudice of the case. An order was issued by the court on October 22, 2003 dismissing the case with prejudice.

18. Kornhass Construction, Inc. v. State of Oklahoma, Department of Central Services, 140 F.Supp.2d 1232 (W.D. OK. 2001)

Plaintiffs, non-minority contractors, brought this action against the State of Oklahoma challenging minority bid preference provisions in the Oklahoma Minority Business Enterprise Assistance Act (“MBE Act”). The Oklahoma MBE Act established a bid preference program by which certified minority business enterprises are given favorable treatment on competitive bids submitted to the state. 140 F.Supp.2d at 1235–36. Under the MBE Act, the bids of non-minority contractors were raised by 5 percent, placing them at a competitive disadvantage according to the district court. *Id.* at 1235–1236.

The named plaintiffs bid on state contracts in which their bids were increased by 5 percent as they were non-minority business enterprises. Although the plaintiffs actually submitted the lowest dollar bids, once the 5 percent factor was applied, minority bidders became the successful bidders on certain contracts. 140 F.Supp. at 1237.

In determining the constitutionality or validity of the Oklahoma MBE Act, the district court was guided in its analysis by the Tenth Circuit Court of Appeals decision in Adarand Constructors, Inc. v. Slater, 288 F.3d 1147 (10th Cir. 2000) (“Adarand VII”). The district court pointed out that in Adarand VII, the Tenth Circuit found compelling evidence of barriers to both minority business formation and existing minority businesses. *Id.* at 1238. In sum, the district court noted that the Tenth Circuit concluded that the Government had met its burden of presenting a strong basis in

evidence sufficient to support its articulated, constitutionally valid, compelling interest. 140 F.Supp. 2d at 1239, citing Adarand VII, 228 F.3d 1147, 1174.

Compelling state interest. The district court, following Adarand VII, applied the strict scrutiny analysis, arising out of the Fourteenth Amendment’s Equal Protection Clause, in which a race-based affirmative action program withstands strict scrutiny only if it is narrowly tailored to serve a compelling governmental interest. Id. at 1239. The district court pointed out that it is clear from Supreme Court precedent, there may be a compelling interest sufficient to justify race-conscious affirmative action measures. Id. The Fourteenth Amendment permits race-conscious programs that seek both to eradicate discrimination by the governmental entity itself and to prevent the governmental entity from becoming a “passive participant” in a system of racial exclusion practiced by private businesses. Id. at 1240. Therefore, the district court concluded that both the federal and state governments have a compelling interest assuring that public dollars do not serve to finance the evil of private prejudice. Id.

The district court stated that a “mere statistical disparity in the proportion of contracts awarded to a particular group, standing alone, does not demonstrate the evil of private or public racial prejudice.” Id. Rather, the court held that the “benchmark for judging the adequacy of a state’s factual predicate for affirmative action legislation is whether there exists a strong basis in the evidence of the state’s conclusion that remedial action was necessary.” Id. The district court found that the Supreme Court made it clear that the state bears the burden of demonstrating a strong basis in evidence for its conclusion that remedial action was necessary by proving either that the state itself discriminated in the past or was “a passive participant” in private industry’s discriminatory practices. Id. at 1240, citing to Associated General Contractors of Ohio, Inc. v. Drabik, 214 F.3d 730, 735 (6th Cir. 2000) and City of Richmond v. J.A. Croson Company, 488 U.S. 469 at 486-492 (1989).

With this background, the State of Oklahoma stated that its compelling state interest “is to promote the economy of the State and to ensure that minority business enterprises are given an opportunity to compete for state contracts.” Id. at 1240. Thus, the district court found the State admitted that the MBE Act’s bid preference “is not based on past discrimination,” rather, it is based on a desire to “encourag[e] economic development of minority business enterprises which in turn will benefit the State of Oklahoma as a whole.” Id. In light of Adarand VII, and prevailing Supreme Court case law, the district court found that this articulated interest is not “compelling” in the absence of evidence of past or present racial discrimination. Id.

The district court considered testimony presented by Intervenors who participated in the case for the defendants and asserted that the Oklahoma legislature conducted an interim study prior to adoption of the MBE Act, during which testimony and evidence were presented to members of the Oklahoma Legislative Black Caucus and other participating legislators. The study was conducted more than 14 years prior to the case and the Intervenors did not actually offer any of the evidence to the court in this case. The Intervenors submitted an affidavit from the witness who serves as the Title VI Coordinator for the Oklahoma Department of Transportation. The court found that the affidavit from the witness averred in general terms that minority businesses were discriminated against in the awarding of state contracts. The district court found that the Intervenors have not produced — or indeed even described — the evidence of discrimination. Id. at 1241. The district court found that it

cannot be discerned from the documents which minority businesses were the victims of discrimination, or which racial or ethnic groups were targeted by such alleged discrimination. Id.

The court also found that the Intervenor's evidence did not indicate what discriminatory acts or practices allegedly occurred, or when they occurred. Id. The district court stated that the Intervenor did not identify "a single qualified, minority-owned bidder who was excluded from a state contract." Id. The district court, thus, held that broad allegations of "systematic" exclusion of minority businesses were not sufficient to constitute a compelling governmental interest in remedying past or current discrimination. Id. at 1242. The district court stated that this was particularly true in light of the "State's admission here that the State's governmental interest was not in remedying past discrimination in the state competitive bidding process, but in 'encouraging economic development of minority business enterprises which in turn will benefit the State of Oklahoma as a whole.'" Id. at 1242.

The court found that the State defendants failed to produce any admissible evidence of a single, specific discriminatory act, or any substantial evidence showing a pattern of deliberate exclusion from state contracts of minority-owned businesses. Id. at 1241 - 1242, footnote 11.

The district court also noted that the Sixth Circuit Court of Appeals in Drabik rejected Ohio's statistical evidence of underutilization of minority contractors because the evidence did not report the actual use of minority firms; rather, they reported only the use of those minority firms that had gone to the trouble of being certified and listed by the state. Id. at 1242, footnote 12. The district court stated that, as in Drabik, the evidence presented in support of the Oklahoma MBE Act failed to account for the possibility that some minority contractors might not register with the state, and the statistics did not account for any contracts awarded to businesses with minority ownership of less than 51 percent, or for contracts performed in large part by minority-owned subcontractors where the prime contractor was not a certified minority-owned business. Id.

The district court found that the MBE Act's minority bidding preference was not predicated upon a finding of discrimination in any particular industry or region of the state, or discrimination against any particular racial or ethnic group. The court stated that there was no evidence offered of actual discrimination, past or present, against the specific racial and ethnic groups to whom the preference was extended, other than an attempt to show a history of discrimination against African Americans. Id. at 1242.

Narrow tailoring. The district court found that even if the State's goals could not be considered "compelling," the State did not show that the MBE Act was narrowly tailored to serve those goals. The court pointed out that the Tenth Circuit in Adarand VII identified six factors the court must consider in determining whether the MBE Act's minority preference provisions were sufficiently narrowly tailored to satisfy equal protection: (1) the availability of race-neutral alternative remedies; (2) limits on the duration of the challenged preference provisions; (3) flexibility of the preference provisions; (4) numerical proportionality; (5) the burden on third parties; and (6) over- or under-inclusiveness. Id. at 1242-1243.

First, in terms of race-neutral alternative remedies, the court found that the evidence offered showed, at most, that nominal efforts were made to assist minority-owned businesses prior to the adoption of the MBE Act's racial preference program. Id. at 1243. The court considered evidence regarding the

Minority Assistance Program, but found that to be primarily informational services only, and was not designed to actually assist minorities or other disadvantaged contractors to obtain contracts with the State of Oklahoma. *Id.* at 1243. In contrast to this “informational” program, the court noted the Tenth Circuit in Adarand VII favorably considered the federal government’s use of racially neutral alternatives aimed at disadvantaged businesses, including assistance with obtaining project bonds, assistance with securing capital financing, technical assistance, and other programs designed to assist start-up businesses. *Id.* at 1243 citing Adarand VII, 228 F.3d at 1178-1179.

The district court found that it does not appear from the evidence that Oklahoma’s Minority Assistance Program provided the type of race-neutral relief required by the Tenth Circuit in Adarand VII, in the Supreme Court in the Croson decision, nor does it appear that the Program was racially neutral. *Id.* at 1243. The court found that the State of Oklahoma did not show any meaningful form of assistance to new or disadvantaged businesses prior to the adoption of the MBE Act, and thus, the court found that the state defendants had not shown that Oklahoma considered race-neutral alternative means to achieve the state’s goal prior to adoption of the minority bid preference provisions. *Id.* at 1243.

In a footnote, the district court pointed out that the Tenth Circuit has recognized racially neutral programs designed to assist *all* new or financially disadvantaged businesses in obtaining government contracts tend to benefit minority-owned businesses, and can help alleviate the effects of past and present-day discrimination. *Id.* at 1243, footnote 15 citing Adarand VII.

The court considered the evidence offered of post-enactment efforts by the State to increase minority participation in State contracting. The court found that most of these efforts were directed toward encouraging the participation of certified minority business enterprises, “and are thus not racially neutral. This evidence fails to demonstrate that the State employed race-neutral alternative measures prior to or after adopting the Minority Business Enterprise Assistance Act.” *Id.* at 1244. Some of the efforts the court found were directed toward encouraging the participation of certified minority business enterprises and thus not racially neutral, included mailing vendor registration forms to minority vendors, telephoning and mailing letters to minority vendors, providing assistance to vendors in completing registration forms, assuring the vendors received bid information, preparing a minority business directory and distributing it to all state agencies, periodically mailing construction project information to minority vendors, and providing commodity information to minority vendors upon request. *Id.* at 1244, footnote 16.

In terms of durational limits and flexibility, the court found that the “goal” of 10 percent of the state’s contracts being awarded to certified minority business enterprises had never been reached, or even approached, during the thirteen years since the MBE Act was implemented. *Id.* at 1244. The court found the defendants offered no evidence that the bid preference was likely to end at any time in the foreseeable future, or that it is otherwise limited in its duration. *Id.* Unlike the federal programs at issue in Adarand VII, the court stated the Oklahoma MBE Act has no inherent time limit, and no provision for disadvantaged minority-owned businesses to “graduate” from preference eligibility. *Id.* The court found the MBE Act was not limited to those minority-owned businesses which are shown to be economically disadvantaged. *Id.*

The court stated that the MBE Act made no attempt to address or remedy any actual, demonstrated past or present racial discrimination, and the MBE Act’s duration was not tied in any way to the

eradication of such discrimination. Id. Instead, the court found the MBE Act rests on the “questionable assumption that 10 percent of all state contract dollars should be awarded to certified minority-owned and operated businesses, without any showing that this assumption is reasonable.” Id. at 1244.

By the terms of the MBE Act, the minority preference provisions would continue in place for five years after the goal of 10 percent minority participation was reached, and thus the district court concluded that the MBE Act’s minority preference provisions lacked reasonable durational limits. Id. at 1245.

With regard to the factor of “numerical proportionality” between the MBE Act’s aspirational goal and the number of existing available minority-owned businesses, the court found the MBE Act’s 10 percent goal was not based upon demonstrable evidence of the availability of minority contractors who were either qualified to bid or who were ready, willing and able to become qualified to bid on state contracts. Id. at 1246–1247. The court pointed out that the MBE Act made no attempt to distinguish between the four minority racial groups, so that contracts awarded to members of all of the preferred races were aggregated in determining whether the 10 percent aspirational goal had been reached. Id. at 1246. In addition, the court found the MBE Act aggregated all state contracts for goods and services, so that minority participation was determined by the total number of dollars spent on state contracts. Id.

The court stated that in Adarand VII, the Tenth Circuit rejected the contention that the aspirational goals were required to correspond to an actual finding as to the number of existing minority-owned businesses. Id. at 1246. The court noted that the government submitted evidence in Adarand VII, that the effects of past discrimination had excluded minorities from entering the construction industry, and that the number of available minority subcontractors reflected that discrimination. Id. In light of this evidence, the district court said the Tenth Circuit held that the existing percentage of minority-owned businesses is “not necessarily an absolute cap” on the percentage that a remedial program might legitimately seek to achieve. Id. at 1246, citing Adarand VII, 228 F.3d at 1181.

Unlike Adarand VII, the court found that the Oklahoma State defendants did not offer “substantial evidence” that the minorities given preferential treatment under the MBE Act were prevented, through past discrimination, from entering any particular industry, or that the number of available minority subcontractors in that industry reflects that discrimination. 140 F.Supp.2d at 1246. The court concluded that the Oklahoma State defendants did not offer any evidence of the number of minority-owned businesses doing business in any of the many industries covered by the MBE Act. Id. at 1246–1247.

With regard to the impact on third parties factor, the court pointed out the Tenth Circuit in Adarand VII stated the mere possibility that innocent parties will share the burden of a remedial program is itself insufficient to warrant the conclusion that the program is not narrowly tailored. Id. at 1247. The district court found the MBE Act’s bid preference provisions prevented non-minority businesses from competing on an equal basis with certified minority business enterprises, and that in some instances plaintiffs had been required to lower their intended bids because they knew minority firms were bidding. Id. The court pointed out that the 5 percent preference is applicable to *all* contracts awarded under the state’s Central Purchasing Act with no time limitation. Id.

In terms of the “under- and over-inclusiveness” factor, the court observed that the MBE Act extended its bidding preference to several racial minority groups without regard to whether each of those groups had suffered from the effects of past or present racial discrimination. *Id.* at 1247. The district court reiterated the Oklahoma State defendants did not offer any evidence at all that the minority racial groups identified in the Act had actually suffered from discrimination. *Id.*

Second, the district court found the MBE Act’s bidding preference extends to all contracts for goods and services awarded under the State’s Central Purchasing Act, without regard to whether members of the preferred minority groups had been the victims of past or present discrimination within that particular industry or trade. *Id.*

Third, the district court noted the preference extends to all businesses certified as minority-owned and controlled, without regard to whether a particular business is economically or socially disadvantaged, or has suffered from the effects of past or present discrimination. *Id.* The court thus found that the factor of over-inclusiveness weighs against a finding that the MBE Act was narrowly tailored. *Id.*

The district court in conclusion found that the Oklahoma MBE Act violated the Constitution’s Fifth Amendment guarantee of equal protection and granted the plaintiffs’ Motion for Summary Judgment.

19. Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, 83 F. Supp. 2d 613 (D. Md. 2000)

The court held unconstitutional the City of Baltimore’s “affirmative action” program, which had construction subcontracting “set-aside” goals of 20 percent for MBEs and 3 percent for WBEs. The court held there was no data or statistical evidence submitted by the City prior to enactment of the Ordinance. There was no evidence showing a disparity between MBE/WBE availability and utilization in the subcontracting construction market in Baltimore. The court enjoined the City Ordinance.

20. Webster v. Fulton County, 51 F. Supp. 2d 1354 (N.D. Ga. 1999), a’ffd per curiam 218 F.3d 1267 (11th Cir. 2000)

This case is instructive as it is another instance in which a court has considered, analyzed, and ruled upon a race-, ethnicity- and gender-conscious program, holding the local government MBE/WBE-type program failed to satisfy the strict scrutiny constitutional standard. The case also is instructive in its application of the Engineering Contractors Association case, including to a disparity analysis, the burdens of proof on the local government, and the narrowly tailored prong of the strict scrutiny test.

In this case, plaintiff Webster brought an action challenging the constitutionality of Fulton County’s (the “County”) minority and female business enterprise program (“M/FBE”) program. 51 F. Supp. 2d 1354, 1357 (N.D. Ga. 1999). [The district court first set forth the provisions of the M/FBE program and conducted a standing analysis at 51 F. Supp. 2d at 1356-62].

The court, citing Engineering Contractors Association of S. Florida, Inc. v. Metro. Engineering Contractors Association, 122 F.3d 895 (11th Cir. 1997), held that “[e]xplicit racial preferences may not be used except as a ‘last resort.’” *Id.* at 1362-63. The court then set forth the strict scrutiny

standard for evaluating racial and ethnic preferences and the four factors enunciated in Engineering Contractors Association, and the intermediate scrutiny standard for evaluating gender preferences. Id. at 1363. The court found that under Engineering Contractors Association, the government could utilize both post-enactment and pre-enactment evidence to meet its burden of a “strong basis in evidence” for strict scrutiny, and “sufficient probative evidence” for intermediate scrutiny. Id.

The court found that the defendant bears the initial burden of satisfying the aforementioned evidentiary standard, and the ultimate burden of proof remains with the challenging party to demonstrate the unconstitutionality of the M/FBE program. Id. at 1364. The court found that the plaintiff has at least three methods “to rebut the inference of discrimination with a neutral explanation: (1) demonstrate that the statistics are flawed; (2) demonstrate that the disparities shown by the statistics are not significant; or (3) present conflicting statistical data.” Id., citing Eng’g Contractors Ass’n, 122 F.3d at 916.

[The district court then set forth the Engineering Contractors Association opinion in detail.]

The court first noted that the Eleventh Circuit has recognized that disparity indices greater than 80 percent are generally not considered indications of discrimination. Id. at 1368, citing Eng’g Contractors Assoc., 122 F.3d at 914. The court then considered the County’s pre-1994 disparity study (the “Brimmer-Marshall Study”) and found that it failed to establish a strong basis in evidence necessary to support the M/FBE program. Id. at 1368.

First, the court found that the study rested on the inaccurate assumption that a statistical showing of underutilization of minorities in the marketplace as a whole was sufficient evidence of discrimination. Id. at 1369. The court cited City of Richmond v. J.A. Croson Co., 488 U.S. 496 (1989) for the proposition that discrimination must be focused on contracting by the entity that is considering the preference program. Id. Because the Brimmer-Marshall Study contained no statistical evidence of discrimination by the County in the award of contracts, the court found the County must show that it was a “passive participant” in discrimination by the private sector. Id. The court found that the County could take remedial action if it had evidence that prime contractors were systematically excluding minority-owned businesses from subcontracting opportunities, or if it had evidence that its spending practices are “exacerbating a pattern of prior discrimination that can be identified with specificity.” Id. However, the court found that the Brimmer-Marshall Study contained no such data. Id.

Second, the Brimmer-Marshall study contained no regression analysis to account for relevant variables, such as firm size. Id. at 1369-70. At trial, Dr. Marshall submitted a follow-up to the earlier disparity study; however, the court found the study had the same flaw in that it did not contain a regression analysis. Id. The court thus concluded that the County failed to present a “strong basis in evidence” of discrimination to justify the County’s racial and ethnic preferences. Id.

The court next considered the County’s post-1994 disparity study. Id. at 1371. The study first sought to determine the availability and utilization of minority- and female-owned firms. Id. The court explained:

Two methods may be used to calculate availability: (1) bid analysis; or (2) bidder analysis. In a bid analysis, the analyst counts the

number of bids submitted by minority or female firms over a period of time and divides it by the total number of bids submitted in the same period. In a bidder analysis, the analyst counts the number of minority or female firms submitting bids and divides it by the total number of firms which submitted bids during the same period.

Id. The court found that the information provided in the study was insufficient to establish a firm basis in evidence to support the M/FBE program. Id. at 1371-72. The court also found it significant to conduct a regression analysis to show whether the disparities were either due to discrimination or other neutral grounds. Id. at 1375-76.

The plaintiff and the County submitted statistical studies of data collected between 1994 to 1997. Id. at 1376. The court found that the data were potentially skewed due to the operation of the M/FBE program. Id. Additionally, the court found that the County's standard deviation analysis yielded non-statistically significant results (noting the Eleventh Circuit has stated that scientists consider a finding of two standard deviations significant). Id. (internal citations omitted).

The court considered the County's anecdotal evidence, and quoted Engineering Contractors Association for the proposition that "[a]necdotal evidence can play an important role in bolstering statistical evidence, but that only in the rare case will anecdotal evidence suffice standing alone." Id., quoting Eng'g Contractors Ass'n, 122 F.3d at 907. The Brimmer-Marshall Study contained anecdotal evidence. Id. at 1379. Additionally, the County held hearings but after reviewing the tape recordings of the hearings, the court concluded that only two individuals testified to discrimination by the County; one of them complained that the County used the M/FBE program to only benefit African Americans. Id. The court found the most common complaints concerned barriers in bonding, financing, and insurance and slow payment by prime contractors. Id. The court concluded that the anecdotal evidence was insufficient in and of itself to establish a firm basis for the M/FBE program. Id.

The court also applied a narrow tailoring analysis of the M/FBE program. "The Eleventh Circuit has made it clear that the essence of this inquiry is whether racial preferences were adopted only as a 'last resort.'" Id. at 1380, citing Eng'g Contractors Assoc., 122 F.3d at 926. The court cited the Eleventh Circuit's four-part test and concluded that the County's M/FBE program failed on several grounds. First, the court found that a race-based problem does not necessarily require a race-based solution. "If a race-neutral remedy is sufficient to cure a race-based problem, then a race-conscious remedy can never be narrowly tailored to that problem." Id., quoting Eng'g Contractors Ass'n, 122 F.3d at 927. The court found that there was no evidence of discrimination by the County. Id. at 1380.

The court found that even though a majority of the Commissioners on the County Board were African American, the County had continued the program for decades. Id. The court held that the County had not seriously considered race-neutral measures:

There is no evidence in the record that any Commissioner has offered a resolution during this period substituting a program of race-neutral measures as an alternative to numerical set-asides based upon race and ethnicity. There is no evidence in the record of any

proposal by the staff of Fulton County of substituting a program of race-neutral measures as an alternative to numerical set-asides based upon race and ethnicity. There has been no evidence offered of any debate within the Commission about substituting a program of race-neutral measures as an alternative to numerical set-asides based upon race and ethnicity Id.

The court found that the random inclusion of ethnic and racial groups who had not suffered discrimination by the County also mitigated against a finding of narrow tailoring. Id. The court found that there was no evidence that the County considered race-neutral alternatives as an alternative to race-conscious measures nor that race-neutral measures were initiated and failed. Id. at 1381. The court concluded that because the M/FBE program was not adopted as a last resort, it failed the narrow tailoring test. Id.

Additionally, the court found that there was no substantial relationship between the numerical goals and the relevant market. Id. The court rejected the County's argument that its program was permissible because it set "goals" as opposed to "quotas," because the program in Engineering Contractors Association also utilized "goals" and was struck down. Id.

Per the M/FBE program's gender-based preferences, the court found that the program was sufficiently flexible to satisfy the substantial relationship prong of the intermediate scrutiny standard. Id. at 1383. However, the court held that the County failed to present "sufficient probative evidence" of discrimination necessary to sustain the gender-based preferences portion of the M/FBE program. Id.

The court found the County's M/FBE program unconstitutional and entered a permanent injunction in favor of the plaintiff. Id. On appeal, the Eleventh Circuit affirmed per curiam, stating only that it affirmed on the basis of the district court's opinion. Webster v. Fulton County, Georgia, 218 F.3d 1267 (11th Cir. 2000).

21. Associated Gen. Contractors v. Drabik, 50 F. Supp. 2d 741 (S.D. Ohio 1999)

In this decision, the district court reaffirmed its earlier holding that the State of Ohio's MBE program of construction contract awards is unconstitutional. The court cited to F. Buddie Contracting v. Cuyahoga Community College, 31 F. Supp. 2d 571 (N.D. Ohio 1998), holding a similar local Ohio program unconstitutional. The court repudiated the Ohio Supreme Court's holding in Ritchey Produce, 707 N.E. 2d 871 (Ohio 1999), which held that the State's MBE program as applied to the state's purchase of non-construction-related goods and services was constitutional. The court found the evidence to be insufficient to justify the MBE program. The court held that the program was not narrowly tailored because there was no evidence that the State had considered a race-neutral alternative.

This opinion underscored that governments must show four factors to demonstrate narrow tailoring: (1) the necessity for the relief and the efficacy of alternative remedies, (2) flexibility and duration of the relief, (3) relationship of numerical goals to the relevant labor market, and (4) impact of the relief on the rights of third parties. The court held the Ohio MBE program failed to satisfy this test.

22. Phillips & Jordan, Inc. v. Watts, 13 F. Supp. 2d 1308 (N.D. Fla. 1998)

This case is instructive because it addressed a challenge to a state and local government MBE/WBE-type program and considered the requisite evidentiary basis necessary to support the program. In Phillips & Jordan, the district court for the Northern District of Florida held that the Florida Department of Transportation's ("FDOT") program of "setting aside" certain highway maintenance contracts for African American- and Hispanic-owned businesses violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The parties stipulated that the plaintiff, a non-minority business, had been excluded in the past and may be excluded in the future from competing for certain highway maintenance contracts "set aside" for business enterprises owned by Hispanic and African American individuals. The court held that the evidence of statistical disparities was insufficient to support the Florida DOT program.

The district court pointed out that Florida DOT did not claim that it had evidence of intentional discrimination in the award of its contracts. The court stated that the essence of FDOT's claim was that the two year disparity study provided evidence of a disparity between the proportion of minorities awarded FDOT road maintenance contracts and a portion of the minorities "supposedly willing and able to do road maintenance work," and that FDOT did not itself engage in any racial or ethnic discrimination, so FDOT must have been a passive participant in "somebody's" discriminatory practices.

Since it was agreed in the case that FDOT did not discriminate against minority contractors bidding on road maintenance contracts, the court found that the record contained insufficient proof of discrimination. The court found the evidence insufficient to establish acts of discrimination against African American- and Hispanic-owned businesses.

The court raised questions concerning the choice and use of the statistical pool of available firms relied upon by the disparity study. The court expressed concern about whether it was appropriate to use Census data to analyze and determine which firms were available (qualified and/or willing and able) to bid on FDOT road maintenance contracts.

Recent State Court Decisions

23. Cleveland Constr., Inc. v. City of Cincinnati, 169 Ohio App. 3d 627, 864 N.E.2d 116 (2006), cert. denied 128 S. Ct. 379 (U.S. 2007)

On appeal from Cleveland Construction, Inc. v. City of Cincinnati, WL 4880918, Case No. A042683 (Ohio Court of Common Pleas, July 13, 2005 and August 29, 2005) (at Section V(C)(2a.), infra), the Ohio Court of Appeals reversed the trial court's entry of a directed verdict against Cleveland Construction on the issue of lost profits, remanded the case for a new trial on the issue of liability and damages under 42 U.S.C. § 1983, and affirmed the trial court in all other respects. 864 N.E.2d 116, 133 (Ohio App. 2006).

On appeal, both parties below raised multiple enumerations of error with the trial court's decision. In the decision below, the trial court ruled that the City's SBE Program created constitutionally impermissible race- and gender-based classifications. (See 2005 Decision, at Section V(C)(2a.), infra). In its fourth enumeration of error, the city argued that its SBE Program should not be subject to strict scrutiny (for race-based classification) or intermediate scrutiny (for gender-based classification).

The City argued that its SBE Program did not create race- or gender-based classifications because the City merely gathered availability estimates “for information purposes only” and bidders were required only to document their good faith efforts at obtaining minority- and women-owned business participation. The Court of Appeals rejected that argument holding that rigid quotas or set-asides are not a prerequisite to a finding of a racial classification: “[w]here regulations pressure or encourage contractors to hire minority subcontractors, courts must apply strict scrutiny.” 864 N.E.2d at 126. The court noted that in Adarand I, although the challenged regulations did not require contractors to hire minority subcontractors, they offered a financial incentive to do so, and the regulations were thus subject to strict scrutiny. Id. at 127, citing Adarand Constructors v. Pena, 515 U.S. 200, 224 (1995).

The Court of Appeals determined that it had to look beyond the SBE Program’s “ostensibly neutral labels such as ‘outreach program’ and ‘participation goals’” to determine whether the SBE Program imposed racial classifications. Id. at 127. The court found that under the SBE Program, bidders were required to use good faith efforts to promote opportunities for minority- and women-owned businesses to the extent of their availability as determined by the City, and to submit detailed descriptions of those good faith efforts. The court held that “[w]here the city’s SBE program required documentation of a bidder’s specific efforts to achieve the participation of minority subcontractors to the extent of their availability as predetermined by the city, the program undeniably pressured bidders to implement racial preferences. Therefore, the program’s rules must be subject to strict scrutiny.” Id. at 127. The court held that to the extent the SBE Program pressured contractors to utilize female-owned subcontractors, that portion was subject to intermediate scrutiny. Because the City conceded that its SBE Program could not survive either standard of heightened scrutiny, the court affirmed the trial court’s finding holding unconstitutional those portions of the SBE Program causing bidders to use racial- or gender-based preferences. The court also overruled the City’s enumeration of error over the trial court’s award of prevailing party attorneys’ fees to the plaintiff.

The Court of Appeals reversed the trial court’s entry of a directed verdict for the city on the plaintiff’s claim for lost profit damages. The court confirmed that under Ohio law, a disappointed bidder cannot recover lost profit damages when a municipality violates competitive-bidding laws. But, under 42 U.S.C. § 1983, a disappointed bidder may recover their lost profits as damages; the court cited to Adarand, W.H. Scott Construction Co. v. Jackson, and Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, Fla. in support of that proposition. The court reversed the entry of a directed verdict and remanded to the trial court for a new trial on the issue of Section 1983 liability and damages.

Finally, the Court of Appeals affirmed the trial court’s ruling that the named city officials sued in their individual capacities were entitled to qualified immunity. The court determined that due to complex nature of the issues, the city officials could not have reasonably known that their conduct was unconstitutional (required on order to overcome a qualified immunity defense).

The city subsequently applied for certiorari to the United States Supreme Court. The Supreme Court denied certiorari on October 9, 2007. 128 S. Ct. 379 (Oct. 9, 2007).

24. Cleveland Constr., Inc. v. City of Cincinnati, Case No. A042683, WL 4880918 (Ohio Court of Common Pleas, July 13, 2005 and August 29, 2005)

This case is instructive as it addresses the validity of the City of Cincinnati's program involving contracting with MBE/WBEs, information that a city may gather as to MBE/WBE participation, information that a city may track as to MBE/WBE participation, and the type of legislation the local or state governments may consider adopting. Cleveland Construction, Inc. (the "plaintiff") challenged the City of Cincinnati's (the "City") Small Business Enterprise Program (the "Program"), and a related SBE Subcontracting Outreach Program which applied to City-funded construction projects valued in excess of \$100,000. Case No. A0402638 (Ohio Common Pleas Court, July 13, 2005) at 5. The Program required prime contractors to subcontract a minimum percentage of their bid (20% or greater on some construction contracts) to qualified available minority subcontractors. Id.

The City stipulated that it lacked the necessary factual basis to withstand a strict scrutiny analysis, or even an intermediate scrutiny analysis, of its Program. Id. at 10-11. The court then considered whether the Program imposed classifications subject to such analyses. Id. The court found that "the law does not prohibit governmental entities from recording statistics relating to race or gender, or from tracking the progress of groups as identified by such categories, or from seeking to ascertain whether any impermissible, discriminatory barriers are hampering the advancement of individuals within groups as defined by race or gender." Id. at 12. Accordingly, the court found that the City could use MBE/WBE annual participation goals in conjunction with such a tracking program, and other outreach efforts, as long as such efforts included no "further mechanism to promote or effectuate or encourage others to meet such goals in any particular context." Id. (internal citations omitted).

However, the court found that where outreach efforts operate as "a *sub rosa* preference — that is, where their administration 'indisputably pressures' contractors to hire minority subcontractors — courts must apply strict scrutiny." Id. at 12-13. The court found that the Program contained a number of race- and gender-classification provisions and "indisputably pressures" contractors to recruit minority subcontractors, including requisite documentation of good faith outreach efforts and potential investigation of recruitment efforts by the Office of Contract Compliance; accordingly, the Program was subject to strict scrutiny. Id. at 13-14. Because the City conceded that the Program could not survive a strict scrutiny analysis, the court found the Program facially unconstitutional and ordered the City to take prompt action to remove all such unconstitutional provisions. Id. at 15. However, the court found the plaintiff was unable to demonstrate that the unconstitutional aspects of the Program caused him to lose the contract award at issue. Id. at 18.

F. Recent Decisions Involving the Federal DBE Program and Federally-Funded Projects in Other Jurisdictions

There are several recent and pending cases involving challenges to the United States Federal DBE Program and its implementation by the states and their governmental entities for federally-funded projects. These cases could have a significant impact on the nature and provisions of contracting and procurement on federally-funded projects, including and relating to the utilization of DBEs. In addition, these cases provide an instructive analysis of the recent application of the strict scrutiny test to MBE/WBE- and DBE-type programs.

1. Northern Contracting, Inc. v. Illinois, 473 F.3d 715 (7th Cir. 2007).

In Northern Contracting, Inc. v. Illinois, the Seventh Circuit affirmed the district court decision upholding the validity and constitutionality of the Illinois Department of Transportation's ("IDOT") DBE Program. Plaintiff Northern Contracting Inc. ("NCI") was a white male-owned construction company specializing in the construction of guardrails and fences for highway construction projects in Illinois. 473 F.3d 715, 717 (7th Cir. 2007). Initially, NCI challenged the constitutionality of both the federal regulations and the Illinois statute implementing these regulations. Id. at 719. The district court granted the USDOT's Motion for Summary Judgment, concluding that the federal government had demonstrated a compelling interest and that TEA-21 was sufficiently narrowly tailored. NCI did not challenge this ruling and thereby forfeited the opportunity to challenge the federal regulations. Id. at 720. NCI also forfeited the argument that IDOT's DBE program did not serve a compelling government interest. Id. The sole issue on appeal to the Seventh Circuit was whether IDOT's program was narrowly tailored. Id.

IDOT typically adopted a new DBE plan each year. Id. at 718. In preparing for Fiscal Year 2005, IDOT retained a consulting firm to determine DBE availability. Id. The consultant first identified the relevant geographic market (Illinois) and the relevant product market (transportation infrastructure construction). Id. The consultant then determined availability of minority- and women-owned firms through analysis of Dun & Bradstreet's Marketplace data. Id. This initial list was corrected for errors in the data by surveying the D&B list. Id. In light of these surveys, the consultant arrived at a DBE availability of 22.77 percent. Id. The consultant then ran a regression analysis on earnings and business information and concluded that in the absence of discrimination, relative DBE availability would be 27.5 percent. Id. IDOT considered this, along with other data, including DBE utilization on IDOT's "zero goal" experiment conducted in 2002 to 2003, in which IDOT did not use DBE goals on 5 percent of its contracts (1.5% utilization) and data of DBE utilization on projects for the Illinois State Toll Highway Authority which does not receive federal funding and whose goals are completely voluntary (1.6% utilization). Id. at 719. On the basis of all of this data, IDOT adopted a 22.77 percent goal for 2005. Id.

Despite the fact the NCI forfeited the argument that IDOT's DBE program did not serve a compelling state interest, the Seventh Circuit briefly addressed the compelling interest prong of the strict scrutiny analysis, noting that IDOT had satisfied its burden. Id. at 720. The court noted that, post-Adarand, two other circuits have held that a state may rely on the federal government's compelling interest in implementing a local DBE plan. Id. at 720-21, citing Western States Paving Co., Inc. v. Washington State DOT, 407 F.3d 983, 987 (9th Cir. 2005), cert. denied, 126 S.Ct. 1332 (Feb. 21, 2006) and Sherbrooke Turf, Inc. v. Minnesota DOT, 345 F.3d 964, 970 (8th Cir.

2003), cert. denied, 541 U.S. 1041 (2004). The court stated that NCI had not articulated any reason to break ranks from the other circuits and explained that “[i]nsofar as the state is merely complying with federal law it is acting as the agent of the federal government If the state does exactly what the statute expects it to do, and the statute is conceded for purposes of litigation to be constitutional, we do not see how the state can be thought to have violated the Constitution.” Id. at 721, quoting Milwaukee County Pavers Association v. Fielder, 922 F.2d 419, 423 (7th Cir. 1991). The court did not address whether IDOT had an independent interest that could have survived constitutional scrutiny.

In addressing the narrowly tailored prong with respect to IDOT’s DBE program, the court held that IDOT had complied. Id. The court concluded its holding in Milwaukee that a state is insulated from a constitutional attack absent a showing that the state exceeded its federal authority remained applicable. Id. at 721-22. The court noted that the Supreme Court in Adarand Constructors v. Peña, 515 U.S. 200 (1995) did not seize the opportunity to overrule that decision, explaining that the Court did not invalidate its conclusion that a challenge to a state’s application of a federally mandated program must be limited to the question of whether the state exceeded its authority. Id. at 722.

The court further clarified the Milwaukee opinion in light of the interpretations of the opinions offered in by the Ninth Circuit in Western States and Eighth Circuit in Sherbrooke. Id. The court stated that the Ninth Circuit in Western States misread the Milwaukee decision in concluding that Milwaukee did not address the situation of an as-applied challenge to a DBE program. Id. at 722, n.5. Relatedly, the court stated that the Eighth Circuit’s opinion in Sherbrooke (that the Milwaukee decision was compromised by the fact that it was decided under the prior law “when the 10 percent federal set-aside was more mandatory”) was unconvincing since all recipients of federal transportation funds are still required to have compliant DBE programs. Id. at 722. Federal law makes more clear now that the compliance could be achieved even with no DBE utilization if that were the result of a good faith use of the process. Id. at 722, n.5. The court stated that IDOT in this case was acting as an instrument of federal policy and NCI’s collateral attack on the federal regulations was impermissible. Id. at 722.

The remainder of the court’s opinion addressed the question of whether IDOT exceeded its grant of authority under federal law, and held that all of NCI’s arguments failed. Id. First, NCI challenged the method by which the local base figure was calculated, the first step in the goal-setting process. Id. NCI argued that the number of registered and prequalified DBEs in Illinois should have simply been counted. Id. The court stated that while the federal regulations list several examples of methods for determining the local base figure, Id. at 723, these examples are not intended as an exhaustive list. The court pointed out that the fifth item in the list is entitled “Alternative Methods,” and states: “You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designated to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.” Id. (citing 49 C.F.R. § 26.45(c)(5)). According to the court, the regulations make clear that “relative availability” means “the availability of ready, willing and able DBEs relative to all business ready, willing, and able to participate” on DOT contracts. Id. The court stated NCI pointed to nothing in the federal regulations that indicated that a recipient must so narrowly define the scope of the ready, willing, and available firms to a simple count of the number of registered and prequalified DBEs. Id.

The court agreed with the district court that the remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net. Id.

Second, NCI argued that the IDOT failed to properly adjust its goal based on local market conditions. Id. The court noted that the federal regulations do not require any adjustments to the base figure, but simply provide recipients with authority to make such adjustments if necessary. Id. According to the court, NCI failed to identify any aspect of the regulations requiring IDOT to separate prime contractor availability from subcontractor availability, and pointed out that the regulations require the local goal to be focused on overall DBE participation. Id.

Third, NCI contended that IDOT violated the federal regulations by failing to meet the maximum feasible portion of its overall goal through race-neutral means of facilitating DBE participation. Id. at 723-24. NCI argued that IDOT should have considered DBEs who had won subcontracts on goal projects where the prime contractor did not consider DBE status, instead of only considering DBEs who won contracts on no-goal projects. Id. at 724. The court held that while the regulations indicate that where DBEs win subcontracts on goal projects strictly through low bid this can be counted as race-neutral participation, the regulations did not require IDOT to search for this data, for the purpose of calculating past levels of race-neutral DBE participation. Id. According to the court, the record indicated that IDOT used nearly all the methods described in the regulations to maximize the portion of the goal that will be achieved through race-neutral means. Id.

The court affirmed the decision of the district court upholding the validity of the IDOT DBE program and found that it was narrowly tailored to further a compelling governmental interest. Id.

2. Northern Contracting, Inc. v. Illinois, 2005 WL 2230195 (N.D. Ill. Sept. 8, 2005), aff'd 473 F.3d 715 (7th Cir. 2007).

This decision is the district court's order that was affirmed by the Seventh Circuit Court of Appeals. This decision is instructive in that it is one of the recent cases to address the validity of the Federal DBE Program and local and state governments' implementation of the program as recipients of federal funds. The case also is instructive in that the court set forth a detailed analysis of race-, ethnicity-, and gender-neutral measures as well as evidentiary data required to satisfy constitutional scrutiny.

The district court conducted a trial after denying the parties' Motions for Summary Judgment in Northern Contracting, Inc. v. State of Illinois, Illinois DOT, and USDOT, 2004 WL 422704 (N.D. Ill. March 3, 2004), discussed infra. The following summarizes the opinion of the district court.

Northern Contracting, Inc. (the "plaintiff"), an Illinois highway contractor, sued the State of Illinois, the Illinois DOT, the United States DOT, and federal and state officials seeking a declaration that federal statutory provisions, the federal implementing regulations ("TEA-21"), the state statute authorizing the DBE program, and the Illinois DBE program itself were unlawful and unconstitutional. 2005 WL 2230195 at *1 (N.D. Ill. Sept. 8, 2005).

Under TEA-21, a recipient of federal funds is required to meet the "maximum feasible portion" of its DBE goal through race-neutral means. Id. at *4 (citing regulations). If a recipient projects that it cannot meet its overall DBE goal through race-neutral means, it must establish contract goals to the

extent necessary to achieve the overall DBE goal. Id. (citing regulation). [The court provided an overview of the pertinent regulations including compliance requirements and qualifications for DBE status.]

Statistical evidence. To calculate its 2005 DBE participation goals, IDOT followed the two-step process set forth in TEA-21: (1) calculation of a base figure for the relative availability of DBEs, and (2) consideration of a possible adjustment of the base figure to reflect the effects of the DBE program and the level of participation that would be expected but for the effects of past and present discrimination. Id. at *6. IDOT engaged in a study to calculate its base figure and conduct a custom census to determine whether a more reliable method of calculation existed as opposed to IDOT's previous method of reviewing a bidder's list. Id.

In compliance with TEA-21, IDOT used a study to evaluate the base figure using a six-part analysis: (1) the study identified the appropriate and relevant geographic market for IDOT's contracting activity and its prime contractors as the State of Illinois; (2) the study identified the relevant product markets in which IDOT and its prime contractors contract; (3) the study sought to identify all available contractors and subcontractors in the relevant industries within Illinois using Dun & Bradstreet's Marketplace; (4) the study collected lists of DBEs from IDOT and twenty other public and private agencies; (5) the study attempted to correct for the possibility that certain businesses listed as DBEs were no longer qualified or, alternatively, businesses not listed as DBEs but qualified as such under the federal regulations; and (6) the study attempted to correct for the possibility that not all DBE businesses were listed in the various directories. Id. at *6-7. The study utilized a standard statistical sampling procedure to correct for the latter two biases. Id. at *7. The study thus calculated a weighted average base figure of 22.7 percent. Id.

IDOT then adjusted the base figure based upon two disparity studies and some reports considering whether the DBE availability figures were artificially low due to the effects of past discrimination. Id. at *8. One study examined disparities in earnings and business formation rates as between DBEs and their white male-owned counterparts. Id. Another study included a survey reporting that DBEs are rarely utilized in non-goals projects. Id.

IDOT considered three reports prepared by expert witnesses. Id. at *9. The first report concluded that minority- and women-owned businesses were underutilized relative to their capacity and that such underutilization was due to discrimination. Id. The second report concluded, after controlling for relevant variables such as credit worthiness, "that minorities and women are less likely to form businesses, and that when they do form businesses, those businesses achieve lower earnings than did businesses owned by white males." Id. The third report, again controlling for relevant variables (education, age, marital status, industry and wealth), concluded that minority- and female-owned businesses formation rates are lower than those of their white male counterparts, and that such businesses engage in a disproportionate amount of government work and contracts as a result of their inability to obtain private sector work. Id.

IDOT also conducted a series of public hearings in which a number of DBE owners who testified that they "were rarely, if ever, solicited to bid on projects not subject to disadvantaged-firm hiring goals." Id. Additionally, witnesses identified twenty prime contractors in IDOT District 1 alone who rarely or never solicited bids from DBEs on non-goals projects. Id. The prime contractors did not respond to IDOT's requests for information concerning their utilization of DBEs. Id.

Finally, IDOT reviewed unremediated market data from four different markets (the Illinois State Toll Highway Authority, the Missouri DOT, Cook County’s public construction contracts, and a “non-goals” experiment conducted by IDOT between 2001 and 2002), and considered past utilization of DBEs on IDOT projects. Id. at *11. After analyzing all of the data, the study recommended an upward adjustment to 27.51 percent, however, IDOT decided to maintain its figure at 22.77 percent. Id.

IDOT’s representative testified that the DBE program was administered on a “contract-by-contract basis.” Id. She testified that DBE goals have no effect on the award of prime contracts but that contracts are awarded exclusively to the “lowest responsible bidder.” IDOT also allowed contractors to petition for a waiver of individual contract goals in certain situations (e.g., where the contractor has been unable to meet the goal despite having made reasonable good faith efforts). Id. at *12. Between 2001 and 2004, IDOT received waiver requests on 8.53 percent of its contracts and granted three out of four; IDOT also provided an appeal procedure for a denial from a waiver request. Id.

IDOT implemented a number of race- and gender-neutral measures both in its fiscal year 2005 plan and in response to the district court’s earlier summary judgment order, including:

1. A “prompt payment provision” in its contracts, requiring that subcontractors be paid promptly after they complete their work, and prohibiting prime contractors from delaying such payments;
2. An extensive outreach program seeking to attract and assist DBE and other small firms DBE and other small firms enter and achieve success in the industry (including retaining a network of consultants to provide management, technical and financial assistance to small businesses, and sponsoring networking sessions throughout the state to acquaint small firms with larger contractors and to encourage the involvement of small firms in major construction projects);
3. Reviewing the criteria for prequalification to reduce any unnecessary burdens;
4. “Unbundling” large contracts; and
5. Allocating some contracts for bidding only by firms meeting the SBA’s definition of small businesses.

Id. (internal citations omitted). IDOT was also in the process of implementing bonding and financing initiatives to assist emerging contractors obtain guaranteed bonding and lines of credit, and establishing a mentor-protégé program. Id.

The court found that IDOT attempted to achieve the “maximum feasible portion” of its overall DBE goal through race- and gender-neutral measures. Id. at *13. The court found that IDOT determined that race- and gender-neutral measures would account for 6.43 percent of its DBE goal, leaving 16.34 percent to be reached using race- and gender-conscious measures. Id.

Anecdotal evidence. A number of DBE owners testified to instances of perceived discrimination and to the barriers they face. Id. The DBE owners also testified to difficulties in obtaining work in the private sector and “unanimously reported that they were rarely invited to bid on such contracts.” Id. The DBE owners testified to a reluctance to submit unsolicited bids due to the expense involved

and identified specific firms that solicited bids from DBEs for goals projects but not for non-goals projects. Id. A number of the witnesses also testified to specific instances of discrimination in bidding, on specific contracts, and in the financing and insurance markets. Id. at *13-14. One witness acknowledged that all small firms face difficulties in the financing and insurance markets, but testified that it is especially burdensome for DBEs who “frequently are forced to pay higher insurance rates due to racial and gender discrimination.” Id. at *14. The DBE witnesses also testified they have obstacles in obtaining prompt payment. Id.

The plaintiff called a number of non-DBE business owners who unanimously testified that they solicit business equally from DBEs and non-DBEs on non-goals projects. Id. Some non-DBE firm owners testified that they solicit bids from DBEs on a goals project for work they would otherwise complete themselves absent the goals; others testified that they “occasionally award work to a DBE that was not the low bidder in order to avoid scrutiny from IDOT.” Id. A number of non-DBE firm owners accused of failing to solicit bids from DBEs on non-goals projects, testified and denied the allegations. Id. at *15.

Strict scrutiny. The court applied strict scrutiny to the program as a whole (including the gender-based preferences). Id. at *16. The court, however, set forth a different burden of proof, finding that the government must demonstrate identified discrimination with specificity and must have a “‘strong basis in evidence’ to conclude that remedial action was necessary, *before* it embarks on an affirmative action program ... If the government makes such a showing, the party challenging the affirmative action plan bears the ‘ultimate burden’ of demonstrating the unconstitutionality of the program.” Id. The court held that challenging party’s burden “can only be met by presenting credible evidence to rebut the government’s proffered data.” Id. at *17.

To satisfy strict scrutiny, the court found that IDOT did not need to demonstrate an independent compelling interest; however, as part of the narrowly tailored prong, IDOT needed to show “that there is a demonstrable need for the implementation of the Federal DBE Program within its jurisdiction.” Id. at *16.

The court found that IDOT presented “an abundance” of evidence documenting the disparities between DBEs and non-DBEs in the construction industry. Id. at *17. The plaintiff argued that the study was “erroneous because it failed to limit its DBE availability figures to those firms ... registered and pre-qualified with IDOT.” Id. The plaintiff also alleged the calculations of the DBE utilization rate were incorrect because the data included IDOT subcontracts and prime contracts, despite the fact that the latter are awarded to the lowest bidder as a matter of law. Id. Accordingly, the plaintiff alleged that IDOT’s calculation of DBE availability and utilization rates was incorrect. Id.

The court found that other jurisdictions had utilized the custom census approach without successful challenge. Id. at *18. Additionally, the court found “that the remedial nature of the federal statutes counsels for the casting of a broader net when measuring DBE availability.” Id. at *19. The court found that IDOT presented “an array of statistical studies concluding that DBEs face disproportionate hurdles in the credit, insurance, and bonding markets.” Id. at *21. The court also found that the statistical studies were consistent with the anecdotal evidence. Id. The court did find, however, that “there was no evidence of even a single instance in which a prime contractor failed to award a job to a DBE that offered the low bid. This ... is [also] supported by the statistical data ... which shows that at least at the level of subcontracting, DBEs are generally utilized at a rate in line

with their ability.” *Id.* at *21, n. 31. Additionally, IDOT did not verify the anecdotal testimony of DBE firm owners who testified to barriers in financing and bonding, however, the court found that such verification was unnecessary. *Id.* at *21, n. 32.

The court further found:

That such discrimination indirectly affects the ability of DBEs to compete for prime contracts, despite the fact that they are awarded solely on the basis of low bid, cannot be doubted: ‘[E]xperience and size are not race- and gender-neutral variables ... [DBE] construction firms are generally smaller and less experienced *because* of industry discrimination.’

Id. at *21, citing Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003).

The parties stipulated to the fact that DBE utilization goals exceed DBE availability for 2003 and 2004. *Id.* at *22. IDOT alleged, and the court so found, that the high utilization on goals projects was due to the success of the DBE program, and not to an absence of discrimination. *Id.* The court found that the statistical disparities coupled with the anecdotal evidence indicated that IDOT’s fiscal year 2005 goal was a “‘plausible lower-bound estimate’ of DBE participation in the absence of discrimination.” *Id.* The court found that the plaintiff did not present persuasive evidence to contradict or explain IDOT’s data. *Id.*

The plaintiff argued that even if accepted at face value, IDOT’s marketplace data did not support the imposition of race- and gender-conscious remedies because there was no evidence of direct discrimination by prime contractors. *Id.* The court found first that IDOT’s indirect evidence of discrimination in the bonding, financing, and insurance markets was sufficient to establish a compelling purpose. *Id.* Second, the court found:

[M]ore importantly, Plaintiff fails to acknowledge that, in enacting its DBE program, IDOT acted not to remedy its own prior discriminatory practices, but pursuant to federal law, which both authorized and required IDOT to remediate the effects of *private* discrimination on federally-funded highway contracts. This is a fundamental distinction ... [A] state or local government need not independently identify a compelling interest when its actions come in the course of enforcing a federal statute.

Id. at *23. The court distinguished Builders Ass’n of Greater Chicago v. County of Cook, 123 F. Supp. 2d 1087 (N.D. Ill. 2000), aff’d 256 F.3d 642 (7th Cir. 2001), noting that the program in that case was not federally-funded. *Id.* at *23, n. 34.

The court also found that “IDOT has done its best to maximize the portion of its DBE goal” through race- and gender-neutral measures, including anti-discrimination enforcement and small business initiatives. *Id.* at *24. The anti-discrimination efforts included: an internet website where a DBE can file an administrative complaint if it believes that a prime contractor is discriminating on the basis of race or gender in the award of sub-contracts; and requiring contractors seeking

prequalification to maintain and produce solicitation records on all projects, both public and private, with and without goals, as well as records of the bids received and accepted. Id. The small business initiative included: “unbundling” large contracts; allocating some contracts for bidding only by firms meeting the SBA’s definition of small businesses; a “prompt payment provision” in its contracts, requiring that subcontractors be paid promptly after they complete their work, and prohibiting prime contractors from delaying such payments; and an extensive outreach program seeking to attract and assist DBE and other small firms DBE and other small firms enter and achieve success in the industry (including retaining a network of consultants to provide management, technical and financial assistance to small businesses, and sponsoring networking sessions throughout the state to acquaint small firms with larger contractors and to encourage the involvement of small firms in major construction projects). Id.

The court found “[s]ignificantly, Plaintiff did not question the efficacy or sincerity of these race- and gender-neutral measures.” Id. at *25. Additionally, the court found the DBE program had significant flexibility in that utilized contract-by-contract goal setting (without a fixed DBE participation minimum) and contained waiver provisions. Id. The court found that IDOT approved 70 percent of waiver requests although waivers were requested on only 8 percent of all contracts. Id., citing Adarand Constructors, Inc. v. Slater “Adarand VII”, 228 F.3d 1147, 1177 (10th Cir. 2000) (citing for the proposition that flexibility and waiver are critically important).

The court held that IDOT’s DBE plan was narrowly tailored to the goal of remedying the effects of racial and gender discrimination in the construction industry, and was therefore constitutional.

3. Northern Contracting, Inc. v. State of Illinois, Illinois DOT, and USDOT, 2004 WL 422704 (N.D. Ill. March 3, 2004)

This is the earlier decision in Northern Contracting, Inc., 2005 WL 2230195 (N.D. Ill. Sept. 8, 2005), see above, which resulted in the remand of the case to consider the implementation of the Federal DBE Program by the Illinois DOT. This case involves the challenge to the Federal DBE Program. The plaintiff contractor sued the Illinois Department of Transportation and the USDOT challenging the facial constitutionality of the Federal DBE Program (TEA-21 and 49 C.F.R. Part 26) as well as the implementation of the Federal Program by the Illinois Department of Transportation (i.e., the IDOT DBE Program). The court held valid the Federal DBE Program, finding there is a compelling governmental interest and the federal program is narrowly tailored. The court also held there are issues of fact regarding whether Illinois DOT’s (“IDOT”) DBE Program is narrowly tailored to achieve the federal government’s compelling interest. The court denied the Motions for Summary Judgment filed by the plaintiff and by IDOT, finding there were issues of material fact relating to IDOT’s implementation of the Federal DBE Program.

The court in Northern Contracting, held that there is an identified compelling governmental interest for implementing the Federal DBE Program and that the Federal DBE Program is narrowly tailored to further that interest. Therefore, the court granted the Federal defendants’ Motion for Summary Judgment challenging the validity of the Federal DBE Program. In this connection, the district court followed the decisions and analysis in Sherbrooke Turf, Inc. v. Minnesota Department of Transportation, 345 F. 3d 964 (8th Cir. 2003) and Adarand Constructors, Inc. v. Slater, 228 F. 3d 1147 (10th Cir. 2000) (“Adarand VII”), cert. granted then dismissed as improvidently granted, 532 U.S. 941, 534 U.S. 103 (2001). The court held, like these two Courts of Appeals that have addressed

this issue, that Congress had a strong basis in evidence to conclude that the DBE Program was necessary to redress private discrimination in federally-assisted highway subcontracting. The court agreed with the Adarand VII and Sherbrooke Turf courts that the evidence presented to Congress is sufficient to establish a compelling governmental interest, and that the contractors had not met their burden of introducing credible particularized evidence to rebut the Government's initial showing of the existence of a compelling interest in remedying the nationwide effects of past and present discrimination in the federal construction procurement subcontracting market. 2004 WL422704 at *34, citing Adarand VII, 228 F. 3d at 1175.

In addition, the court analyzed the second prong of the strict scrutiny test, whether the government provided sufficient evidence that its program is narrowly tailored. In making this determination, the court looked at several factors, such as the efficacy of alternative remedies; the flexibility and duration of the race-conscious remedies, including the availability of waiver provisions; the relationships between the numerical goals and relevant labor market; the impact of the remedy on third parties; and whether the program is over-or-under-inclusive. The narrow tailoring analysis with regard to the as-applied challenge focused on Illinois' implementation of the Federal DBE Program.

First, the court held that the Federal DBE Program does not mandate the use of race-conscious measures by recipients of federal dollars, but in fact requires only that the goal reflect the recipient's determination of the level of DBE participation it would expect absent the effects of the discrimination. 49 C.F.R. § 26.45(b). The court recognized, as found in the Sherbrooke Turf and Adarand VII cases, that the Federal Regulations place strong emphasis on the use of race-neutral means to increase minority business participation in government contracting, that although narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, it does require "serious, good faith consideration of workable race-neutral alternatives." 2004 WL422704 at *36, citing and quoting Sherbrooke Turf, 345 F. 3d at 972, quoting Grutter v. Bollinger, 539 U.S. 306 (2003). The court held that the Federal regulations, which prohibit the use of quotas and severely limit the use of set-asides meet this requirement. The court agreed with the Adarand VII and Sherbrooke Turf courts that the Federal DBE Program does require recipients to make a serious good faith consideration of workable race-neutral alternatives before turning to race-conscious measures.

Second, the court found that because the Federal DBE Program is subject to periodic reauthorization, and requires recipients of Federal dollars to review their programs annually, the Federal DBE scheme is appropriately limited to last no longer than necessary.

Third, the court held that the Federal DBE Program is flexible for many reasons, including that the presumption that women and minority are socially disadvantaged is deemed rebutted if an individual's personal net worth exceeds \$750,000.00, and a firm owned by individual who is not presumptively disadvantaged may nevertheless qualify for such status if the firm can demonstrate that its owners are socially and economically disadvantaged. 49 C.F.R. § 26.67(b)(1)(d). The court found other aspects of the Federal Regulations provide ample flexibility, including recipients may obtain waivers or exemptions from any requirements. Recipients are not required to set a contract goal on every USDOT-assisted contract. If a recipient estimates that it can meet its entire overall goals for a given year through race-neutral means, it must implement the Program without setting contract goals during the year. If during the course of any year in which it is using contract goals a recipient determines that it will exceed its overall goals, it must adjust the use of race-conscious contract goals

accordingly. 49 C.F.R. § 26.51(e)(f). Recipients also administering a DBE Program in good faith can not be penalized for failing to meet their DBE goals, and a recipient may terminate its DBE Program if it meets its annual overall goal through race-neutral means for two consecutive years. 49 C.F.R. § 26.51(f). Further, a recipient may award a contract to a bidder/offeror that does not meet the DBE Participation goals so long as the bidder has made adequate good faith efforts to meet the goals. 49 C.F.R. § 26.53(a)(2). The regulations also prohibit the use of quotas. 49 C.F.R. § 26.43.

Fourth, the court agreed with the Sherbrooke Turf court's assessment that the Federal DBE Program requires recipients to base DBE goals on the number of ready, willing and able disadvantaged business in the local market, and that this exercise requires recipients to establish realistic goals for DBE participation in the relevant labor markets.

Fifth, the court found that the DBE Program does not impose an unreasonable burden on third parties, including non-DBE subcontractors and taxpayers. The court found that the Federal DBE Program is a limited and properly tailored remedy to cure the effects of prior discrimination, a sharing of the burden by parties such as non-DBEs is not impermissible.

Finally, the court found that the Federal DBE Program was not over-inclusive because the regulations do not provide that every woman and every member of a minority group is disadvantaged. Preferences are limited to small businesses with a specific average annual gross receipts over three fiscal years of \$16.6 million or less (at the time of this decision), and businesses whose owners' personal net worth exceed \$750,000.00 are excluded. 49 C.F.R. § 26.67(b)(1). A firm owned by a white male may qualify as social and economically disadvantaged. 49 C.F.R. § 26.67(d).

The court analyzed the constitutionality of the Illinois DBE Program. The court adopted the reasoning of the Eighth Circuit in Sherbrooke Turf, that a recipient's implementation of the Federal DBE Program must be analyzed under the narrow tailoring analysis but not the compelling interest inquiry. Therefore, the court agreed with Sherbrooke Turf that a recipient need not establish a distinct compelling interest before implementing the Federal DBE Program, but did conclude that a recipient's implementation of the Federal DBE Program must be narrowly tailored. The court found that issues of fact remain in terms of the validity of the Illinois DOT's DBE Program as implemented in terms of whether it was narrowly tailored to achieve the Federal Government's compelling interest. The court, therefore, denied the contractor plaintiff's Motion for Summary Judgment and the Illinois DOT's Motion for Summary Judgment.

4. Sherbrooke Turf, Inc. v. Minnesota DOT, and Gross Seed Company v. Nebraska Department of Road, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004)

This case is instructive in its analysis of state DOT DBE-type programs and their evidentiary basis and implementation. This case also is instructive in its analysis of the narrowly tailored requirement for state DBE programs. In upholding the challenged Federal DBE Program at issue in this case, the Eighth Circuit emphasized the race-, ethnicity- and gender-neutral elements, the ultimate flexibility of the Program, and the fact the Program was tied closely only to labor markets with identified discrimination.

In Sherbrooke Turf, Inc. v. Minnesota DOT, and Gross Seed Company v. Nebraska Department of Road, the U.S. Court of Appeals for the Eighth Circuit upheld the constitutionality of the Federal DBE Program (49 C.F.R. Part 26). The court held the Federal Program was narrowly tailored to remedy a compelling governmental interest. The court also held the federal regulations governing the states' implementation of the Federal DBE Program were narrowly tailored, and the state DOT's implementation of the Federal DBE Program was narrowly tailored to serve a compelling government interest.

Sherbrooke and Gross Seed both contended that the Federal DBE Program on its face and as applied in Minnesota and Nebraska violated the Equal Protection component of the Fifth Amendment's Due Process Clause. The Eighth Circuit engaged in a review of the Federal DBE Program and the implementation of the Program by the Minnesota DOT and the Nebraska Department of Roads under a strict scrutiny analysis and held that the Federal DBE Program was valid and constitutional and that the Minnesota DOT's and Nebraska DOR's implementation of the Program also was constitutional and valid. Applying the strict scrutiny analysis, the court first considered whether the Federal DBE Program established a compelling governmental interest, and found that it did. It concluded that Congress had a strong basis in evidence to support its conclusion that race-based measures were necessary for the reasons stated by the Tenth Circuit in Adarand, 228 F. 3d at 1167-76. Although the contractors presented evidence that challenged the data, they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to participation in highway contracts. Thus, the court held they failed to meet their ultimate burden to prove that the DBE Program is unconstitutional on this ground.

Finally, Sherbrooke and Gross Seed argued that the Minnesota DOT and Nebraska DOR must independently satisfy the compelling governmental interest test aspect of strict scrutiny review. The government argued, and the district courts' below agreed, that participating states need not independently meet the strict scrutiny standard because under the DBE Program the state must still comply with the DOT regulations. The Eighth Circuit held that this issue was not addressed by the Tenth Circuit in Adarand. The Eighth Circuit concluded that neither side's position is entirely sound.

The court rejected the contention of the contractors that their facial challenges to the DBE Program must be upheld unless the record before Congress included strong evidence of race discrimination in construction contracting in Minnesota and Nebraska. On the other hand, the court held a valid race-based program must be narrowly tailored, and to be narrowly tailored, a national program must be limited to those parts of the country where its race-based measures are demonstrably needed to the extent that federal government delegates this tailoring function, as a state's implementation becomes relevant to a reviewing court's strict scrutiny. Thus, the court left the question of state implementation to the narrow tailoring analysis.

The court held that a reviewing court applying strict scrutiny must determine if the race-based measure is narrowly tailored, that is, whether the means chosen to accomplish the government's asserted purpose are specifically and narrowly framed to accomplish that purpose. The contractors have the ultimate burden of establishing that the DBE Program is not narrowly tailored. Id. The

compelling interest analysis focused on the record before Congress; the narrow-tailoring analysis looks at the roles of the implementing highway construction agencies.

For determining whether a race-conscious remedy is narrowly tailored, the court looked at factors such as the efficacy of alternative remedies, the flexibility and duration of the race-conscious remedy, the relationship of the numerical goals to the relevant labor market, and the impact of the remedy on third parties. *Id.* Under the DBE Program, a state receiving federal highway funds must, on an annual basis, submit to DOT an overall goal for DBE participation in its federally-funded highway contracts. *See*, 49 C.F.R. § 26.45(f)(1). The overall goal “must be based on demonstrable evidence” as to the number of DBEs who are ready, willing, and able to participate as contractors or subcontractors on federally-assisted contracts. 49 C.F.R. § 26.45(b). The number may be adjusted upward to reflect the state’s determination that more DBEs would be participating absent the effects of discrimination, including race-related barriers to entry. *See*, 49 C.F.R. § 26.45(d).

The state must meet the “maximum feasible portion” of its overall goal by race-neutral means and must submit for approval a projection of the portion it expects to meet through race-neutral means. *See*, 49 C.F.R. § 26.45(a), (c). If race-neutral means are projected to fall short of achieving the overall goal, the State must give preference to firms it has certified as DBEs. However, such preferences may not include quotas. 49 C.F.R. § 26.45(b). During the course of the year, if a state determines that it will exceed or fall short of its overall goal, it must adjust its use of race-conscious and race-neutral methods “[t]o ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination.” 49 C.F.R. § 26.51(f).

Absent bad faith administration of the program, a state’s failure to achieve its overall goal will not be penalized. *See*, 49 C.F.R. § 26.47. If the state meets its overall goal for two consecutive years through race-neutral means, it is not required to set an annual goal until it does not meet its prior overall goal for a year. *See*, 49 C.F.R. § 26.51(f)(3). In addition, DOT may grant an exemption or waiver from any and all requirements of the Program. *See*, 49 C.F.R. § 26.15(b).

Like the district courts below, the Eighth Circuit concluded that the DOT regulations, on their face, satisfy the Supreme Court’s narrowing tailoring requirements. First, the regulations place strong emphasis on the use of race-neutral means to increase minority business participation in government contracting. 345 F. 3d at 972. Narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, but it does require serious good faith consideration of workable race-neutral alternatives. 345 F. 3d at 971, citing *Grutter v. Bollinger*, 539 U.S. 306.

Second, the revised DBE Program has substantial flexibility. A State may obtain waivers or exemptions from any requirements and is not penalized for a good faith effort to meet its overall goal. In addition, the Program limits preferences to small businesses falling beneath an earnings threshold, and any individual whose net worth exceeds \$750,000.00 cannot qualify as economically disadvantaged. *See*, 49 C.F.R. § 26.67(b). Likewise, the DBE program contains built-in durational limits. 345 F. 3d at 972. A State may terminate its DBE program if it meets its annual overall goal through race-neutral means for two consecutive years. *Id.*; 49 C.F.R. § 26.51(f)(3).

Third, the court found, the USDOT has tied the goals for DBE participation to the relevant labor markets. The regulations require states to set overall goals based upon the likely number of minority contractors that would have received federal assisted highway contracts but for the effects of past

discrimination. See, 49 C.F.R. § 26.45(c)-(d)(Steps 1 and 2). Though the underlying estimates may be inexact, the exercise requires the States to focus on establishing realistic goals for DBE participation in the relevant contracting markets. Id. at 972.

Finally, Congress and DOT have taken significant steps, the court held, to minimize the race-base nature of the DBE Program. Its benefits are directed at all small business owned and controlled by the socially and economically disadvantaged. While TEA-21 creates a rebuttable presumption that members of certain racial minorities fall within that class, the presumption is rebuttable, wealthy minority owners and wealthy minority-owned firms are excluded, and certification is available to persons who are not presumptably disadvantaged that demonstrate actual social and economic disadvantage. Thus, race is made relevant in the Program, but it is not a determinative factor. 345 F. 3d at 973. For these reasons, the court agreed with the district courts that the revised DBE Program is narrowly tailored on its face.

Sherbrooke and Gross Seed also argued that the DBE Program as applied in Minnesota and Nebraska is not narrowly tailored. Under the Federal Program, states set their own goals, based on local market conditions; their goals are not imposed by the federal government nor do recipients have to tie them to any uniform national percentage. 345 F. 3d at 973, citing 64 Fed. Reg. at 5102.

The court analyzed what Minnesota and Nebraska did in connection with their implementation of the Federal DBE Program. Minnesota DOT commissioned a disparity study of the highway contracting market in Minnesota. The study group determined that DBEs made up 11.4 percent of the prime contractors and subcontractors in a highway construction market. Of this number 0.6 percent were minority-owned and 10.8 percent women-owned. Based upon its analysis of business formation statistics, the consultant estimated that the number of participating minority-owned business would be 34 percent higher in a race-neutral market. Therefore, the consultant adjusted its DBE availability figure from 11.4 percent to 11.6 percent. Based on the study, Minnesota DOT adopted an overall goal of 11.6 percent DBE participation for federally-assisted highway projects. Minnesota DOT predicted that it would need to meet 9 percent of that overall goal through race and gender-conscious means, based on the fact DBE participation in State highway contracts dropped from 10.25 percent in 1998 to 2.25 percent in 1999 when its previous DBE Program was suspended by the injunction by the district court in an earlier decision in Sherbrooke. Minnesota DOT required each prime contract bidder to make a good faith effort to subcontract a prescribe portion of the project to DBEs, and determined that portion based on several individualized factors, including the availability of DBEs in the extent of subcontracting opportunities on the project.

The contractor presented evidence attacking the reliability of the data in the study, but it failed to establish that better data were available or that Minnesota DOT was otherwise unreasonable in undertaking this thorough analysis and relying on its results. Id. The precipitous drop in DBE participation when no race-conscious methods were employed, the court concluded, supports Minnesota DOT's conclusion that a substantial portion of its overall goal could not be met with race-neutral measures. Id. On that record, the court agreed with the district court that the revised DBE Program serves a compelling government interest and is narrowly tailored on its face and as applied in Minnesota.

In Nebraska, the Nebraska DOR commissioned a disparity study also to review availability and capability of DBE firms in the Nebraska highway construction market. The availability study found

that between 1995 and 1999, when Nebraska followed the mandatory 10 percent set-aside requirement, 9.95 percent of all available and capable firms were DBEs, and DBE firms received 12.7 percent of the contract dollars on federally assisted projects. After apportioning part of this DBE contracting to race-neutral contracting decisions, Nebraska DOR set an overall goal of 9.95 percent DBE participation and predicted that 4.82 percent of this overall goal would have to be achieved by race-and-gender conscious means. The Nebraska DOR required that prime contractors make a good faith effort to allocate a set portion of each contract's funds to DBE subcontractors. The Eighth Circuit concluded that Gross Seed, like Sherbrooke, failed to prove that the DBE Program is not narrowly tailored as applied in Nebraska. Therefore, the court affirmed the district courts' decisions in Gross Seed and Sherbrooke. (See district court opinions discussed infra).

5. Sherbrooke Turf, Inc. v. Minnesota DOT, 2001 WL 1502841, No. 00-CV-1026 (D. Minn. 2001) (unpublished opinion), aff'd 345 F.3d 964 (8th Cir. 2003)

Sherbrooke involved a landscaping service contractor owned and operated by Caucasian males. The contractor sued the Minnesota Department of Transportation claiming the Federal DBE provisions of the Transportation Equity Act for the 21st Century ("TEA-21") are unconstitutional. Sherbrooke challenged the "federal affirmative action programs," the USDOT implementing regulations, and the Minnesota DOT's participation in the DBE Program. The United States Department of Transportation and the Federal Highway Administration intervened as Federal defendants in the case. Sherbrooke, 2001 WL 1502841 at *1.

The United States District Court in Sherbrooke relied substantially on the Tenth Circuit Court of Appeals decision in Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000), in holding that the Federal DBE Program is constitutional. The district court addressed the issue of "random inclusion" of various groups as being within the program in connection with whether the Federal DBE Program is "narrowly tailored." The court held that Congress cannot enact a national program to remedy discrimination without recognizing classes of people whose history has shown them to be subject to discrimination and allowing states to include those people in its DBE Program.

The court held that the Federal DBE Program attempts to avoid the "potentially invidious effects of providing blanket benefits to minorities" in part,

by restricting a state's DBE preference to identified groups actually appearing in the target state. In practice, this means Minnesota can only certify members of one or another group as potential DBEs if they are present in the local market. This minimizes the chance that individuals — simply on the basis of their birth — will benefit from Minnesota's DBE program. If a group is not present in the local market, or if they are found in such small numbers that they cannot be expected to be able to participate in the kinds of construction work TEA-21 covers, that group will not be included in the accounting used to set Minnesota's overall DBE contracting goal.

Sherbrooke, 2001 WL 1502841 at *10 (D. Minn.).

The court rejected plaintiff's claim that the Minnesota DOT must independently demonstrate how its program comports with Croson's strict scrutiny standard. The court held that the "Constitution calls out far different requirements when a state implements a federal affirmative action program, as opposed to those occasions when a state or locality initiates the program." Id. at *11 (emphasis added). The court in a footnote ruled that TEA-21, being a federal program, "relieves the state of any burden to independently carry the strict scrutiny burden." Id. at *11 n.3. The court held states that establish DBE programs under TEA-21 and 49 C.F.R. Part 26 are implementing a Congressionally-required program and not establishing a local one. As such, the court concluded that the state need not independently prove its DBE program meets the strict scrutiny standard. Id.

6. Gross Seed Co. v. Nebraska Department of Roads, Civil Action File No. 4:00CV3073 (D. Neb. May 6, 2002), aff'd 345 F. 3d 964 (8th Cir. 2003)

The United States District Court for the District of Nebraska held in Gross Seed Co. v. Nebraska (with the United States DOT and Federal Highway Administration as Interveners), that the Federal DBE Program (codified at 49 C.F.R. Part 26) is constitutional. The court also held that the Nebraska Department of Roads ("NDOR") DBE Program adopted and implemented solely to comply with the Federal DBE Program is "approved" by the court because the court found that 49 C.F.R. Part 26 and TEA-21 were constitutional.

The court concluded, similar to the court in Sherbrooke Turf, that the State of Nebraska did not need to independently establish that its program met the strict scrutiny requirement because the Federal DBE Program satisfied that requirement, and was therefore constitutional. The court did not engage in a thorough analysis or evaluation of the NDOR Program or its implementation of the Federal DBE Program. The court points out that the NDOR Program is adopted in compliance with the Federal DBE Program, and that the USDOT approved the use of NDOR's proposed DBE goals for fiscal year 2001, pending completion of USDOT's review of those goals. Significantly, however, the court in its findings does note that the NDOR established its overall goals for fiscal year 2001 based upon an independent availability/disparity study.

The court upheld the constitutionality of the Federal DBE Program by finding the evidence presented by the federal government and the history of the federal legislation are sufficient to demonstrate that past discrimination does exist "in the construction industry" and that racial and gender discrimination "within the construction industry" is sufficient to demonstrate a compelling interest in individual areas, such as highway construction. The court held that the Federal DBE Program was sufficiently "narrowly tailored" to satisfy strict scrutiny analysis based again on the evidence submitted by the federal government as to the Federal DBE Program.

7. Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000) cert. granted then dismissed as improvidently granted sub nom. Adarand Constructors, Inc. v. Mineta, 532 U.S. 941, 534 U.S. 103 (2001)

This is the Adarand decision by the United States Court of Appeals for the Tenth Circuit, which was on remand from the earlier Supreme Court decision applying the strict scrutiny analysis to any constitutional challenge to the Federal DBE Program. See Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995). The decision of the Tenth Circuit in this case was considered by the United States Supreme Court, after that court granted certiorari to consider certain issues raised on appeal. The Supreme Court subsequently dismissed the writ of certiorari “as improvidently granted” without reaching the merits of the case. The court did not decide the constitutionality of the Federal DBE Program as it applies to state DOTs or local governments.

The Supreme Court held that the Tenth Circuit had not considered the issue before the Supreme Court on certiorari, namely whether a race-based program applicable to direct federal contracting is constitutional. This issue is distinguished from the issue of the constitutionality of the United States DOT DBE Program as it pertains to procurement of federal funds for highway projects let by states, and the implementation of the Federal DBE Program by state DOTs. Therefore, the Supreme Court held it would not reach the merits of a challenge to federal laws relating to direct federal procurement.

Turning to the Tenth Circuit decision in Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000), the Tenth Circuit upheld in general the facial constitutionality of the Federal DBE Program. The court found that the federal government had a compelling interest in not perpetuating the effects of racial discrimination in its own distribution of federal funds and in remediating the effects of past discrimination in government contracting, and that the evidence supported the existence of past and present discrimination sufficient to justify the Federal DBE Program. The court also held that the Federal DBE Program is “narrowly tailored,” and therefore upheld the constitutionality of the Federal DBE Program.

It is significant to note that the court in determining the Federal DBE Program is “narrowly tailored” focused on the current regulations, 49 C.F.R. Part 26, and in particular § 26.1(a), (b), and (f). The court pointed out that the federal regulations instruct recipients as follows:

[y]ou must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation, 49 C.F.R. § 26.51(a)(2000); see also 49 C.F.R. § 26.51(f)(2000) (if a recipient can meet its overall goal through race-neutral means, it must implement its program without the use of race-conscious contracting measures), and enumerate a list of race-neutral measures, see 49 C.F.R. § 26.51(b)(2000). The current regulations also outline several race-neutral means available to program recipients including assistance in overcoming bonding and financing obstacles, providing technical assistance, establishing programs to assist start-up firms, and other methods. See 49 C.F.R. § 26.51(b). We therefore are dealing here with revisions that emphasize the continuing need to employ non-race-

conscious methods even as the need for race-conscious remedies is recognized. 228 F.3d at 1178-1179.

In considering whether the Federal DBE Program is narrowly tailored, the court also addressed the argument made by the contractor that the program is over- and under-inclusive for several reasons, including that Congress did not inquire into discrimination against each particular minority racial or ethnic group. The court held that insofar as the scope of inquiry suggested was a particular state's construction industry alone, this would be at odds with its holding regarding the compelling interest in Congress's power to enact nationwide legislation. Id. at 1185-1186. The court held that because of the "unreliability of racial and ethnic categories and the fact that discrimination commonly occurs based on much broader racial classifications," extrapolating findings of discrimination against the various ethnic groups "is more a question of nomenclature than of narrow tailoring." Id. The court found that the "Constitution does not erect a barrier to the government's effort to combat discrimination based on broad racial classifications that might prevent it from enumerating particular ethnic origins falling within such classifications." Id.

Finally, the Tenth Circuit did not specifically address a challenge to the letting of federally-funded construction contracts by state departments of transportation. The court pointed out that plaintiff Adarand "conceded that its challenge in the instant case is to 'the federal program, implemented by federal officials,' and not to the letting of federally-funded construction contracts by state agencies." 228 F.3d at 1187. The court held that it did not have before it a sufficient record to enable it to evaluate the separate question of Colorado DOT's implementation of race-conscious policies. Id. at 1187-1188.

8. *Geod Corporation v. New Jersey Transit Corporation, et. seq.* ____ F.Supp. 2d ____, 2009 WL 2595607 (D.N.J. August 20, 2009)

Plaintiffs Geod Corporation and its officers, who are white males, sued the New Jersey Transit Corporation (“NJT”) and state officials seeking a declaration that NJT’s DBE program was unconstitutional and in violation of the United States 5th and 14th Amendment to the United States Constitution and the Constitution of the State of New Jersey, and seeking a permanent injunction against NJT for enforcing or utilizing its DBE program. The NJT’s DBE program was implemented in accordance with the Federal DBE Program and the Transportation Equity Act for the 21st century (“TEA-21”) and 49 C.F.R. Part 26.

The parties filed cross Motions for Summary Judgment. The plaintiff Geod challenged the constitutionality of NJT’s DBE program for multiple reasons, including alleging NJT could not justify establishing a program using race- and sex-based preferences; the NJT’s disparity study did not provide a sufficient factual predicate to justify the DBE Program; NJT’s statistical evidence did not establish discrimination; NJT did not have anecdotal data evidencing a “strong basis in evidence” of discrimination which justified a race- and sex-based program; NJT’s program was not narrowly tailored and over-inclusive; NJT could not show an exceedingly persuasive justification for gender preferences; and that NJT’s program was not narrowly tailored because race-neutral alternatives existed. In opposition, NJT filed a Motion for Summary Judgment asserting that its DBE program was narrowly tailored because it fully complied with the requirements of the Federal DBE Program and TEA-21.

Compelling interest. The district court held that states and their agencies are entitled to adopt the federal governments’ compelling interest in enacting TEA-21 and its implementing regulations. 2009 WL 2595607 at *4. The court stated that plaintiff’s argument that NJT cannot establish the need for its DBE program was a “red herring, which is unsupported.” The plaintiff did not question the constitutionality of the compelling interest of the Federal DBE Program. The court held that all states “inherit the federal governments’ compelling interest in establishing a DBE program.” *Id.*

The court found that establishing a DBE program “is not contingent upon a state agency demonstrating a need for same, as the federal government has already done so.” *Id.* The court concluded that this reasoning rendered plaintiff’s assertions that NJT’s disparity study did not have sufficient factual predicate for establishing its DBE program, and that no exceedingly persuasive justification was found to support gender based preferences, as without merit. *Id.* The court held that NJT does not need to justify establishing its DBE program, as it has already been justified by the legislature. *Id.*

NJT’s DBE program as applied. The court noted that both plaintiff’s and defendant’s arguments were based on an alleged split in the Federal Circuit Courts of Appeal. Plaintiff Geod relies on Western States Paving Company v. Washington State DOT, 407 F.3d 983(9th Cir. 2005) for the proposition that an as-applied challenge to the constitutionality of a particular DBE program requires a demonstration by the recipient of federal funds that the program is narrowly tailored. *Id.* at *5. In contrast, the NJT relied primarily on Northern Contracting, Inc. v. State of Illinois, 473 F.3d 715 (7th Cir. 2007) for the proposition that if a DBE program complies with TEA-21, it is narrowly tailored. *Id.*

The court viewed the various Federal Circuit Court of Appeals decisions as fact specific determinations which have lead to the parties distinguishing cases without any substantive difference in the application of law. Id.

The court reviewed the decisions by the Ninth Circuit in Western States Paving and the Seventh Circuit of Northern Contracting. In Western States Paving, the district court stated that the Ninth Circuit held for a DBE program to pass constitutional muster, it must be narrowly tailored; specifically, the recipient of federal funds must evidence past discrimination in the relevant market in order to utilize race conscious DBE goals. Id. at *5. The Ninth Circuit, according to district court, made a fact specific determination as to whether the DBE program complied with TEA-21 in order to decide if the program was narrowly tailored to meet the federal regulation's requirements. The district court stated that the requirement that a recipient must evidence past discrimination "is nothing more than a requirement of the regulation." Id.

The court stated that the Seventh Circuit in Northern Contracting held a recipient must demonstrate that its program is narrowly tailored, and that generally a recipient is insulated from this sort of constitutional attack absent a showing that the state exceeded its federal authority. Id., citing Northern Contracting, 473 F.3d at 721. The district court held that implicit in Northern Contracting is the fact one may challenge the constitutionality of a DBE program, as it is applied, to the extent that the program exceeds its federal authority. Id.

The court, therefore, concluded that it must determine first whether NJT's DBE program complies with TEA-21, then whether NJT exceeded its federal authority in its application of its DBE program. In other words, the district court stated it must determine whether the NJT DBE program complies with TEA-21 in order to determine whether the program, as implemented by NJT, is narrowly tailored. Id.

The court pointed out that the Eighth Circuit Court of Appeals in Sherbrook Turf, Inc. v. Minnesota DOT, 345 F.3d 964 (8th Cir. 2003) found Minnesota's DBE program was narrowly tailored because it was in compliance with TEA-21's requirements. The Eighth Circuit in Sherbrook, according to the district court, analyzed the application of Minnesota's DBE program to ensure compliance with TEA-21's requirements to ensure that the DBE program implemented by Minnesota DOT was narrowly tailored. Id. at *5.

The court held that TEA-21 delegates to each state that accepts federal transportation funds the responsibility of implementing a DBE program that comports with TEA-21. In order to comport with TEA-21, the district court stated a recipient must (1) determine an appropriate DBE participation goal, (2) examine all evidence and evaluate whether an adjustment, if any, is needed to arrive at their goal, and (3) if the adjustment is based on continuing effects of past discrimination, provide demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought. Id. at *6, citing Western States Paving Company, 407 F.3d at 983, 988.

Determination of DBE goal. First, the district court stated a recipient of federal funds must determine, at the local level, the figure that would constitute an appropriate DBE involvement goal, based on their relative availability of DBEs. Id. at *6, citing 49 C.F.R. § 26.45(c). In this case, the court found that NJT did determine a base figure for the relative availability of DBEs, which accounted for demonstrable evidence of local market conditions and was designed to be rationally

related to the relative availability of DBEs. Id. The court pointed out that NJT conducted a disparity study; and the disparity study utilized NJT's DBE lists from fiscal years 1995-1999 and Census Data to determine its base DBE goal. The court noted that the plaintiffs' argument that the data used in the disparity study were stale, was without merit and had no basis in law. The court found that the disparity study took into account the primary industries, primary geographic market, and race neutral alternatives, then adjusted its goal to encompass these characteristics. Id. at *6.

The court stated that the use of DBE directories and Census data are what the legislature intended for state agencies to utilize in making a base DBE goal determination. Id. Also, the court stated that "perhaps more importantly, NJT's DBE goal was approved by the USDOT every year from 2002 until 2008." Id. at *6. Thus, the court found NJT appropriately determined their DBE availability, which was approved by the USDOT, pursuant to 49 C.F.R. § 26.45(c). Id. at *6. The court held that NJT demonstrated its overall DBE goal is based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate in DOT assisted contracts and reflects its determination of the level of DBE participation it would expect absent the effects of discrimination. Id.

Also of significance, the court pointed out that plaintiffs did not provide any evidence that NJT did not set a DBE goal based upon 49 C.F. § 26.45(c). The court thus held that genuine issues of material fact remain only as to whether a reasonable jury may find that the method used by NJT to determine its DBE goal was sufficiently narrowly tailored. Id. at *6.

NJT's adjustment of its DBE goal. The court pointed out that to determine what adjustment to make, the disparity study examined qualitative data such as focus groups on the pre-qualification status of DBEs, working with prime contractors, securing credit, and its effect on DBE participation, as well as procurement officer interviews to analyze, and compare and contrast their relationships with non-DBE vendors and DBE vendors. Id. at *7. This qualitative information was then compared to DBE bids and DBE goals for each year in question. NJT's adjustment to its DBE goal also included an analysis of the overall disparity ratio, as well as, DBE utilization based on race, gender and ethnicity. Id. A decomposition analysis was also performed. Id.

The court concluded that NJT provided evidence that it, at a minimum, examined the current capacity of DBEs to perform work in its DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years, as well as utilizing the disparity study itself. The court pointed out there were two methods specifically approved by 49 C.F.R. § 26.45(d). Id.

The court also found that NJT took into account race neutral measures to ensure that the greatest percentage of DBE participation was achieved through race and gender neutral means. The district court concluded that "critically," plaintiffs failed to provide evidence of another, more perfect, method that could have been utilized to adjust NJT's DBE goal. Id. at *7. The court held that genuine issues of material fact remain only as to whether NJT's adjustment to its DBE goal is sufficiently narrowly tailored and thus constitutional. Id.

Effects of past discrimination. NJT, the court found, adjusted its DBE goal to account for the effects of past discrimination, noting the disparity study took into account the effects of past discrimination in the pre-qualification process of DBEs. Id. at *7. The court quoted the disparity

study as stating that it found non-trivial and statistically significant measures of discrimination in contract amounts awarded during the study period. *Id.* at *8.

The court found, however, that what was “gravely critical” about the finding of the past effects of discrimination is that it only took into account six groups including American Indian, Hispanic, Asian, blacks, women and “unknown,” but did not include an analysis of past discrimination for the ethnic group “Iraqi,” which is now a group considered to be a DBE by the NJT. *Id.* Because the disparity report included a category entitled “unknown,” the court held a genuine issue of material fact remains as to whether “Iraqi” is legitimately within NJT’s defined DBE groups and whether a demonstrable finding of discrimination exists for Iraqis. Therefore, the court denied both plaintiffs’ and defendants’ Motions for Summary Judgment as to the constitutionality of NJT’s DBE program.

Qualified immunity and Title VI. The court also held that because the law was not clearly established at the time NJT established its DBE program to comply with TEA-21, the individual state defendants were entitled to qualified immunity and their Motion for Summary Judgment as to the state officials was granted. The court, in addition, held that plaintiff’s Title VI claims were dismissed because the individual defendants were not recipients of federal funds, and that the NJT as an instrumentality of the State of New Jersey is entitled to sovereign immunity. Therefore, the court held that the plaintiff’s claims based on the violation of 42 U.S.C. § 1983 were dismissed and NJT’s Motion for Summary Judgment was granted as to that claim.

9. Klaver Construction, Inc. v. Kansas DOT, 211 F. Supp. 2d 1296 (D. Kan. 2002)

This is another case that involved a challenge to the USDOT Regulations that implement TEA-21 (49 C.F.R. Part 26), in which the plaintiff contractor sought to enjoin the Kansas Department of Transportation (“DOT”) from enforcing its DBE Program on the grounds that it violates the Equal Protection Clause under the Fourteenth Amendment. This case involves a direct constitutional challenge to racial and gender preferences in federally-funded state highway contracts. This case concerned the constitutionality of the Kansas DOT’s implementation of the Federal DBE Program, and the constitutionality of the gender-based policies of the federal government and the race- and gender-based policies of the Kansas DOT. The court granted the federal and state defendants (USDOT and Kansas DOT) Motions to Dismiss based on lack of standing. The court held the contractor could not show the specific aspects of the DBE Program that it contends are unconstitutional have caused its alleged injuries.

G. Recent Decisions and Authorities Involving Federal Procurement That May Impact MBE/WBE and DBE Programs

1. Rothe Development Corp. v. U.S. Department of Defense, 545 F.3d 1023 (Fed. Cir. 2008)

Although this case does not involve the Federal DBE Program (49 C.F.R. Part 26), it is an analogous case that may impact the legal analysis and law related to the validity of programs implemented by recipients of federal funds, including the Federal DBE Program. Additionally, it underscores the requirement that race-, ethnic- and gender-based programs of any nature must be supported by substantial evidence. In Rothe, an unsuccessful bidder on a federal defense contract brought suit alleging that the application of an evaluation preference, pursuant to a federal statute, to a small disadvantaged bidder (SDB) to whom a contract was awarded, violated the Equal Protection clause of the U.S. Constitution. The federal statute challenged is Section 1207 of the National Defense Authorization Act of 1987 and as reauthorized in 2003. The statute provides a goal that 5 percent of the total dollar amount of defense contracts for each fiscal year would be awarded to small businesses owned and controlled by socially and economically disadvantaged individuals. 10 U.S.C. § 2323. Congress authorized the DOD to adjust bids submitted by non-socially and economically disadvantaged firms upwards by 10 percent (the “Price Evaluation Adjustment Program” or “PEA”).

The district court held the federal statute, as reauthorized in 2003, was constitutional on its face. The court held the 5 percent goal and the PEA program as reauthorized in 1992 and applied in 1998 was unconstitutional. The basis of the decision was that Congress considered statistical evidence of discrimination that established a compelling governmental interest in the reauthorization of the statute and PEA program in 2003. Congress had not documented or considered substantial statistical evidence that the DOD discriminated against minority small businesses when it enacted the statute in 1992 and reauthorized it in 1998. The plaintiff appealed the decision.

The Federal Circuit found that the “analysis of the facial constitutionality of an act is limited to evidence before Congress prior to the date of reauthorization.” 413 F.3d 1327 (Fed. Cir. 2005)(affirming in part, vacating in part, and remanding 324 F. Supp. 2d 840 (W.D. Tex. 2004). The court limited its review to whether Congress had sufficient evidence in 1992 to reauthorize the provisions in 1207. The court held that for evidence to be relevant to a strict scrutiny analysis, “the evidence must be proven to have been before Congress prior to enactment of the racial classification.” The Federal Circuit held that the district court erred in relying on the statistical studies without first determining whether the studies were before Congress when it reauthorized section 1207. The Federal Circuit remanded the case and directed the district court to consider whether the data presented was so outdated that it did not provide the requisite strong basis in evidence to support the reauthorization of section 1207.

On August 10, 2007 the Federal District Court for the Western District of Texas in Rothe Development Corp. v. U.S. Dept. of Defense, 499 F.Supp.2d 775 (W.D.Tex. Aug 10, 2007) issued its Order on remand from the Federal Circuit Court of Appeals decision in Rothe, 413 F.3d 1327 (Fed Cir. 2005). The district court upheld the constitutionality of the 2006 Reauthorization of Section 1207 of the National Defense Authorization Act of 1987 (10 USC § 2323), which permits the U.S. Department of Defense to provide preferences in selecting bids submitted by small businesses owned by socially and economically disadvantaged individuals (“SDBs”). The district

court found the 2006 Reauthorization of the 1207 Program satisfied strict scrutiny, holding that Congress had a compelling interest when it reauthorized the 1207 Program in 2006, that there was sufficient statistical and anecdotal evidence before Congress to establish a compelling interest, and that the reauthorization in 2006 was narrowly tailored.

The district court, among its many findings, found certain evidence before Congress was “stale,” that the plaintiff (Rothe) failed to rebut other evidence which was not stale, and that the decisions by the Eighth, Ninth and Tenth Circuits in the decisions in Concrete Works, Adarand Constructors, Sherbrooke Turf and Western States Paving (discussed above and below) were relevant to the evaluation of the facial constitutionality of the 2006 Reauthorization.

2007 Order of the District Court (499 F.Supp. 2d 775). In the Section 1207 Act, Congress set a goal that 5 percent of the total dollar amount of defense contracts for each fiscal year would be awarded to small businesses owned and controlled by socially and economically disadvantaged individuals. In order to achieve that goal, Congress authorized the DOD to adjust bids submitted by non-socially and economically disadvantaged firms up to 10 percent (the “Price Evaluation Adjustment Program” or “PEA”) 10 U.S.C. § 2323(e)(3). Rothe, 499 F.Supp.2d. at 782. Plaintiff Rothe did not qualify as an SDB because it was owned by a Caucasian female. Although Rothe was technically the lowest bidder on a DOD contract, its bid was adjusted upward by 10 percent, and a third party, who qualified as a SDB, became the “lowest” bidder and was awarded the contract. Id. Rothe claims that the 1207 Program is facially unconstitutional because it takes race into consideration in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment. Id. at 782-83. The district court’s decision only reviewed the facial constitutionality of the 2006 Reauthorization of the 2007 Program.

The district court initially rejected six legal arguments made by Rothe regarding strict scrutiny review based on the rejection of the same arguments by the Eighth, Ninth, and Tenth Circuit Courts of Appeal in the Sherbrooke Turf, Western States Paving, Concrete Works, Adarand VII cases, and the Federal Circuit Court of Appeal in Rothe. Rothe at 825-833.

The district court discussed and cited the decisions in Adarand VII (2000), Sherbrooke Turf (2003), and Western States Paving (2005), as holding that Congress had a compelling interest in eradicating the economic roots of racial discrimination in highway transportation programs funded by federal monies, and concluding that the evidence cited by the government, particularly that contained in *The Compelling Interest* (a.k.a. the *Appendix*), more than satisfied the government’s burden of production regarding the compelling interest for a race-conscious remedy. Rothe at 827. Because the Urban Institute Report, which presented its analysis of 39 state and local disparity studies, was cross-referenced in the *Appendix*, the district court found the courts in Adarand VII, Sherbrooke Turf, and Western States Paving, also relied on it in support of their compelling interest holding. Id. at 827.

The district court also found that the Tenth Circuit decision in Concrete Works IV, 321 F.3d 950 (10th Cir. 2003), established legal principles that are relevant to the court’s strict scrutiny analysis. First, Rothe’s claims for declaratory judgment on the racial constitutionality of the earlier 1999 and 2002 Reauthorizations were moot. Second, the government can meet its burden of production without conclusively proving the existence of past or present racial discrimination. Third, the government may establish its own compelling interest by presenting evidence of its own direct participation in racial discrimination or its passive participation in private discrimination. Fourth,

once the government meets its burden of production, Rothe must introduce “credible, particularized” evidence to rebut the government’s initial showing of the existence of a compelling interest. Fifth, Rothe may rebut the government’s statistical evidence by giving a race-neutral explanation for the statistical disparities, showing that the statistics are flawed, demonstrating that the disparities shown are not significant or actionable, or presenting contrasting statistical data. Sixth, the government may rely on disparity studies to support its compelling interest, and those studies may control for the effect that pre-existing affirmative action programs have on the statistical analysis. *Id.* at 829-32.

Based on *Concrete Works IV*, the district court did not require the government to conclusively prove that there is pervasive discrimination in the relevant market, that each presumptively disadvantaged group suffered equally from discrimination, or that private firms intentionally and purposefully discriminated against minorities. The court found that the inference of discriminatory exclusion can arise from statistical disparities. *Id.* at 830-31.

The district court held that Congress had a compelling interest in the 2006 Reauthorization of the 1207 Program, which was supported by a strong basis in the evidence. The court relied in significant part upon six state and local disparity studies that were before Congress prior to the 2006 Reauthorization of the 1207 Program. The court based this evidence on its finding that Senator Kennedy had referenced these disparity studies, discussed and summarized findings of the disparity studies, and Representative Cynthia McKinney also cited the same six disparity studies that Senator Kennedy referenced. The court stated that based on the content of the floor debate, it found that these studies were put before Congress prior to the date of the Reauthorization of Section 1207. *Id.* at 838.

The district court found that these six state and local disparity studies analyzed evidence of discrimination from a diverse cross-section of jurisdictions across the United States, and “they constitute prima facie evidence of a nation-wide pattern or practice of discrimination in public and private contracting.” *Id.* at 838-39. The court found that the data used in these six disparity studies is not “stale” for purposes of strict scrutiny review. *Id.* at 839. The court disagreed with Rothe’s argument that all the data was stale (data in the studies from 1997 through 2002), “because this data was the most current data available at the time that these studies were performed.” *Id.* The court found that the governmental entities should be able to rely on the most recently available data so long as that data is reasonably up-to-date. *Id.* The court declined to adopt a “bright-line rule for determining staleness.” *Id.*

The court referred to the reliance by the Ninth Circuit and the Eighth Circuit on the *Appendix* to affirm the constitutionality of the United States Department of Transportation MBE [now DBE] Program, and rejected five years as a bright-line rule for considering whether data is “stale.” *Id.* at n.86. The court also stated that it “accepts the reasoning of the *Appendix*, which the court found stated that for the most part “the federal government does business in the same contracting markets as state and local governments. Therefore, the evidence in state and local studies of the impact of discriminatory barriers to minority opportunity in contracting markets throughout the country is relevant to the question whether the federal government has a compelling interest to take remedial action in its own procurement activities.” *Id.* at 839, quoting *61 Fed.Reg.* 26042-01, 26061 (1996).

The district court also discussed additional evidence before Congress that it found in Congressional Committee Reports and Hearing Records. *Id.* at 865-71. The court noted SBA Reports that were before Congress prior to the 2006 Reauthorization. *Id.* at 871.

The district court found that the data contained in the *Appendix*, the Benchmark Study, and the Urban Institute Report was “stale,” and the court did not consider those reports as evidence of a compelling interest for the 2006 Reauthorization. *Id.* at 872-75. The court stated that the Eighth, Ninth and Tenth Circuits relied on the *Appendix* to uphold the constitutionality of the Federal DBE Program, citing to the decisions in *Sherbrooke Turf*, *Adarand VII*, and *Western States Paving*. *Id.* at 872. The court pointed out that although it does not rely on the data contained in the *Appendix* to support the 2006 Reauthorization, the fact the Eighth, Ninth, and Tenth Circuits relied on this data to uphold the constitutionality of the Federal DBE Program as recently as 2005, convinced the court that a bright-line staleness rule is inappropriate. *Id.* at 874.

Although the court found that the data contained in the *Appendix*, the Urban Institute Report, and the Benchmark Study was stale for purposes of strict scrutiny review regarding the 2006 Reauthorization, the court found that Rothe introduced no concrete, particularized evidence challenging the reliability of the methodology or the data contained in the six state and local disparity studies, and other evidence before Congress. The court found that Rothe failed to rebut the data, methodology or anecdotal evidence with “concrete, particularized” evidence to the contrary. *Id.* at 875. The district court held that based on the studies, the government had satisfied its burden of producing evidence of discrimination against African Americans, Asian Americans, Hispanic Americans, and Native Americans in the relevant industry sectors. *Id.* at 876.

The district court found that Congress had a compelling interest in reauthorizing the 1207 Program in 2006, which was supported by a strong basis of evidence for remedial action. *Id.* at 877. The court held that the evidence constituted prima facie proof of a nationwide pattern or practice of discrimination in both public and private contracting, that Congress had sufficient evidence of discrimination throughout the United States to justify a nationwide program, and the evidence of discrimination was sufficiently pervasive across racial lines to justify granting a preference to all five purportedly disadvantaged racial groups. *Id.*

The district court also found that the 2006 Reauthorization of the 1207 Program was narrowly tailored and designed to correct present discrimination and to counter the lingering effects of past discrimination. The court held that the government’s involvement in both present discrimination and the lingering effects of past discrimination was so pervasive that the Department of Defense and Department of Air Force had become passive participants in perpetuating it. *Id.* The court stated it was law of the case and could not be disturbed on remand that the Federal Circuit in *Rothe III* had held that the 1207 Program was flexible in application, limited in duration and it did not unduly impact on the rights of third parties. *Id.*, quoting *Rothe III*, 262 F.3d at 1331.

The district court thus conducted a narrowly tailored analysis that reviewed three factors:

1. The efficacy of race-neutral alternatives;
2. Evidence detailing the relationship between the stated numerical goal of 5 percent and the relevant market; and
3. Over- and under-inclusiveness.

Id. The court found that Congress examined the efficacy of race-neutral alternatives prior to the enactment of the 1207 Program in 1986 and that these programs were unsuccessful in remedying the effects of past and present discrimination in the federal procurement. Id. The court concluded that Congress had attempted to address the issues through race-neutral measures, discussed those measures, and found that Congress' adoption of race-conscious provisions were justified by the ineffectiveness of such race-neutral measures in helping minority-owned firms overcome barriers. Id. The court found that the government seriously considered and enacted race-neutral alternatives, but these race-neutral programs did not remedy the widespread discrimination that affected the federal procurement sector, and that Congress was not required to implement or exhaust every conceivable race-neutral alternative. Id. at 880. Rather, the court found that narrow tailoring requires only "serious, good faith consideration of workable race-neutral alternatives." Id.

The district court also found that the 5 percent goal was related to the minority business availability identified in the six state and local disparity studies. Id. at 881. The court concluded that the 5 percent goal was aspirational, not mandatory. Id. at 882. The court then examined and found that the regulations implementing the 1207 Program were not over-inclusive for several reasons.

November 4, 2008 decision by the Federal Circuit Court of Appeals. On November 4, 2008, the Federal Circuit Court of Appeals reversed the judgment of the district court in part, and remanded with instructions to enter a judgment (1) denying Rothe any relief regarding the facial constitutionality of Section 1207 as enacted in 1999 or 2002, (2) declaring that Section 1207 as enacted in 2006 (10 U.S.C. § 2323) is facially unconstitutional, and (3) enjoining application of Section 1207 (10 U.S.C. § 2323).

The Federal Circuit Court of Appeals held that Section 1207, on its face, as reenacted in 2006, violated the Equal Protection component of the Fifth Amendment right to due process. The court found that because the statute authorized the Department of Defense to afford preferential treatment on the basis of race, the court applied strict scrutiny, and because Congress did not have a "strong basis in evidence" upon which to conclude that the Department of Defense was a passive participant in pervasive, nationwide racial discrimination — at least not on the evidence produced by the Department of Defense and relied on by the district court in this case — Section 1207 failed to meet this strict scrutiny test. 545 F.3d at 1050.

Strict scrutiny framework. The Federal Circuit Court of Appeals recognized that the Supreme Court has held a government may have a compelling interest in remedying the effects of past or present racial discrimination. 545 F.3d at 1036. The court cited the decision in Croson, 488 U.S. at 492, that it is "beyond dispute that any public entity, state or federal, has a compelling interest in assuring

that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.” 545 F.3d. at 1036, quoting Croson, 488 U.S. at 492.

The court held that before resorting to race-conscious measures, the government must identify the discrimination to be remedied, public or private, with some specificity, and must have a strong basis of evidence upon which to conclude that remedial action is necessary. 545 F.3d at 1036, quoting Croson, 488 U.S. at 500, 504. Although the party challenging the statute bears the ultimate burden of persuading the court that it is unconstitutional, the Federal Circuit stated that the government first bears a burden to produce strong evidence supporting the legislature’s decision to employ race-conscious action. 545 F.3d at 1036.

Even where there is a compelling interest supported by strong basis in evidence, the court held the statute must be narrowly tailored to further that interest. *Id.* The court noted that a narrow tailoring analysis commonly involves six factors: (1) the necessity of relief; (2) the efficacy of alternative, race-neutral remedies; (3) the flexibility of relief, including the availability of waiver provisions; (4) the relationship with the stated numerical goal to the relevant labor market; (5) the impact of relief on the rights of third parties; and (6) the overinclusiveness or underinclusiveness of the racial classification. *Id.*

Compelling interest – strong basis in evidence. The Federal Circuit pointed out that the statistical and anecdotal evidence relied upon by the district court in its ruling below included six disparity studies of state or local contracting. The Federal Circuit also pointed out that the district court found that the data contained in the Appendix, the Urban Institute Report, and the Benchmark Study were stale for purposes of strict scrutiny review of the 2006 Authorization, and therefore, the district court concluded that it would not rely on those three reports as evidence of a compelling interest for the 2006 reauthorization of the 1207 Program. 545 F.3d 1023, citing to *Rothe VI*, 499 F.Supp. 2d at 875. Since the Department of Defense did not challenge this finding on appeal, the Federal Circuit stated that it would not consider the Appendix, the Urban Institute Report, or the Department of Commerce Benchmark Study, and instead determined whether the evidence relied on by the district court was sufficient to demonstrate a compelling interest. *Id.*

Six state and local disparity studies. The Federal Circuit found that disparity studies can be relevant to the compelling interest analysis because, as explained by the Supreme Court in Croson, “[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by [a] locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise.” 545 F.3d at 1037-1038, quoting Croson, 488 U.S.C. at 509. The Federal Circuit also cited to the decision by the Fifth Circuit Court of Appeals in W.H. Scott Constr. Co. v. City of Jackson, 199 F.3d 206 (5th Cir. 1999) that given Croson’s emphasis on statistical evidence, other courts considering equal protection challenges to minority-participation programs have looked to disparity indices, or to computations of disparity percentages, in determining whether Croson’s evidentiary burden is satisfied. 545 F.3d at 1038, quoting W.H. Scott, 199 F.3d at 218.

The Federal Circuit noted that a disparity study is a study attempting to measure the difference- or disparity- between the number of contracts or contract dollars actually awarded minority-owned businesses in a particular contract market, on the one hand, and the number of contracts or contract

dollars that one would expect to be awarded to minority-owned businesses given their presence in that particular contract market, on the other hand. 545 F.3d at 1037.

Staleness. The Federal Circuit declined to adopt a per se rule that data more than five years old is stale per se, which rejected the argument put forth by Rothe. 545 F.3d at 1038. The court pointed out that the district court noted other circuit courts have relied on studies containing data more than five years old when conducting compelling interest analyses, citing to Western States Paving v. Washington State Department of Transportation, 407 F.3d 983, 992 (9th Cir. 2005) and Sherbrooke Turf, Inc. v. Minnesota Department of Transportation, 345 F.3d 964, 970 (8th Cir. 2003)(relying on the Appendix, published in 1996).

The Federal Circuit agreed with the district court that Congress “should be able to rely on the most recently available data so long as that data is reasonably up-to-date.” 545 F.3d at 1039. The Federal Circuit affirmed the district court’s conclusion that the data analyzed in the six disparity studies was not stale at the relevant time because the disparity studies analyzed data pertained to contracts awarded as recently as 2000 or even 2003, and because Rothe did not point to more recent, available data. Id.

Before Congress. The Federal Circuit found that for evidence to be relevant in the strict scrutiny analysis, it “must be proven to have been before Congress prior to enactment of the racial classification.” 545 F.3d at 1039, quoting Rothe V, 413 F.3d at 1338. The Federal Circuit had issues with determining whether the six disparity studies were actually before Congress for several reasons, including that there was no indication that these studies were debated or reviewed by members of Congress or by any witnesses, and because Congress made no findings concerning these studies. 545 F.3d at 1039-1040. However, the court determined it need not decide whether the six studies were put before Congress, because the court held in any event that the studies did not provide a substantially probative and broad-based statistical foundation necessary for the strong basis in evidence that must be the predicate for nation-wide, race-conscious action. Id. at 1040.

The court did note that findings regarding disparity studies are to be distinguished from formal findings of discrimination by the Department of Defense “which Congress was emphatically not required to make.” Id. at 1040, footnote 11 (emphasis in original). The Federal Circuit cited the Dean v. City of Shreveport case that the “government need not incriminate itself with a formal finding of discrimination prior to using a race-conscious remedy.” 545 F.3d at 1040, footnote 11 quoting Dean v. City of Shreveport, 438 F.3d 448, 445 (5th Cir. 2006).

Methodology. The Federal Circuit found that there were methodological defects in the six disparity studies. The court found that the objections to the parameters used to select the relevant pool of contractors was one of the major defects in the studies. 545 F.3d at 1040-1041.

The court stated that in general, “[a] disparity ratio less than 0.80” — i.e., a finding that a given minority group received less than 80 percent of the expected amount — “indicates a relevant degree of disparity,” and “might support an inference of discrimination.” 545 F.3d at 1041, quoting the district court opinion in Rothe VI, 499 F.Supp. 2d at 842; and citing Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County, 122 F.3d 895, 914 (11th Cir. 1997). The court noted that this disparity ratio attempts to calculate a ratio between the expected

contract amount of a given race/gender group and the actual contract amount received by that group. 545 F.3d at 1041.

The court considered the availability analysis, or benchmark analysis, which is utilized to ensure that only those minority-owned contractors who are qualified, willing and able to perform the prime contracts at issue are considered when performing the denominator of a disparity ratio. 545 F.3d at 1041. The court cited to an expert used in the case that a “crucial question” in disparity studies is to develop a credible methodology to estimate this benchmark share of contracts minorities would receive in the absence of discrimination and the touchstone for measuring the benchmark is to determine whether the firm is ready, willing, and able to do business with the government. 545 F.3d at 1041-1042.

The court concluded the contention by Rothe, that the six studies misapplied this “touchstone” of Croson and erroneously included minority-owned firms that were deemed willing or potentially willing and able, without regard to whether the firm was qualified, was not a defect that substantially undercut the results of four of the six studies, because “the bulk of the businesses considered in these studies were identified in ways that would tend to establish their qualifications, such as by their presence on city contract records and bidder lists.” 545 F.3d at 1042. The court noted that with regard to these studies available prime contractors were identified via certification lists, willingness survey of chamber membership and trade association membership lists, public agency and certification lists, utilized prime contractor, bidder lists, county and other government records and other type lists. Id.

The court stated it was less confident in the determination of qualified minority-owned businesses by the two other studies because the availability methodology employed in those studies, the court found, appeared less likely to have weeded out unqualified businesses. Id. However, the court stated it was more troubled by the failure of five of the studies to account officially for potential differences in size, or “relative capacity,” of the business included in those studies. 545 F.3d at 1042-1043.

The court noted that qualified firms may have substantially different capacities and thus might be expected to bring in substantially different amounts of business even in the absence of discrimination. 545 F.3d at 1043. The Federal Circuit referred to the Eleventh Circuit explanation similarly that because firms are bigger, bigger firms have a bigger chance to win bigger contracts, and thus one would expect the bigger (on average) non-MWBE firms to get a disproportionately higher percentage of total construction dollars awarded than the smaller MWBE firms. 545 F.3d at 1043 quoting Engineering Contractors Association, 122 F.3d at 917. The court pointed out its issues with the studies accounting for the relative sizes of contracts awarded to minority-owned businesses, but not considering the relative sizes of the businesses themselves. Id. at 1043.

The court noted that the studies measured the availability of minority-owned businesses by the percentage of firms in the market owned by minorities, instead of by the percentage of total marketplace capacity those firms could provide. Id. The court said that for a disparity ratio to have a significant probative value, the same time period and metric (dollars or numbers) should be used in measuring the utilization and availability shares. 545 F.3d at 1044, n. 12.

The court stated that while these parameters relating to the firm size may have ensured that each minority-owned business in the studies met a capacity threshold, these parameters did not account

for the relative capacities of businesses to bid for more than one contract at a time, which failure rendered the disparity ratios calculated by the studies substantially less probative on their own, of the likelihood of discrimination. *Id.* at 1044. The court pointed out that the studies could have accounted for firm size even without changing the disparity ratio methodologies by employing regression analysis to determine whether there was a statistically significant correlation between the size of a firm and the share of contract dollars awarded to it. 545 F.3d at 1044 citing to Engineering Contractors Association, 122 F.3d at 917. The court noted that only one of the studies conducted this type of regression analysis, which included the independent variables of a firm-age of a company, owner education level, number of employees, percent of revenue from the private sector and owner experience for industry groupings. *Id.* at 1044-1045.

The court stated, to “be clear,” that it did not hold that the defects in the availability and capacity analyses in these six disparity studies render the studies wholly unreliable for any purpose. *Id.* at 1045. The court said that where the calculated disparity ratios are low enough, the court does not foreclose the possibility that an inference of discrimination might still be permissible for some of the minority groups in some of the studied industries in some of the jurisdictions. *Id.* The court recognized that a minority-owned firm’s capacity and qualifications may themselves be affected by discrimination. *Id.* The court held, however, that the defects it noted detracted dramatically from the probative value of the six studies, and in conjunction with their limited geographic coverage, rendered the studies insufficient to form the statistical core of the strong basis and evidence required to uphold the statute. *Id.*

Geographic coverage. The court pointed out that whereas municipalities must necessarily identify discrimination in the immediate locality to justify a race-based program, the court does not think that Congress needs to have had evidence before it of discrimination in all 50 states in order to justify the 1207 program. *Id.* The court stressed, however, that in holding the six studies insufficient in this particular case, “we do not necessarily disapprove of decisions by other circuit courts that have relied, directly or indirectly, on municipal disparity studies to establish a federal compelling interest.” 545 F.3d at 1046. The court stated in particular, the Appendix relied on by the Ninth and Tenth Circuits in the context of certain race-conscious measures pertaining to federal highway construction, references the Urban Institute Report, which itself analyzed over 50 disparity studies and relied for its conclusions on over 30 of those studies, a far broader basis than the six studies provided in this case. *Id.*

Anecdotal evidence. The court held that given its holding regarding statistical evidence, it did not review the anecdotal evidence before Congress. The court did point out, however, that there was not evidence presented of a single instance of alleged discrimination by the Department of Defense in the course of awarding a prime contract, or to a single instance of alleged discrimination by a private contractor identified as the recipient of a prime defense contract. 545 F.3d at 1049. The court noted this lack of evidence in the context of the opinion in Croson that if a government has become a passive participant in a system of racial exclusion practiced by elements of the local construction industry, then that government may take affirmative steps to dismantle the exclusionary system. 545 F.3d at 1048, citing Croson, 488 U.S. at 492.

The Federal Circuit pointed out that the Tenth Circuit in Concrete Works noted the City of Denver offered more than dollar amounts to link its spending to private discrimination, but instead provided

testimony from minority business owners that general contractors who use them in city construction projects refuse to use them on private projects, with the result that Denver had paid tax dollars to support firms that discriminated against other firms because of their race, ethnicity and gender. 545 F.3d at 1049, quoting *Concrete Works*, 321 F.3d at 976-977.

In concluding, the court stated that it stressed its holding was grounded in the particular items of evidence offered by the Department of Defense, and “should not be construed as stating blanket rules, for example about the reliability of disparity studies. As the Fifth Circuit has explained, there is no ‘precise mathematical formula to assess the quantum of evidence that rises to the Croson ‘strong basis in evidence’ benchmark.” 545 F.3d at 1049, quoting *W.H. Scott Constr. Co.*, 199 F.3d at 218 n.11.

Narrowly tailoring. The Federal Circuit only made two observations about narrowly tailoring, because it held that Congress lacked the evidentiary predicate for a compelling interest. First, it noted that the 1207 Program was flexible in application, limited in duration, and that it did not unduly impact on the rights of third parties. 545 F.3d at 1049. Second, the court held that the absence of strongly probative statistical evidence makes it impossible to evaluate at least one of the other narrowly tailoring factors. Without solid benchmarks for the minority groups covered by the Section 1207, the court said it could not determine whether the 5 percent goal is reasonably related to the capacity of firms owned by members of those minority groups — i.e., whether that goal is comparable to the share of contracts minorities would receive in the absence of discrimination.” 545 F.3d at 1049-1050.

2. Dynalantic Corp. v. United States Dept. of Defense, 503 F. Supp. 2d 262 (D.D.C. 2007)

Dynalantic Corp. involves a recent challenge to the Department of Defense’s (“DOD”) utilization of the Small Business Administration’s (“SBA”) 8(a) Business Development Program (the “8(a) Program”). In its Order of August 23, 2007, the district court denied both parties’ Motions for Summary Judgment because there was no information in the record regarding the evidence before Congress supporting its 2006 reauthorization of the program in question; the court directed the parties to propose future proceedings to supplement the record. 503 F. Supp. 2d 262, 263 (D.D.C. 2007).

The court first explained that the 8(a) Program sets a goal that no less than 5 percent of total prime federal contract and subcontract awards for each fiscal year be awarded to socially and economically disadvantaged individuals. Id. Each federal government agency is required to establish its own goal for contracting but the goals are not mandatory and there is no sanction for failing to meet the goal. Upon application and admission into the 8(a) Program, small businesses owned and controlled by disadvantaged individuals are eligible to receive technological, financial, and practical assistance, and support through preferential award of government contracts. For the past few years, the 8(a) Program was the primary preferential treatment program the DOD used to meet its 5 percent goal. Id. at 264.

This case arose from a Navy contract that the DOD decided to award exclusively through the 8(a) Program. The plaintiff owned a small company that would have bid on the contract but for the fact it was not a participant in the 8(a) Program. After multiple judicial proceedings the D.C. Circuit dismissed the plaintiff’s action for lack of standing but granted the plaintiff’s motion to enjoin the

contract procurement pending the appeal of the dismissal order. The Navy cancelled the proposed procurement but the D.C. Circuit allowed the plaintiff to circumvent the mootness argument by amending its pleadings to raise a facial challenge to the 8(a) program as administered by the SBA and utilized by the DOD. The D.C. Circuit held the plaintiff had standing because of the plaintiff's inability to compete for DOD contracts reserved to 8(a) firms, the injury was traceable to the race-conscious component of the 8(a) Program, and the plaintiff's injury was imminent due to the likelihood the government would in the future try to procure another contract under the 8(a) Program for which the plaintiff was ready, willing, and able to bid. Id. at 264-65.

On remand, the plaintiff amended its complaint to challenge the constitutionality of the 8(a) Program and sought an injunction to prevent the military from awarding any contract for military simulators based upon the race of the contractors. Id. at 265. The district court first held that the plaintiff's complaint could be read only as a challenge to the DOD's implementation of the 8(a) Program [pursuant to 10 U.S.C. § 2323] as opposed to a challenge to the program as a whole. Id. at 266. The parties agreed that the 8(a) Program uses race-conscious criteria so the district court concluded it must be analyzed under the strict scrutiny constitutional standard. The court found that in order to evaluate the government's proffered "compelling government interest," the court must consider the evidence that Congress considered at the point of authorization or reauthorization to ensure that it had a strong basis in evidence of discrimination requiring remedial action. The court cited to Western States Paving in support of this proposition. Id. The court concluded that because the DOD program was reauthorized in 2006, the court must consider the evidence before Congress in 2006.

The court cited to the recent Rothe decision as demonstrating that Congress considered significant evidentiary materials in its reauthorization of the DOD program in 2006, including six recently published disparity studies. The court held that because the record before it in the present case did not contain information regarding this 2006 evidence before Congress, it could not rule on the parties' Motions for Summary Judgment. The court denied both motions and directed the parties to propose future proceedings in order to supplement the record. Id. at 267.

3. "Federal Procurement After Adarand" (USCCR Report September, 2005)

In September of 2005, the United States Commission on Civil Rights (the "Commission") issued its report entitled "Federal Procurement After Adarand" setting forth its findings pertaining to federal agencies' compliance with the constitutional standard enunciated in Adarand. United States Commission on Civil Rights: Federal Procurement After Adarand (Sept. 2005), available at <http://www.usccr.gov>, citing Adarand, 515 U.S. at 237-38. The following is a brief summary of the report.

In 1995, the United States Supreme Court decided Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995), which set forth the constitutional standard for evaluating race-conscious programs in federal contracting. The Commission states in its report that the Court in Adarand held that racial classifications imposed by federal, state and local governments are subject to strict scrutiny and the burden is upon the government entity to show that the racial classification is the least restrictive way to serve a "compelling public interest;" the government program must be narrowly tailored to meet that interest. The Court held that narrow tailoring requires, among other things, that "agencies must first consider race-neutral alternatives before using race conscious measures." [p. ix]

Scope and methodology of the Commission’s report. The purpose of the Commission’s study was to examine the race-neutral programs and strategies implemented by agencies to meet the requirements set forth in Adarand. Accordingly, the study considered the following questions:

- Do agencies seriously consider workable race-neutral alternatives, as required by Adarand?
- Do agencies sufficiently promote and participate in race-neutral practices such as mentor-protégé programs, outreach, and financial and technical assistance?
- Do agencies employ and disclose to each other specific best practices for consideration of race-neutral alternatives?
- How do agencies measure the effects of race-neutral programs on federal contracting?
- What race-neutral mechanisms exist to ensure government contracting is not discriminatory?

The Commission’s staff conducted background research, reviewing government documents, federal procurement and economic data, federal contracting literature, and pertinent statutes, regulations and court decisions. The Commission selected seven agencies to study in depth and submitted interrogatories to assess the agencies’ procurement methods. The agencies selected for evaluation procure relatively large amounts of goods and services, have high numbers of contracts with small businesses, SDBs, or HUBZone firms, or play a significant support or enforcement role: the Small Business Administration (SBA), and the Departments of Defense (DOD), Transportation (DOT), Education (DOEd), Energy (DOEn), Housing and Urban Development (HUD), and State (DOS).

The report did not evaluate existing disparity studies or assess the validity of data suggesting the persistence of discrimination. It also did not seek to identify whether, or which, aspects of the contracting process disparately affect minority-owned firms.

Findings and recommendations. The Commission concluded that “among other requirements, agencies must consider race-neutral strategies before adopting any that allow eligibility based, even in part, on race.” [p. ix] The Commission further found “that federal agencies have not complied with their constitutional obligation, according to the Supreme Court, to narrowly tailor programs that use racial classifications by considering race-neutral alternatives to redress discrimination.” [p. ix]

The Commission found that “agencies have largely failed to apply the Supreme Court’s requirements, or [the U.S. Department of Justice’s (“DOJ”)] guidelines, to their contracting programs.” [p. 70] The Commission found that agencies “have not seriously considered race-neutral alternatives, relying instead on SBA-run programs, without developing new initiatives or properly assessing the results of existing programs.” [p. 70]

The Commission identified four elements that underlie “serious consideration” of race-neutral efforts, ensure an inclusive and fair race-neutral system, and tailor race-conscious programs to meet a documented need: “Element 1: Standards — Agencies must develop policy, procedures, and statistical standards for evaluating race-neutral alternatives; Element 2: Implementation — Agencies must develop or identify a wide range of race-neutral approaches, rather than relying on only one or two generic government-wide programs; Element 3: Evaluation — Agencies must measure the

effectiveness of their chosen procurement strategies based on established empirical standards and benchmarks; Element 4: Communication — Agencies should communicate and coordinate race-neutral practices to ensure maximum efficiency and consistency government-wide.” [p. xi]

The Commission found that “despite the requirements that Adarand imposed, federal agencies fail to consider race-neutral alternatives in the manner required by the Supreme Court’s decision.” [p. xiii] The Commission also concluded that “[a]gencies engage in few race-neutral strategies designed to make federal contracting more inclusive, but do not exert the effort associated with serious consideration that the Equal Protection Clause requires. Moreover, they do not integrate race-neutral strategies into a comprehensive procurement approach for small and disadvantaged businesses.” [p. xiii]

Serious consideration [P. 71]

Finding: Most agencies could not demonstrate that they consider race-neutral alternatives before resorting to race-conscious programs. Due to the lack of specific guidance from the DOJ, “agencies appear to give little thought to their legal obligations and disagree both about what the law requires and about the legal ramifications of their actions.”

Recommendation: Agencies must adopt and follow guidelines to ensure consideration of race-neutral alternatives, which system could include: (1) identifying and evaluating a wide range of alternatives; (2) articulating the underlying facts that demonstrate whether race-neutral plans work; (3) collecting empirical research to evaluate success; (4) ensuring such assessments are based on current, competent and comprehensive data; (5) periodically reviewing race conscious plans to determine their continuing need; and (6) establishing causal relationships before concluding that a race-neutral plan is ineffective. Best practices could include: (1) statistical standards by which agencies would determine when to abandon race race-conscious efforts; (2) ongoing data collection, including racial and ethnic information, by which agencies would assess effectiveness; and (3) policies for reviewing what constitutes disadvantaged status and the continued necessity for strategies to increase inclusiveness.

Antidiscrimination policy and enforcement [P. 72]

Finding: The federal government lacks an appropriate framework for enforcing nondiscrimination in procurement. Limited causes of action are available to contractors and subcontractors, but the most accessible mechanisms are restricted to procedural complaints about bidding processes.

Recommendation: The enactment of legislation expressly prohibiting discrimination based on race, color, religion, sex, national origin, age, and disability, in federal contracting and procurement. Such legislation should include protections for both contractors and subcontractors and establish clear sanctions, remedies and compliance standards. Enforcement authority should be delegated to each agency with contracting capabilities.

Finding: Most agencies do not have policies or procedures to prevent discrimination in contracting. Generally, agencies are either unaware of or confused about whether federal law protects government contractors from discrimination.

Recommendation: The facilitation of agency development and implementation of civil rights enforcement policies for contracting. Agencies must establish strong enforcement systems to provide individuals a means to file and resolve complaints of discriminatory conduct. Agencies must also adopt clear compliance review standards and delegate authority for these functions to a specific, high-level component. Once agencies adopt nondiscrimination policies, they should conduct regular compliance reviews of prime and other large contract recipients, such as state and local agencies. Agencies should widely publicize complaint procedures, include them with bid solicitations, and codify them in acquisition regulations. Civil rights personnel in each agency should work with procurement officers to ensure that contractors understand their rights and responsibilities and implement additional policies upon legislative action.

Finding: Agencies generally employ systems for reviewing compliance with subcontracting goals made at the bidding stage, but do not establish norms for the number of reviews they will conduct, nor the frequency with which they will do so.

Recommendation: Good faith effort policies should be rooted in race-neutral outreach. Agencies should set standards for and carry out regular on-site audits and formal compliance reviews of SDB subcontracting plans to make determinations of contractors' good faith efforts to achieve established goals. Agencies should develop and disseminate clear regulations for what constitutes a good faith effort, specific to individual procurement goals and procedures. Agencies should also require that all prime contractors be subject to audits, and require prime contractors to demonstrate all measures taken to ensure equal opportunity for SDBs to compete, paying particular attention to contractors that have not achieved goals expressed in their offers.

Ongoing review [P. 73]

Finding: Narrow tailoring requires regular review of race-conscious programs to determine their continued necessity and to ensure that they are focused enough to serve their intended purpose. However, no agency reported policies, procedures, or statistical standards for when to use race-conscious instead of race-neutral strategies, nor had agencies established procedures to reassess presumptions of disadvantage.

Recommendation: Agencies must engage in regular, systematic reviews (perhaps biennial) of race-conscious programs, including those that presume race-based disadvantage. They should develop and document clear policies, standards and justifications for when race-conscious programs are in effect. Agencies should develop and implement standards for the quality of data they collect and use to analyze race-conscious and race-neutral programs and apply these criteria when deciding effectiveness. Agencies should also evaluate whether race-neutral alternatives could reasonably generate the same or similar outcomes, and should implement such alternatives whenever possible.

Data and measurement [P. 73-75]

Finding: Agencies have neither conducted race disparity studies nor collected empirical data to assess the effects of procurement programs on minority-owned firms.

Recommendation: Agencies should conduct regular benchmark studies which should be tailored to each agency's specific contracting needs; and the results of the studies should be used in setting procurement goals.

Finding: The current procurement data does not evaluate the effectiveness or continuing need for race-neutral and/or race-conscious programs.

Recommendation: A task force should determine what data is necessary to implement narrow tailoring and assess whether (1) race-conscious programs are still necessary, and (2) the extent to which race-neutral strategies are effective as an alternative to race-conscious programs.

Finding: Agencies do not assess the effectiveness of individual race-neutral strategies (e.g., whether contract unbundling is a successful race-neutral strategy).

Recommendation: Agencies should measure the success of race-neutral strategies independently so they can determine viability as alternatives to race-conscious measures (e.g., agencies could track the number and dollar value of contracts broken apart, firms to which smaller contracts are awarded, and the effect of such efforts on traditionally excluded firms).

Communication and collaboration [P. 75]

Finding: Agencies do not communicate effectively with each other about efforts to strengthen procurement practices (e.g., there is no exchange of race-neutral best practices).

Recommendation: Agencies should engage in regular meetings with each other to share information and best practices, coordinate outreach, and develop measurement strategies.

Outreach [P. 76]

Finding: Even though agencies engage in outreach efforts, there is little evidence that their efforts to reach small and disadvantaged businesses are successful. They do not produce planning or reporting documents on outreach activities, nor do they apply methods for tracking activities, expenditures, or the number and types of beneficiaries.

Recommendation: Widely broadcast information on the Internet and in popular media is only one of several steps necessary for a comprehensive and effective outreach program. Agencies can use a variety of formats — conferences, meetings, forums, targeted media, Internet, printed materials, ad campaigns, and public service announcements — to reach appropriate audiences. In addition, agencies should capitalize on technological capabilities, such as listservs, text messaging, audio subscription services, and new technologies associated with portable listening devices, to circulate information about contracting opportunities. Agencies should include outreach in budget and planning documents, establish goals for conducting outreach activities, track the events and diversity of the audience, and train staff in outreach strategies and skills.

Conclusion. The Commission found that 10 years after the Supreme Court’s Adarand decision, federal agencies have largely failed to narrowly tailor their reliance on race-conscious programs and have failed to seriously consider race-neutral decisions that would effectively redress discrimination. Although some agencies employ some race-neutral strategies, the agencies fail “to engage in the basic activities that are the hallmarks of serious consideration,” including program evaluation, outcomes measurement, reliable empirical research and data collection, and periodic review.

The Commission found that most federal agencies have not implemented “even the most basic race-neutral strategy to ensure equal access, i.e., the development, dissemination, and enforcement of clear, effective antidiscrimination policies. Significantly, most agencies do not provide clear recourse for contractors who are victims of discrimination or guidelines for enforcement.”

One Commission member, Michael Yaki, filed an extensive Dissenting Statement to the Report. [pp. 79-170]. This Dissenting Statement by Commissioner Yaki was referred to and discussed by the district court in Rothe Development Corp. v. US DOD, 499 F.Supp.2d 775, 864-65 (W.D. Tex. August 10, 2007), reversed on appeal, Rothe, 545 F.3d 1023 (Fed.Cir 2008), (see discussion of Rothe above at Section VII, 1.). In his dissent, Commissioner Yaki criticized the Majority Opinion, including noting that his statistical data was “*deleted*” from the original version of the draft Majority Opinion that was received by all Commissioners. The district court in Rothe considered the data discussed by Yaki.

APPENDIX C.

Utilization and Case Study Data Collection

This appendix describes the utilization data collection and review processes in three parts:

- A. Utilization data for construction and construction-related professional services contracts;¹
- B. Contract case study data; and
- C. City of Portland review.

A. Utilization Data for Construction and Construction-related Professional Services Contracts

Data request. BBC requested that the City of Portland (the “City”) provide contract information from the Bureau of Purchases BizTrak database — the City’s contract management system.

The City provided the following information for each construction and construction-related professional services contract that it awarded during the study period (July 1, 2004 through June 30, 2009):

- Project ID;
- Name of prime contractor or firm that performed the work;
- Firm ID;
- Contract award or execution date;
- Contract amount;
- Amended contract amount;
- Payments (for informal contracts);
- Year-to-date payment amount for on-call contracts;
- Description of work;
- Goals/program indicator;
- Subcontractor/supplier name;
- Subcontractor/supplier amount; and
- Bureau.

Construction data. Both prime and subcontractor construction data were collected from BizTrak for the contracts awarded within the study period. For construction contracts estimated to exceed \$100,000, the City collects subcontract data as required by the first-tier subcontractors disclosure

¹ The City’s construction-related professional services contracts are awarded through the Professional, Expert and Technical Services contracting process.

rule.² BBC analyzed first-tier subcontractor data provided by the City. The City also provided some second-tier subcontractors to BBC, but because these data were not comprehensive, the study team did not include second-tier subcontract data in the analysis.

The City issued some contracts near the end of the study period through its alternative bid process and submitted the most current data available for these contracts at the time of the study. Subcontracts had not yet been developed for a few of these contracts, so BBC excluded such contracts from the analysis.

Construction-related professional services data. BBC collected data on all standard and on-call construction-related professional services contracts awarded by the City within the study period. For standard contracts, both prime and subcontract data were collected from the BizTrak database.

The study team examined the on-call construction-related professional services contracts on which the City reported paying contractors during the study period. Year-to-date payments were collected from the BizTrak database. For on-call contracts with positive year-to-date payments, BBC collected prime and subcontractor invoice information. When invoice data were not available, the study team used the year-to-date paid amount as reported by the City.

Firm data. The City provided contact and other information on firms utilized during the study period as available from BizTrak and the State of Oregon Office of Minority, Women, and Emerging Small Business (OMWESB). These data included race, gender and ethnicity of the owners. The City provided the following information about utilized firms:

- Firm name;
- Alternate name(s);
- Firm identification number;
- Address and phone number;
- Alternate address;
- Firm e-mail address;
- M/W/ESB indicators;
- M/W/ESB certification indicators;
- Type of work firm performs; and
- Firm size.

² City of Portland Charter. 5.34.493 *First-Tier Subcontractors; Disclosure and Substitution.*

BBC obtained additional information about utilized firms from business lists that the study team purchased from Dun & Bradstreet and from telephone interviews with prime contractors and subcontractors. BBC obtained the following information about utilized firms:

- Primary line of work;
- Firm size;
- Year in which the firm was established; and
- Additional contact information.

MBE/WBE status. For the purposes of the study, BBC relied on race/ethnicity definitions used by the OMWESB. OMWESB recognizes the following groups for MBE certification:

- Black American;
- Hispanic American;
- Native American;
- Asian-Pacific American; and
- Subcontinent Asian American.

In order to determine ownership status for firms, BBC relied on several sources of information including:

- The OMWESB certification database;
- Availability telephone surveys;
- Utilization telephone surveys;
- Information from the Small Business Administration;
- City and Portland Development Commission (PDC) staff review; and
- Information from Dun & Bradstreet.

The study team gave highest priority to the OMWESB certification database when determining the race/ethnicity/gender of ownership and MBE/WBE status of a firm. Absent OMWESB certification, BBC relied on survey data as the highest priority data source.

B. Contract Case Study Data

BBC analyzed bids and proposals for construction and construction-related professional services contracts that the City awarded during the study period. The study team obtained bid, proposal and other information from the City.

Construction bid data. The City maintains electronic data for bid tabulations for many of its construction contracts worth more than \$100,000 awarded during the study period. It has electronic bid data for some smaller construction contracts as well. BBC analyzed bid data for each of the 287 construction contracts for which electronic data were available within the study period.

The City also furnished BBC with letters of protest from firms protesting awards for City construction contracts within the study period (12 contracts).

Construction-related professional services. For construction-related professional services contracts, the study team collected proposal information for a random sample of contracts. BBC selected 54 contracts to be included in the City's construction-related professional services case study analysis, stratified by contract area, contract size and year of award. BBC successfully collected proposal information for one-half (27) of those contracts.

Prequalification data. BBC also requested certain prequalification data for firms that the City had prequalified to bid on construction contracts over \$100,000. These data included names of firms and the prequalified bidding limit for each class of work each firm was prequalified to perform. The City provided the data for the 266 firms prequalified as of November 2009.

C. City of Portland Review

After BBC collected contract and firm data, the study team compiled the data and submitted it to the City staff for review. BBC used City feedback to finalize contract and firm data.

BBC followed a similar process in the PDC disparity study. Any feedback from PDC and City staff relating to characteristics of firms is reflected in the final data for both disparity studies.

APPENDIX D.

Availability Survey

The study team analyzed MBE/WBE availability for City of Portland (“City”) and Portland Development Commission (PDC) construction and construction-related professional services contracts and subcontracts.^{1,2} Appendix D expands on the analysis presented in Chapter 5 by explaining:

- A. Overall approach;
- B. Development of list of business establishments;
- C. Development of questionnaire;
- D. Interview execution and performance;
- E. Additional considerations; and
- F. A summary of the above sections.

A. Overall Approach

BBC Research 7 Consulting (BBC) contracted with Customer Research International (CRI) to conduct telephone interviews with business establishments in the Portland Metropolitan Statistical Area (MSA). The business establishments interviewed were those identified in a Dun & Bradstreet (D&B) database as doing work in fields closely related to the types of construction and construction-related professional services work related to City and PDC contracts. D&B strives to list every company in business — its list of businesses and phone numbers represents the most comprehensive list of business establishments BBC could obtain.

The study team attempted to contact every listing in relevant industry codes rather than drawing a sample of listings from the D&B database.

- CRI attempted to reach 8,130 business listings via telephone. Repeated attempts were made to reach each business listing.
- The study team successfully contacted 3,726 business establishments, about 63 percent of the establishments with valid phone listings (about 2,200 listings were non-working, duplicate or wrong numbers).

¹ PDC professional services contracts are referred to as “personal services” contracts.

² The City’s construction-related professional services contracts are awarded through the Professional, Expert and Technical Services contracting process.

- About 1,700 establishments that were successfully contacted indicated they were not interested in participating in a discussion of availability for public sector work.
- Nearly 2,000 firms completed interviews about firm characteristics, their interest and qualifications for work in Portland, and other topics.
- After screening for qualifications, interest in future construction and construction-related professional services work, and other factors, BBC identified 1,536 firms as available for City construction and construction-related professional services work.

B. Development of List of Business Establishments

BBC developed a list of business establishments to contact for availability interviews based on a D&B database of establishments with locations in metropolitan Portland. The study team determined business specializations that accounted for most City construction and construction-related professional services work. BBC then identified the 8-digit D&B industry codes best corresponding to that work and collected information about Portland area firms that D&B listed as having their primary lines of business within those industries.

- The study team did not expect every firm in these lines of business to report that they were available for the City's construction or construction-related professional services work. In some subindustries, BBC anticipated that relatively few firms would perform that type of work.
- In the same vein, the study team did not design the research effort so that every firm possibly performing construction or construction-related professional services work would be called as part of the interviews. To do so would have required including subindustries that are only marginally related to City construction and construction-related professional services contracts.
- Some firms did not respond to the interview effort after multiple attempts to contact the firm. It is also possible that some firms were not included in the D&B database or were inaccurately coded within the database.
- Finally, only firms with Portland metropolitan area locations were included in the interviews.

For the above reasons, the interviews do not represent a complete census of all firms possibly available for City construction and construction-related professional services work. The study team's objective was to develop accurate, unbiased estimates of the relative availability of minority- and women-owned firms (MBE/WBEs) among firms doing business in the Portland area within the lines of work principally involved in the City's construction and construction-related professional services contracting. Although the interviews are not a complete census, the availability analysis might approach one when considering statistical reliability of results, as explained further in this appendix.

Identifying the relevant subindustries for Portland construction and construction-related professional services contracting. BBC determined the types of firms involved in City construction and construction-related professional services contracts by reviewing the dollars of City prime contracts and subcontracts going to different types of businesses. Appendix C describes the study team's collection and analysis of City contract and subcontract data.

D&B has developed 8-digit industry codes that provide more precise definitions of firm specializations than the 4-digit SIC codes or the NAICS codes that have been prepared by the federal government. Figure D-1 on the following page lists industry codes for construction and construction-related professional services firms that were contacted as part of the telephone interview process.

Figure D-1.
Construction and construction-related professional services work types included in the availability interviews

Industry code	Industry description	Industry code	Industry description
Construction			
Highway and street construction		Excavation	
1611-0000	Highway and street construction	1611-0203	Grading
1611-0200	Surfacing and paving	1629-0400	Land preparation construction
1611-0204	Highway and street paving contractor	1794-0000	Excavation work
1611-0205	Resurfacing contractor	1794-9901	Excavation and grading, building construction
1611-9901	General contractor, highway and street construction	1799-0901	Boring for building construction
1611-9902	Highway and street maintenance		
1622-9901	Bridge construction	Concrete supply	
1629-0202	Railroad and railway roadbed construction	3272-0000	Concrete products, nec
1771-0300	Driveway, parking lot, and blacktop contractors	3272-0303	Concrete products, precast, nec
1771-0301	Blacktop (asphalt) work	3272-0608	Pipe, concrete or lined with concrete
7389-9921	Flagging service (traffic control)	3272-9904	Prestressed concrete products
		3273-0000	Ready-mixed concrete
Bridge construction and repair		Concrete work	
1622-0000	Bridge, tunnel, and elevated highway construction	1611-0202	Concrete construction: roads, highways, sidewalks, etc.
		1771-0000	Concrete work
Building construction		1771-0100	Stucco, gunite, and grouting contractors
1522-0000	Residential construction, nec	1771-0103	Guniting contractor
1522-0101	Apartment building construction	1771-0200	Curb and sidewalk contractors
1541-0000	Industrial buildings and warehouses	1771-0201	Curb construction
1541-9902	Factory construction	1771-0202	Sidewalk contractor
1541-9905	Industrial buildings, new construction, nec	1771-0302	Driveway contractor
1541-9908	Prefabricated building erection, industrial	1771-9901	Concrete pumping
1541-9909	Renovation, remodeling and repairs: industrial buildings	1771-9902	Concrete repair
1541-9910	Steel building construction	1799-9911	Erection and dismantling of forms for poured concrete
1541-9912	Warehouse construction		
1542-0000	Nonresidential construction, nec	Electrical work	
1542-0100	Commercial and office building contractors	1731-0000	Electrical work
1542-0101	Commercial and office building, new construction	1731-0300	Communications specialization
1542-0103	Commercial and office buildings, renovation and repair	1731-0302	Fiber optic cable installation
1542-0400	Specialized public building contractors	1731-0304	Telephone and telephone equipment installation
1542-9901	Custom builders, non-residential	1731-0305	Voice, data, and video wiring contractor
1542-9902	Design and erection, combined: non-residential	1731-0403	Fire detection and burglar alarm systems specialization
1791-0000	Structural steel erection	1731-9903	General electrical contractor
1791-9905	Iron work, structural	1731-9904	Lighting contractor
Construction equipment rental		Painting	
7353-0000	Heavy construction equipment rental	1721-0200	Commercial painting
7353-9901	Cranes and aerial lift equipment, rental or leasing	1721-0201	Exterior commercial painting contractor
7359-9912	Work zone traffic equipment (flags, cones, barrels, etc.)	1721-0300	Industrial painting
		1721-0303	Pavement marking contractor
Landscaping		Trucking	
0782-9903	Landscape contractors	4212-0000	Local trucking, without storage
		4212-9905	Dump truck haulage
Roofing		4213-9905	Heavy machinery transport
1761-0000	Roofing, siding, and sheetmetal work	4214-0000	Local trucking with storage
1761-0100	Roofing and gutter work		
1761-0103	Roofing contractor		

Figure D-1 (continued).
Construction and construction-related professional services work types included in the availability interviews

Industry code	Industry description	Industry code	Industry description
Construction			
Water, sewer and utility line construction		Plumbing and HVAC	
1622-9903	Tunnel construction	1711-0000	Plumbing, heating, air-conditioning
1623-0000	Water, sewer, and utility lines	1711-0200	Plumbing contractors
1623-0300	Water and sewer line construction	1711-0301	Fire sprinkler system installation
1623-0302	Sewer line construction	1711-0302	Irrigation sprinkler system installation
1623-0303	Water main construction	1711-0400	Heating and air conditioning contractors
1623-9903	Pipe laying construction	1711-0401	Mechanical contractor
1623-9904	Pipeline construction, nsk	1711-0404	Ventilation and duct work contractor
1623-9906	Underground utilities contractor	1711-0405	Warm air heating and air conditioning contractor
1799-0208	Insulation of pipes and boilers	1731-0203	Environmental system control installation
Specialty trades and other construction		Structural steel supply	
1623-0204	Transmitting tower (telecommunication) construction	3441-9901	Building components, structural steel
1629-0000	Heavy construction, nec	5051-0216	Steel
1629-0100	Dams, waterways, docks, and other marine construction	Wrecking and demolition	
1629-0105	Drainage system construction	1795-0000	Wrecking and demolition work
1629-0106	Dredging contractor	1795-9901	Concrete breaking for streets and highways
1629-0108	Irrigation system construction	1795-9902	Demolition, buildings and other structures
1629-0110	Marine construction	Water, sewer and utility lines	
1629-0302	Golf course construction	3317-0000	Steel pipe and tubes
1629-0303	Tennis court construction	3317-0203	Pipes, wrought: welded, lock joint, or heavy riveted
1741-0000	Masonry and other stonework	3498-0000	Fabricated pipe and fittings
1742-0101	Drywall	Other construction materials	
1742-0104	Plastering, plain or ornamental	2434-0000	Wood kitchen cabinets
1742-0201	Acoustical and ceiling work	3312-9906	Iron and steel products, hot-rolled
1742-0203	Insulation, buildings	3441-0000	Fabricated structural metal
1751-0100	Cabinet and finish carpentry	3442-0100	Window and door frames
1752-0000	Floor laying and floor work, nec	3444-0000	Sheet metalwork
1752-9908	Wood floor installation and refinishing	3449-0101	Bars, concrete reinforcing: fabricated steel
1761-9901	Architectural sheet metal work	3496-9906	Fencing, made from purchased wire
1761-9903	Sheet metal work, nec	5031-0308	Skylights, all materials
1771-0102	Grouting work	5039-0101	Metal buildings
1771-9903	Flooring contractor	5063-0400	Lighting fixtures
1793-0000	Glass and glazing work	5072-9901	Builders' hardware, nec
1796-0000	Installing building equipment	5074-0000	Plumbing and hydronic heating supplies
1796-9901	Elevator installation and conversion	5075-0000	Warm air heating and air conditioning
1799-0100	Athletic and recreation facilities construction	5075-0200	Warm air heating equipment and supplies
1799-0102	Court construction, indoor athletic	5082-0000	Construction and mining machinery
1799-0200	Coating, caulking, and weather, water, and fireproofing	5084-0803	Elevators
1799-0201	Caulking (construction)	5211-0303	Solar heating equipment
1799-0210	Weather stripping	5211-9907	Fencing
1799-0400	Rigging and scaffolding	5999-9916	Plumbing and heating supplies
1799-0800	Decontamination services		
1799-0801	Asbestos removal and encapsulation		
1799-9902	Artificial turf installation		
1799-9906	Core drilling and cutting		
1799-9912	Fence construction		
7699-2501	Elevators: inspection, service, and repair		

Figure D-1 (continued).
Construction and construction-related professional services work types included in the availability interviews

Industry code	Industry description	Industry code	Industry description
Professional services			
Engineering		Architecture	
8711-0000	Engineering services	7373-0401	Computer-aided design (CAD) systems services
8711-0202	Mechanical engineering	8712-0000	Architectural services
8711-0400	Construction and civil engineering	8712-0100	Architectural engineering
8711-0401	Building construction consultant	8712-0101	Architectural engineering
8711-0402	Civil engineering	8712-0102	House designer
8711-0404	Structural engineering	Consulting services - environmental, transportation and planning	
8711-9901	Acoustical engineering	0711-9906	Soil testing services
8711-9903	Consulting engineer	8733-0201	Archeological expeditions
8711-9905	Electrical or electronic engineering	8742-0410	Transportation consultant
Construction management		8748-0200	Urban planning and consulting services
8741-9902	Construction management	8748-9905	Environmental consultant
Landscape architects		Surveying	
0781-0201	Landscape architects	8713-0000	Surveying services

Note: 8-digit SIC codes were developed by Dun & Bradstreet.

Source: BBC Research & Consulting from Dun & Bradstreet Marketplace, 2009-2010.

Determining list of establishments to be contacted. Each Portland area business establishment within relevant subindustries for which D&B had a phone number was included in the list purchased from D&B. There was no “sampling” of business establishments from the D&B list. BBC purchased contact information for 8,130 business establishments for the availability interviews. This number included 6,480 construction-related establishments and 1,650 construction-related professional services work establishments.

Because D&B organizes its database by “business establishment,” not by “firm,” BBC purchased the business listings in that fashion. Therefore, multiple Portland locations for a single firm were obtained in the list of establishments to be called. The study team attempted to contact each establishment by telephone. (BBC’s methods for consolidating information for multiple establishments into a single record for a firm are described later in this appendix.)

C. Development of Questionnaire

The study team drafted a telephone interview guide to collect business information from construction and construction-related Construction and construction-related professional services firms. Before the interview guide was used in the field, City staff reviewed the questionnaire. BBC has successfully used similar questionnaires as part of other disparity studies. The basic interview document for construction firms is provided in Figure D-4 at the end of this appendix. The questionnaire was slightly modified for certain groups of firms based on line of work in order to use the terms commonly employed in those fields. For example, the words “prime consultant” and “subconsultant” were substituted for “prime contractor” and “subcontractor” when interviewing construction-related professional services firms.

A fax/email version of the questionnaire was developed for firms that, once contacted, preferred to complete the questionnaire in hard copy format. Those firms returned completed questionnaires to BBC via fax or e-mail.

Interview structure. Questions in each section of the survey were asked of all firms. Interviewers did not know race/ethnicity/gender ownership status when calling a firm. The questionnaires included the following sections.

Identification of purpose. The interviews began by identifying the City and PDC as the survey sponsors and by describing the purpose of the study.

Verification of correct firm name. The interviewer verified that he or she had reached the correct business, and if not, inquired about the correct contact information for that business. When the firm name was not correct, interviewers asked if the respondent knew how to contact the company. The BBC study team followed up with the desired company based on the new contact information (see areas “X” and “Y” of the Availability Questionnaire in Figure D-4).

Performance of construction or PTE work. Firms were asked, “First, I want to confirm that your firm does work or provides materials related to construction projects. Is this correct?” Interviewers continued with firms responding “yes” to this question (Question A1). BBC instructed interviewers that “doing work” included trying to sell that work.

Verification of for-profit business status. The interviewer also asked whether the organization was a for-profit business as opposed to a government or not-for-profit entity (Question A2). Interviewers continued with firms responding “yes” to this question.

Confirmation of main line of business. Construction firms were asked to identify types of work they perform from a list developed based on the City’s prequalification categories (Question A3). They also confirmed their primary line of business according to D&B records (Question A4). Firms seeking to change or clarify this description were then asked to identify their primary line of business (Question A4b). (After the interview was complete, BBC coded the new information on primary line of business into appropriate industry codes.) Construction-related professional services firms were also asked to confirm or update their main line of business, and BBC coded the new information appropriately.

Sole location, or multiple locations. Because the study team interviewed business establishments, business owners and managers were asked if they had other locations (Question A5). They were also asked if the establishment was an affiliate or subsidiary of another firm (Question A9). (A discussion of how BBC consolidated this information into a single response for a firm is presented later in this appendix.)

Past bids or work with governments and the private sector. The interviewer inquired about bids or work on past government and private sector projects. This area of questions also asked whether the firm had bid or worked as a prime contractor or as a subcontractor or supplier (Questions B1–B12).

Qualifications and interest in future construction work. Firm representatives were asked about their qualifications and interest in future work for the City and PDC. Separate questions asked about qualifications and interest in this work as a prime contractor and/or as a subcontractor (Questions B13–B14).

Year firm established. Interviewers asked firms to identify the approximate year that the firm was established (Question D1).

Largest contracts. Interviewers asked firms to identify the largest prime contract or subcontract they had been awarded in the Portland area in the past five years. They were also asked about the largest prime contract or subcontract that they had bid on in the Portland area in the past five years (Questions D2–D4).

Ownership. Firms were asked whether they were at least 51 percent owned and controlled by women and/or minorities (Questions E1–E3). If firms indicated that they were minority-owned, they were also asked about the race/ethnicity of ownership.

Business background. Several questions collected information on 2009 revenues and number of employees (Questions F1–F6). For firms with multiple establishments, the interview also asked about revenue and employee numbers for all locations.

Comments about the marketplace and doing business with the City and PDC. Near the end of the interview, CRI asked a series of questions concerning general insights on the marketplace and City and PDC contracting practices (Question G1a – G1m). This set of questions was introduced with the following statement: “Finally, we’re interested in whether your company has experienced barriers or difficulties associated with starting or expanding a business in your industry or with obtaining work. Think about your experiences within the past five years as we ask you these questions.”

The interview also included an open-ended question about the Portland area marketplace (Question G2): “Finally, we’re asking for general insights on starting and expanding a business in your field or winning work as a prime or subcontractor. Do you have any thoughts to offer on these topics?”

Contact information. The interview concluded by collecting complete contact information for the establishment (Questions H1–H6).

D. Interview Execution and Performance

CRI has completed tens of thousands of similar telephone interviews for BBC as part of disparity studies and other BBC assignments throughout the country. BBC routinely holds planning sessions with CRI executives and training sessions with CRI interviewers as part of BBC’s ongoing relationship with the firm. CRI programmed and conducted the interviews and provided daily reports on results. BBC instructed CRI to make at least five attempts to reach a person at each phone number. This design is intentionally persistent to minimize non-response.

BBC instructed CRI staff to identify and interview an available company representative such as the owner, manager, chief financial officer or other key official who could answer questions about the company’s line of business, past contracts, financial and employment figures, interest in work with various clients, and ownership status. The interviews were conducted from December 2009 through October 2010.

Performance. The interview process began with a very large number of D&B business listings for organizations in the Portland area in certain lines of work related to construction and construction-related professional services. At the end of the availability analysis process, firms reporting that they

were available for and interested in City or construction-related professional services work, and had bid on or had performed construction or construction-related professional services work, were included in the database used for the availability analysis.

Valid business listings. Some of the business listings purchased from D&B were:

- Duplicate numbers (122 listings);
- Non-working phone numbers (1,705 listings); or
- Wrong numbers for the desired businesses (360 listings that could not be reached through follow-up calls).

Figure D-2 shows how the beginning set of 8,130 listings became a set of 5,943 establishments with working phone numbers by eliminating listings with duplicate, non-working or incorrect phone numbers. Some non-working phone numbers and some wrong numbers for the desired businesses reflect firms going out of business or changing their names and phone numbers between the time that D&B listed them in its database and the time that the study team attempted to contact them.

Figure D-2 also shows the final disposition of the 5,943 business establishments that CRI attempted to contact:

- Slightly less than 10 percent of business establishments could not be reached after a minimum of five phone calls (558 establishments). Call-backs to these business establishments were made at different times of day and different days of the week in order to maximize response.
- About 20 percent of business establishments could not provide a staff member to complete the interview after a minimum of five phone calls (1,185 establishments).
- Interviews were only conducted in English. Less than one-half of one percent of business establishments could not communicate with the interviewer due to language barriers (20 establishments).
- About 8 percent of business establishments asked the study team to send the questionnaire via fax or e-mail but did not successfully obtain the fax or e-mail (after multiple attempts) or received the questionnaire but did not return a completed interview to BBC (454 establishments).

In sum, BBC successfully contacted 3,726 business establishments, or about 63 percent of the business establishments with valid phone listings.

**Figure D-2.
Disposition of
attempts to interview
D&B business listings**

Note:

* After multiple attempts to complete interview.

Source:

BBC Research & Consulting from 2009–2010 Availability Interviews.

	Number of firms	Percent of business listings
Beginning list	8,130	
Less duplicate numbers	122	
Less non-working phone numbers	1,705	
Less wrong number/business	360	
Unique business listings with working phone numbers	5,943	100.0 %
Less no answer*	558	9.4
Less could not reach responsible staff member	1,185	19.9
Less language barrier	20	0.3
Less unreturned fax/email	454	7.6
Establishments successfully contacted	3,726	62.7 %

Establishments not interested in discussing availability for City work. Figure D-3 shows that among the 3,726 business establishments successfully contacted, 1,754 establishments were not interested in discussing availability for City or PDC work. Many of these firms indicated that they did not perform construction or construction-related professional services work and were not interested in conducting the interview. More than 50 percent of the firms successfully contacted completed interviews about firm characteristics (1,972 establishments).

Firms that report being available for construction and construction-related professional services work. Among the business establishments that completed interviews, only a portion was deemed available for any type of City construction or construction-related professional services work, as explained below:

- Thirty-two individual establishments of multi-location firms completed the interview. Prior to analyzing results, BBC combined responses from these multiple establishments into a single response (described below). This removed 16 establishments from the availability analysis (about 1 percent of total completed interviews).
- About 8 percent of the firms that completed an interview indicated they did not perform work related to construction or construction-related professional services (148 establishments). The interview ended when a business owner or manager reported that the business did not do that type of work.
- Less than 1 percent of interviewed establishments indicated that they were involved in construction or construction-related professional services work but reported main lines of work that were well outside the scope of the availability analysis (5 establishments). For example, a firm identified by D&B as a consulting engineering firm reported in the interview that they did construction-related professional services work but that their primary line of business was personnel management consultation, which is outside the scope of the study. CRI completed the full interview with these firms. Prior to analyzing results, BBC removed them from the final data set.
- A few interviewed establishments were excluded because they were an organization other than a for-profit business (16 establishments). Non-profit and public sector agencies were not included in the availability analysis because the study focused on for-profit firms. The interview ended

when a respondent reported that the establishment was something other than a for-profit business.

- Two hundred and forty-four firms that were interested in future work with the City or PDC were not counted as firms available for City or PDC projects because they had not bid on or received awards for similar projects in the Portland area within the past five years.
- Seven additional firms were not counted as firms available for City projects because they said they were not interested in either prime contracting or subcontracting opportunities on such projects.

After these refinements, the interview effort produced a database of 1,536 firms for the availability analysis (see Figure D-3).

**Figure D-3.
Screening of completed
business telephone
interviews for possible
inclusion in the availability
analysis**

Note:

*One hundred and seventy-nine of these firms were not included in the availability marketplace analysis (Appendix H), because they did not respond to question D2 or D4 on the availability survey.

Source:

BBC Research & Consulting from 2009-2010 Availability Interviews.

	Number of firms
Establishments successfully contacted	3,726
Less establishments not interested in discussing availability for City or PDC work	1,754
Establishments that completed interviews about firm characteristics	1,972
Less multiple establishments	16
Less no City or PDC related work	148
Less line of work outside scope	5
Less not a business	16
Less no past bid/award	244
Less no interest in future work	7
Firms available for City of Portland work*	1,536

Study team identification and coding of responses from multi-location firms. Multiple responses from different establishments operating under the same firm name were combined into a single, summary case according to the following rules:

- If any of the establishments reported bidding or working on a contract within a particular sector, the firm summary for that variable was coded to an affirmative response for the corresponding subindustry;
- The role of work (prime contractor, subcontractor, supplier or trucker) that establishments reported were summed to a single variable, again corresponding to the appropriate subindustry;
- Except when there was a large discrepancy among the individual responses in a set of establishments' self-reported founding dates, BBC used the median founding date provided by the multiple establishments;
- The values for the firm summary variables for contract sizes and firm revenue are the largest dollar amounts indicated by any of its establishments;
- The summary number of firm employees is equal to the most common or the mean response of the multiple establishments; and

- Firms with multiple locations were re-coded as women- or minority-owned, or certified emerging small businesses (ESBs) if duplicate establishments indicated such status.

E. Additional Considerations

The study team explored several possible limitations in its approach to estimating relative availability. They include:

- Assessing relative MBE/WBE availability and not providing a count of all firms available for City work;
- Use of D&B as the sample frame;
- Selection of specific industry;
- Non-response bias;
- Language; and
- Reliability of answers to interview questions.

Not providing a count of all firms available for City work. The purpose of the availability interviews was to estimate the *percentage* of firms available for City and PDC construction and construction-related professional services work that were minority- and women-owned and controlled (i.e., “relative” MBE/WBE availability). The interviews provided such information. The interviews do not provide a comprehensive listing of every firm available for City and PDC work and should not be used as such.

The interview approach of measuring relative availability has been approved by federal courts (see, for example, the Seventh Circuit decision on *Northern Contracting*) when considering state implementation of the Federal DBE Program.³ Use of a survey is recommended as an approach to measuring availability in the USDOT guidance on goal-setting.⁴

Use of D&B list. D&B provides the most comprehensive private database of business listings in the United States. Even so, this database does not include all establishments operating in the Portland area:

- **New firms.** There can be a lag between formation of a new business and inclusion in the database. This means that the newest firms are underrepresented in the sample frame. Based on the firms successfully interviewed, newly formed firms are more likely than older firms to be minority- or women-owned, which suggests that MBEs and WBEs might be slightly underrepresented in the final database of interviewed firms.
- **Home-based businesses.** The D&B database is more likely to miss a business working out of the home than a firm with a distinct business office. Small, home-based firms are more

³ *N. Contracting, Inc. v. Illinois DOT*, 473 F.3d 715 (7th Cir. 2007)

⁴ USDOT. *Tips for Goals Setting in the Disadvantaged Business Enterprise (DBE) Program* (<http://osdbu.dot.gov/?TabId=133>)

likely than large firms to be MBE/WBEs, which again suggests that MBEs and WBEs might be slightly underrepresented in the final availability data set.

Selection of specific industry. Defining an industry based on specific industry codes (e.g., SIC, NAICS or D&B industry codes) is a standard step when analyzing an economic sector. Government and private sector economic data are typically organized according to industry codes. As with any such research, there are limitations when choosing the specific industry codes to define sets of establishments to be interviewed. For example, it was not possible for BBC to include all industries possibly related to construction and construction-related professional services work without interviewing firms in nearly every industry in the Portland area.

A further limitation to the use of D&B codes to classify businesses, or any other work type classification method, is that some codes are imprecise and overlap with other business specialties. Even though BBC used D&B's own 8-digit industry codes, D&B does not maintain a detailed 8-digit code for each firm in its database. When firm owners and managers were asked to identify primary lines of business, they often gave broad answers. For these reasons, BBC collapsed many of the industry codes into broader work categories in the final database of firms available for construction and construction-related professional services work.

Non-response bias. Analysis of non-response bias considers whether firms not successfully interviewed are different from those successfully interviewed and included in the final data set. There are opportunities for non-response bias in any primary research effort. The study team considered the potential for non-response bias due to:

- Research sponsorship; and
- Work specializations.

Research sponsorship and introduction. Interviewers introduced themselves by identifying the City and PDC as interview sponsors in order to encourage firms that performed construction and construction-related professional services work to participate in the interview. Firms would be less likely to answer somewhat sensitive business questions asked by an interviewer who was unable to identify the sponsor of the interview. In fact, some firms asked to check with the City or PDC to verify sponsorship prior to participating in the interview.

Analysis of interview refusal rates suggests that sponsorship had a positive effect on response rates. Most of the businesses contacted conducted interviews.

Work specializations. Businesses in highly-mobile fields, such as trucking, may be more difficult to reach than firms more likely to work out of a fixed office (e.g., engineering firms). This suggests that response rates will differ by business specialization.

If all interviewed firms were simply counted to determine relative MBE/WBE availability, this would lead to estimates that relied too heavily on fields that could be easily contacted by telephone. This potential non-response bias is minimal in this study because the availability analysis compares firms within particular work fields before determining an MBE/WBE availability figure. In other words, the potential for trucking firms to be less likely to complete an interview is less important because the

number of MBE/WBE trucking firms completing interviews is compared with total number of trucking firms, not all firms across all fields.

Language. City of Portland and PDC contracting documents are in English and not other languages. The study team made the decision to only include businesses able to provide a representative who could complete the interview in English in the availability analysis to remove language barriers as a potential explanation for any differences in outcomes observed between MBE/WBEs and majority-owned firms.

Individuals who could not communicate in English well enough to complete the interview and could not locate another individual to answer interview questions in English were not captured in the availability analysis.

Response reliability. Firm owners and managers were asked questions that may be difficult to answer, including firm revenues and employment. For this reason, the study team prompted them with D&B information for their establishment and asked them to confirm that information or provide more accurate estimates. Further, respondents were typically not asked to give absolute figures for difficult questions such as firm revenues. Rather, they were given ranges of dollar figures or employment levels.

BBC explored reliability by analyzing consistency of interview responses for the firm revenues and firm employment questions. BBC found interview responses to these difficult questions to be internally consistent. For example, firms with smaller employee numbers reported revenues consistent with their employment levels.

F. Summary

“Custom census” approaches to availability that begin with D&B data have been reviewed positively by federal courts. The study team’s methodology for analyzing MBE/WBE availability took the previous custom census approach as a starting point and added several layers of additional screening when determining firms available for City and PDC construction and construction-related professional services work (or, in the case of PDC, personal services work).

The study team attempted to complete interviews with all Portland area firms that, according to D&B, have a primary line of business within construction and construction-related professional services codes. (There was no “sampling” from the sample frame in preparing the list of firms to be interviewed.) The study team attempted to contact 8,130 business listings, about 2,200 of which were found to be invalid listings. A relatively high proportion of the establishments with working phone numbers were successfully contacted, and 3,726 business establishments completed availability interviews.

BBC examined several potential sources of non-response bias. It is possible that MBEs and WBEs were slightly under-represented in the final database of available firms. However, BBC concludes that this potential under-representation of MBE/WBEs does not significantly affect the analyses.

Figure D-4. Interview Instrument [Construction]

Hello. My name is [*interviewer name*] from CRI. We are calling on behalf of the City of Portland and the Portland Development Commission.

We are developing a list of companies involved in construction work in the Portland area. With whom can I speak to get the information we need from your firm?

[AFTER REACHING THE OWNER OR AN APPROPRIATELY SENIOR STAFF MEMBER, THE INTERVIEWER SHOULD RE-INTRODUCE THE PURPOSE OF THE SURVEY AND BEGIN WITH QUESTIONS]

[IF ASKED, THE INFORMATION DEVELOPED IN THESE INTERVIEWS WILL ADD TO EXISTING DATA FOR THE CITY AND THE DEVELOPMENT COMMISSION ON COMPANIES INTERESTED IN WORKING WITH THE CITY AND PDC IN THE FUTURE]

X1. I have a few basic questions about your company and the type of work you do. Can you confirm that this is [*firm name*]?

- 1=RIGHT COMPANY – SKIP TO A1
- 2=NOT RIGHT COMPANY – SKIP TO Y1
- 3=REFUSE TO GIVE INFORMATION – TERMINATE

Y1. Can you give me any information about [*firm name*]?

- 1=Yes, same owner doing business under a different name – SKIP TO Y4
- 2=Yes, can give information about named company – SKIP TO Y2
- 3=Company bought/sold/changed ownership – SKIP TO Y4
- 4=No, does not have information – TERMINATE
- 5=Refused to give information – TERMINATE

Y1. ENTER NEW NAME

- 1=VERBATIM

Y2. Can you give me the phone number of [*firm name*]?

(ENTER UPDATED PHONE OF NAMED COMPANY)

1=VERBATIM

Y3. Can you give me the complete address or city for [*firm name*]?

(NOTE TO INTERVIEWER - RECORD IN THE FOLLOWING FORMAT:

. STREET ADDRESS

. CITY

. STATE

. ZIP)

1=VERBATIM

Y4. And what is the new name of the business that used to be [*firm name*]?

(ENTER UPDATED NAME)

1=VERBATIM

Y5. Can you give me the name of the owner or manager of the new business?

(ENTER UPDATED NAME)

1=VERBATIM

Y6. Can I have a telephone number for them?

(ENTER UPDATED PHONE)

1=VERBATIM

Y7. Can you give me the complete address or city for [*new firm name*]?

1=VERBATIM

Y8. Do you work for this new company?

1=YES - CONTINUE

2=NO – TERMINATE

A1. First, I want to confirm that your firm does work or provides materials related to construction projects. Is this correct?

(NOTE TO INTERVIEWER – INCLUDES ANY WORK RELATED TO CONSTRUCTION, MAINTAINENCE OR DESIGN SUCH AS BUILDING AND PARKING FACILITIES, PAVING AND CONCRETE, TUNNELS, BRIDGES AND ROADS.)

(NOTE TO INTERVIEWER - INCLUDES HAVING DONE WORK, TRYING TO SELL THIS WORK, OR PROVIDING MATERIALS)

1=Yes

2=No - TERMINATE

A2. Let me confirm that [*firm name / new firm name*] is a business, as opposed to a non-profit organization, a foundation or a government office. Is that correct?

1=Yes, a business

2=No, other – TERMINATE

A3. What types of work does your company perform?

[CHECK ALL THAT APPLY, DO NOT PROMPT]

- a. Building construction
- b. Water and sewer facility construction
- c. Water, sewer and utility lines (underground utility lines)
- d. Highway and street construction
- e. Bridge construction and repair (include elevated highway)
- f. Concrete work
- g. Excavation
- h. Electrical work
- i. Wrecking and demolition
- j. Plumbing and HVAC
- k. Painting
- l. Roofing
- m. Landscaping
- n. Construction management
- o. Concrete supply
- p. Structural steel supply
- q. Other construction materials

- r. Trucking
- s. Other: _____ [VERBATIM]

A4a. Let me also confirm what your main line of business is. The information we have from Dun & Bradstreet indicates that your main line of business is [SIC Code description]. Is this correct?

(NOTE TO INTERVIEWER - IF ASKED, DUN & BRADSTREET OR D&B, IS A COMPANY THAT COMPILES BUSINESS INFORMATION THROUGHOUT THE COUNTRY)

1=Yes – SKIP TO A5

2=No

98= (DON'T KNOW)

99= (REFUSED)

A4b. What would you say is the main line of business at [firm name / new firm name]?

(ENTER VERBATIM RESPONSE)

1=VERBATIM

A5. Is this the sole location for your business, or do you have offices in other locations?

1=Sole location – SKIP TO A8

2=Have other locations

98= (DON'T KNOW)

99= (REFUSED)

A8. Is your company a subsidiary or affiliate of another firm?

1=Independent – SKIP TO B1

2=Subsidiary or affiliate of another firm

98= (DON'T KNOW)

99= (REFUSED)

A9. What is the name of your parent company?

1=ENTER NAME

98= (DON'T KNOW)

99= (REFUSED)

A9. ENTER NAME OF PARENT COMPANY

1=VERBATIM

B1. Next, I have a few questions about your company's role in construction work. During the past five years, has your company submitted a bid or a price quote to any part of a government project in the Portland area?

1=Yes

2=No – SKIP TO B3

98= (DON'T KNOW) – SKIP TO B3

99= (REFUSED) – SKIP TO

B2. Were those bids or price quotes to work as a prime contractor, a subcontractor, or as a supplier?

1=Prime contractor

2=Subcontractor

3=Supplier (or manufacturer)

4=Prime and Sub

5=Sub and Supplier

6=Prime and Supplier

7=Prime, Sub, and Supplier

8=Trucker

10=(Supplier and Trucker)

11=(Prime and Trucker)

12=(Sub and Trucker)

13= (Prime, Supplier, and Trucker)

14= (Sub, Supplier, and Trucker)

15= (Prime, Sub, and Trucker)

16= (Prime, Sub, Supplier, Trucker)

98= (DON'T KNOW)

99= (REFUSED)

B3. During the past five years, has your company received an award for work as a prime contractor or as a subcontractor to any part of a government project in the Portland area?

1=Yes

2=No – SKIP TO B9

98= (DON'T KNOW) – SKIP TO B9

99= (REFUSED) – SKIP TO B9

B4. Were those awards to work as a prime contractor, a subcontractor, or as a supplier?

- | | |
|-------------------------------|-------------------------------------|
| 1=Prime contractor/consultant | 10= (Supplier and Trucker) |
| 2=Subcontractor/subconsultant | 11= (Prime and Trucker) |
| 3=Supplier (or manufacturer) | 12= (Sub and Trucker) |
| 4=Prime and Sub | 13= (Prime, Supplier, and Trucker) |
| 5=Sub and Supplier | 14= (Sub, Supplier, and Trucker) |
| 6=Prime and Supplier | 15= (Prime, Sub, and Trucker) |
| 7=Prime, Sub, and Supplier | 16= (Prime, Sub, Supplier, Trucker) |
| 8=Trucker | 98= (DON'T KNOW) |
| | 99= (REFUSED) |

B9. During the past five years, has your company submitted a bid or a price quote for any part of a private sector contract in the Portland area?

- 1=Yes
- 2=No – SKIP TO B11
- 98= (DON'T KNOW) – SKIP TO B11
- 99= (REFUSED) – SKIP TO B11

B10. Were those bids or price quotes to work as a prime contractor, a subcontractor, or as a supplier?

- | | |
|-------------------------------|-------------------------------------|
| 1=Prime contractor/consultant | 10= (Supplier and Trucker) |
| 2=Subcontractor/consultant | 11= (Prime and Trucker) |
| 3=Supplier (or manufacturer) | 12= (Sub and Trucker) |
| 4=Prime and Sub | 13= (Prime, Supplier, and Trucker) |
| 5=Sub and Supplier | 14= (Sub, Supplier, and Trucker) |
| 6=Prime and Supplier | 15= (Prime, Sub, and Trucker) |
| 7=Prime, Sub, and Supplier | 16= (Prime, Sub, Supplier, Trucker) |
| 8=Trucker | 98= (DON'T KNOW) |
| | 99= (REFUSED) |

B11. During the past five years, has your company received an award for work as a prime contractor or as a subcontractor for any part of a private sector contract in the Portland area?

1=Yes

2=No – SKIP TO B13

98= (DON'T KNOW) – SKIP TO B13

99= (REFUSED) – SKIP TO B13

B12 Were those awards to work as a prime contractor, a subcontractor, or as a supplier?

1=Prime contractor/consultant

2=Subcontractor/subconsultant

3=Supplier (or manufacturer)

4=Prime and Sub

5=Sub and Supplier

6=Prime and Supplier

7=Prime, Sub, and Supplier

8=Trucker

10= (Supplier and Trucker)

11= (Prime and Trucker)

12= (Sub and Trucker)

13= (Prime, Supplier, and Trucker)

14= (Sub, Supplier, and Trucker)

15= (Prime, Sub, and Trucker)

16= (Prime, Sub, Supplier, Trucker)

98= (DON'T KNOW)

99= (REFUSED)

B13. Is your company qualified and interested in working with the City of Portland or Portland Development Commission as a prime contractor?

1=Yes (BOTH)

2=Yes (JUST THE CITY OF PORTLAND)

3=Yes (JUST THE DEVELOPMENT COMMISSION)

4=No

98= (DON'T KNOW)

99= (REFUSED)

B14. Is your company qualified and interested in working with the City of Portland or Portland Development Commission (PDC) as a subcontractor or supplier?

1=Yes Yes (BOTH)

2=Yes (JUST THE CITY OF PORTLAND)

3=Yes (JUST THE DEVELOPMENT COMMISSION)

4=No

98= (DON'T KNOW)

99= (REFUSED)

D1. About what year was your firm established?

(RECORD FOUR-DIGIT YEAR, e.g., '1977')

(9998 = DON'T KNOW)

(9999 = REFUSED)

1=NUMERIC (1600-2009)

D2. In rough dollar terms, what was the largest contract or subcontract your company was awarded in the Portland area during the past five years?

(NOTE TO INTERVIEWER - INCLUDES CONTRACTS NOT YET COMPLETE)

(NOTE TO INTERVIEWER - READ CATEGORIES IF NECESSARY)

1=\$100,000 or less

2=More than \$100,000 to \$500,000

3=More than \$500,000 to \$1 million

4=More than \$1 million to \$2 million

5=More than \$2 million to \$5 million

6=More than \$5 million to \$10 million

7=More than \$10 million to \$20 million

8=\$20 million to \$50 million

9=\$50 million to \$100 million

10=Greater than \$100 million

97= (NONE)

98= (DON'T KNOW)

99= (REFUSED)

D3. Was this the largest contract or subcontract that your company bid on or submitted quotes for in the Portland area during the past five years?

1=Yes – SKIP TO E1

2=No

98= (DON'T KNOW) – SKIP TO E1

99= (REFUSED) – SKIP TO E1

D4. What was the largest contract or subcontract that your company bid on or submitted quotes for in the Portland area during the past five years?

(READ CATEGORIES IF NECESSARY)

1=\$100,000 or less

2=More than \$100,000 to \$500,000

3=More than \$500,000 to \$1 million

4=More than \$1 million to \$2 million

5=More than \$2 million to \$5 million

6=More than \$5 million to \$10 million

7=More than \$10 million to \$20 million

8=\$20 million to \$50 million

9=\$50 million to \$100 million

10=Greater than \$100 million

97= (NONE)

98= (DON'T KNOW)

99= (REFUSE)

E1. My next questions are about the ownership of the business. A business is defined as woman-owned if more than half – that is, 51 percent or more – of the ownership and control is by women. By this definition, is [firm name / new firm name] a woman-owned business?

1=Yes

2=No

98= (DON'T KNOW)

99= (REFUSED)

E2. A business is defined as minority-owned if more than half – that is, 51 percent or more – of the ownership and control is African American, Asian, Hispanic, Native American or another minority group. By this definition, is [firm name || new firm name] a minority-owned business?

1=Yes

2=No – SKIP TO F1

3= (OTHER GROUP - SPECIFY)

98= (DON'T KNOW)

99= (REFUSED)

E2. OTHER GROUP - SPECIFY

1=VERBATIM

E3. Would you say that the minority group ownership is mostly African American, Asian-Pacific American, Subcontinent Asian American, Hispanic American, or Native American?

1=African-American

2=Asian Pacific American (persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia(Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong)

3=Hispanic American (persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race)

4=Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians)

5=Subcontinent Asian American (persons whose Origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka)

6= (OTHER - SPECIFY)

98= (DON'T KNOW)

99= (REFUSED)

E3. OTHER - SPECIFY

1=VERBATIM

F1. Dun & Bradstreet indicates that your company has about [number] employees working out of just your location. Is that a fairly accurate average thinking about the past 12 months?

(NOTE TO INTERVIEWER - INCLUDES EMPLOYEES WHO WORK AT THAT LOCATION AND THOSE WHO WORK FROM THAT LOCATION)

1=Yes – SKIP TO F3

2=No

98= (DON'T KNOW)

99= (REFUSED) – SKIP TO F3

F2. About how many employees did you have working out of just your location, on average, over the course of last 12 months?

(RECORD NUMBER OF EMPLOYEES)

1=NUMERIC (1-999999999)

F3. Dun & Bradstreet lists the annual gross revenue of your company, just considering your location, to be [dollar amount]. Is that accurate for 2009?

1=Yes – SKIP TO F5

2=No

98= (DON'T KNOW)

99= (REFUSED) – SKIP TO F5

F4. Roughly, what was the gross revenue of your company, just considering your location, in 2009? Would you say . . . (READ LIST)

1=Less than \$200,000

2=\$200,000 - \$499,999

3=\$500,000 - \$999,999

4=\$1 Million - \$2.49 Million

5=\$2.5 Million - \$4.9 Million

6=\$5 Million - \$9.9 Million

7=\$10 Million - \$24.9 Million

8=\$25 Million - \$49.9 Million

9=\$50 Million or more

98= (DON'T KNOW)

99= (REFUSED)

F5. For 2009, about how many employees did you have, on average, for all of your locations?

1= (ENTER RESPONSE)

98= (DON'T KNOW)

99= (REFUSED)

F5. RECORD NUMBER OF EMPLOYEES

1=VERBATIM

F6. Roughly, what was the gross revenue of your company, for all of your locations in 2009?

Would you say . . . (READ LIST)

1=Less than \$200,000

2=\$200,000 - \$499,999

3=\$500,000 - \$999,999

4=\$1 Million - \$2.49 Million

5=\$2.5 Million - \$4.9 Million

6=\$5 Million - \$9.9 Million

7=\$10 Million - \$24.9 Million

8=\$25 Million - \$49.9 Million

9=\$50 Million or more

98= (DON'T KNOW)

99= (REFUSED)

G1. Finally, we're interested in whether your company has experienced barriers or difficulties associated with starting or expanding a business in your industry or with obtaining work. Think about your experiences within the past five years as we ask you these questions.

G1a. Has your company experienced any difficulties in obtaining lines of credit or loans?

1=Yes

2=No

98= (Don't know)

99= (Does not apply)

G1b. Has your company obtained or tried to obtain a bond for a project?

1=Yes

2=No [SKIP TO G1d]

98= (Don't know) [SKIP TO G1d]

99= (Does not apply) [SKIP TO G1d]

G1c. Has your company had any difficulties obtaining bonds needed for a project?

1=Yes

2=No

98= (Don't know)

99= (Does not apply)

G1d. Have any insurance requirements on projects presented a barrier to bidding?

1=Yes

2=No

98= (Don't know)

99= (Does not apply)

G1e. Has the size of projects presented a barrier to bidding?

1=Yes

2=No

98= (Don't know)

99= (Does not apply)

G1f. Has your company experienced any difficulties learning about bid opportunities with the City of Portland?

1=Yes

2=No

98= (Don't know)

99= (Does not apply)

G1g. Has your company experienced any difficulties learning about bid opportunities with the Portland Development Commission?

1=Yes

2=No

98= (Don't know)

99= (Does not apply)

G1h. Has your company experienced any difficulties learning about bid opportunities with the private sector in the Portland area?

1=Yes

2=No

98= (Don't know)

99= (Does not apply)

G1i. Has your company experienced any difficulties learning about subcontracting opportunities in the Portland area?

1=Yes

2=No

98= (Don't know)

99= (Does not apply)

G1i. Has your company experienced any difficulties receiving payment in a timely manner?

1=Yes

2=No

98= (Don't know)

99= (Does not apply)

G1j. Has your company looked into or applied for prequalification for City of Portland prime contracts?

1=Yes

2=No [SKIP TO G1m]

98= (Don't know) SKIP TO G2

99= (Does not apply) SKIP TO G2

G1k. Has your company experienced any difficulties with the City prequalification process?

1=Yes

2=No

98= (Don't know)

99= (Does not apply)

G1l. What were those difficulties?

_____ [OPEN-ENDED TO START, WILL CLOSE AFTER INITIAL SURVEYS]

98= (Don't know)

GO TO G2

G1m. Why not?

_____ [OPEN-ENDED TO START, WILL CLOSE AFTER INITIAL SURVEYS]

98= (Don't know)

G2. Finally, we're asking for general insights on starting and expanding a business in your field or winning work as a prime or subcontractor. Do you have any thoughts to offer on these topics?

1=VERBATIM (PROBE FOR COMPLETE THOUGHTS)

97= (NOTHING/NONE/NO COMMENTS)

98= (DON'T KNOW)

99= (REFUSED)

G3. Would you be willing to participate in a follow-up interview about any of these issues?

1=Yes

2=No

98= (DON'T KNOW)

99= (REFUSED)

H1. Just a few last questions. What is your name and position at [*firm name / new firm name*]?

(RECORD FULL NAME)

1=VERBATIM

H2. What is your position?

1=Receptionist

2=Owner

3=Manager

4=CFO

5=CEO

6=Assistant to Owner/CEO

7=Sales manager

8=Office manager

9=President

9= (OTHER - SPECIFY)

99= (REFUSED)

H2. OTHER - SPECIFY

1=VERBATIM

H3. For purposes of receiving information from the City and Development Commission, is your mailing address [*firm address*]:

1=Yes – SKIP TO H5

2=No

98= (DON'T KNOW)

99= (REFUSED)

H4. What mailing address should they use to get any materials to you?

1=VERBATIM

H5. What fax number could they use to fax any materials to you?

1=NUMERIC (1000000000-9999999999)

H6. What e-mail address could they use to get any materials to you?

1=ENTER E-MAIL

97= (NO EMAIL ADDRESS)

98= (DON'T KNOW)

99= (REFUSED)

H6. (RECORD EMAIL ADDRESS) (VERIFY ADDRESS LETTER BY LETTER: EXAMPLE: 'John@CRI-RESEARCH.COM' SHOULD BE VERIFIED AS: J-O-H-N-at-C-R-I-hyphen-R-E-S-E-A-R-C-H-dot-com)

1=VERBATIM

Thank you very much for your participation. If you have any questions, please contact Annette Palmer at the City of Portland or Linda Andrews at the Portland Development Commission. Ms. Palmer's phone number is 503-823-7194, her email address is apalmer@ci.portland.or.us. Ms. Andrews' phone number is 503-823-3261, her email address is andrewsll@pdc.us.

APPENDIX E.

Entry and Advancement in the Portland Construction and Professional Services Industries

Appendix E examines entry and advancement in the Portland construction and professional services industries. Appendix F explores business formation; Appendix H considers the success of businesses. Related to both of these topics, an examination of access to capital can be found in Appendix G. Together, these appendices present an overview of marketplace conditions in the Portland construction and professional services industries, referred to as “study industries” in this report. Appendix I discusses data sources used in these appendices.

In Appendix E and other marketplace appendices, professional services refer to architectural, engineering and related services.¹ Each reference to “professional services” refers to these types of services.

Introduction

BBC examined whether there were barriers to formation of minority- and women-owned businesses in the Portland Metropolitan Statistical Area (MSA).² Business ownership often results from ascending the ranks within a particular industry. Within this process of entry and advancement in the Portland construction and professional services industries, there may be some barriers that limit opportunities for minorities and women. This appendix uses 1980 and 2000 Census data and 2006-2008 American Community Survey (ACS) data to analyze education, employment and workplace advancement — all factors that influence the likelihood of forming a business. Where possible, BBC used these data to examine the construction and professional services industries separately, as entrance requirements and opportunities for advancement often differ across industries.

¹ “Architectural, engineering and related services” was coded under the 1980 and 2000 census industrial classification system as 882 and 729, respectively.

² In the marketplace appendices, the Portland MSA comprises the following 7 counties (unless otherwise noted): Clackamas, Clark, Multnomah, Skamania, Washington, Yamhill and Polk. Collectively, these counties are referred to as the Portland MSA, or simply Portland. Appendix I provides further detail on the definition of the MSA.

Representation of minorities among workers and business owners in Portland. As a starting point, the study team examined how business owners in Portland, Oregon and the United States differed from the entire labor force with respect to the representation of racial and ethnic minorities. Based on 2000 and 2006-2008 data, Figure E-1 on the following page shows the demographics of the labor force, business owners in all Portland industries and business owners in study industries. Results for the Portland MSA in 2006-2008 show the following:

- About 9 percent of workers and 5 percent of business owners (including business owners in study industries) were Hispanic Americans;
- Asian-Pacific Americans were about 6 percent of all workers and 7 percent of business owners, but a smaller proportion of business owners in study industries (4%).
- African Americans represented about 3 percent of workers, 2 percent of all business owners, but less than 1 percent of business owners in study industries;
- Native Americans comprised about 1 percent of all workers, all business owners and business owners in study industries.
- Subcontinent Asian Americans and other minority groups represented less than 1 percent of workers and business owners in the Portland MSA.
- Non-Hispanic whites made up about 80 percent of the Portland workforce and 85 percent of all business owners. In study industries, non-Hispanic whites comprised an even larger share of business owners, about 90 percent.

Patterns found in the Portland MSA related to the racial/ethnic composition of workers and business owners were similar to those observed in the state as a whole. The United States also had a similar overall pattern with the following exception: Hispanic Americans made up a greater share of business owners in study industries relative to their representation in the labor force.

Representation of women among workers and business owners in Portland.

Figure E-1 also shows the proportion of workers and business owners that were women in the Portland MSA, Oregon and the United States. In 2006-2008, women made up about 46 percent of the Portland labor force and 41 percent of all business owners. However, only about 10 percent of business owners in the study industries were women during these years.

In both Oregon and the United States, women also comprised a very small percentage of business owners in study industries, especially compared to their representation in the entire workforce.

Figure E-1.
Demographic distribution of the workforce and business owners, 2000 and 2006-2008

Portland MSA	Workforce in all industries		Business owners in all industries		Business owners in study industries	
	2000 (n=46,824)	2006-08 (n=32,139)	2000 (n=5,113)	2006-08 (n=3,822)	2000 (n=908)	2006-08 (n=603)
Race/ethnicity						
African American	2.6 %	2.7 %	1.5 % **	2.3 %	0.8 % **	0.8 % **
Asian-Pacific American	4.7	5.8	3.8	6.5	1.3 **	3.5 **
Subcontinent Asian American	0.5	0.6	0.5	0.4	0.0	0.0
Hispanic American	6.8	9.2	3.1 **	4.9 **	3.7 **	5.3 **
Native American	1.6	1.4	1.4	1.3	1.4	0.8
Other minority group	<u>0.5</u>	<u>0.1</u>	<u>0.6</u>	<u>0.1</u>	<u>0.3</u>	<u>0.0</u>
Total minority	16.7 %	19.8 %	11.0 %	15.5 %	7.5 %	10.4 %
Non-Hispanic white	<u>83.3</u>	<u>80.2</u>	<u>89.0</u> **	<u>84.5</u> **	<u>92.5</u> **	<u>89.6</u> **
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	45.6 %	45.7 %	39.1 % **	41.3 % **	10.9 % **	10.0 % **
Male	<u>54.4</u>	<u>54.3</u>	<u>60.9</u> **	<u>58.7</u> **	<u>89.1</u> **	<u>90.0</u> **
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Oregon	Workforce in all industries		Business owners in all industries		Business owners in study industries	
	2000 (n=85,796)	2006-08 (n=55,857)	2000 (n=10,917)	2006-08 (n=7,502)	2000 (n=1,851)	2006-08 (n=1,268)
Race/ethnicity						
African American	1.7 %	1.8 %	0.9 % **	1.4 %	0.4 %	0.5 % **
Asian-Pacific American	3.2	4.0	2.5 **	4.3	1.0 **	2.2 **
Subcontinent Asian American	0.4	0.4	0.4	0.3	0.0	0.0
Hispanic American	7.0	9.7	3.1 **	5.0 **	2.8 **	5.0 **
Native American	2.1	1.9	1.7	1.5 **	1.7	1.1 **
Other minority group	<u>0.4</u>	<u>0.1</u>	<u>0.4</u>	<u>0.1</u>	<u>0.3</u>	<u>0.1</u>
Total minority	14.8 %	18.0 %	9.0 %	12.6 %	6.3 %	8.8 %
Non-Hispanic white	<u>85.2</u>	<u>82.0</u>	<u>91.0</u> **	<u>87.4</u> **	<u>93.7</u> **	<u>91.2</u> **
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	45.7 %	46.2 %	38.4 % **	40.0 % **	9.3 % **	9.7 % **
Male	<u>54.3</u>	<u>53.8</u>	<u>61.6</u> **	<u>60.0</u> **	<u>90.7</u> **	<u>90.3</u> **
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
United States	Workforce in all industries		Business owners in all industries		Business owners in study industries	
	2000 (n=6,832,970)	2006-08 (n=4,488,276)	2000 (n=676,804)	2006-08 (n=484,074)	2000 (n=119,227)	2006-08 (n=90,397)
Race/ethnicity						
African American	10.9 %	11.6 %	4.9 % **	5.6 % **	4.0 % **	4.3 % **
Asian-Pacific American	3.4	4.0	3.4	4.0	1.3 **	1.7 **
Subcontinent Asian American	0.7	1.0	0.7	1.0	0.2 **	0.2 **
Hispanic American	10.7	13.9	7.3 **	11.2 **	7.7 **	13.7
Native American	1.1	1.0	1.0 **	0.8 **	1.2	1.0
Other minority group	<u>0.4</u>	<u>0.3</u>	<u>0.5</u>	<u>0.3</u>	<u>0.5</u>	<u>0.2</u>
Total minority	27.3 %	31.8 %	17.7 %	22.9 %	14.9 %	21.3 %
Non-Hispanic white	<u>72.7</u>	<u>68.2</u>	<u>82.3</u> **	<u>77.1</u> **	<u>85.1</u> **	<u>78.7</u> **
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	46.5 %	46.5 %	33.6 % **	34.1 % **	7.9 % **	7.8 % **
Male	<u>53.5</u>	<u>53.5</u>	<u>66.4</u> **	<u>65.9</u> **	<u>92.1</u> **	<u>92.2</u> **
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %

Note: ** Denotes that the difference in proportions between all workers and business owners (or business owners in study industries) for the given race/ethnicity/gender group is statistically significant at the 95% confidence level.

Source: BBC Research & Consulting from 2000 U.S. Census 5% sample and 2006-2008 ACS Public Use Micro-sample data. The raw data extracts were obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Construction Industry

BBC first examined the construction industry and how education, training, employment and advancement may affect the number of businesses owned by different race/ethnicity and gender groups in the Portland MSA.

Education. Formal education beyond high school is not a prerequisite for most construction jobs. For this reason, the construction industry often attracts individuals who have lower levels of educational attainment.

Most construction industry employees in the Portland MSA do not have a four-year college degree. Based on the 2000 Census, 34 percent of workers in construction were high school graduates with no post-secondary education, and 17 percent had not finished high school. Only 12 percent of those in the construction industry had a four-year college degree or higher, compared to nearly 30 percent of all workers.

Hispanic Americans represented an especially large pool of Portland area workers with no post-secondary education. In 2000, seven in ten Hispanic American workers had no formal education beyond high school, compared with less than one-third of non-Hispanic whites. Based on minimal educational requirements for entry-level jobs and the relatively limited education for many Hispanic Americans in the Portland MSA, one would expect high representation of Hispanics in the construction industry. The percentage of African American (43%) and Native American (45%) workers with no formal education beyond high school was also greater than that of non-Hispanic whites.

Among workers age 25 or older in the Portland MSA, 38 percent of Asian-Pacific Americans and 75 percent of Subcontinent Asian Americans had at least a four-year college degree in 2000. By comparison, about 35 percent of non-Hispanic whites and only 14 percent of Hispanic Americans had a bachelor's degree or higher. Given their relatively high educational attainment, Asian-Pacific Americans and Subcontinent Asian Americans may have lower representation in construction relative to other minority groups.

In Portland, female workers were as likely as men to have an education beyond high school. Among workers 25 years or older in 2000, 34 percent of men and 33 percent of women had at least a bachelor's degree.

Training in the construction industry is largely on-the-job or through trade schools and apprenticeship programs. Entry-level jobs for workers out of high school include laborers, helpers or apprentices. Higher-skilled positions in the construction industry may require additional training through a technical or trade school or through an apprenticeship or other employer-provided training program. Such apprenticeship programs can be developed by employers, trade associations, trade unions and other groups. Workers often enter these programs from high school or a trade school. Apprenticeships have traditionally been three- to five-year programs that combine on-the-job training with classroom instruction.³ Opportunities for these programs across race/ethnicity are discussed later in this appendix.

³ Bureau of Labor Statistics, U.S. Department of Labor. 20010-11. "Construction." *Career Guide to Industries*. <http://www.bls.gov/oco/cg/cgs003.htm> (accessed May 24, 2010).

Employment. With educational attainment among minorities and women as a context, the study team examined employment in the Portland construction industry. Based on data from 1980, 2000 and 2006-2008, Figure E-2 compares the demographic composition of workers in the construction industry with that of the entire labor force in the Portland MSA, Oregon and the United States.

As a single group, minorities represented a larger percentage of construction workers in 2006-2008 than 2000. One in five individuals working in the Portland construction industry in these later years was a minority. This change was largely due to an increase in the number of Hispanic construction workers, as representation of other minority groups did not change substantially over this time.

Of the people working in the Portland construction industry in 2006-2008:

- 14 percent were Hispanic Americans;
- About 2 percent were African Americans;
- Less than 2 percent were Asian-Pacific Americans; and
- Less than 2 percent were Native Americans.

According to the 2006-2008 ACS data, there were very few Subcontinent Asian Americans or other race minorities in the Portland construction industry.

In the Portland MSA, Hispanic Americans made up a greater share of workers in construction than the whole labor force in 2006-2008. About 14 percent of construction workers were Hispanic Americans, compared to 9 percent of all workers. On average, Hispanic Americans had less education than all workers in the Portland MSA, which could explain the relatively large number of Hispanics in construction.

In contrast, representation of Asian-Pacific Americans in construction was lower than for the Portland workforce as a whole. Asian-Pacific Americans made up only 2 percent of the construction workforce but about 6 percent of all Portland MSA workers in 2006-2008. Average educational attainment among Asian-Pacific Americans, especially compared to other minority groups, may partially explain this difference.

In 2000, African Americans made up a smaller proportion of construction workers than all workers (a statistically significant difference). Representation of African Americans in construction was also lower compared to all industries in 2006-2008, although the difference was not statistically significant. Educational requirements for construction jobs did not exceed the average educational attainment for African Americans in 2000, so other factors may be behind the relatively low number of African American workers in this industry. A number of studies throughout the United States have argued that racial discrimination by construction unions has held down employment of African Americans in construction trades.⁴

⁴ See, for example, Waldinger, Roger and Thomas Bailey. 1991. "The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction." *Politics & Society*, 19(3).

Figure E-2.
Demographics of workers in construction and all industries, 1980, 2000 and 2006-2008

Portland MSA	Construction			All industries		
	1980 (n=2,197)	2000 (n=3,380)	2006-08 (n=2,190)	1980 (n=33,289)	2000 (n=46,824)	2006-08 (n=32,139)
Race/ethnicity						
African American	1.2 % **	1.6 % **	2.1 %	2.1 %	2.6 %	2.7 %
Asian-Pacific American	1.0 **	1.7 **	1.8 **	1.9	4.7	5.8
Subcontinent Asian American	0.0	0.1	0.0	0.1	0.5	0.6
Hispanic American	1.3	8.4	14.4 **	1.8	6.8	9.2
Native American	1.0	1.5	1.5	0.7	1.6	1.4
Other minority group	0.0	0.3	0.0	0.1	0.5	0.1
Total minority	4.4 %	13.7 %	19.7 %	6.7 %	16.7 %	19.8 %
Non-Hispanic white	95.6 **	86.3 **	80.3	93.3	83.3	80.2
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	9.3 % **	12.3 % **	10.8 % **	42.5	45.6	45.7
Male	90.7 **	87.7 **	89.2 **	57.5	54.4	54.3
Total	100.0 %	100.0 %	100.0 %	100.0	100.0	100.0
Oregon	Construction			All industries		
	1980 (n=4,203)	2000 (n=6,205)	2006-08 (n=4,080)	1980 (n=62,099)	2000 (n=85,796)	2006-08 (n=55,857)
Race/ethnicity						
African American	0.7 % **	0.9 % **	1.1 % **	1.2 %	1.7 %	1.8 %
Asian-Pacific American	0.7 **	1.3 **	1.3 **	1.4	3.2	4.0
Subcontinent Asian American	0.0	0.0	0.0	0.1	0.4	0.4
Hispanic American	1.8 **	6.6	13.6 **	2.3	7.0	9.7
Native American	0.9	2.1	1.9	0.9	2.1	1.9
Other minority group	0.0 **	0.5	0.1 **	0.1	0.4	0.1
Total minority	4.1 %	11.5 %	18.0 %	6.0 %	14.8 %	18.0 %
Non-Hispanic white	95.9 **	88.5 **	82.0	94.0	85.2	82.0
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	8.5 % **	11.6 % **	10.2 % **	41.5	45.7	46.2
Male	91.5 **	88.4 **	89.8 **	58.5	54.3	53.8
Total	100.0 %	100.0 %	100.0 %	100.0	100.0	100.0
United States	Construction			All industries		
	1980 (n=330,464)	2000 (n=480,280)	2006-08 (n=325,848)	1980 (n=5,287,471)	2000 (n=6,832,970)	2006-08 (n=4,488,276)
Race/ethnicity						
African American	7.4 % **	6.2 % **	5.9 % **	10.1 %	10.9 %	11.6 %
Asian-Pacific American	0.7 **	1.3 **	1.5 **	1.5	3.4	4.0
Subcontinent Asian American	0.1 **	0.2 **	0.2 **	0.2	0.7	1.0
Hispanic American	5.9 **	15.0 **	23.4 **	5.7	10.7	13.9
Native American	0.8 **	1.5 **	1.2 **	0.5	1.1	1.0
Other minority group	0.1	0.4	0.3	0.1	0.4	0.3
Total minority	14.9 %	24.5 %	32.6 %	18.1 %	27.3 %	31.8 %
Non-Hispanic white	85.1 **	75.5 **	67.4 **	81.9	72.7	68.2
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	7.9 % **	9.9 % **	9.2 % **	42.2	46.5	46.5
Male	92.1 **	90.1 **	90.8 **	57.8	53.5	53.5
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %

Note: ** Denotes that the difference in proportions between workers in the construction industry and all industries for the given Census/ACS year is statistically significant at the 95% confidence level.

Source: BBC Research & Consulting from 1980 and 2000 U.S. Census 5% sample and 2006-2008 ACS Public Use Microdata samples. The raw data extracts were obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Considering their representation in the entire Portland labor force, relatively few women work in the Portland construction industry. Women represented about 46 percent of the labor force in 2006-2008 but only about one-tenth of construction workers during this period (see Figure E-2).

Many of the patterns seen in the Portland construction industry in 2000 and 2006-2008 were also evident in Oregon and the United States during these years.

Importance of unions in entering the construction industry. Labor scholars characterize construction as a historically volatile industry sensitive to business cycles, making the presence of labor unions important for stability and job security within the industry.⁵ The temporary nature of construction work often results in uncertain job prospects, and the high turnover of laborers presents a disincentive for construction companies to invest in training. Some scholars claim that constant turnover has lent itself to informal recruitment practices and nepotism, compelling laborers to tap social networks for training and work. They credit the importance of social networks with the high degree of ethnic segmentation in the construction industry.⁶ Unable to integrate themselves into traditionally white social networks, African Americans face long-standing historical barriers preventing entry into the industry.⁷

Construction unions aim to provide a reliable source of labor for employers and to preserve job opportunities for workers by formalizing the recruitment process, coordinating training and apprenticeships, enforcing standards of work, and mitigating wage competition. The unionized sector of construction would seemingly be the best path for African American and other under-represented groups into the industry. However, the role of unions in the advancement of minorities and women in the construction industry has been mixed. While recent studies provide evidence of unions playing a positive role in supporting and training minority and female workers, earlier research has shown how trade unions historically prevented minorities from obtaining employment in skilled trades.⁸

Several studies provide evidence of historical discrimination by trade unions. For example:

- A Department of Justice report in 1996 found that unions had used admissions criteria that adversely affected minorities. Federal courts ruled in the 1970s that standardized testing requirements unfairly disadvantaged minority applicants who had less exposure to testing, and that requirements that new union members have relatives in the union perpetuated the effects of past discrimination. The same report identified discriminatory practices in employee referral procedures that precluded minorities from having the same access to construction work as their white counterparts.⁹
- In 1999, a national study by Herbert Applebaum reported that, of those minority individuals who had been admitted to unions, a disproportionately low number were

⁵ Applebaum, Herbert. 1999. *Construction Workers, U.S.A.* Westport: Greenwood Press.

⁶ Waldinger, Roger and Thomas Bailey. 1991. "The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction." *Politics & Society*, 19(3).

⁷ Feagin, Joe R. and Nikitah Imani. 1994. "Racial Barriers to African American Entrepreneurship: An Exploratory Study." *Social Problems*. 41(4): 562-584.

⁸ U.S. Department of Justice. 1996. Proposed Reforms to Affirmative Action in Federal Procurement. 61 FR 26042.

⁹ Ibid. See *United States v. Iron Workers Local 86* (1971), *Sims v. Sheet Metal Workers International Association* (1973), and *United States v. International Association of Bridge, Structural and Ornamental Iron Workers* (1971).

admitted into apprenticeship programs coordinated by unions. Apprenticeship programs are important means of producing skilled construction laborers, and the reported exclusion of African Americans from these programs may have severely limited their access to skilled occupations in the construction industry in the past.¹⁰

- According to testimony from African American union members reported in a 1994 study, even when unions implemented meritocratic mechanisms of apportioning employment to laborers, white workers were often allowed to circumvent procedures and received preference for construction jobs.¹¹

However, more recent research suggests that the relationship between minorities and unions has been changing. As a result, these historical observations may not be indicative of current dynamics in construction unions. Recent studies focusing on the role of unions in apprenticeship programs have compared minority and female participation and graduation rates for apprenticeships in joint programs (organized by unions and employers together) with rates in employer-only programs. Many of these studies conclude that the impact of union involvement is generally positive or neutral for minorities and women, compared to non-Hispanic white males:

- In a 2005 study, Robert Glover and Cihan Bilginsoy analyzed apprenticeship programs in the U.S. construction industry during the period 1996-2003. Their dataset covered about 65 percent of apprenticeships during that time. The authors found that joint programs had “much higher enrolments and participation of women and ethnic/racial minorities” and exhibited “markedly better performance for all groups on rates of attrition and completion” compared to programs run only by employers.¹²
- In a similar analysis focusing on women apprentices, Bilginsoy and Berik found that women were most likely to become members of highly-skilled construction professions as a result of enrolment in joint programs, as opposed to employer-only programs. Moreover, the positive effect of union involvement in apprenticeship training was higher for African American women than for white women.¹³
- A recent study on the presence of African Americans and Hispanic Americans in apprenticeship programs found that African Americans were 8 percent more likely to be enrolled in a joint program than in an employer program. However, Hispanic Americans were less likely to be in a joint program than in an employer-only program.¹⁴ These data suggest that Hispanic Americans may be more likely than African Americans to enter the construction industry without the support of a union.

¹⁰ Applebaum, Herbert. 1999. *Construction Workers, U.S.A.* Westport: Greenwood Press.

¹¹ Feagin and Imani. 1994. “Racial Barriers to African American Entrepreneurship: An Exploratory Study.” *Social Problems*. 41(4): 562-584.

¹² Glover, Robert and Bilginsoy, Cihan. 2005. “Registered Apprenticeship Training in the U.S. Construction Industry.” *Education & Training*, Vol. 47, 4/5, p 337.

¹³ Günseli Berik, Cihan Bilginsoy. 2006. “Still a wedge in the door: women training for the construction trades in the USA”, *International Journal of Manpower*, Vol. 27 Iss: 4, pp.321 - 341

¹⁴ Bilginsoy, Cihan. 2005. “How Unions Affect Minority Representation in Building Trades Apprenticeship Programs.” *Journal of Labor Research*, 57(1).

Two studies also provide evidence for the positive effect of unions in the success of minority and women apprentices in Oregon:

- A 2008 study by Berik, Bilginsoy and Williams used microdata to track the professional activity of Oregon construction workers who began apprenticeship programs between 1991 and 2003. Workers were followed up to 2007. The study found that not only were apprentices more likely to benefit from joint union-employer programs overall, but that “white women and minority men benefited disproportionately more from training in union programs.”¹⁵
- A 2009 report by the University of Oregon found that women enrolled in construction apprenticeship programs in Oregon had a consistently higher graduation rate than women enrolled in non-union programs. The graduation rate for minorities in union and non-union programs was similar.¹⁶

Other data also indicate a more positive relationship between construction unions and minority workers than that which may have prevailed in the past. For example, 2007 Current Population Survey (CPS) data indicate that union membership rates for African Americans are similar to those of non-Hispanic whites.¹⁷ The CPS asked participants “Are you a member of a labor union or of an employee association similar to a union?” CPS data show union membership for African Americans in construction to be 11 percent and non-Hispanic whites to be 12 percent — not a statistically significant difference. On the other hand, based on these national data, only 7 percent of Hispanic Americans are union members.

¹⁵ Günseli Berik, Cihan Bilginsoy and Larry Williams. 2008. Gender and Racial Training Gaps in Oregon Apprenticeship Programs. University of Utah Department of Economics Working Paper 20008-15.

¹⁶ Byrd, Barbara. 2009. *Construction Apprenticeship in Oregon: An Analysis of Data on Union and Non-union Apprenticeship Programs*. University of Oregon Labor Education and Research Center. (Prepared for the Oregon State Building and Construction Trades Council.)

¹⁷ 2006 Current Population Survey (CPS), U.S. Census Bureau and Bureau of Labor Statistics.

Advancement in the Portland construction industry. To research opportunities for advancement in the construction industry, the study team examined the representation of minorities and women in different construction occupations, as defined by the U.S. Bureau of Labor Statistics.¹⁸

Race and ethnic composition of construction occupations. Figure E-3 shows the demographics of construction workers and those of particular construction occupations in 2000. The study team examined specific occupations to measure minority and female representation among workers in entry-level positions (e.g., construction laborers), specific skilled occupations (e.g., carpenters and electricians) and higher-ranking occupations (e.g., first-line supervisors). Similar statistics are not presented for later years as the 2006-2008 ACS data had considerably smaller sample sizes.

As a single group, minorities comprised about 14 percent of the Portland construction workforce in 2000. There were large differences in the demographic composition of workers in different construction occupations. For example, about 29 percent of construction laborers in the Portland MSA were minorities (a statistically significant difference compared to minority representation among all construction workers).

Compared to the Portland construction industry as a whole, a number of occupations had lower minority representation:

- Carpenters (11%);
- Electricians (12%);
- Pipelayers, plumbers, pipefitters and steamfitters (6%);
- Miscellaneous equipment operators (8%); and
- First-line supervisors (11%).

Minorities represented a larger proportion of workers in other construction occupations. For example, minorities comprised approximately 24 percent of painters; 33 percent of drywall installers, ceiling tile installers and tapers; and 37 percent of roofers.

¹⁸ Bureau of Labor Statistics, U.S. Department of Labor. 2001. "Standard Occupational Classification Major Groups." http://www.bls.gov/soc/soc_majo.htm (accessed May 20, 2010).

**Figure E-3.
Demographics of all construction workers and selected occupations in Portland, 2000**

	All constructions (n=3,380)	Construction laborers (n=338)	Carpenters (n=534)	Electricians (n=158)	Pipelayers, plumbers, pipefitters and steamfitters (n=156)	Painters (n=146)	Drywall installers, ceiling tile installers, and tapers (n=86)	Roofers (n=86)	Miscellaneous equipment operators (n=70)	First-line supervisors (n=300)
Race/ethnicity										
African American	1.6 %	2.9 %	0.7 %	2.8 %	0.0 %	2.3 %	0.0 %	0.0	1.4 %	2.9 %
Hispanic American	8.4	21.5 **	6.3	5.4	3.4	15.3	32.4 **	34.7 **	0.0	3.6 **
Other minority group	3.6	4.1	4.3	4.1	2.9	6.0	0.4	2.0	6.7	4.0
Total minority	13.7 %	28.5 %	11.3 %	12.4 %	6.3 %	23.6 %	32.8 %	36.8	8.1 %	10.5 %
Non-Hispanic white	86.3	71.5 **	88.7	87.6	93.7	76.4	67.2	63.2 **	91.9	89.5
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0	100.0 %	100.0 %
Gender										
Female	12.3 %	6.8 %	2.8 % **	1.3 % **	2.9 % **	12.6 %	0.0 % **	0.7	0.4 % **	3.5 % **
Male	87.7	93.2	97.2 **	98.7 **	97.1 **	87.4	100.0 **	99.3 **	99.6 **	96.5 **
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0	100.0 %	100.0 %

Note: ** Denotes that the difference in proportions between all workers in the construction industry and those in specific occupations is statistically significant at the 95% confidence level.

Source: BBC Research & Consulting from 2000 U.S. Census 5% sample Public Use Microdata samples. The raw data extracts were obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Most minorities working in the Portland construction industry in 2000 were Hispanic Americans, who also represented the largest share of minorities in each of the construction occupations examined, with the exception of miscellaneous equipment operators and first-line supervisors. Representation of Hispanic Americans was greater among construction laborers than among all construction workers. In the Portland MSA in 2000, Hispanics made up about 22 percent of construction laborers but only 8 percent of all construction workers and 4 percent of first-line supervisors.

Women in construction trades. Figure E-3 also compares the representation of women in the construction workforce with their representation in specific construction occupations. Overall, about 12 percent of workers in the Portland construction industry were women in 2000.

Considering their representation in the full construction workforce, women comprised a small percentage of workers in each construction occupation, except for painters. For example, women comprised only 7 percent of construction laborers and 4 percent of first-line supervisors in 2000. Women working in the industry were highly concentrated in administrative or support roles: about 50 percent of all women working in the Portland construction industry in 2000 were in office and administrative support occupations; women represented approximately 90 percent of workers in those occupations.¹⁹

Percentage of minorities and women in construction who are managers. To further assess advancement opportunities for minorities and women, the study team examined differences between demographic groups in the proportion of construction workers that were managers.

Figure E-4 shows the percentage of construction workers that reported being a construction manager in 2000 and 2006-2008.

¹⁹ Workers in “office and administrative support occupations” include those with an IPUMS occupation code (OCC) between 500 and 593. More information regarding occupations can be found on IPUMS website: <http://usa.ipums.org/usa/>

Figure E-4.
Percentage of construction workers who worked as a manager, 2000 and 2006-2008

Note:
 ** Denotes that the difference in proportions between the minority group and non-Hispanic whites (or between females and males) for the given Census/ACS year is statistically significant at the 95% confidence level.

Source:
 BBC Research & Consulting from the 2000 U.S. Census 5% sample and 2006-2008 ACS Public Use Microdata samples. The raw data extracts were obtained through the IPUMS program of the MN Population Center:
<http://usa.ipums.org/usa/>.

Portland MSA	2000	2006-08	Sample size		
			2000	2006-08	
Race/ethnicity					
African American	1.8 % **	4.1 % **	50	36	
Asian-Pacific American	8.4	12.3	60	44	
Hispanic American	4.8	2.9 **	278	230	
Native American	2.1	8.8	59	43	
Non-Hispanic white	9.4	11.9	2,916	1,837	
Gender					
Female	4.3 % **	6.3 % **	413	278	
Male	9.3	10.9	2,967	1,912	
Oregon		2000	2006-08	Sample size	
		2000	2006-08	2000	2006-08
Race/ethnicity					
African American	2.0 %	3.4 % **	49	34	
Asian-Pacific American	9.1	17.8	80	57	
Hispanic American	5.1	2.4 **	374	410	
Native American	5.1	10.7	147	93	
Non-Hispanic white	8.7	10.4	5,519	3,482	
Gender					
Female	3.9 % **	5.8 % **	722	472	
Male	8.9	9.8	5,485	3,608	
United States		2000	2006-08	Sample size	
		2000	2006-08	2000	2006-08
Race/ethnicity					
African American	3.1 % **	4.7 % **	26,752	15,372	
Asian-Pacific American	7.4	9.4	5,746	4,829	
Hispanic American	2.5 **	3.0 **	66,531	58,547	
Native American	4.6 **	6.3 **	7,640	4,463	
Non-Hispanic white	7.5	9.9	371,152	241,237	
Gender					
Female	4.1 % **	5.9 % **	46,791	33,461	
Male	6.7	8.1	433,678	292,387	

In 2000, about 9 percent of non-Hispanic whites in the Portland construction industry were managers. A smaller proportion of minorities than non-Hispanic whites were managers:

- About 2 percent of African Americans and Native Americans working in the Portland construction industry were managers;
- Five percent of Hispanic Americans were managers; and
- About 8 percent of Asian-Pacific Americans were managers.

In 2006-2008, the percentage of African Americans, Hispanic Americans and Native Americans who were construction managers in Portland remained below that of non-Hispanic whites.

- About 3 percent of Hispanic Americans working in the construction industry were managers, compared to 12 percent of non-Hispanic whites. (a statistically significant difference).
- Nine percent of Native Americans were construction managers.
- Four percent of African Americans were managers (also a statistically significant difference compared to the rate for non-Hispanic whites).

For African Americans, Asian-Pacific Americans and Native Americans, the proportion of construction workers that were managers increased between 2000 and 2006-2008. Fewer Hispanic Americans working in the construction industry were managers in the later years.

Construction managers working in the Portland MSA had, on average, more education than other workers in the construction industry. About one-quarter of managers but only one-eighth of all construction workers had at least a bachelor's degree. Disparities in college education for African Americans and Hispanic Americans compared to non-Hispanic whites may explain some of the differences in advancement to manager level for these groups.

Female construction workers were also less likely than their male counterparts to be managers in 2000 and 2006-2008 (a statistically significant difference in both years). About 6 percent of women in the Portland construction industry were managers compared to 11 percent of men in 2006-2008.

Professional Services Industry

BBC next examined how education and employment may influence ownership opportunities for different race/ethnicity and gender groups in the professional services industry.

Education. In contrast to the construction industry, lack of educational attainment may preclude workers' entry into the professional services industry, as many occupations require at least a four-year college degree. Based on Census data for 2000, 65 percent of individuals working in the professional services industry in the Portland MSA had at least a four-year college degree. Barriers to such education, therefore, can restrict employment opportunities, advancement and ultimately business ownership. Disparities in business ownership rates in professional services may have resulted from lack of sufficient education across race, ethnicity and gender groups.²⁰

Based on 2000 Census data and 2006-2008 ACS data, Figure E-5 presents the percentage of workers, age 25 and older, with at least a four-year degree in the Portland MSA, Oregon and the United States. The level of education necessary to work in the professional services industry may partially restrict employment opportunities for African Americans, Hispanic Americans and Native Americans. For each of these groups, the percentage of workers age 25 or older with a bachelor's degree or higher was substantially lower than that of non-Hispanic whites in both years examined.

²⁰ Feagin, Joe R. and Nikitah Imani. 1994. "Racial Barriers to African American Entrepreneurship: An Exploratory Study." *Social Problems*. 42 (4): 562-584.

In the Portland MSA, about 35 percent of non-Hispanic white workers age 25 and older had at least a four-year degree in 2000. For other racial and ethnic groups, 2000 Census data for Portland indicate the following:

- About 23 percent of African Americans had at least a four-year college degree;
- Only 14 percent of Hispanic Americans were college graduates; and
- Eighteen percent of Native Americans had reached this level of educational attainment.

Some minority groups in the Portland MSA were more likely than non-Hispanic whites to be college graduates in 2000. Approximately 38 percent of Asian-Pacific Americans and 75 percent of Subcontinent Asian Americans had at least a bachelor's degree.

In Portland, most race/ethnicity groups showed an increase between 2000 and 2006-2008 in the proportion of workers with a bachelor's degree. However, the percentage of African American and Hispanic American workers with this level of education did not change substantially during this time. As in 2000, a smaller proportion of Hispanic Americans, Native Americans and African Americans than non-Hispanic whites were four-year college graduates in 2006-2008. In contrast, a larger percentage of Asian-Pacific Americans and Subcontinent Asian Americans had at least a bachelor's degree in these years.

In the Portland MSA in 2000, about 33 percent of women and 34 percent of men were four-year college graduates. In 2006-2008, a larger percentage of women (37%) had a bachelor's degree than men (36%).

Figure E-5.
Percentage of labor force 25
and older with at least a four-
year degree,
2000 and 2006-2008

Note:

** Denotes that the difference in proportions between the minority and non-Hispanic white groups (or female and male gender groups) for the given Census/ACS year is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 2000 U.S. Census 5% sample and 2006-2008 ACS Public Use Microdata samples. The raw data extracts were obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Portland MSA	2000	2006-08	Sample size	
			2000	2006-08
Race/ethnicity				
African American	22.5 % **	22.1 % **	982	580
Asian-Pacific American	37.6	41.9	1,795	1,589
Subcontinent Asian American	75.3 **	83.8 **	202	184
Hispanic American	14.3 **	13.4 **	2,275	1,804
Native American	17.9 **	24.1 **	621	412
Other minority group	29.4	32.6	186	35
Non-Hispanic white	34.6	38.7	33,732	23,572
Gender				
Female	32.7 %	36.7 %	18,057	13,203
Male	33.5	36.1	21,736	14,973
Oregon	2000	2006-08	Sample size	
			2000	2006-08
Race/ethnicity				
African American	22.5 % **	23.9 % **	1,034	617
Asian-Pacific American	36.5 **	43.0 **	2,103	1,802
Subcontinent Asian American	72.9 **	84.1 **	236	196
Hispanic American	11.1 **	11.4 **	4,415	3,366
Native American	15.1 **	18.8 **	1,661	955
Other minority group	26.1	27.8	301	66
Non-Hispanic white	30.3	33.5	62,990	41,845
Gender				
Female	28.8 %	32.4 % **	33,191	23,001
Male	29.2	31.1	39,549	25,846
United States	2000	2006-08	Sample size	
			2000	2006-08
Race/ethnicity				
African American	19.1 % **	21.9 % **	552,397	345,957
Asian-Pacific American	44.9 **	48.5 **	186,333	151,247
Subcontinent Asian American	68.4 **	73.2 **	37,269	37,158
Hispanic American	13.4 **	14.7 **	533,419	414,103
Native American	17.1 **	19.2 **	67,363	41,253
Other minority group	30.0 **	30.9 **	22,382	7,655
Non-Hispanic white	32.5	35.7	4,369,746	2,881,324
Gender				
Female	29.3 % **	32.8 % **	2,680,687	1,837,374
Male	30.2	31.4	3,088,222	2,041,323

Additional indices of educational attainment. Because attending college generally precedes employment in the professional services industry, the study team examined additional information on the educational achievement of minority high school students. Universities evaluate prospective students based on a number of factors, including high school achievement and standardized test scores. One such test, the American College Testing (ACT) assessment, measures educational attainment in four subject areas: English, Mathematics, Reading, and Science.

The same organization that administers the ACT also measures “college readiness” using a benchmark score — the minimum score needed in each subject area to indicate a 50 percent chance of obtaining a “B” or higher or a 75 percent chance of obtaining a “C” or higher in corresponding college-level courses. Each year, ACT publishes its findings in state-specific reports, which include the percent of students that met the college readiness benchmark score by race and ethnicity. The study team presents additional measures of high school educational attainment for Oregon rather than Portland, as ACT does not publish reports for individual MSAs.

Using data from the 2006 report, BBC created an attainment index for minority students by measuring college readiness rates for each group against those of non-Hispanic white students. For example, about 7 percent of African American students in Oregon met the ACT benchmark score for Science, compared to about 39 percent of non-Hispanic white students. BBC created an “index” for African American college readiness by dividing 7 by 39 percent, and then multiplying by 100, yielding an index value of 18. This score indicates that African Americans met the college readiness benchmark score for science at approximately 18 percent of the rate observed for non-Hispanic white students. Hispanic American students in Oregon had a college readiness index of 28 when measured against non-Hispanic white students in this subject area.

As shown in Figure E-6, 2006 high school attainment indices in different subject areas ranged from 18 to 44 for African American students in Oregon. Indices for Hispanic American students ranged from 24 to 52.

Figure E-6.
Indices of high school achievement for African Americans, Asian Americans, Hispanic Americans and non-Hispanic whites in Oregon, 2005-2006 (white=100)

Oregon	African American	Asian American	Hispanic American	Native American	Non-Hispanic white
ACT college readiness benchmark index for:					
English	44	90	52	53	100
Math	38	105	38	36	100
Reading	38	84	48	52	100
Science	18	79	28	31	100
All four	15	79	24	33	100
ACT composite score	75	95	79	79	100
Average freshman graduation rate	82	122	92	78	100

Note: Data for college readiness are from the graduating class of 2006, and data for graduation rates and dropout rates are from 2005-2006. The average freshman graduation rate (AFGR) is an estimate of the percentage of the entering high school freshman class graduating in four years. For a more detailed explanation, visit the United States Department of Education website.

Source: BBC Research & Consulting from ACT. *ACT High School Profile Report. Oregon, 2006* & U.S. Department of Education, Common Core of Data. *Public School Graduates and Dropouts from the Common Core of Data; School Year 2005-2006.*

In addition to subject indices, Figure E-6 shows indices based on ACT composite scores, which are calculated from raw scores received on the test to ensure comparability in scores across years. Using the same indexing method, Figure E-6 also presents average freshman graduation rates for different racial and ethnic groups among high school students in Oregon.

Notable indices for African Americans students in Oregon included:

- Meeting the ACT college readiness benchmark score for Math at 38 percent of the rate for non-Hispanic white students;
- Meeting the ACT college readiness benchmark score in all four subject areas at 15 percent of the rate for non-Hispanic white students; and
- Having an average freshman graduation rate that was 82 percent of that found for non-Hispanic white students.

In terms of the college readiness benchmark score, the smallest disparity between African Americans and non-Hispanic whites was in English (index score of 44).

There were also disparities in college readiness and high school achievement for Hispanic American students in Oregon when measuring their scores against those of non-Hispanic white students. As shown in Figure E-6, Hispanic American students met the college readiness benchmark scores in Math and Science at about 38 percent and 28 percent, respectively, of the non-Hispanic white rate. For those in the graduating class of 2006, Hispanic Americans had an average freshman graduation rate that was 92 percent of that found for non-Hispanic whites.

Native American students in Oregon also met the college readiness benchmark scores at lower rates than non-Hispanic whites. On the English and Reading sections of the ACT, one-half as many Native American students met the college readiness benchmark score as non-Hispanic white students. On the Math and Science sections, Native Americans met the ACT college readiness benchmark scores at 36 percent and 31 percent, respectively, of the non-Hispanic white rate. Native Americans also had the lowest freshman graduation rate among minority groups in Oregon (index score of 78).

Compared to other minority groups, Asian Americans generally performed better on each section of the ACT. High school attainment indices in different subject areas ranged from 79 to 105 for Asian American students in Oregon. A disparity index of 105 indicates that Asian Americans were more likely than non-Hispanic whites to meet the college readiness benchmark score on the Math section of the exam. Asian Americans also had an average freshman graduation rate that was 122 percent of that found for non-Hispanic whites.

In addition to achievement indices being lower, high school dropout rates were generally higher for most minority groups than non-Hispanic whites in Oregon. According to the Oregon Department of Education, non-Hispanic whites had a high school dropout rate of about 11 percent in 2009. Among those who attended high school, about 21 percent of African Americans and 20 percent of Hispanic Americans dropped out in 2009. For Native Americans, the high school dropout rate was approximately 15 percent.

Disparities in high school educational attainment are important for explaining the relatively low number of African Americans, Native Americans and Hispanic Americans with college degrees in Oregon.

In addition to attending college in fewer numbers, Hispanic Americans and African Americans who attended college in the state were less likely to graduate compared to non-Hispanic whites. Whereas the graduation rate for non-Hispanic whites was about 58 percent in 2009, only about 51 percent of

Hispanic Americans and 41 percent of African Americans graduated from a four-year college after attending.²¹ National studies consider the extent to which large disparities in the quality of education may have caused these differences in educational outcomes for minority high school students, but these studies are not reviewed here.

For a more in-depth picture of educational opportunities and outcomes in the state, the study team examined enrollment and graduation statistics by demographic group at three institutions in the Oregon University System. Figure E-7 shows the racial and ethnic composition of enrolled students and graduates at the University of Oregon (UO), Oregon State University (OSU) and Portland State University (PSU) in 2000, 2004 and 2008.

Minorities as a whole represented a smaller proportion of graduates than students in each year — a pattern also evident when examining individual racial and ethnicity groups. For example, about 16 percent of enrollees but only 12 percent of graduates at OSU in 2008 were minorities. In 2004, minorities represented about 14 percent of enrollees and 12 percent of graduates.

Patterns were similar at other universities in the state. In 2008, 11 percent of OU graduates and 13 percent of enrolled students were minorities. In the same years, minorities represented 18 percent of students and 15 percent of graduates at PSU.

These results are consistent with the lower graduation rates for different race/ethnicity groups in the state as whole, compared to non-Hispanic whites.

Figure E-7.
Demographics of enrollees and graduates at the UO, OSU and PSU, 2000, 2004 and 2008

University of Oregon	Enrollment			Degrees awarded		
	2000	2004	2008	2000	2004	2008
Race/ethnicity						
African American	1.5 %	1.6 %	1.7 %	1.2 %	1.0 %	1.3 %
Asian American	6.0	5.8	6.1	5.6	5.0	5.1
Hispanic American	2.8	3.0	3.7	2.5	2.5	3.3
Native American	1.1	1.1	1.1	1.2	1.0	1.0
Total minority	11.4 %	11.5 %	12.6 %	10.5 %	9.5 %	10.7 %
Oregon State University	Enrollment			Degrees awarded		
	2000	2004	2008	2000	2004	2008
Race/ethnicity						
African American	1.2 %	1.4 %	1.6 %	1.0 %	0.9 %	0.9 %
Asian American	7.5	7.7	8.4	5.9	6.7	6.5
Hispanic American	3.0	3.3	4.5	2.4	3.4	3.7
Native American	1.1	1.2	1.3	1.2	0.9	1.1
Total minority	12.8 %	13.6 %	15.8 %	10.5 %	11.8 %	12.1 %
Portland State University	Enrollment			Degrees awarded		
	2000	2004	2008	2000	2004	2008
Race/ethnicity						
African American	2.7 %	2.9 %	2.8 %	2.6 %	2.5 %	2.5 %
Asian American	8.7	9.1	8.5	6.1	7.7	7.1
Hispanic American	3.6	4.1	5.0	3.4	3.4	4.0
Native American	1.1	1.2	1.3	0.9	0.8	1.3
Total minority	16.0 %	17.3 %	17.6 %	13.0 %	14.4 %	14.8 %

Note: Enrollment data for Oregon State University are reported for separate campuses in 2004 and 2008. Thus, the statistics presented above for OSU in 2004 and 2006 (but not 2000) are for enrollment at OSU-Corvallis. Data from the OUS Factbooks represent the entirety of enrollments and graduates at each educational institution; these data are not a sample.

Source: BBC Research & Consulting from Oregon University System Factbooks: 2000, 2004 and 2008. Available online at <http://www.ous.edu/>.

²¹ Complete College America. "The Alliance of States: Oregon." 2009. www.completecollege.org (accessed June 11, 2010).

Employment. After consideration of educational opportunities and attainment for minorities and women, the study team examined the race/ethnicity and gender composition of the professional services industry in the Portland MSA, Oregon and the United States.

Figure E-8 compares the demographic composition of professional services to that of workers age 25 and older with a college degree. Results are presented for 1980, 2000 and 2006-2008.

In 2006-2008, about 9 percent of workers in the Portland professional services industry were minorities. In contrast to the construction industry, in which minority representation increased over time, minorities made up a smaller share of workers in the professional services industry in 2006-2008 compared to 2000.

Of those working in the Portland professional services industry in 2006-2008:

- 1 percent were African Americans;
- 5 percent were Asian-Pacific Americans; and
- 2 percent were Hispanic Americans;

Native Americans comprised less than 1 percent of professional services workers in 2006-2008. An even smaller percentage of workers were Subcontinent Asian American and other race minorities.

In 2006-2008, minorities as a single group comprised a smaller share of workers in professional services than all workers age 25 or older with a college degree. In particular, less than 2 percent of workers in professional services but about 3 percent of college graduates (at least 25 years old) were Hispanic Americans (a statistically significant difference).

Compared to their representation among all workers age 25 or older with a college degree, relatively few women work in the professional services industry. In 2006-2008, women represented 27 percent of professional services workers in Portland but about 46 percent of college graduates.

Due to the limited number of professional services workers in the sample, the study team did not examine specific occupations in the industry.

Figure E-8.
Demographic distribution of architecture, engineering and related services workers and workers age 25 and older with a four-year college degree in all industries, 1980, 2000 and 2006-2008

Portland MSA	Professional Services			Workers 25+ with college degree		
	1980 (n=239)	2000 (n=533)	2006-08 (n=464)	1980 (n=6,538)	2000 (n=12,973)	2006-08 (n=11,204)
Race/ethnicity						
African American	0.4 %	1.3 %	1.4 %	1.2 %	1.7 %	1.5 %
Asian-Pacific American	0.8 **	4.7	4.9	2.5	5.2	6.7
Subcontinent Asian American	0.8	1.2	0.0	0.1	1.2	1.6
Hispanic American	2.1	3.2	1.6 **	1.0	2.5	3.2
Native American	0.0 **	0.7	0.6	0.3	0.8	0.8
Other minority group	<u>0.4</u>	<u>0.5</u>	<u>0.0</u>	<u>0.1</u>	<u>0.4</u>	<u>0.1</u>
Total minority	4.6 %	11.5 %	8.5 %	5.2 %	11.9 %	13.9 %
Non-Hispanic white	<u>95.4</u>	<u>88.5</u>	<u>91.5</u> **	<u>94.8</u>	<u>88.1</u>	<u>86.1</u>
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	22.2 % **	28.0 % **	27.2 % **	33.4 %	44.4 %	45.6 %
Male	<u>77.8</u> **	<u>72.0</u> **	<u>72.8</u> **	<u>66.6</u>	<u>55.6</u>	<u>54.4</u>
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Oregon	Professional Services			Workers 25+ with college degree		
	1980 (n=414)	2000 (n=753)	2006-08 (n=618)	1980 (n=11,049)	2000 (n=20,149)	2006-08 (n=16,392)
Race/ethnicity						
African American	0.5 %	0.9 %	1.3 %	0.8 %	1.2 %	1.2 %
Asian-Pacific American	1.4	3.9	3.6 **	2.1	4.0	5.4
Subcontinent Asian American	0.5	1.0	0.7	0.1	0.9	1.2
Hispanic American	1.7	2.7	2.5	1.1	2.3	3.3
Native American	0.5	1.1	1.0	0.3	1.0	1.0
Other minority group	<u>0.0</u> **	<u>0.5</u>	<u>0.0</u>	<u>0.1</u>	<u>0.4</u>	<u>0.1</u>
Total minority	4.6 %	10.1 %	9.1 %	4.5 %	9.9 %	12.3 %
Non-Hispanic white	<u>95.4</u>	<u>89.9</u>	<u>90.9</u> **	<u>95.5</u>	<u>90.1</u>	<u>87.7</u>
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	23.4 % **	27.9 % **	28.8 % **	33.2 %	44.9 %	46.7 %
Male	<u>76.6</u> **	<u>72.1</u> **	<u>71.2</u> **	<u>66.8</u>	<u>55.1</u>	<u>53.3</u>
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
United States	Professional Services			Workers 25+ with college degree		
	1980 (n=28,869)	2000 (n=58,221)	2006-08 (n=49,480)	1980 (n=858,511)	2000 (n=1,631,919)	2006-08 (n=1,306,052)
Race/ethnicity						
African American	3.1 % **	4.2 % **	5.0 % **	5.3 %	6.8 %	7.7 %
Asian-Pacific American	2.8	4.6 **	5.1 **	2.7	5.2	6.2
Subcontinent Asian American	1.1 **	1.3 **	1.6 **	0.6	1.7	2.4
Hispanic American	3.5 **	5.5 **	6.8 **	2.5	4.4	6.1
Native American	0.3 **	0.7	0.7	0.2	0.6	0.6
Other minority group	<u>0.1</u>	<u>0.4</u>	<u>0.2</u>	<u>0.1</u>	<u>0.4</u>	<u>0.2</u>
Total minority	11.1 %	16.7 %	19.3 %	11.4 %	19.1 %	23.2 %
Non-Hispanic white	<u>88.9</u>	<u>83.3</u> **	<u>80.7</u> **	<u>88.6</u>	<u>80.9</u>	<u>76.8</u>
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	21.1 % **	26.0 % **	26.1 % **	34.7 %	45.6 %	47.3 %
Male	<u>78.9</u> **	<u>74.0</u> **	<u>73.9</u> **	<u>65.3</u>	<u>54.4</u>	<u>52.7</u>
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %

Note: ** Denotes that the difference in proportions between professional service workers and workers age 25 or older with a four-year degree in all industry groups for the given Census/ACS year is statistically significant at the 95% confidence level.

Source: BBC Research & Consulting from 1980 and 2000 U.S. Census 5% sample and 2006-2008 ACS Public Use Microdata samples. The raw data extracts were obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>

Summary of Entry and Advancement in the Construction and Professional Services Industries

BBC's analysis suggests that barriers to entry into the construction and professional services industries in Portland may help explain the relatively low number of businesses owned by certain minority groups and women.

- In 2000, relatively fewer African Americans worked in the Portland construction industry compared to all industries.
- In 2000 and 2006-2008, women were represented in the Portland construction industry in particularly low numbers considering their representation among all workers.
- Lack of education appears to be a barrier to entry into the Portland architecture, engineering and related services industry for African Americans, Hispanic Americans and Native Americans. In 2000 and 2006-2008, workers in each of these groups were less likely to have a bachelor's degree compared to non-Hispanic whites. For each of these minority groups, disparities in educational attainment appear at the high school level, which may affect college opportunities.
- In 2000 and 2006-2008, there were fewer women than men in the architecture, engineering and related services industry in the Portland MSA, despite the fact that women had comparable levels of educational attainment.

Barriers to advancement in the construction industry may also be an important reason for the relatively low number of minority and female business owners. In 2000:

- Minorities comprised a relatively small proportion of certain occupations in the construction industry. Hispanic Americans were a significantly smaller proportion of first-line supervisors than all workers.
- Compared to non-Hispanic whites in the construction industry, African Americans, Hispanic Americans and Native Americans were less likely to be managers (a statistically significant difference for African Americans).
- Women were also less likely than men to be managers in the construction industry.

APPENDIX F.

Business Ownership in the Portland Construction and Professional Services Industries

About 11 percent of all workers in the Portland Metropolitan Statistical Area (MSA) were self-employed in 2006-2008. Workers in the local construction and professional services industries each had higher rates of business ownership at about 23 percent and 13 percent, respectively. Focusing on these industries, BBC Research & Consulting (BBC) examined business ownership for different race, ethnicity and gender groups in the Portland MSA, Oregon and the United States.¹ This appendix includes summary statistics and regression models for evaluating the determinants of business ownership in Portland. “Self-employment” and “business ownership” are used as interchangeable terms in the following discussion.

Business Ownership Rates

Many studies have explored differences at the national level between minority and non-minority rates of business ownership. Although overall self-employment rates have increased for minorities and women over the years, a number of studies indicate that gender, ethnicity and race continue to affect opportunities for entrepreneurship.² The extent to which such individual characteristics may limit ownership opportunities differs across industries and from state to state.

BBC used Public Use Microdata Samples (PUMS) from the 1980 and 2000 U.S. Census of Population and the 2006-2008 American Community Surveys (ACS) to study business ownership rates in the construction and professional services industries.

Construction industry. Compared to other industries, construction has a relatively large number of business owners. In 2006-2008, about 11 percent of workers across all industries were self-employed in the Portland MSA; about 23 percent of those in the construction industry were business owners. Figure F-1 shows the percentage of workers in the construction industry by race/ethnicity and gender that were self-employed in 1980, 2000 and 2006-2008. It also reports corresponding sample sizes for each percentage shown in the figure.

¹ In the marketplace appendices, the Portland MSA comprises the following 7 counties (unless otherwise noted): Clackamas, Clark, Multnomah, Washington, Skamania, Yamhill and Polk. Collectively, these counties are referred to as the Portland MSA, or simply Portland. Further detail is provided in Appendix I.

² See, for example, Waldinger, Roger and Howard E. Aldrich. 1990. *Ethnicity and Entrepreneurship*. Annual Review of Sociology. 111-135.; Fairlie, Robert W. and Bruce D. Meyer. 1996. *Ethnic and Racial Self-Employment Differences and Possible Explanations*. The Journal of Human Resources, Volume 31, Issue 4, 757-793.; Fairlie, Robert W. and Alicia M. Robb. 2006. *Why are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families Inheritances and Business Human Capital*. Forthcoming Journal of Labor Economics.; and Fairlie, Robert W. and Alicia M. Robb. 2006. *Race, Families and Business Success: A Comparison of African-American-, Asian-, and White-Owned Businesses*. Russell Sage Foundation.

Figure F-1.
Percentage of workers in the construction industry who were self-employed,
1980, 2000 and 2006-2008

Portland MSA	1980	2000	2006-08	Sample size		
				1980	2000	2006-08
Race/ethnicity						
African American	11.5 %	12.0 %	10.3 % **	26	50	36
Asian-Pacific American	19.0	16.1	44.6 **	21	60	44
Hispanic American	3.6 **	10.8 **	9.2 **	28	278	230
Native American	9.5	24.1	14.0	21	59	43
Non-Hispanic white	22.0	25.2	25.2	2,100	2,916	1,837
Gender						
Female	14.2 % **	18.9 %	18.4 %	204	413	278
Male	22.2	24.2	23.3	1,993	2,967	1,912
All individuals	21.4 %	23.5 %	22.8 %	2,197	3,380	2,190
Oregon						
				Sample size		
Oregon	1980	2000	2006-08	1980	2000	2006-08
Race/ethnicity						
African American	9.7 % **	14.2 %	10.9 % **	31	49	34
Asian-Pacific American	21.4	18.1	42.2	28	80	57
Hispanic American	10.8 **	11.7 **	10.0 **	74	374	410
Native American	15.4	22.6	16.3 **	39	147	93
Non-Hispanic white	24.7	28.6	28.6	4,029	5,519	3,482
Gender						
Female	17.6 % **	20.3 % **	21.4 % **	357	722	472
Male	24.9	27.9	26.4	3,846	5,485	3,608
All individuals	24.3 %	27.0 %	25.9 %	4,203	6,207	4,080
United States						
				Sample size		
United States	1980	2000	2006-08	1980	2000	2006-08
Race/ethnicity						
African American	9.0 % **	15.2 % **	17.9 % **	24,357	26,752	15,372
Asian-Pacific American	10.9 **	21.0 **	23.9 **	2,360	5,746	4,829
Hispanic American	10.6 **	12.2 **	14.4 **	19,590	66,531	58,547
Native American	10.6 **	19.3 **	21.3 **	2,571	7,640	4,463
Non-Hispanic white	19.4	25.4	27.3	281,094	371,152	241,237
Gender						
Female	9.8 % **	16.8 % **	18.3 % **	26,096	46,791	33,461
Male	18.7	23.3	24.1	304,368	433,678	292,387
All individuals	18.0 %	22.6 %	23.5 %	330,464	480,469	325,848

Note: ** Denotes that the difference in proportions between the minority and non-Hispanic white groups (or female and male groups) for the given Census/ACS year is statistically significant at the 95% confidence level.

Source: BBC Research & Consulting from 1980 and 2000 U.S. Census 5% sample and 2006-2008 ACS Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Business ownership rates in 2000. In 2000, approximately 25 percent of non-Hispanic whites working in the Portland construction industry were self-employed (in incorporated or unincorporated businesses). A smaller proportion of African Americans, Asian-Pacific Americans and Hispanic Americans owned businesses in the Portland construction industry.

- About 12 percent of African Americans were self-employed, less than one-half the rate for non-Hispanic whites.
- Asian-Pacific Americans had a business ownership rate of about 16 percent.
- Roughly 11 percent of Hispanic Americans working in the construction industry in Portland were self-employed (a statistically significant difference compared to the business ownership rate for non-Hispanic whites).

In 2000, Native Americans owned construction businesses at a similar rate (24%) as non-Hispanic whites. There were too few Subcontinent Asian Americans or other race minorities in the sample to analyze business ownership rates for these groups in the Portland MSA.

Compared to about 24 percent of men, about 19 percent of women working in the construction industry in the Portland MSA were self-employed. This difference, although not statistically significant, is consistent with those seen in Oregon and the United States.

Changes in business ownership rates since 2000. As in 2000, about 25 percent of non-Hispanic whites working in the Portland construction industry were self-employed in 2006-2008. With the exception of Asian-Pacific Americans, each minority group had a lower rate of business ownership in 2006-2008 than 2000.

- In 2006-2008, substantially fewer African Americans (10%) than non-Hispanic whites were business owners in the Portland construction industry (a statistically significant difference).
- The business ownership rate for Hispanic Americans was about 9 percent (also a statistically significant difference compared to the rate for non-Hispanic whites).
- About 14 percent of Native American construction workers owned businesses in the Portland MSA.

At about 45 percent, the self-employment rate for Asian-Pacific Americans in 2006-2008 was substantially greater than that of other racial and ethnic groups, non-Hispanic whites included.

Differences in business ownership rates between women and men working in the Portland construction industry were similar in 2006-2008 and 2000.

Note that for some racial/ethnic groups in the Portland MSA, there were relatively few observations in the 2000 and 2006-2008 samples. Caution should be exercised when analyzing business ownership rates for groups with small sample sizes.

Professional services industry. BBC also examined business ownership rates in the professional services industry. In this and other marketplace appendices, these professional services refer to architectural, engineering and related services.

At approximately 13 percent in 2006-2008, the overall business ownership rate in the professional services industry was slightly greater than that of all industries (11%). Figure F-2 reports self-employment rates for those working in the professional services industry in the Portland MSA, Oregon and the nation. Due to small sample sizes for individual racial and ethnic groups, BBC combined all minority groups into a single category when analyzing business ownership rates in the professional services industry. For the same reason, BBC also did not report the 1980 business ownership rate for minorities working in the Portland and Oregon professional services industries.

Business ownership rates in 2000. In 2000, about 18 percent of non-Hispanic whites working in the Portland professional services industry owned businesses. About 9 percent of minorities working in this industry were self-employed in 2000. The difference between minority and non-minority business ownership rates were similar to patterns found for the state and nation as a whole.

During the same year, approximately 12 percent of women were self-employed compared to 19 percent of men in the Portland professional services industry. In both Oregon and the United States in 2000, women were also less likely than men to own businesses in this industry.

Changes in business ownership rates since 2000. As shown in Figure F-2, the business ownership rates for both non-Hispanic whites and minorities in the Portland professional services industry were lower in 2006-2008 than 2000. However, overall differences in business ownership rates did not change over this time period. Compared to about 14 percent of non-Hispanic whites, only 4 percent of minorities owned businesses in the Portland professional services industry in 2006-2008 (a statistically significant difference).

In the state and U.S. as a whole, trends and patterns of business ownership in the professional services industry were similar to those in the Portland MSA.

Figure F-2.
Percentage of workers in the professional services
industry who were self-employed, 2000 and 2006-2008

Portland MSA	2000	2006-08	Sample size	
			2000	2006-08
Race/ethnicity				
Minority	9.2 %	4.3 % **	61	39
Non-Hispanic white	17.6	13.6	472	425
Gender				
Female	11.6 %	10.9 %	147	126
Male	18.7	13.4	386	338
All individuals	16.7 %	12.7 %	533	464
Oregon				
Race/ethnicity				
Minority	10.7 %	8.4 % **	77	50
Non-Hispanic white	19.4	17.8	676	568
Gender				
Female	10.2 % **	14.4 %	208	175
Male	21.8	18.0	545	443
All individuals	18.5 %	17.0 %	753	618
United States				
Race/ethnicity				
Minority	7.8 % **	7.4 % **	9,401	8,559
Non-Hispanic white	14.2	13.4	48,823	40,921
Gender				
Female	7.5 % **	7.7 % **	15,191	13,009
Male	15.1	13.9	43,033	36,471
All individuals	13.2 %	12.3 %	58,221	49,480

Note: "Minority" includes African Americans, Hispanic Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Native Americans and other minority groups. Sample sizes for these race/ethnicity groups were too small to analyze individually. The data presented in this table include all workers in the professional services industry.

** Denotes that the difference in proportions between the minority and non-Hispanic white group (or female and male groups) for the given Census/ACS year is statistically significant at the 95% confidence level.

"NA" denotes cases where percentages are not shown due to small sample size (i.e., less than 25 observations).

Source: BBC Research & Consulting from 1980 and 2000 U.S. Census 5% sample and 2006-2008 ACS Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Potential causes of differences in business ownership rates. Researchers have examined whether there are disparities in business ownership rates after consideration of other personal characteristics such as education and age. A number of studies have found that disparities in business ownership still exist when accounting for such neutral factors:

- Some studies have found that access to financial capital is a strong determinant of business ownership. Researchers have consistently found a positive relationship between start-up capital and business formation, expansion and survival.³ One study found that housing appreciation measured at the MSA level is a positive determinant of becoming self-employed.⁴ Unexplained differences still exist, however, when controlling for these factors.⁵
- Education has a positive effect on the probability of business ownership in most industries. However, findings from multiple studies indicate that minorities are still less likely to own a business than non-minority counterparts with the same levels of education.⁶
- Intergenerational links affect one's likelihood of self-employment. One study found that experience working for a self-employed family member increases the likelihood of business ownership for minority groups.⁷
- Time since immigration and assimilation into American society are important determinants of self-employment, but unexplained differences in minority-business ownership still exist when accounting for these factors.⁸

³ See Lofstrom, Magnus and Chunbei Wang. 2006. *Hispanic Self-Employment: A Dynamic Analysis of Business Ownership*. Working paper, Forschungsinstitut zur Zukunft der Arbeit (Institute for the Study of Labor); and Fairlie, Robert W. and Alicia M. Robb. 2006. *Race, Families and Business Success: A Comparison of African-American-, Asian-, and White-Owned Businesses*. Russell Sage Foundation.

⁴ Fairlie, Robert W. and Harry A. Krashinsky. 2006. Liquidity Constraints, Household Wealth and Entrepreneurship Revisited.

⁵ Lofstrom, Magnus and Chunbei Wang. 2006. *Hispanic Self-Employment: A Dynamic Analysis of Business Ownership*. Working paper, Forschungsinstitut zur Zukunft der Arbeit (Institute for the Study of Labor).

⁶ See Fairlie, Robert W. and Bruce D. Meyer. 1996. *Ethnic and Racial Self-Employment Differences and Possible Explanations*. The Journal of Human Resources, Volume 31, Issue 4, 757-793; and Butler, John Sibley and Cedric Herring. 1991. *Ethnicity and Entrepreneurship in America: Toward an Explanation of Racial and Ethnic Group Variations in Self-Employment*. Sociological Perspectives. 79-94.

⁷ See Fairlie, Robert W. and Alicia M. Robb. 2006. *Race, Families and Business Success: A Comparison of African-American-, Asian-, and White-Owned Businesses*. Russell Sage Foundation; and Fairlie, Robert W. and Alicia M. Robb. 2006. Why are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital. Forthcoming Journal of Labor Economics.

⁸ See Fairlie, Robert W. and Bruce D. Meyer. 1996. *Ethnic and Racial Self-Employment Differences and Possible Explanations*. The Journal of Human Resources, Volume 31, Issue 4, 757-793; and Butler, John Sibley and Cedric Herring. 1991. *Ethnicity and Entrepreneurship in America: Toward an Explanation of Racial and Ethnic Group Variations in Self-Employment*. Sociological Perspectives. 79-94.

Race, ethnicity and gender can affect opportunities for business ownership, even when accounting for other personal characteristics such as education, age and familial ties. To further examine this topic, BBC developed multivariate statistical models to explore patterns of business ownership in the Portland MSA. These models estimate the effect of race/ethnicity and gender on the probability of self-employment while controlling for other potentially influential factors.

Business Ownership Regression Analysis

An extensive body of literature examines whether race- and gender-neutral factors such as access to financial capital, education, age, and family characteristics (e.g., marital status) help explain differences in business ownership. This subject has also been examined in other disparity analyses. Prior studies in Minnesota⁹ and Illinois¹⁰ have conducted econometric analyses investigating whether disparities in business ownership among race/ethnicity and gender groups in the combined construction and engineering industry remain after controlling for other personal characteristics. These studies have incorporated probit econometric models using PUMS data from the 2000 Census and have been among materials submitted to courts in subsequent litigation concerning state implementation of the Federal DBE Program.

BBC used similar probit regression models to predict business ownership from multiple independent or “explanatory” variables.¹¹ Independent variables include:

- Personal characteristics potentially linked to the likelihood of business ownership (age, age-squared, marital status, number of children and elderly people in the household, English-speaking ability and disability status);
- Indicators of educational attainment;
- Measures and indicators related to personal financial resources and constraints (home ownership, home value, monthly mortgage payment, dividend and interest income and additional household income from a spouse or unmarried partner); and
- Variables representing the race/ethnicity and gender of the individual.

⁹ National Economic Research Associates, Inc. 2000. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Minnesota Department of Transportation.

¹⁰ National Economic Research Associates, Inc. 2004. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Illinois Department of Transportation.

¹¹ Probit models estimate the effects of multiple independent or “predictor” variables in terms of a single, dichotomous dependent or “outcome” variable — in this case, business ownership. The dependent variable is binary, coded as “1” for individuals in a particular industry who are self-employed; “0” for individuals who are not self-employed. The model enables estimation of the probability that a worker in a given estimation sample is self-employed. The study team excluded observations where the Census Bureau had imputed values for the dependent variable, business ownership.

BBC developed three models using PUMS data from the 2000 Census and 2006-2008 ACS:

- A probit regression model for the Portland MSA construction industry in 2000 that included 2,963 observations;
- A probit regression model for the Portland MSA construction industry in 2006-2008 that included 2,105 observations; and
- A probit regression model for the Oregon and Washington professional services industry in 2000 that included 2,261 observations.

The professional services model differs slightly in form from the two construction models as it examines a larger geographic area. Due to the small sample size for professional services in the Portland MSA, BBC developed a model using observations from Oregon and Washington. All professional services workers from these two states are included in the model, and any Portland effects are estimated by including MSA-level control variables. (BBC used a similar approach when analyzing SSBF data on business credit in Appendix G.) The MSA-level variables included an indicator variable for Portland workers as well as “interaction” terms for minorities and women living in the Portland MSA.

Results specific to the Portland construction industry. BBC developed probit regression models of business ownership in the Portland MSA construction industry for 2000 and 2006-2008.

Portland construction industry in 2000. Figure F-3 presents the coefficients and t-statistics for the 2000 probit model for individuals working in the Portland construction industry.

The model indicates that several neutral factors are important in predicting the probability of business ownership in this industry:

- Older individuals are more likely to be business owners;
- More children living in the household increases the likelihood of being self-employed;
- Owning a more expensive home is associated with greater probability of business ownership;
- Greater interest and dividend income and greater income from a spouse or partner both increase workers’ likelihood of owning a business; and
- Speaking English well increases the probability of self-employment in construction.

Even after controlling for neutral factors in the 2000 data, statistically significant disparities in rates of business ownership remain for women working in the Portland construction industry.

Figure F-3.
Portland construction industry business ownership model, 2000

Variable	Coefficient	t-statistic
Constant	-2.6058	-6.85 **
Age	0.0380	2.47 **
Age-squared	-0.0002	-1.08
Married	-0.0861	-1.13
Disabled	-0.1434	-1.39
Number of children in household	0.0834	3.02 **
Number of people over 65 in household	-0.0512	-0.51
Owns home	0.1240	1.37
Home value (\$000s)	0.0005	1.90 *
Monthly mortgage payment (\$000s)	0.0221	0.37
Interest and dividend income (\$000s)	0.0049	1.73 *
Income of spouse or partner (\$000s)	0.0029	2.36 **
Speaks English well	0.5196	2.38 **
Less than high school education	0.0087	0.09
Some college	0.0634	0.94
Four-year degree	-0.0209	-0.20
Advanced degree	0.1426	0.77
African American	-0.3402	-1.30
Asian-Pacific American	-0.0478	-0.23
Hispanic American	-0.1412	-0.89
Native American	0.1425	0.63
Other minority group	-0.3292	-0.73
Female	-0.3312	-3.60 **

Note: *,** Denote statistical significance at the 90% and 95% confidence levels, respectively.

Source: BBC Research & Consulting based on analysis of 2000 Census of Population data.

The probit modeling approach allows for simulation of business ownership rates for minorities and females if they had the same probability of self-employment as similarly situated non-Hispanic whites and males, respectively. To conduct this next step in the analysis, BBC performed a probit regression predicting business ownership using only non-Hispanic white (or non-Hispanic white male) construction workers in the dataset.¹² The study team then applied the coefficients from this version of the model to the mean characteristics of minorities (or women) working in the Portland construction industry to estimate the probability of business ownership in the absence of any racial/ethnic (or gender) differences in the likelihood of self-employment.

BBC performed these calculations for only those groups with statistically significant disparities in business ownership (as shown in Figure F-3).

Figure F-4, on the next page, shows these simulated (“benchmark”) business ownership rates, comparing them to the actual, observed mean probability of business ownership for non-Hispanic white women. Similar simulation approaches have been incorporated in other disparity studies reviewed by the courts.

¹² This version of the model excludes the race/ethnicity indicator variables since the value for all of those variables would be the same.

Figure F-4.
Comparison of actual construction business ownership rates in Portland to simulated rates, 2000

Group	Self-employment rate		Disparity index (100 = parity)
	Actual	Benchmark	
White female	20.6%	28.6%	72

Note: As the benchmark figure can only be estimated for records with an observed dependent variable, comparison is made with only this subset of the sample. For this reason, actual self-employment rates may differ slightly from those in Figure F-1.

Source: BBC Research & Consulting from statistical models of 2000 Census of Population data.

Comparing actual self-employment rates of non-Hispanic white women with a benchmark based on business ownership rates of non-Hispanic white men, there were about 72 percent as many white female-owned businesses as would be expected. (To focus on the effects of gender, BBC’s analysis compares actual and predicted rates for non-Hispanic white women.)

Portland construction industry in 2006-2008. Figure F-5 presents the coefficients and t-statistics from the probit model predicting business ownership in the Portland construction industry in 2006-2008.¹³

From the 2006-2008 model, it appears that many of the same neutral factors that are important in predicting business ownership in the 2000 model also have an impact in more recent years. However, only one neutral factor has a statistically significant effect on the probability of business ownership in the Portland construction industry in 2006-2008: owning a home with greater value is associated with a greater likelihood of self-employment.

After controlling for neutral factors, there was a statistically significant disparity in the rate of business ownership for female construction workers. On the other hand, Asian-Pacific Americans were significantly more likely to own businesses compared to non-Hispanic whites.

¹³ The 2006-2008 data do not include a variable indicating that an individual had a disability. Thus, the 2006-2008 model differs only slightly from the 2000 model as it does not include such a variable.

Figure F-5.
Portland construction industry business ownership model, 2006-2008

Variable	Coefficient	t-statistic
Constant	-2.3961	-5.18 **
Age	0.0351	1.79
Age-squared	-0.0002	-0.78
Married	-0.0046	-0.05
Number of children in household	0.0390	1.23
Number of people over 65 in household	0.1033	1.07
Owns home	0.0299	0.21
Home value (\$000s)	0.0008	3.49 **
Monthly mortgage payment (\$000s)	0.0803	1.46
Interest and dividend income (\$000s)	0.0052	1.05
Income of spouse or partner (\$000s)	0.0000	-0.02
Speaks English well	0.2959	1.45
Less than high school education	-0.1110	-0.76
Some college	-0.0748	-0.85
Four-year degree	-0.0697	-0.48
Advanced degree	0.0233	0.11
African American	-0.4397	-1.51
Asian-Pacific American	0.5794	2.87 **
Hispanic American	-0.2800	-1.77
Native American	-0.1855	-0.61
Female	-0.2781	-2.76 *

Note: **, * Denote statistical significance at the 90% and 95% confidence levels, respectively.

Source: BBC Research & Consulting based on analysis of 20006-2008 ACS data.

The study team used the same approach from the previous section to simulate business ownership rates for minorities and females in 2006-2008 if they had the same probability of self-employment as similarly situated non-Hispanic whites and non-Hispanic white males, respectively. Figure F-6 shows actual and simulated (“benchmark”) business ownership rates for Asian-Pacific Americans and white women.

Figure F-6.
Comparison of actual construction business ownership rates in Portland to simulated rates, 2006-2008

Group	Self-employment rate		Disparity index (100 = parity)
	Actual	Benchmark	
Asian-Pacific American	46.2%	27.2%	170
White female	18.9%	27.5%	69

Note: As the benchmark figure can only be estimated for records with an observed dependent variable, comparison is made with only this subset of the sample. For this reason, actual self-employment rates may differ slightly from those in Figure F-1.

Source: BBC Research & Consulting from statistical models of 2006-2008 ACS data.

In 2006-2008, Asian-Pacific Americans had a self-employment rate of about 46 percent, substantially greater than the predicted rate of 27 percent from the study team's simulation. This translates into a disparity index of 170, which suggests that substantially fewer Asian-Pacific Americans would be business owners if they had the same self-employment rate as similarly situated non-Hispanic whites.

For women, results for 2006-2008 were similar to 2000. Based on the simulation, about 28 percent of white women would own businesses in the construction industry if gender did not have an impact on self-employment. However, their actual self-employment rate was only 19 percent in 2006-2008 (a disparity index of 69).

Results specific to the Oregon and Washington professional services industry. Factors associated with self-employment may differ between the construction and professional services industries. Therefore, BBC developed a separate business ownership model for the professional services industry. Due to small sample sizes for the Portland MSA, the study team combined 2000 Census data for Oregon and Washington. The model included an indicator variable for Portland and interaction terms for minorities and women in the MSA.

Figure F-7 presents results from the 2000 professional services model for Oregon and Washington.

The following neutral factors are statistically significant in predicting business ownership for the professional services industry in Oregon and Washington in 2000:

- Older individuals are more likely to be business owners, but this marginal effect declines for the oldest individuals;
- Higher home values (for homeowners) are associated with a greater likelihood of business ownership;
- Larger mortgage payments are associated with lower rates of self-employment; and
- Having a four-year or advanced degree increases the likelihood of owning a business.

After accounting for neutral factors, the professional services model indicates statistically significant disparities in the business ownership rates for other race minorities and women working in the industry.

The variables representing African Americans and the interaction term for African Americans in the Portland MSA were not included in the model because not a single African American worker in the 2000 Oregon and Washington professional services industry sample owned a business.

The indicator variable for the Portland MSA and the interaction terms for minority- and female-workers are not statistically significant. This result suggests that the probabilities of business ownership for minorities and females (and non-minorities) within the Portland MSA are not significantly different from the larger geographic region of Oregon and Washington.¹⁴

¹⁴ Where sample sizes were very small, interaction terms for minority groups have been excluded from the model.

Figure F-7.
Oregon and Washington professional services
industry business ownership model, 2000

Variable	Coefficient	t-statistic
Constant	-4.5167	-8.29 **
Age	0.1110	4.53 **
Age-squared	-0.0009	-3.20 **
Married	-0.1246	-1.23
Disabled	0.0039	0.03
Number of children in household	-0.0554	-1.39
Number of people over 65 in household	0.1829	1.64
Owns home	0.0955	0.72
Home value (\$000s)	0.0015	4.73 **
Monthly mortgage payment (\$000s)	-0.1386	-2.06 **
Interest and dividend income (\$000s)	0.0012	0.42
Income of spouse or partner (\$000s)	-0.0010	-0.82
Less than high school education	-0.0615	-0.13
Some college	0.0480	0.25
Four-year degree	0.4204	2.27 **
Advanced degree	0.3249	1.65 *
Asian-Pacific American	-0.2731	-1.25
Hispanic American	-0.0111	-0.03
Native American	-0.0655	-0.22
Other minority group	-0.7529	-1.78 *
Female	-0.3116	-2.79 **
Asian-Pacific American in Portland MSA	-0.0928	-0.23
Hispanic American in Portland MSA	0.2805	0.47
Native American in Portland MSA	0.9419	1.54
Other minority group in Portland MSA	0.5457	0.68
Female in Portland MSA	0.0526	0.26
Portland MSA	0.1428	1.40

Note: Results pertain to construction –related professional services industry.
 *,** Denote statistical significance at the 90% and 95% confidence levels, respectively.
 The variable representing African Americans and the interaction term representing African Americans in the Portland MSA were dropped from the model as they predicted failure perfectly.

Source: BBC Research & Consulting based on analysis of 2000 Census of Population data.

BBC used the same approach from previous sections to simulate the business ownership rate for minorities and white women in the Oregon and Washington professional services industry if they had the same probability of business ownership as similarly situated non-Hispanic whites and non-Hispanic white males. Figure F-8 shows simulated self-employment rate in comparison to the actual, observed mean probability of business ownership for other race minorities and white women.

Figure F-8.
Comparison of actual professional services business ownership rates in Oregon and Washington to simulated rates, 2000

Group	Self-employment rate		Disparity index (100 = parity)
	Actual	Benchmark	
Other minority group	9.4%	19.3%	49
White female	8.0%	13.3%	60

Note: Results pertain to professional services industry.
 As the benchmark figure can only be estimated for records with an observed dependent variable, comparison is made with only this subset of the sample. For these reason, actual self-employment rates may differ slightly from those in Figure F-2.

Source: BBC Research & Consulting from statistical models of 2000 Census of Population data.

Less than half as many other race minorities own businesses in the Oregon and Washington professional services industry as one would expect based on the model. Other race minorities had an actual self-employment rate of approximately 9 percent and a benchmark business ownership rate of about 19 percent.

The simulation indicates that white women working in the industry own professional services firms at 60 percent of the rate observed for similarly situated white men. In the Oregon and Washington professional services industry, only about 8 percent of non-Hispanic white women were business owners in 2000. White women had a benchmark business ownership rate of about 13 percent. Consistent with other research, the statistical modeling indicates that gender may affect rates of business ownership even after controlling for neutral factors.

Summary of Business Ownership in the Construction and Professional Services Industries

In 2006-2008, disparities in business ownership were present in the Portland construction industry:

- The business ownership rate for African Americans was less than one-half that of non-Hispanic whites (a statistically significant difference).
- Compared to all other race/ethnicity groups, Hispanic Americans had the lowest self-employment rate, about 9 percent (also a statistically significant difference from the non-Hispanic white rate).
- Lower business ownership rates also existed for Native Americans compared to non-Hispanic whites and for women compared to men, although these differences are not statistically significant.

Disparities were also found in the Portland professional services industry in 2006-2008:

- Fewer minorities than non-Hispanic whites owned businesses in the Portland construction –related professional services industry (a statistically significant difference).
- Women also had a lower self-employment rate than men in this industry, but the difference is not statistically significant.

BBC used probit regression models to investigate the presence of race/ethnicity and gender disparities in business ownership in Portland after accounting for the effects of neutral factors. Even while controlling for neutral personal characteristics, statistically significant disparities in business ownership rates were found in the construction industry for women in 2000 and 2006-2008. BBC also identified statistically significant disparities in ownership rates for other race minorities and women in the construction-related professional services industry in Oregon and Washington.

APPENDIX G.

Access to Capital for Business Formation and Success

Access to capital represents one of the factors researchers have examined when studying business formation and success. If discrimination exists in capital markets, minorities and women may have difficulty acquiring the capital necessary to start or expand businesses.¹ This appendix explores access to business capital, which relates closely to matters discussed in Appendix E and Appendix F.

BBC first examines homeownership and mortgage lending, as home equity can be an important source of capital to start and expand businesses. The appendix then turns to business loans, assessing whether minorities and females experience difficulty acquiring capital. Using data acquired from availability interviews, the study team also examines whether minority- and women-owned firms (MBE/WBEs) are more likely than majority-owned firms (i.e., firms that are not owned by minorities or women) to report difficulties obtaining bonding and insurance.

Homeownership and Mortgage Lending

BBC analyzed homeownership and conditions in the mortgage lending industry, examining differences between race, ethnicity and gender groups that may lead to disparities in access to capital.

Homeownership. Wealth created through homeownership can be an important source of funds to help grow a business.² Any barriers to homeownership and home equity growth for minorities or women can affect business opportunities by constraining their acquisition of capital. Similarly, any barriers to accessing equity through home mortgages can limit the availability of funds for new or expanding businesses. In sum:

- A home is a tangible asset that provides borrowing power to the owner;
- Wealth that accrues from housing equity and tax savings from homeownership both contribute to capital formation;³
- Next to business lines of credit, mortgage loans have traditionally been the second largest loan type for small businesses;⁴ and

¹ For example, see: Coleman, Susan. 2002. *Small Firm Sources of Debt Capital: A Comparison by Gender, Race and Ethnicity*. University of Hartford.

² The recent (beginning in late 2006) housing and mortgage crisis has substantially affected the ability of small businesses to secure loans through home equity. A discussion of the consequences to small businesses and MBE/WBEs is provided at the end of this section.

³ Jackman, Mary R. and Robert W. Jackman 1980. "Racial Inequalities in Home Ownership." *Social Forces*. 58. 1221-1234.

⁴ Berger, Allen N. and Gregory F. Udell. 1998. "The Economics of Small Business Finance: The Roles of Private Equity and Debt Markets in the Financial Growth Cycle." *Journal of Banking and Finance*. 22.

- Homeownership correlates with an estimated 30 percent reduction in the probability of loan denial for small businesses.⁵

The study team first analyzed homeownership rates and home values before considering loan denial and subprime lending.

Homeownership rates in the Portland Metropolitan Statistical Area. Many studies have documented past discrimination in the housing market. The United States has a long history of restrictive real estate covenants and property laws that affect the ownership rights of minorities and women.⁶ For example, in the past, a woman's involvement in homeownership was ancillary to that of her husband or parents.⁷

BBC used 2000 Census and 2006-2008 American Community Survey (ACS) data to examine homeownership rates in the Portland Metropolitan Statistical Area (MSA), Oregon and the United States. Based on these data, Figure G-1 presents rates of homeownership for specific minority groups and non-Hispanic whites.

In 2000, about two-thirds of non-minorities owned homes in the Portland MSA. Homeownership rates in Portland were lower for each minority group compared to that of non-Hispanic whites.

- About 38 percent of African Americans were homeowners in the Portland MSA;
- Asian-Pacific Americans and Subcontinent Asian Americans had homeownership rates of about 57 percent and 45 percent, respectively.
- The homeownership rate for Hispanic Americans was about 32 percent; and
- About 48 percent of Native Americans and other race minorities owned homes.

In each case, the difference between the minority homeownership rate and the rate for non-Hispanic whites is statistically significant.

Homeownership rates for Native Americans and other race minorities in Portland did not change substantially between 2000 and 2006-2008. Over this same time span, rates increased for Asian-Pacific Americans, Subcontinent Asian Americans and Hispanic Americans, but African Americans were less likely to be homeowners in 2006-2008 than 2000. Only Asian-Pacific Americans owned homes in Portland at a similar rate compared to non-Hispanic whites in 2006-2008; each of the other minority groups had substantially lower rates of homeownership during this period.

The overall pattern in Portland was similar to that observed in the state as a whole: each minority group had significantly lower rates of homeownership compared to non-Hispanic whites in 2000. In

⁵ Cavalluzzo, Ken and John Wolken. 2005. "Small Business Loan Turndowns, Personal Wealth and Discrimination." *Journal of Business*. 78:2153-2178.

⁶ Ladd, Helen F. 1982. "Equal Credit Opportunity: Women and Mortgage Credit." *The American Economic Review*. 72:166-170.

⁷ Card, Emily. 1980. "Women, Housing Access, and Mortgage Credit." *Signs*. 5:215-219.

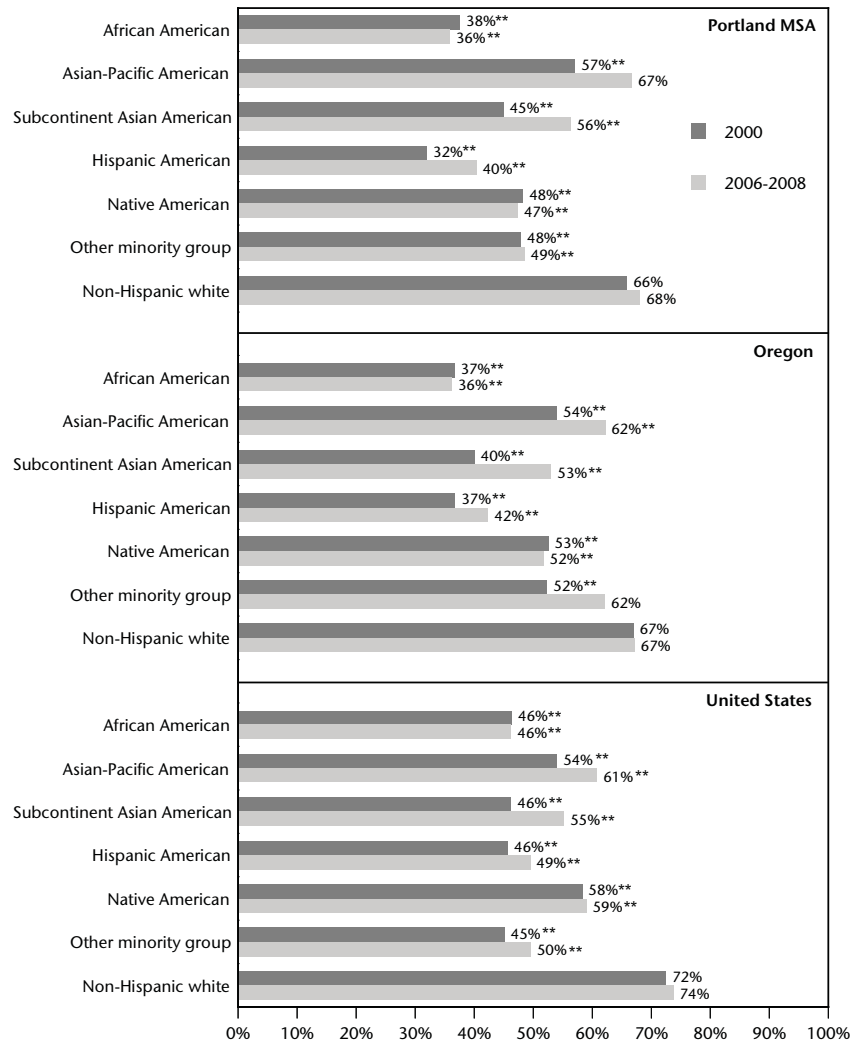
2006-2008 as well, non-Hispanic whites in Oregon had a substantially higher homeownership rate than other racial and ethnic groups.

For the most part, the Portland MSA and Oregon were similar to the United States regarding differences in homeownership across race/ethnicity groups. Compared to non-minorities in the country, rates of homeownership were significantly lower for each minority group in both years examined.

**Figure G-1.
Homeownership rates,
2000 and 2006-2008**

Note:
The sample universe is all households.
** Denotes that the difference in proportion between the minority group and non-Hispanic whites is statistically significant at the 95% confidence level.

Source:
BBC Research & Consulting from 2000 U.S. Census and 2006-2008 American Community Survey data. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.



Although not presented here, the study team also examined homeownership rates for heads of household working in the construction and professional services industries. Except for Asian-Pacific Americans in the construction industry, each minority group had a lower rate of home ownership than non-Hispanic whites in these industries.

Lower rates of homeownership could in part reflect lower incomes for minorities. This may be self-reinforcing, as low wealth puts individuals at a disadvantage in becoming homeowners, and homeownership can be an effective path to building wealth. One 1980 study found statistically

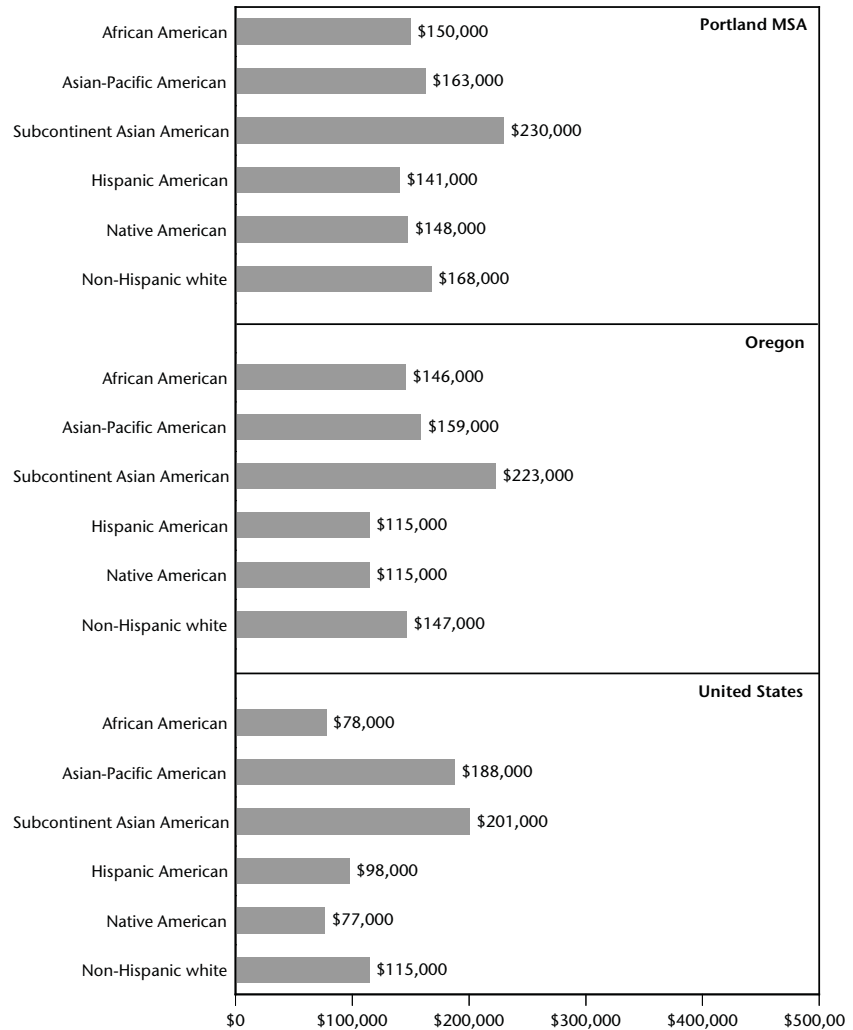
significant results indicating that the probability of homeownership has historically been lower for African Americans than for similarly situated non-Hispanic whites throughout the U.S.⁸

Home values. Recent research has found homeownership and home values to be direct determinants of capital available to form or expand businesses. Using 2000 Census and 2006-2008 ACS data, BBC compared median home values for different racial and ethnic groups. Figure G-2 presents results from 2000 for the Portland MSA, Oregon and the United States.

Figure G-2.
Median home value,
2000

Note:
The sample universe is all owner-occupied housing units.

Source:
BBC Research & Consulting from 2000 U.S. Census data.



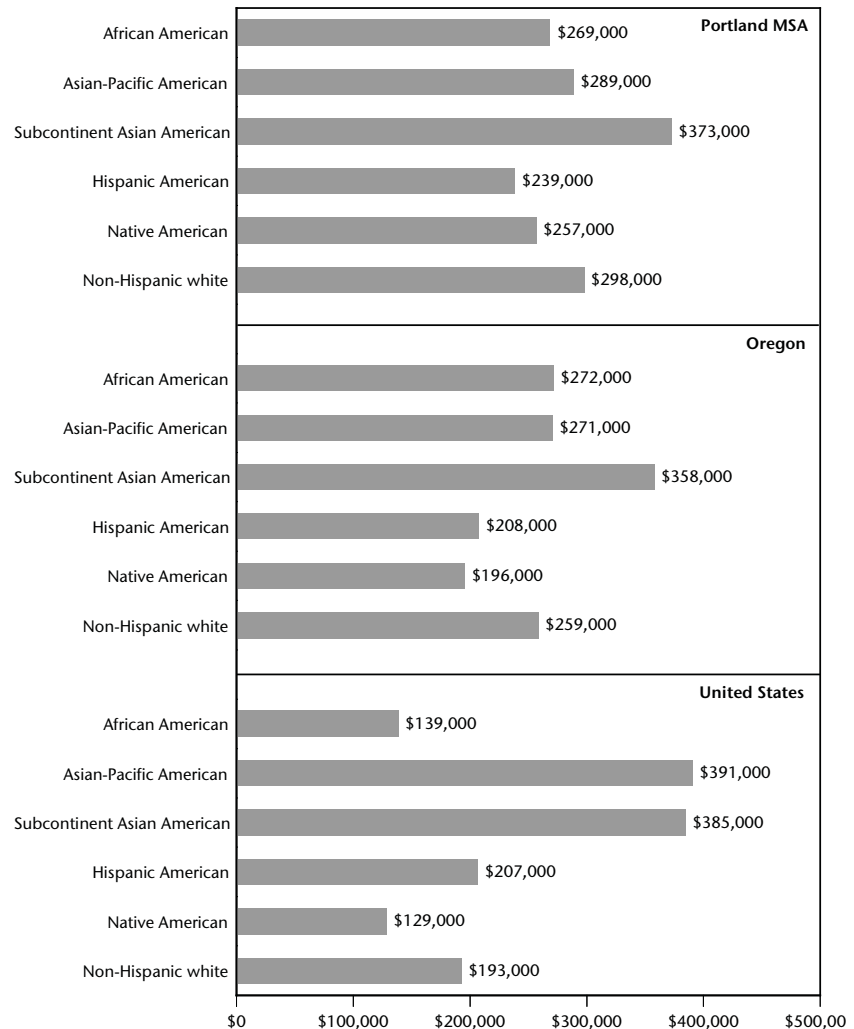
In 2000, non-Hispanic whites living in Portland had a median home value of \$168,000, higher than median values of homes owned by African Americans (\$150,000), Hispanic Americans (\$141,000) and Native Americans (\$148,000). At about \$163,000, the median home value for Asian-Pacific Americans was closer to that of non-Hispanic whites. Subcontinent Asian Americans, however, generally owned homes of greater value than non-Hispanic whites.

⁸ Jackman. 1980. "Racial Inequalities in Home Ownership."

Figure G-3 presents median home values for different racial and ethnic groups in the Portland MSA, Oregon and the United States in 2006-2008. Patterns from these years in the Portland MSA were similar to 2000 results: African Americans, Hispanic Americans and Native Americans had lower median home values compared to non-Hispanic whites. Asian-Pacific Americans also owned homes with a lower median value, but Subcontinent Asian Americans' homes had a higher median value.

Figure G-3.
Median home values,
2006-2008

Note:
The sample universe is all owner-occupied housing units.
Source:
BBC Research & Consulting from 2006-2008 American Community Survey data. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.



Loan denial in mortgage lending. If discriminated against when applying for home mortgages, minorities may be denied opportunities to own homes, purchase more expensive homes or access equity in their current homes. To examine this possibility, BBC explored conditions in the mortgage lending market in the United States, Oregon and the Portland MSA.

The best available source of information concerning mortgage lending comes from Home Mortgage Disclosure Act (HMDA) data, which provide information on mortgage loan applications received by financial institutions, savings banks, credit unions and some mortgage companies.⁹ These data

⁹ Financial institutions are required to report HMDA data if they have assets of more than \$32 million, have a branch office in a metropolitan area, and originated at least one home purchase or refinance loan in the reporting calendar year. Mortgage companies are required to report HMDA if they are for-profit institutions, had home purchase loan originations exceeding

include information about the location, dollar amount, and types of loans made, as well as race and ethnicity, income, and credit characteristics of loan applicants. Data are available for home purchase, home improvement and refinance loans.

BBC examined HMDA data provided by the Federal Financial Institutions Examination Council (FFIEC) on conventional loan denial rates for high-income borrowers. Conventional loans are those that are not insured by a government program; high-income borrowers include households with income at or above 120 percent of the U.S. Department of Housing and Urban Development (HUD) area median family income.¹⁰ Loan denial rates are based on denied loans as a share of all mortgage applications for which the application process was not terminated by the potential borrower.

Figure G-4 reports results for the Portland MSA, Oregon, and the nation in 2004, 2006 and 2008. Although 2008 was the most recent year for which HMDA data were available, the 2006 data are the most complete and up-to-date source as many of the institutions that originated loans in 2008 were no longer in business by the HMDA reporting date.¹¹

Mortgage lending data for the Portland MSA show higher denial rates for minority high-income households than for non-Hispanic white high-income households.¹² Among such households applying for mortgages, between 16 percent and 27 percent of Hispanic American applicants in Portland had their applications denied during the years examined, compared with between 9 percent and 14 percent of non-Hispanic white households. The loan denial rate for African Americans was also higher in 2004 and 2006 but comparable to the rate for non-Hispanic whites in 2008. In each year examined by the study team, a larger share of applications from Asian Americans resulted in denial. For Native Americans, denial rates varied from being higher than that of non-Hispanic whites in 2004 to being lower in 2008.

Results for the Portland MSA are similar to the nation as a whole. In the United States, minority high-income borrowers were generally more likely to be denied loans than non-minority high-income borrowers.

10 percent of all loan obligations in the past year, are located in an Metropolitan Statistical Area (or originated five or more home purchase loans in an MSA) and either had more than \$10 million in assets or made at least 100 home purchase or refinance loans in the calendar year.

¹⁰ The Portland MSA resides in a HUD region where the 2008 median family income was \$67,500. In Oregon, HUD area median family income ranged from \$48,100 to \$68,000.

¹¹ According to an article by the Federal Reserve, the volume of reported loan applications and originations fell sharply from 2007 to 2008 after previously falling between 2006 and 2007. See Avery, Brevoort, and Canner, "The 2008 HMDA Data." Available online: <http://www.federalreserve.gov/pubs/bulletin/>.

¹² Rates are based on all loans originated during the year and not on a sample; thus, analyses using HMDA data do not require tests for statistical significance.

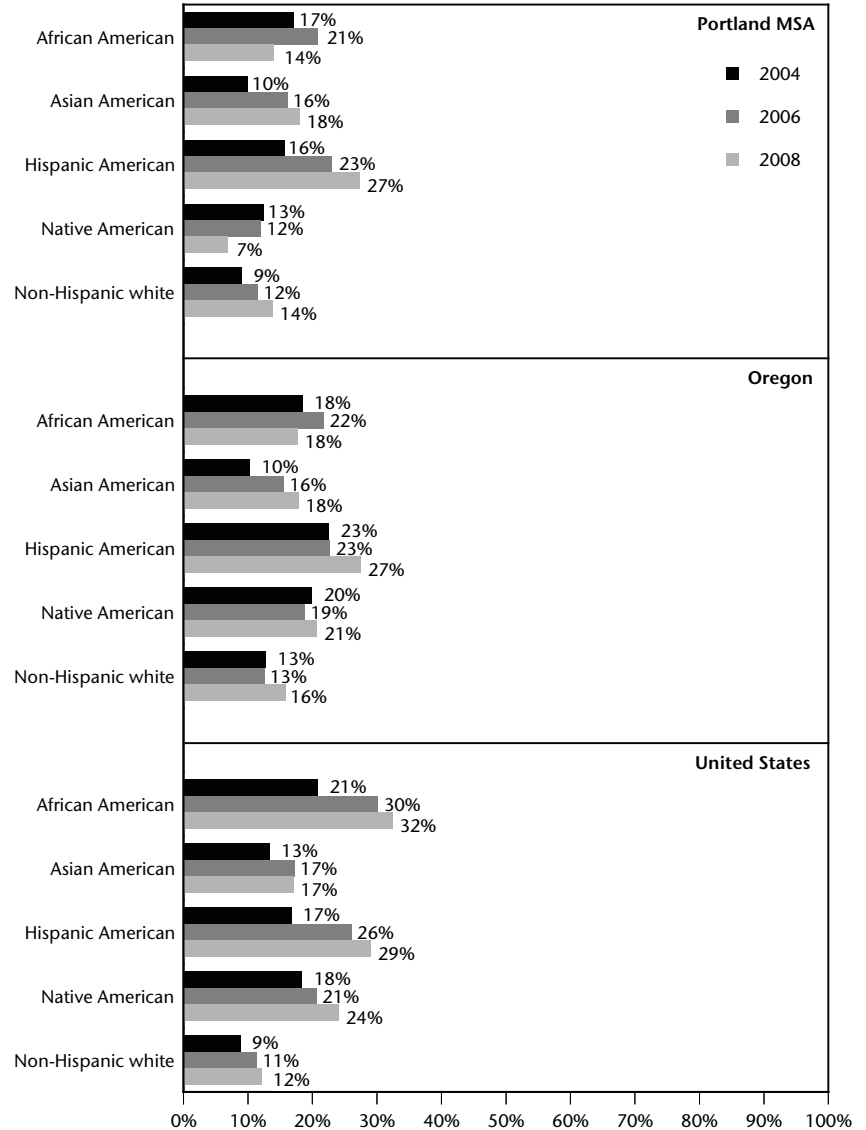
Figure G-4.
Denial rates on conventional purchase loans to high-income households in 2004, 2006 and 2008

Note:

High-income borrowers are those households with 120% or more than the HUD area median family income (MFI).

Source:

FFIEC HMDA data, 2004, 2006 and 2008



National research. A number of national studies have examined disparities in loan denial rates and loan amounts for minorities in the presence of other influences. Examples include the following:

- A study by the Federal Reserve Bank of Boston is one of the most cited studies of mortgage lending discrimination.¹³ It was conducted using the most comprehensive set of credit characteristics assembled for a study on mortgage discrimination.¹⁴ The study provided persuasive evidence that lenders in the Boston area discriminated against minorities in 1990.¹⁵

¹³ Munnell, Alicia H., Geoffrey Tootell, Lynn Browne and James McEneaney. 1996. "Mortgage Lending in Boston: Interpreting HMDA Data." *The American Economic Review*. 86: 25-53.

¹⁴ Ladd, Helen F. 1998. "Evidence on Discrimination in Mortgage Lending." *The Journal of Economic Perspectives*. 12:41-62.

¹⁵ Yinger, John. 1995. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*. New York: Russell Sage Foundation, 71.

- Using the Federal Reserve Board’s 1983 Survey of Consumer Finances and the 1980 Census of Population and Housing data, statistical analysis revealed that minority households were one-third as likely to receive conventional loans as non-Hispanic white households after taking into account financial and demographic controls.¹⁶
- Findings from a Midwest study indicate a significant relationship between race and both the number and size of mortgage loans. Data matched on socioeconomic characteristics revealed that African American borrowers across 13 census tracts received significantly fewer and smaller loans compared to their white counterparts.¹⁷

However, other studies have found that differences in preferences for Federal Housing Administration (FHA) loans — mortgage loans that are insured by the federal government — versus conventional loans among racial and ethnic groups may partly explain disparities found in conventional loan approvals between minorities and non-minorities in past years.¹⁸ Several studies have found that, historically, minority borrowers were far more likely to receive FHA loans than comparable non-Hispanic white borrowers at all income and wealth levels. The insurance on FHA loans protects the lender, but the borrower can be impacted by higher-cost loans.¹⁹

Subprime lending. Loan denial represents one of several ways minorities can be discriminated against in the home mortgage market; mortgage lending discrimination may also occur through higher fees and interest rates. The housing market provides a unique environment for this type of discrimination through fees associated with various loan types.

Until recently, one of the fastest-growing segments of the home mortgage industry was subprime lending. From 1994 through 2003, subprime mortgage activity grew by 25 percent per year and accounted for \$330 billion of U.S. mortgages in 2003, up from \$35 billion a decade earlier. In 2006, subprime loans represented about one-fifth of all mortgages in the United States.²⁰

With higher interest rates than prime loans, subprime loans are typically marketed and sold to customers with blemished or limited credit histories who would not typically qualify for prime loans. Over time, these loans have also become available to homeowners who did not want to make a down payment or provide proof of income and assets or wanted to purchase a larger home with a cost above that for which they would qualify from a prime lender.²¹ Because of higher interest rates and additional costs, subprime loans affect homeowners’ ability to grow home equity while simultaneously increasing their risk of foreclosure.

Although there is no standard definition of a subprime loan, there are several commonly-used approaches to examining rates of subprime lending. BBC used a “rate-spread method” — in which

¹⁶ Canner, Glenn B., Stuart A. Gabriel and J. Michael Woolley. 1991. “Race, Default Risk and Mortgage Lending: A Study of the FHA and Conventional Loan Markets.” *Southern Economic Journal*. 58:249-262.

¹⁷ Leahy, Peter J. 1985. “Are Racial Factors Important for the Allocation of Mortgage Money?: A Quasi-Experimental Approach to an Aspect of Discrimination.” *American Journal of Economics and Sociology*. 44:185-196.

¹⁸ Canner. 1991. “Race, Default Risk and Mortgage Lending: A Study of the FHA and Conventional Loan Markets.”

¹⁹ Yinger. 1995. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*. 80.

²⁰ See Avery, Brevoort, and Canner, “The 2006 HMDA Data.”

²¹ Gerardi, Shapiro, and P. Willen. 2008. “Subprime Outcomes: Risky Mortgages, Homeownership Experiences, and Foreclosure.” *Federal Reserve Bank of Boston*.

subprime loans are identified as those with substantially above-average interest rates — to measure rates of subprime lending in 2004, 2006 and 2008.²² These results are presented in Figure G-5 and Figure G-6.

BBC also examined subprime lending rates in 2004 using the U.S. Department of Housing and Urban Development (HUD) Subprime Lender list. Rather than identifying subprime loans based on the interest rate, this approach identifies loans that have been issued by subprime lenders. HUD identifies such lenders using a number of different variables in HMDA data. For example, subprime lenders will usually have relatively lower origination rates; they will originate greater proportions of home refinance loans; and they typically do not sell a significant percentage of portfolios to government-sponsored enterprises. After compiling a list of “potential” subprime lenders, HUD called or visited the website of each lender to confirm that they specialized in subprime loans.²³

As an updated HUD list was not available after 2005, this analysis was conducted for 2004 but not 2006 or 2008. Results from this analysis are presented in Figure G-7.

Because lending patterns and borrower motivations differ depending on the type of loan being sought, the study team considered home purchase loans and refinance loans separately. Results from the two methods for identifying patterns in subprime lending did not differ substantially.

Based on 2004, 2006 and 2008 HMDA data, Figure G-5 shows the percent of conventional home purchase loans that were subprime in the Portland MSA, Oregon and the United States. In the Portland MSA during the three years examined, African American and Hispanic American borrowers were more likely to receive subprime loans than non-Hispanic whites. For example, in 2006, about 34 percent and 47 percent of conventional home purchase loans issued to African Americans and Hispanic Americans, respectively, were subprime. In contrast, subprime loans represented only about 16 percent of loans issued to non-Hispanic whites in Portland in 2006.

Native Americans applying for home purchase loans in the Portland MSA were more likely than non-Hispanic whites to receive subprime loans in 2004 and 2006 but less likely in 2008. In each year, an equal or smaller proportion of Asian Americans received subprime loans compared to non-minorities.

Many of the patterns found in the Portland MSA and the state were also evident in the United States as a whole.

²² Consistent with other researchers, first lien loans are identified as subprime if they have an interest rate more than 3 percentage points higher than the federal treasury rate of like maturity. For junior lien loans, the required rate difference is 5 percentage points.

²³ For more information on this methodology, visit the website for the Department of Housing and Urban Development at <http://www.huduser.org/>.

Figure G-5.
Percent of conventional home purchase loans that were subprime in 2004, 2006 and 2008

Note: Subprime loans are identified using rate spreads.
 Source: FFIEC HMDA data, 2006 and 2008.

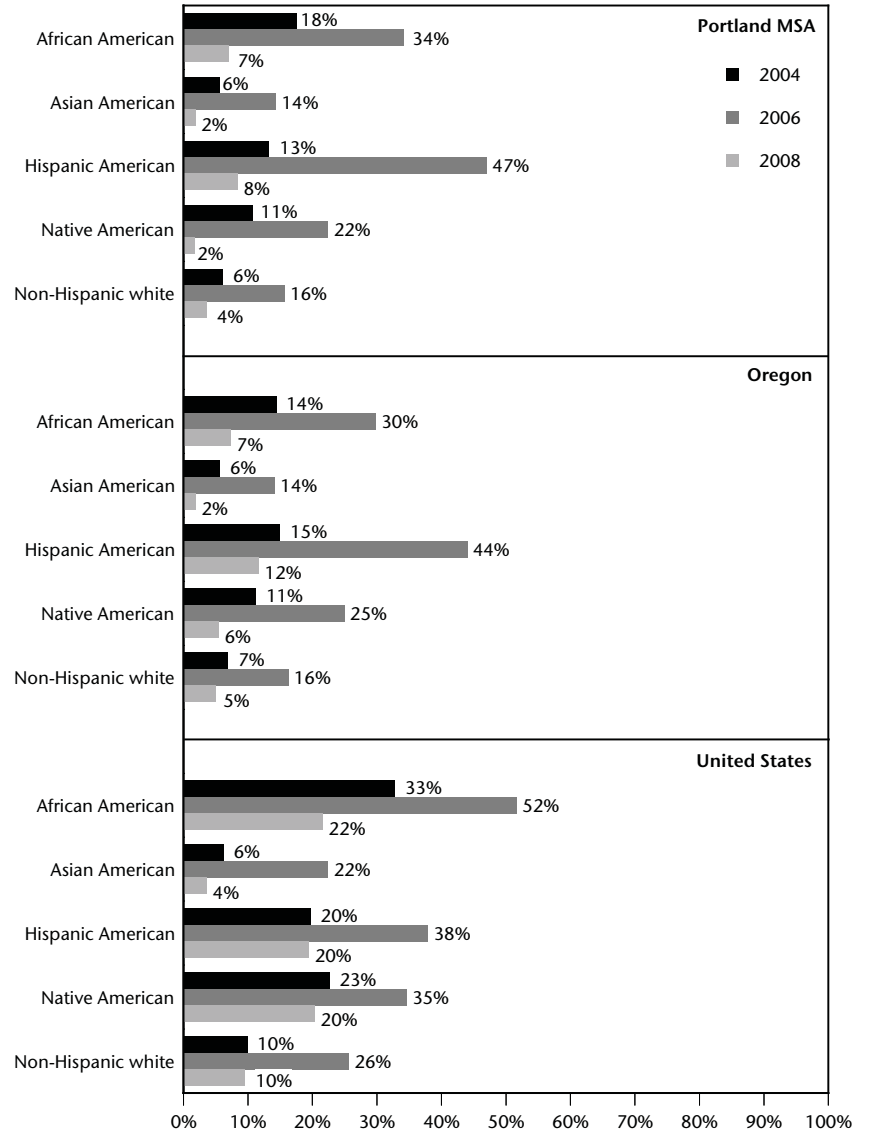


Figure G-6 shows the proportion of refinancing loans that were subprime with respect to the race or ethnicity of the borrower. In the Portland MSA in 2006, each minority group was more likely than non-Hispanic whites to refinance with a subprime loan. This pattern was also evident in 2004 and 2008 with one exception — Asian American borrowers were similar to non-Hispanic whites in the proportion that received subprime loans. Subprime lending followed a similar pattern in the state and nation: a larger share of minorities than non-Hispanic whites received these high-cost loans.

Figure G-6.
Percent of conventional refinancing loans that were subprime in 2004, 2006 and 2008

Note: Subprime loans are identified using rate spreads.
 Source: FFIEC HMDA data, 2006 and 2008.

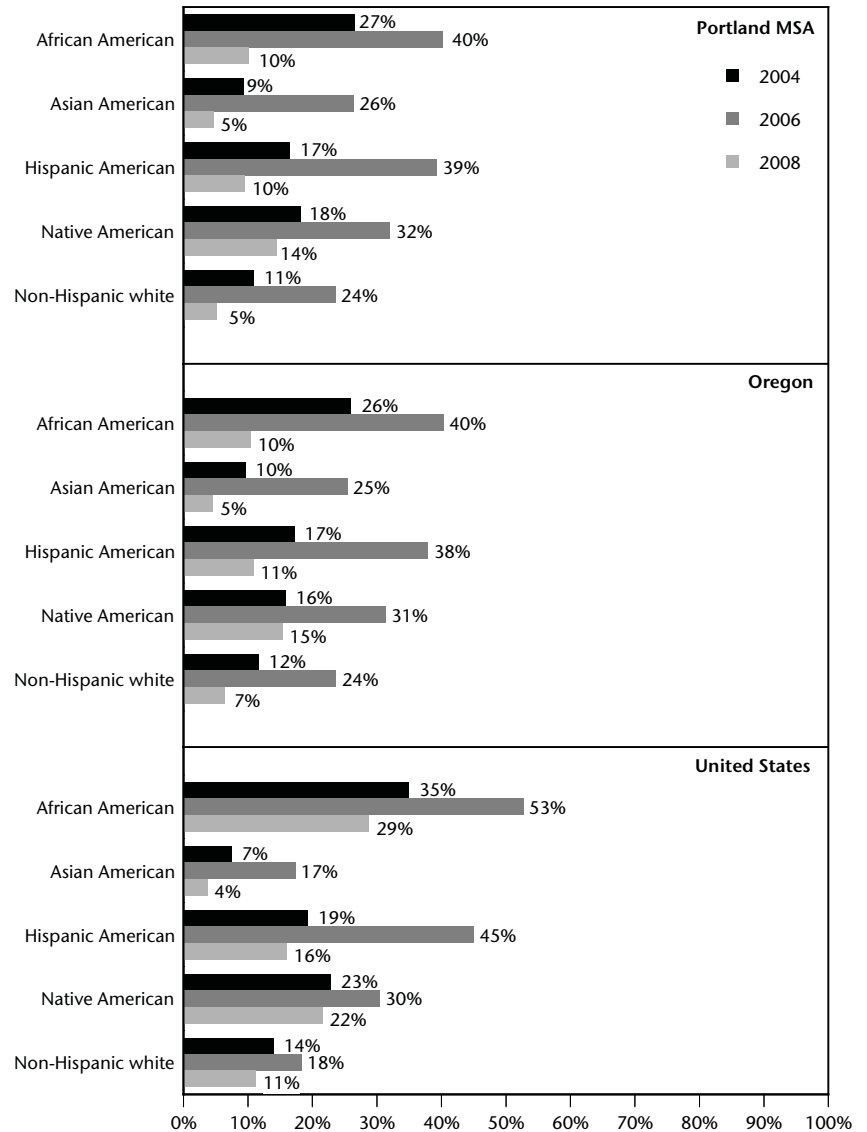
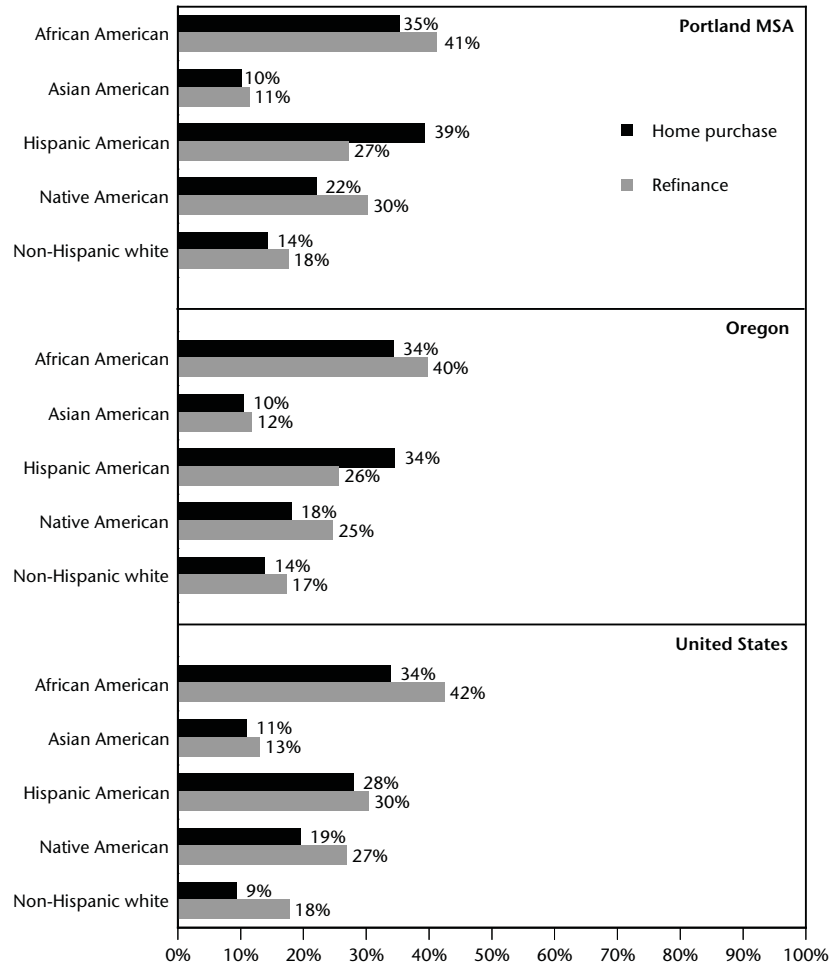


Figure G-7 shows the percent of loans issued by subprime lenders (as identified by the HUD list) in the Portland MSA, Oregon and the U.S. in 2004. Based on this approach, African American, Hispanic American and Native American borrowers in the Portland MSA were more likely to obtain home purchase and refinancing loans from subprime lenders compared to non-Hispanic whites. A smaller proportion of Asian Americans than non-Hispanic whites received loans from a subprime lender in 2004. These patterns are broadly consistent with those found when identifying subprime loans by rate-spread.

In Oregon and the United States, African American, Hispanic American and Native American borrowers were more likely than non-Hispanic whites to receive home purchase and refinance loans from a subprime lender in 2004. In contrast, subprime lending rates to Asian Americans were similar to or less than the rates for non-Hispanic whites.

Figure G-7.
Percent of conventional home purchase and refinancing loans from subprime lenders, 2004

Note: Subprime loans are identified as those loans issued by lenders on the 2004 HUD Subprime Lender list.
 Source: FFIEC HMDA data 2004 and 2004 HUD Subprime Lender list.



In sum, BBC’s analysis of HMDA data on subprime lending reveals the following:

- Compared to non-Hispanic whites, a larger share of loans issued to African Americans and Hispanic Americans were subprime in the Portland MSA, in Oregon and in the United States. This is true for both home purchase and refinancing loans and when examining subprime lending using different methods.
- In the Portland MSA, a larger share of Native American borrowers than non-Hispanic white borrowers received subprime loans when applying for refinancing loans in 2004, 2006 and 2008. Native Americans were also generally more likely to receive subprime loans when applying for home purchase loans (except in 2008).
- Asian Americans in Portland were generally no more likely than non-Hispanic whites to be issued subprime loans.

Some evidence suggests that lenders seek out and offer these high-cost loans to individuals who likely will not be able to pay off the loan, a form of “predatory lending.”²⁴ Furthermore, some research has found that many recipients of subprime loans could have qualified for prime loans.²⁵

According to previous studies on subprime lending, predatory lenders have disproportionately targeted minorities. A 2001 HUD study using 1998 HMDA data found that subprime loans were disproportionately concentrated in black neighborhoods compared to white neighborhoods even after controlling for income.²⁶ For example, borrowers in upper-income black neighborhoods were six times more likely to refinance with a subprime loan than borrowers in upper-income white neighborhoods.

Historically, differences in types of loans awarded to minorities have also been attributed to steering by real estate agents, who serve as an information filter between buyers and sellers.²⁷ Some studies claim that real estate brokers provide different levels of assistance and different information on loans to minorities and non-minorities.²⁸ This “steering” can shape the perception of minority borrowers with respect to the availability of loans.

Lessons from the recent mortgage lending crisis. The turmoil in the housing market since late 2006 has been far-reaching, resulting in the loss of home equity, decreased demand for housing and increased rates of foreclosure.²⁹ Much of the blame has been placed on risky practices in the mortgage industry including substantial increases in subprime lending.

As discussed above, subprime mortgages increased at an extraordinary rate between the mid-1990s and mid-2000s. These high-cost loans increased from 8 percent of originations in 2003 to 20 percent in both 2005 and 2006.³⁰ In 2005, subprime loans represented roughly 14 percent of all loans originated in the Portland MSA.³¹ The preponderance of subprime lending is important as households repaying subprime loans have a higher likelihood of delinquency or foreclosure. A 2008 study released from the Federal Reserve Bank of Boston found, “homeownerships that begin with a

²⁴ Department of Housing and Urban Development (HUD) and the Department of Treasury. 2001. HUD-Treasury National Predatory Lending Task Force Report. *HUD*; Carr, J. and L. Kolluri. 2001. *Predatory Lending: An Overview. Fannie Mae Foundation*; and California Reinvestment Coalition, Community Reinvestment Association of North Carolina, Empire Justice Center, Massachusetts Affordable Housing Alliance, Neighborhood Economic Development Advocacy Project, Ohio Fair Lending Coalition and Woodstock Institute, 2008. “Paying More for the American Dream.”

²⁵ Freddie Mac. 1996, September. “Automated Underwriting: Making Mortgage Lending Simpler and Fairer for America’s Families.” *Freddie Mac*. (accessed February 5, 2007); and Lanzerotti. 2006. “Homeownership at High Cost: Foreclosure Risk and High Cost Loans in California.” *Federal Reserve Bank of San Francisco*.

²⁶ Department of Housing and Urban Development (HUD) and the Department of Treasury. 2001.

²⁷ Kantor, Amy C. and John D. Nystuen. 1982. “De Facto Redlining a Geographic View.” *Economic Geography*. 4:309-328.

²⁸ Yinger. 1995. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*. 78–79.

²⁹ Joint Center for Housing Studies of Harvard University. 2008. “The State of the Nation’s Housing.”

³⁰ Joint Center for Housing Studies of Harvard University. 2008. “The State of the Nation’s Housing.”

³¹ Mayer, Chris and Karen Perce. “Subprime Mortgage: Who, Where and to Whom?” *Division of Research and Statistics and Monetary Affairs*. Available online at: “<http://www.federalreserve.gov/Pubs/FEDS/2008/200829/200829abs.html>.”

subprime purchase mortgage end up in foreclosure almost 20 percent of the time, or more than 6 times as often as experiences that begin with prime purchase mortgages.”³²

Although Oregon has not suffered to the same extent as states such as California and Nevada in terms of foreclosures and falling home values, the state has nevertheless been affected by the change in housing market conditions. In Oregon, there were about 34,000 properties with foreclosure filings in 2009, representing one in every 47 housing units.³³ Oregon’s foreclosure rate ranked 11th out of 50 states and Washington D.C. in 2009. As of September 2009, the proportion of residential properties in Oregon with negative equity (a mortgage worth more than the value of the home) was 13.9 percent, considerably below the national average of 22.6 percent.³⁴ However, due to higher rates of subprime mortgages, it is likely that minority homeowners have been disproportionately affected in terms of foreclosures and loss of home equity.

Such problems in the housing industry substantially reduce the ability of would-be borrowers to secure capital through home mortgages for starting or expanding small businesses. This issue was highlighted in statements made by members of the Board of Governors of the Federal Reserve System to the U.S. Senate and U.S. House of Representatives in 2008:

- On April 16, 2008, Frederic Mishkin informed the U.S. Senate Committee on Small Business and Entrepreneurship that “one of the most important concerns about the future prospects for small business access to credit is that many small businesses use real estate assets to secure their loans. Looking forward, continuing declines in the value of their real estate assets clearly have the potential to substantially affect the ability of those small businesses to borrow. Indeed, anecdotal stories to this effect have already appeared in the press.”³⁵
- On November 20, 2008, Randall Kroszner told the U.S. House of Representatives Committee on Small Business that “small business and household finances are, in practice, very closely intertwined. [T]he most recent Survey of Small Business Finances (SSBF) indicated that about 15 percent of the total value of small business loans in 2003 was collateralized by ‘personal’ real estate. Because the condition of household balance sheets can be relevant to the ability of some small businesses to obtain credit, the fact that declining house prices have weakened household balance-sheet positions suggests that the housing market crisis has likely had an adverse impact on the volume and price of credit that small businesses are able to raise over and above the effects of the broader credit market turmoil.”³⁶

Federal Reserve Chairman Ben Bernanke recognized the reality of these concerns in a speech titled “Restoring the Flow of Credit to Small Businesses” on July 12, 2010.³⁷ Bernanke indicated that small

³² Gerardi, Shapiro, and P. Willen. 2008. “Subprime Outcomes: Risky Mortgages, Homeownership Experiences, and Foreclosure. *Federal Reserve Bank of Boston*.

³³ RealtyTrac. 2009 U.S. Foreclosure Market Report.™ Available online at <http://www.realtytrac.com>.

³⁴ First American CoreLogic. 2009. First American CoreLogic’s Negative Equity Data Report.

³⁵ Mishkin, Frederic. 2008. “Statement of Frederic S. Mishkin, Member, Board of Governors of the Federal Reserve System before the Committee on Small Business and Entrepreneurship, U.S. Senate on April 16.”

³⁶ Kroszner, Randall. 2008. “Effects of the financial crisis on small business.” *Testimony before the Committee on Small Business, U.S. House of Representative on November 20*.

³⁷ Bernanke, Ben. 2010. Restoring the Flow of Credit to Small Businesses. *Presented at the Federal Reserve Meeting Series: Addressing the Financing Needs of Small Businesses on July 12*.

businesses have had difficulty accessing credit and pointed to the declining value of real estate as one of the primary obstacles.

Furthermore, the National Federation of Independent Business (NFIB) conducted a national survey of 751 small businesses³⁸ in late-2009 to investigate how the recent recession has impacted access to capital.³⁹ NFIB concluded that “falling real estate values (residential and commercial) severely limit small business owner capacity to borrow and strains currently outstanding credit relationships.” Survey results indicated that 95 percent of small business employers owned real estate and 13 percent held upside-down property.⁴⁰

Current opportunities to obtain business capital through home mortgages appear to be limited, especially for homeowners with little home equity. Furthermore, the increasing rates of default and foreclosure, particularly for homeowners with subprime loans, reflect shrinking capital that was initially available through these loans. These consequences are likely to have a disproportionate impact on minorities in terms of both homeownership and securing capital for business.

Redlining. Redlining refers to mortgage lending discrimination against geographic areas associated with high lender risk. These areas are often racially determined, focused in African American or mixed race neighborhoods.⁴¹ This practice can exacerbate problems in already poor neighborhoods.⁴²

Most quantitative studies have failed to find strong evidence in support of geographic dimensions of lender decisions. Studies in Columbus, Ohio; Boston, Massachusetts; and Houston, Texas found that racial differences in loan denial had little to do with the racial composition of a neighborhood, but rather the individual characteristics of the borrower.⁴³ Some studies found the race of an applicant but not the racial makeup of the neighborhood to be a factor in loan denials.

Studies of redlining have primarily focused on the geographic aspect of lender decisions; however, redlining can also include the practice of restricting credit flows to minority neighborhoods through procedures that are not observable in actual loan decisions. Examples include branch placement, advertising and other pre-application procedures, all of which can prevent minorities from starting

³⁸ The study defined a small business as a business employing no less than one individual in addition to the owner(s) and no more than 250.

³⁹ National Federation of Independent Business (NFIB). 2010. Small Business Credit in a Deep Recession.

⁴⁰ Upside-down is defined as a mortgage that is worth more than the appraised value of the house.

⁴¹ Holloway, Steven R. 1998. “Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio.” *Annals of the Association of American Geographers*. 88:252-276.

⁴² Ladd, Helen F. 1998. “Evidence on Discrimination in Mortgage Lending.” *The Journal of Economic Perspectives*. 12:41-62.

⁴³ See Holloway. 1998. “Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio.”; Tootell. 1996. “Redlining in Boston: Do Mortgage Lenders Discriminate Against Neighborhoods?”; and Holmes, Andrew and Paul Horvitz. 1994. “Mortgage Redlining: Race, Risk, and Demand.” *The Journal of Finance*. 49:81-99.

businesses.⁴⁴ Locations of financial institutions are important as local banking sectors often finance local business.⁴⁵ Redlining practices would limit this capital resource to minorities.

Steering by real estate agents. A number of researchers have found that discrimination by real estate agents sometimes contributes to residential segregation of minorities. Such practices include “steering” of prospective homebuyers toward particular neighborhoods based on their race or ethnicity (a practice that has been prohibited by law for many decades). A recent study found such practices in cities throughout the country.⁴⁶

Gender discrimination in mortgage lending. Relatively little information is available on sex-based discrimination in mortgage lending markets. Historically, lending practices overtly discriminated against women by requiring information on marital and childbearing status. Risk associated with women of childbearing age and unmarried women resulted in “income discounting,” limiting the availability of loans to women.⁴⁷

The Equal Credit Opportunity Act (ECOA) of 1973 suspended these discriminatory lending practices, but certain barriers have continued in spite of such laws. For example, there is some evidence that lenders have under-appraised property for female borrowers, thereby restricting the amount of capital they received.⁴⁸

Access to Business Capital

Barriers to capital markets can have significant impact on small business formation and expansion. Several studies have found evidence that start-up capital is important for business profits, longevity and other outcomes:⁴⁹

- The amount of start-up capital is positively associated with small business sales and other outcomes;⁵⁰
- Limited access to capital has restricted the growth of African American-owned businesses;⁵¹ and

⁴⁴ Yinger, John. 1995. “Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination.” Russell Sage Foundation. New York. 78-79.

⁴⁵ Holloway. 1998. “Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio.”

⁴⁶ Galster, George and Erin Godfrey. 2005. “Racial Steering by Real Estate Agents in the U.S. in 2000.” *Journal of the American Planning Association*. 71:251-268.

⁴⁷ Card. 1980. “Women, Housing Access, and Mortgage Credit.”

⁴⁸ Ladd, Helen F. 1982. “Equal Credit Opportunity: Women and Mortgage Credit.” *The American Economic Review*. 72:166-170.

⁴⁹ For examples see Fairlie. 2006. “Liquidity Constraints, Household Wealth, and Entrepreneurship Revisited;” and Grown, Caren and Timothy Bates. 1991. “Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies.” Center for Economic Studies, U.S. Bureau of the Census.

⁵⁰ See Fairlie, Robert W. and Harry A. Krashinsky. 2006. “Liquidity Constraints, Household Wealth, and Entrepreneurship Revisited;” and Grown. 1991. “Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies.”

⁵¹ Grown. 1991. “Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies.”

- Weak financial capital was identified as a significant reason that more African American-owned firms than non-Hispanic white-owned firms closed over a four-year period.⁵²

Bank loans are one of the largest sources of debt for small businesses.⁵³ Discrimination in the application and approval processes of these loans and limited access to other credit resources could be detrimental to the success of MBEs and WBEs. Previous investigations have addressed race/ethnicity and gender discrimination in capital markets by evaluating the following:

- Loan denial rates;
- Loan values;
- Interest rates;
- Individual assumptions that loan applications will be rejected;
- Sources of capital; and
- Relationships between start-up capital and business survival.

To examine the role of race/ethnicity and gender in capital markets, the study team analyzed data from the Federal Reserve Board's 1998 and 2003 Surveys of Small Business Finances (SSBF), the most comprehensive national source of credit characteristics of small firms (those with fewer than 500 employees). The survey contains information on loan denial and interest rates, as well as anecdotal information from firms. Sample weights are applied to provide representative estimates. The samples from 1998 and 2003 contain records for 3,521 and 4,240 firms, respectively.

The SSBF records the geographic location of firms by Census Division, rather than city, county or state. Oregon resides in the Pacific Census Division (referred to below as the Pacific region) along with Alaska, Washington, California and Hawaii.

Loan denial rates. Figure G-8 shows loan denial rates from the 1998 and 2003 SSBFs for the Pacific region and the United States. The 1998 SSBF data for the nation reveal the following:

- African American-owned businesses experienced higher rates of denial compared to all other racial and ethnic groups;
- African American-, Hispanic American- and Asian American-owned firms had a loan denial rate considerably above that of non-Hispanic white male-owned firms (in each case a statistically significant difference); and
- A larger proportion of women-owned firms than male-owned firms were denied business loans.

⁵² Grown. 1991. "Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies."

⁵³ Data from the 1998 SSBF indicates that 70 percent of loans to small business are from commercial banks. This result is present across all gender, race and ethnic groups with the exception of African Americans, whose rate of lending from commercial banks is even greater than other minorities. See Blanchard, Lloyd, Bo Zhao and John Yinger. 2005. "Do Credit Market Barriers Exist for Minority and Woman Entrepreneurs." *Center for Policy Research, Syracuse University*.

Measured against rates of loan denial for non-Hispanic white- and male-owned firms in 2003, loan denial rates were higher for minority- and women-owned firms in the United States. The loan denial rate for African American-owned firms in 2003 was substantially higher than rates for other groups (51%).

Loan denial statistics on individual minority groups in the Pacific region are not reported in Figure G-8 due to small sample sizes. However, about 34 percent of minority- and women-owned firms in the Pacific region reported being denied loans in 1998, a larger proportion than the 21 percent of non-Hispanic white male-owned firms that were denied. In contrast, according to the 2003 SSBF data, a smaller share of minority- and female-owned firms in the Pacific region were denied loans, compared to non-Hispanic white male-owned firms.

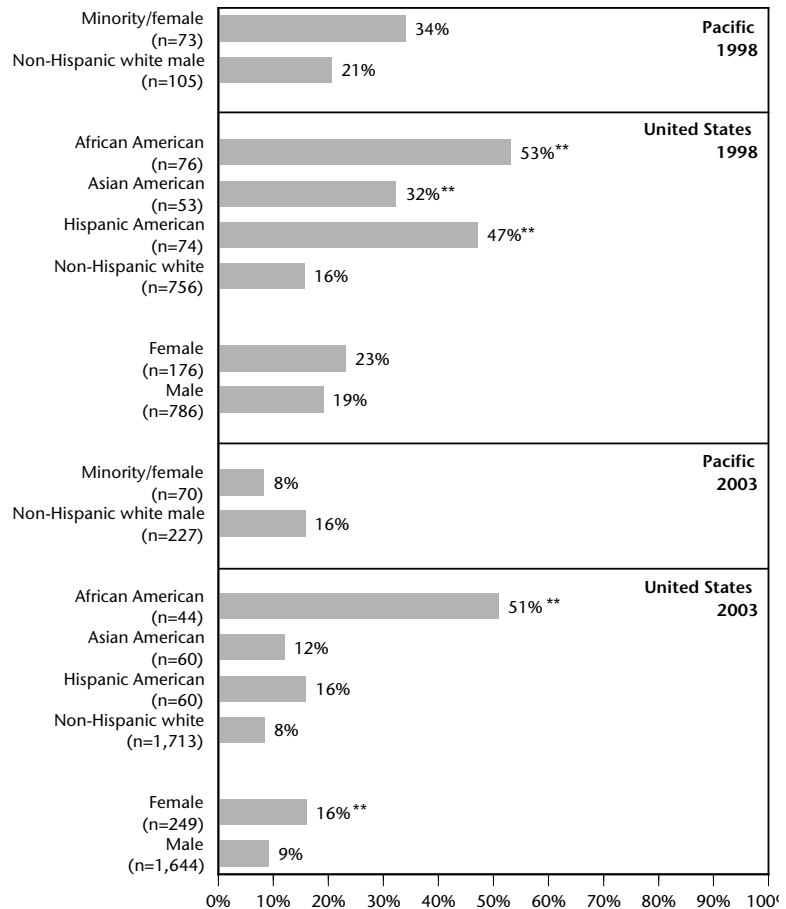
Figure G-8.
Business loan denial rates,
1998 and 2003

Note:

** Denotes that the difference in proportion from non-Hispanic white male-owned firms is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 1998 and 2003 Survey of Small Business Finances.



Regression analyses of loan denial rates. A number of studies have investigated whether disparities in loan denial rates for different race/ethnicity and gender groups exist after controlling for other factors that affect loan approvals. Findings from these studies include:

- Commercial banks are less likely to loan to African American-owned firms than to non-Hispanic white-owned firms after controlling for other factors.⁵⁴

⁵⁴ Cavalluzzo, Ken, Linda Cavalluzzo and John Wolken. 2002. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey." *Journal of Business*. 75: 641-679.

- African American, Hispanic American and Asian American men are more likely to be denied a loan than non-Hispanic white men. However, African American borrowers are more likely to apply for a loan.⁵⁵
- Disparities in loan denial rates between African American-owned and non-Hispanic white-owned firms tend to decrease with increasing competitiveness of lender markets. A similar phenomenon is observed when considering differences in loan denial rates between male- and female-owned firms.⁵⁶
- The probability of loan denial decreases with greater personal wealth. However, controlling for personal wealth does not resolve the large differences in denial rates across African American-, Hispanic American-, Asian American-, and non-Hispanic white-owned firms. Specifically, information on personal wealth explained some differences for Hispanic- and Asian American-owned firms compared to non-Hispanic whites, but not for African American-owned firms.⁵⁷
- Loan denial rates are significantly higher for African American-owned firms than non-Hispanic white-owned firms in the presence of several other factors such as creditworthiness and other characteristics. This result is largely insensitive to specification of the model. Consistent evidence on loan denial rates and other indicators of discrimination in credit markets was not found for other minorities and women.⁵⁸
- Women-owned businesses are no less likely to apply for or to be approved for loans in comparison to firms owned by men.⁵⁹

BBC regression model for the 1998 SSBF. The study team conducted its own analysis of the 1998 SSBF by developing a model to explore the relationships between loan denial and the race/ethnicity and gender of firm ownership while controlling for other factors.⁶⁰ As discussed above, the extensive body of literature on business loan denials provides the theoretical basis for the regression model. Many studies have used probit econometric models to investigate the effects of various owner, firm and loan characteristics — including the race and gender of the ownership — on the likelihood of being denied a loan. The standard model includes three general categories of variables relating to:

- The owner’s demographic characteristics (including race and gender), credit and resources;

⁵⁵ Coleman, Susan. 2002. “Characteristics and Borrowing Behavior of Small, Women-owned Firms: Evidence from the 1998 National Survey of Small Business Finances.” *The Journal of Business and Entrepreneurship*. 151-166.

⁵⁶ Cavalluzzo, 2002. “Competition, Small Business Financing and Discrimination: Evidence from a New Survey.”

⁵⁷ Cavalluzzo, Ken and John Wolken. 2002. “Small Business Turndowns, Personal Wealth and Discrimination.” *FEDS Working Paper No. 2002-35*.

⁵⁸ Blanchflower, David G., Phillip B. Levine and David J. Zimmerman. 2003. “Discrimination in the Small Business Credit Market.” *The Review of Economics and Statistics*. 85:930-943.

⁵⁹ Coleman. 2002. “Characteristics and Borrowing Behavior of Small, Women-owned Firms: Evidence from the 1998 National Survey of Small Business Finances.”

⁶⁰ BBC performed the regression analysis using the 1998 SSBF — as opposed to the 2003 SSBF — to capitalize on oversampling of minority-owned businesses in the national dataset in 1998 (not done in 2003).

- The firm’s characteristics, credit and financial health; and
- The environment in which the firm and lender operate and characteristics of the loan.⁶¹

After excluding a small number of observations where the loan outcome was imputed, the national sample included 931 firms that had applied for a loan during the three years preceding the survey; the Pacific region included 171 such firms.

A large number of variables are used to control for differences in neutral factors described above. Variables are included to represent: the owner’s credit and resources (11 variables); the firm’s characteristics, credit and financial health (29 variables); and the environment in which the firm and lender operate including the type of loan for which the borrower applied (19 variables). Given the relatively small sample size and the large number of variables, the study team did not develop a model based on firms located in the Pacific region. Instead, all U.S. firms are included in the model and any Pacific region effects are estimated by including regional control variables — an approach commonly used in other studies that analyze these data.⁶² The regional variables include an indicator variable for firms located in the Pacific region and interaction variables that represent firms located in the region that are owned by minorities or women.

Figure G-9 presents the coefficients and t-statistics from the probit model predicting loan denials. The results from the model indicate that a number of neutral factors affect the probability of loan denial with statistical significance:

- Older business owners are more likely to be denied loans;
- Having a four-year degree lowers the probability of loan denial;
- Increased equity in the business owner’s home — if he or she is a homeowner — reduces the likelihood of loan denial;
- Business owners who filed for bankruptcy in the past seven years or have had a judgment against them are more likely to be denied a loan;
- Family-owned businesses are more likely to be denied;
- Businesses with an existing line of credit, an existing mortgage, or existing vehicle or equipment loans are less likely to be denied a loan. However, firms with outstanding loans from stockholders are more likely to be denied;
- Firms that have been delinquent in business transactions or that filed for bankruptcy in the past seven years have a higher probability of being denied a loan;

⁶¹ See, for example, Blanchard, Lloyd; Zao, Bo and John Yinger. 2005. “Do Credit Barriers Exist for Minority and Women Entrepreneurs?” *Center for Policy Research, Syracuse University*.

⁶² Blanchflower, David G.; Levine, Phillip B. and David J. Zimmerman. 2003. “Discrimination in the Small-Business Credit Market.” *The Review of Economics and Statistics*. 85(4): 930-943; National Economic Research Associates, Inc., 2008. “Race, Sex, and Business Enterprise: Evidence from the City of Austin.” *Prepared for the City of Austin, Texas*; and CRA International. 2007. “Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization.” *Prepared for Santa Clara Valley Transportation Authority*.

- Being in the construction or engineering industry increases the likelihood of loan denial;
- Firms in highly concentrated industry segments (as measured by the Herfindahl index) are more likely to be denied; and
- Business mortgage applications and vehicle and equipment loan applications are less likely to be denied than other types of business loans.

Figure G-9.
Likelihood of business loan denial (probit regression) in the U.S. in the 1998 SSBF,
Dependent variable: loan denial

Variable	Coefficient	t-statistic	Variable	Coefficient	t-statistic	Variable	Coefficient	t-statistic
Race/ethnicity and gender								
Constant	-5.504990	-4.26 **	Firm's characteristics, credit and financial health			Firm and lender environment and loan characteristics	0.111897	0.32
African American	1.299680	4.82 **	D&B credit score = moderate risk	0.528255	1.05	Partnership	-0.172629	-0.74
Asian American	-0.016730	-0.04	D&B credit score = average risk	0.651411	1.29	S corporation	-0.219942	-0.80
Hispanic American	0.937239	4.00 **	D&B credit score = significant risk	0.334541	0.64	C corporation	0.554675	2.10 **
Female	-0.215049	-1.11	D&B credit score = high risk	0.390482	0.71	Construction industry	0.037434	0.13
Pacific region	0.041610	0.16	Total employees	-0.001578	-0.50	Manufacturing industry	0.412689	0.91
African American in Pacific region	-0.938737	-1.54	Percent of business owned by principal	-0.002877	-0.60	Transportation, communications and utilities industry	-0.167462	-0.48
Asian American in Pacific region	0.516142	0.85	Family-owned business	0.806077	2.54 **	Finance, insurance and real estate industries	0.621517	1.67 *
Hispanic American in Pacific region	-0.033862	-0.07	Firm purchased	-0.285351	-1.38	Engineering industry	0.247414	1.27
Female in Pacific region	0.554211	1.37	Firm inherited	0.174592	0.53	Other industry	2.034522	4.18 **
Owner's characteristics, credit and resources								
Age	0.014019	1.65 *	Firm has checking account	-0.009864	-0.93	Herfindahl index = .10 to .18	2.343574	4.72 **
Owner experience	0.005169	0.48	Firm has savings account	0.257405	0.80	Herfindahl index = .18 or above	0.057633	0.31
Less than high school education	0.429916	1.20	Firm has line of credit	-0.203582	-1.16	Located in MSA	0.115044	0.71
Some college	-0.116842	-0.55	Existing capital leases	-0.057004	-0.28	Sales market local only	0.000000	-0.19
Four-year degree	-0.505153	-2.24 **	Existing mortgage for business	-0.378937	-1.80 *	Loan amount	-0.203963	-0.60
Advanced degree	-0.377032	-1.50	Existing vehicle loans	-0.516237	-2.82 **	Capital lease application	-0.706651	-2.51 **
Log of home equity	-0.070577	-3.61 **	Existing equipment loans	-0.487929	-2.22 **	Business mortgage application	-1.238039	-3.90 **
Bankruptcy in past 7 years	1.176523	2.20 **	Other existing loans	0.594402	2.84 **	Equipment loan application	-0.812488	-2.82 **
Judgement against in past 3 years	1.005242	3.31 **	Firm used trade credit in past year	-0.065957	-0.32	Loan for other purposes	-0.335181	-1.62
Log of net worth excluding home	0.006526	0.11	Log of total sales in prior year	-0.225135	-1.38			
Owner has negative net worth	-0.219202	-0.31	Log of total sales in prior year	0.000724	0.01			
			Negative sales in prior year	0.425990	0.50			
			Log of cost of doing business in prior year	0.013326	0.25			
			Log of total assets	0.029816	0.41			
			Negative total assets	-0.496365	-0.57			
			Log of total equity	0.103717	1.36			
			Negative total equity	1.165334	1.49			
			Firm bankruptcy in past 7 years	0.898550	1.69 *			
			Firm delinquency in business transactions	1.156361	6.25 **			

Note: * Statistically significant at 90% confidence level.

** Statistically significant at 95% confidence level.

There were insufficient observations to include separate variables for Native Americans at the national level or Pacific region level.

Source: BBC Research & Consulting analysis of 1998 SSBF data.

Even after controlling for neutral influences, firms owned by African Americans and Hispanic Americans were more likely to have their loans denied than other firms (both statistically significant differences). The indicator variable for the Pacific region and interaction terms for minority- and women business owners in the Pacific region are not statistically significant. This result suggests that the probabilities of loan denial for minority- and women-owned firms located in the Pacific region are not statistically different from those in the U.S. as a whole.

The study team simulated loan approval rates for those minority groups with statistically significant disparities (African Americans and Hispanic Americans) and compared observed approval rates with these simulated rates.⁶³ The study team simulated the rates by inputting observed variables for those minorities into a probit model developed for non-Hispanic white-owned firms, one that included the effect of operating in the Pacific region. Figure G-10 shows these simulated loan approval rates in comparison to actual approval rates obtained from the 1998 SSBF data.

Figure G-10.
Comparison of actual loan approval rates to simulated loan approval rates, 1998

Group	Loan approval rates		Disparity index (100 = parity)
	Actual	Benchmark	
African American	46.4%	76.8%	60
Hispanic American	53.7%	75.9%	71

Note: Actual approval rates presented here and denial rates in Figure G-7 do not sum to 100% because some observations were dropped in the probit regression.

Source: BBC Research & Consulting analysis of 1998 SSBF data.

Based on 1998 SSBF data, the observed loan approval rate was 46 percent for African American-owned firms that applied for loans. Model results show that African American-owned firms would have an approval rate of about 77 percent if they were approved at the same rate as similarly situated firms owned by non-Hispanic whites. In this same environment, about 76 percent of Hispanic American-owned firms would be approved for loans; however, the actual loan approval rate for Hispanic American-owned firms was 54 percent.

Other researchers' analyses of the 2003 SSBF. Summary statistics from the 2003 SSBF on loan denial rates by race and ethnicity are presented at the beginning of this section. Although these data are the most recent information collected from small businesses, the study team selected the data from the 1998 SSBF to conduct the econometric analysis to capitalize on the over-sampling of minority-owned business, a method that was not used when collecting the 2003 SSBF data.⁶⁴

However, other recent studies elected to incorporate the 2003 SSBF into the analysis, while at the same time acknowledging the drawbacks of these data. In a study prepared for the City of Austin, Texas, NERA Economic Consulting (NERA) presented results from models using the 1993, 1998 and 2003 SSBFs, while focusing the analysis on the 1993 data. NERA investigated factors

⁶³ The approval rate is equal to one minus the denial rate.

⁶⁴ In the 1998 data, 7.3 percent of the firms surveyed were owned by Hispanic Americans, however in 2003 that number dropped to 4.0 percent. Numbers dropped from 7.7 percent to 2.8 percent and 5.7 percent to 4.2 percent for African American-owned and Asian American-owned firms, respectively. This decrease in minority samples impacts the precision of econometric analysis used to investigate disparities in loan denial rates for minority groups.

influencing loan denial rates using a probit econometric model. At a national level, their results using the 1998 SSBF are consistent with BBC’s findings. When using the 2003 SSBF data, however, they find that loan denial rates for Hispanic-owned firms are not significantly different from rates for non-Hispanic white-owned firms.⁶⁵

CRA International (CRA) also incorporated the 2003 SSBF in a study prepared for the Santa Clara Valley Transportation Authority (also located in the Pacific region). Combining data from the 1998 and 2003 SSBFs “to increase precision of estimates,” the CRA study reveals possible disparities in loan denial by race/ethnicity and gender using a probit econometric model and controlling for other factors. Figure G-11 shows a summary of the findings.

Figure G-11.
Likelihood of loan denial:
Findings from 2007 CRA study
using 1998 and 2003 SSBF data

	Statistical significance	Likelihood of loan denial
African American	Yes	Higher
Asian American	Yes	Higher
Hispanic American	Yes	Higher
Female	No	N/A

Note:

N/A: not applicable.

The model specification included controls for owner characteristics, business characteristics, geographic characteristics, business performance, personal financial history, business financial history, use of financial services and loan application characteristics.

While the study does not find differences in the likelihood of loan denial for female-owned business at a national level, the results indicate that female-owned firms have a lower likelihood of denial in the Pacific region.

Source:

CRA International. 2007. “Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization.” Prepared for Santa Clara Valley Transportation Authority.

Consistent with BBC’s findings, the CRA results indicate that African American- and Hispanic-owned firms have higher probabilities of loan denial. The study also finds that Asian-owned firms are more likely to be denied loans. CRA’s results indicate that female-owned firms in the Pacific region are less likely to be denied loans.⁶⁶

Applying for loans. Fear of loan denial can be a barrier to capital markets as it prevents small businesses from applying for needed loans and thus can help explain differences in business outcomes. An examination of this fear provides insight into minority business owners’ perceptions of the small business lending market. Using data from the 1998 and 2003 SSBF, Figure G-12 shows the proportion of firms that reported needing credit but did not apply for fear of denial.

In 1998 and 2003, minority- and women-owned firms were more likely than non-Hispanic white male-owned firms to forgo applying for loans due to fear of denial, both in the Pacific region and nationally. In 1998, for example, about 31 percent of minority- and women-owned firms in the Pacific region indicated that they had not applied for loans for this reason, compared to 25 percent of non-Hispanic white male-owned firms.

⁶⁵ National Economic Research Associates, Inc., 2008. “Race, Sex, and Business Enterprise: Evidence from the City of Austin.” *Prepared for the City of Austin, Texas.*

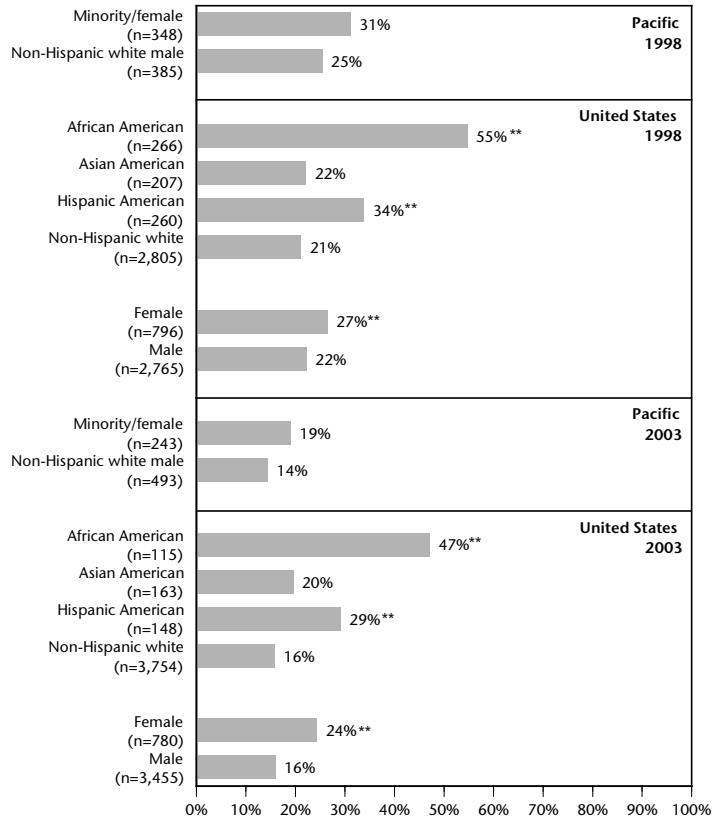
⁶⁶ CRA International. 2007. “Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization.” *Prepared for Santa Clara Valley Transportation Authority.*

At the national level in 1998 and 2003, disparities were greatest for African American- and Hispanic American-owned business.

Figure G-12.
Firms that needed loans but did not apply due to fear of denial, 1998 and 2003

Note:
 ** Denotes that the difference in proportions from non-Hispanic white male-owned firms is statistically significant at the 95% confidence level.

Source:
 BBC Research & Consulting from 1998 and 2003 Survey of Small Business Finances.



In its study for the Santa Clara Valley Transportation Authority, CRA used an econometric model to investigate firms that did not apply for loans for fear of denial. The model explored whether differences between race/ethnicity and gender groups exist after controlling for other factors. As explained above, CRA based their analysis on combined data from the 1998 and 2003 SSBFs. Figure G-13 presents a summary of their findings.

Figure G-13.
Fear of loan denial: Findings from 2007 CRA study using 1998 and 2003 SSBF data

Note:
 N/A: not applicable.
 The model specification included controls for owner characteristics, business characteristics, geographic characteristics, personal financial history, business financial history and use of financial services.

Source:
 CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization. Prepared for Santa Clara Valley Transportation Authority.

	Statistical significance	Likelihood of not applying for a loan due to fear of denial
African American	Yes	Higher
Asian American	No	N/A
Hispanic American	Yes	Higher
Female	No	N/A

Results from CRA's model indicate that African American- and Hispanic American-owned businesses are more likely to not apply out of fear of being denied. In addition, results for firms located in the Pacific region do not differ significantly from national results.⁶⁷

Other studies have identified factors that influence the decision to apply for a loan, such as firm size, firm age, owner age and educational attainment. Controlling for these factors can help in determining whether race and ethnicity explain this fear of loan denial. Findings indicate:

- African American- and Hispanic American-owners are significantly less likely to apply for loans.⁶⁸
- After controlling for educational attainment, there were no significant differences in loan application rates between non-Hispanic white, African American, Hispanic American and Asian American men.⁶⁹
- African American-owned firms are more likely than other firms to report being seriously concerned with credit markets and are less likely to apply for credit for fear of denial.⁷⁰

Loan values. The study team also considered average loan values for firms that received loans. Results from the 1998 and 2003 SSBFs for mean loan values awarded by racial and ethnic group are presented in Figure G-14. Comparing loan amounts for non-Hispanic white male-owned firms to minority- and women-owned firms indicates the following:

- In both 1998 and 2003, minority- and women-owned firms in the Pacific region received loans that amounted to less, on average, than loan amounts awarded to non-Hispanic white male-owned firms.
- In 2003, national results show that minority- and women-owned firms received loans that were on average less than half the average loan amount received by non-Hispanic white male-owned firms (statistically significant difference). However, the 1998 data suggests that minority- and women-owned firms in the U.S. received loans with slightly higher value, on average, than those received by non-Hispanic white males.

⁶⁷ CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization. *Prepared for Santa Clara Valley Transportation Authority.*

⁶⁸ Cavalluzzo, 2002. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey."

⁶⁹ Coleman, Susan. 2004. "Access to Debt Capital for Small Women- and Minority-Owned Firms: Does Educational Attainment Have an Impact?" *Journal of Developmental Entrepreneurship*. 9:127-144.

⁷⁰ Blanchflower et al., 2003. Discrimination in the Small Business Credit Market.

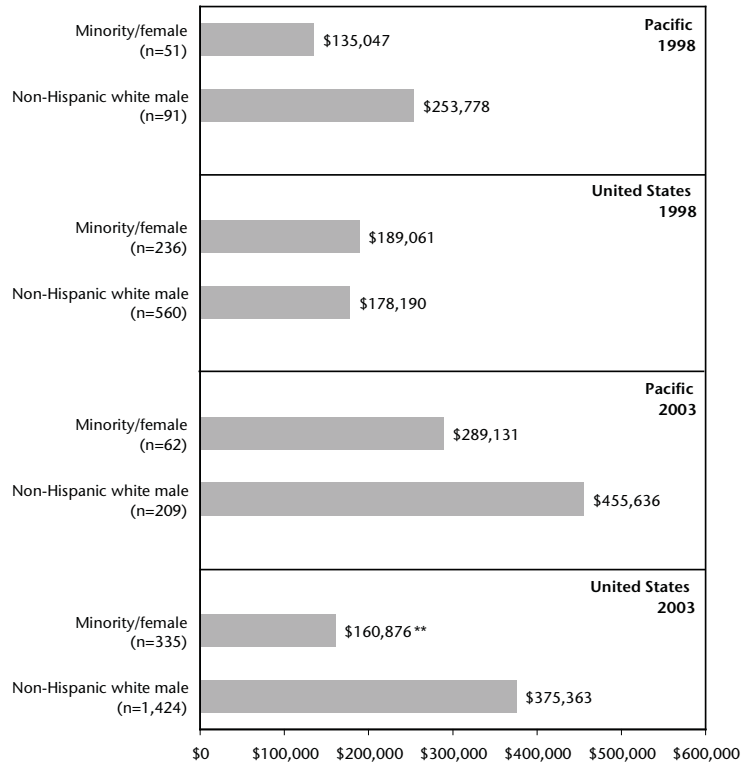
Figure G-14.
Mean value of approved
business loans, 1998
and 2003

Note:

** Denotes that the difference in means from non-Hispanic white male-owned firms is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 1998 and 2003 Survey of Small Business Finances.



Previous national studies have found that African American-owned firms received substantially lower loan amounts than their non-Hispanic white counterparts with similar characteristics. Examination of construction companies in the United States revealed that African American-owned firms received smaller loans than firms with otherwise identical traits.⁷¹

Interest rates. Based on 1998 and 2003 SSBF data, Figure G-15 presents the average interest rates on commercial loans by the race and ethnicity of firm ownership. In 1998, on average, minority- and women-owned firms in the Pacific region received loans with similar interest rates compared to loans received by non-Hispanic white male-owned firms. However, in 2003, the average interest rate on loans obtained by minority- and women-owned firms was about 1.6 percentage points higher than the mean interest rate for non-Hispanic white-owned firms.

The overall pattern in the Pacific region was similar to that found in the United States in both years examined by the study team. In 2003 but not in 1998, minority- and female-owned firms received loans with higher interest compared to non-Hispanic white-owned firms.

⁷¹ Grown. 1991. "Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies."

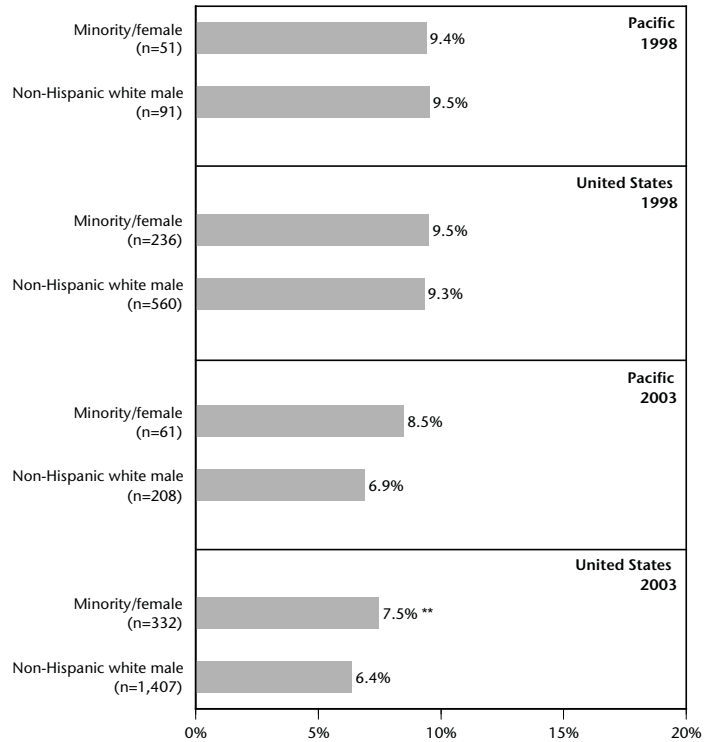
Figure G-15.
Mean interest rate for
business loans, 1998 and 2003

Note:

** Denotes that the difference in means from non-Hispanic white male-owned firms is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 1998 and 2003 Survey of Small Business Finances.



Previous studies have investigated differences in interest rates across race/ethnicity and gender while controlling for factors such as individual credit history, firm credit history and Dun and Bradstreet credit scores. Findings from these studies include:

- Hispanic-owned firms had significantly higher interest rates for lines of credit in places with less credit market competition. However, no evidence was found that African American- or female-owned firms received different rates.⁷²
- Among a sample of firms without past credit problems, African American-owned firms paid significantly higher interest rates on approved loans.⁷³

The CRA study investigated differences in interest rates by race/ethnicity and gender using a linear econometric model that controlled for other factors that may impact interest rates. Results are summarized in Figure G-16.

⁷² Cavalluzzo. 2002. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey."

⁷³ Blanchflower. 2003. "Discrimination in the Small Business Credit Market."

Figure G-16.
Differences in interest rates:
Findings from 2007 CRA study using 1998 and
2003 SSBF data

Note:

N/A: not applicable.

The model specification included controls for owner characteristics, business characteristics, geographic characteristics, business performance, personal financial history, business financial history and use of financial services.

Source:

CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization. Prepared for Santa Clara Valley Transportation Authority.

	Statistical significance	Comparison of interest rates
African American	Yes	Higher
Asian American	No	N/A
Hispanic American	Yes	Higher
Female	No	N/A

On a national level, African American- and Hispanic American-owned firms pay a higher interest rate than non-minority-owned firms, even after controlling for other factors. CRA did not find any significant differences for firms located in the Pacific region.⁷⁴

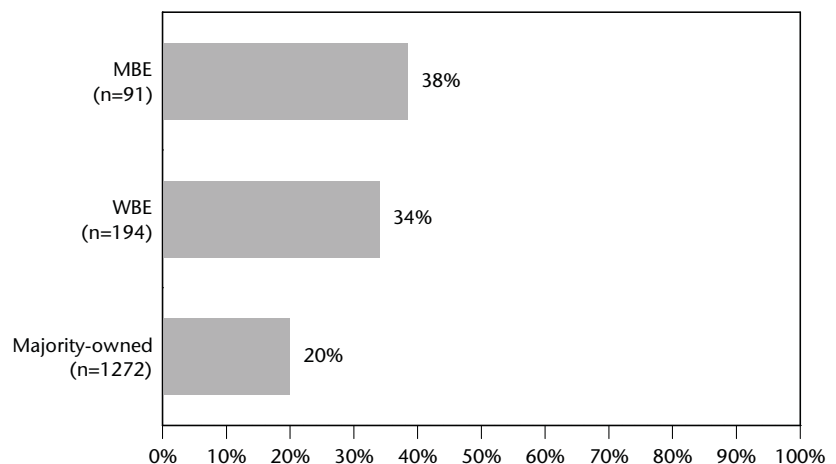
Results from BBC availability interviews. At the close of the 2010 availability interviews with study area businesses, BBC asked, "Finally, we're interested in whether your company has experienced barriers or difficulties associated with starting or expanding a business in your industry or with obtaining work. Think about your experiences within the past five years as we ask you these questions." The first question was, "Has your company experienced any difficulties in obtaining lines of credit or loans?"

Access to lines of credit and loans. As shown in Figure G-17, about 40 percent of MBEs and one-third of WBEs reported difficulties obtaining lines of credit or loans. Fewer majority-owned firms reported that they had experienced difficulties obtaining lines of credit or loans.

Figure G-17.
Has your company
experienced any difficulties in
obtaining lines of credit or
loans?

Source:

BBC Research & Consulting from 2010 Availability Interviews.

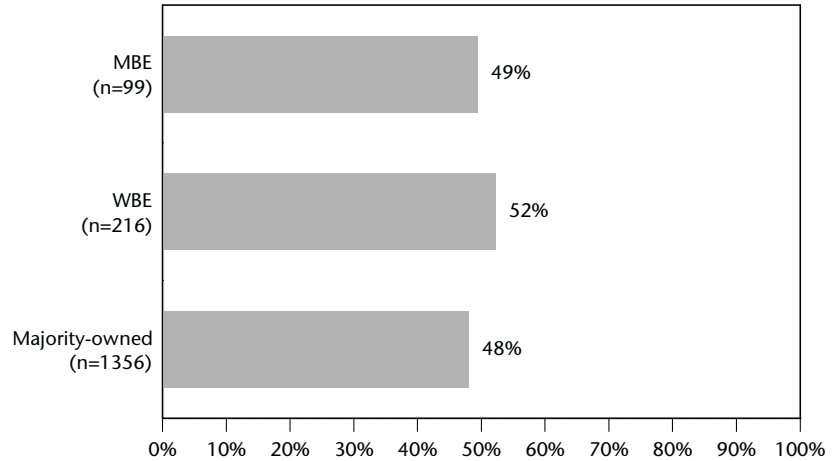


⁷⁴ CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization. Prepared for Santa Clara Valley Transportation Authority.

Receiving timely payment. Need for business credit is, in part, linked to whether firms are paid for their work in a timely manner. In the availability interviews, BBC asked, “Has your company had any difficulties receiving payment in a timely manner?” Nearly half of all respondents indicated that they had experienced difficulties receiving payments in a timely manner.

Figure G-18.
Has your company experienced any difficulties receiving payment in a timely manner?

Source:
 BBC Research & Consulting from 2010
 Availability Interviews.



Other factors affecting capital markets. Ethnic banking sectors may also affect the availability of loans to different minority groups. For example, one study found strength in the ethnic banking sector influences credit accessibility in ethnic communities in Los Angeles. A strong Asian American bank sector helped Asian American communities transition to successful business environments, and a lack thereof in African American communities could hinder development of African American businesses.⁷⁵

Bonding and Insurance

Bonding is closely related to access to capital. Some national studies have identified barriers regarding MBE/WBEs and access to surety bonds for public construction projects.⁷⁶ High insurance requirements on public sector projects may also represent a barrier for certain construction and professional services firms attempting to do business with government agencies.

Bonding. To research whether bonding represented a barrier for Portland area businesses, BBC asked firms completing availability interviews:

- Has your company obtained or tried to obtain a bond for a project?
- [and if so] Has your company had any difficulties obtaining bonds needed for a project?

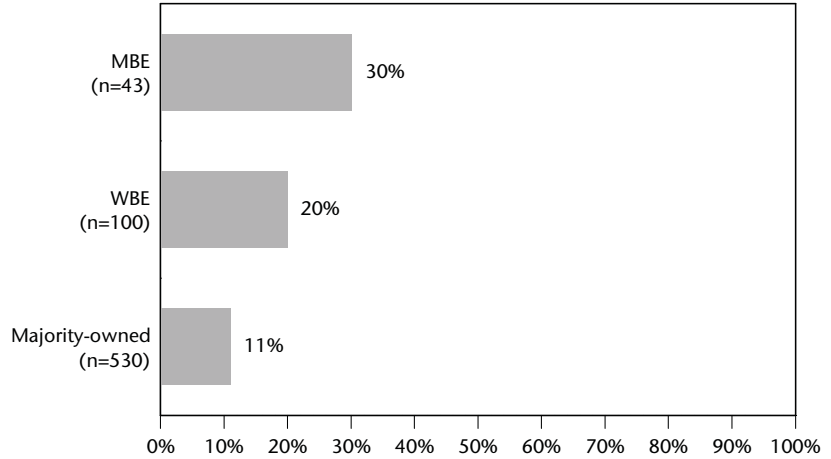
⁷⁵ Dymski, Gary and Lisa Mohanty. 1999. “Credit and Banking Structure: Asian and African-American Experience in Los Angeles.” *The American Economic Review*. 89:362-366.

⁷⁶ For example, Enchautegui, Maria E. et al. 1997. “Do Minority-Owned Businesses Get a Fair Share of Government Contracts?” *The Urban Institute*: 1-117, p. 56.

Among firms reporting that they had obtained or tried to obtain a bond, 30 percent of MBEs indicated difficulties obtaining bonds needed for a project. A somewhat smaller share of WBEs (20%) reported difficulties. Only 11 percent of majority-owned firms that had obtained or tried to obtain a bond reported difficulties. Figure G-19 presents these results from the 2010 availability interviews.

Figure G-19.
Has your company had any difficulties obtaining bonds needed for a project?

Source:
 BBC Research & Consulting from 2010
 Availability Interviews.

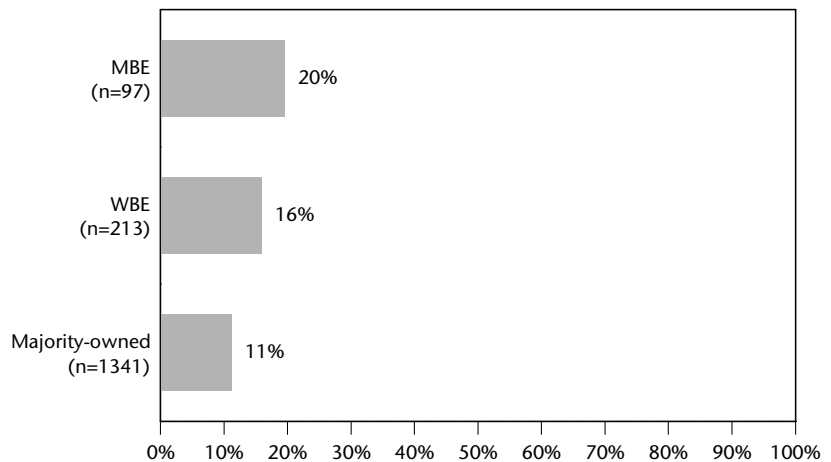


The in-depth interviews with businesses in the Portland MSA, completed as part of this disparity study also identified bonding as a major barrier for smaller construction firms (see Appendix J).

Insurance. BBC also examined whether minority- and women-owned firms were more likely than majority-owned firms within the study area to report that insurance requirements represented a barrier to bidding. About one-in-five MBEs and 16 percent of WBEs interviewed reported such difficulties. Fewer majority-owned firms indicated that insurance requirements presented a barrier to bidding on projects.

Figure F-20.
Have any insurance requirements on projects presented a barrier to bidding?

Source:
 BBC Research & Consulting from 2010
 Availability Interviews.



Summary of Analysis of Access to Capital for Business Formation and Success

There is evidence that minorities and women continue to face certain disadvantages in accessing capital necessary to start and expand businesses, based upon analysis of 2000 and 2006-2008 Census Bureau data; 2006 and 2008 HMDA data; and the 1998 and 2003 SSBF data.

- Home equity is an important source of funds for business start-up and growth. In the Portland MSA, some minority groups were particularly poorly situated to use homeownership as means of acquiring capital. Compared to non-Hispanic whites, fewer African Americans, Hispanic Americans and Native Americans own homes, and those who do own homes tend to have lower home values.
- Asian-Pacific American and Subcontinent Asian Americans also have relatively low homeownership rates in the Portland MSA. Asian-Pacific Americans (but not Subcontinent Asian Americans) generally own homes of lesser value compared to non-Hispanic white-owned homes.
- Larger shares of African Americans, Asian Americans and Hispanic Americans than non-minorities applying for home mortgages were denied loans in the Portland MSA.
- African American and Hispanic American mortgage borrowers are more likely to receive subprime loans in the Portland MSA. Native Americans are more likely to receive subprime refinancing loans.
- Minority- and women-owned firms in the Pacific region are more likely to forgo applying for loans due to fear of denial.
- Based on a regression analysis using 1998 SSBF data, African American and Hispanic American business owners are more likely to be denied a loan in the U.S., even after controlling for neutral factors.
- Among Portland area firms completing availability interviews as part of this study, minority- and women-owned firms were far more likely to report difficulties obtaining a line of credit or loans than were majority-owned firms.
- Among firms completing availability interviews and reporting that they had obtained or tried to obtain a bond, MBEs and WBEs were far more likely than majority-owned firms to indicate difficulties obtaining a bond. MBEs and WBEs were also more likely to report difficulties obtaining insurance.

APPENDIX H.

Success of Businesses in the Portland Professional Services Industries

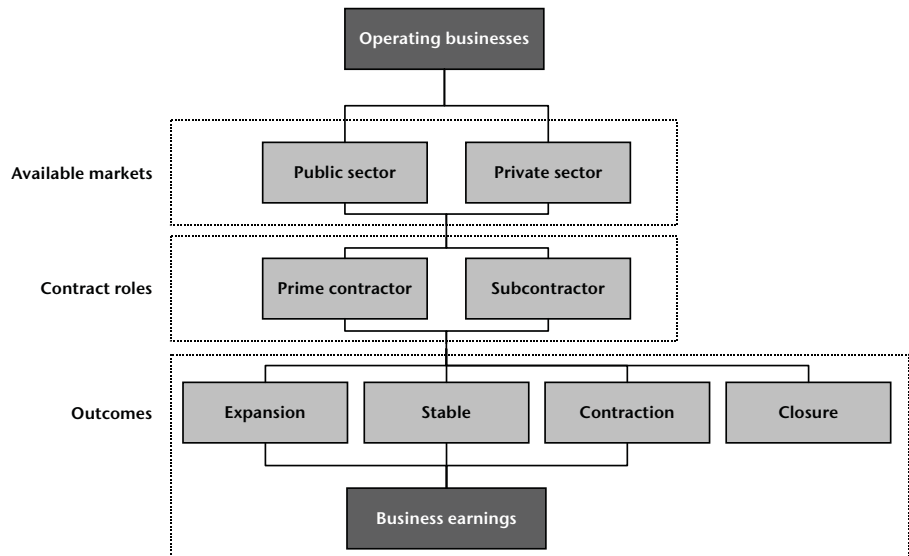
BBC examined the success of minority and women-owned firms (MBE/WBEs), assessing whether business outcomes for those firms differ from those of majority-owned firms (i.e., firms not owned by minorities or women) in the construction and the professional services industries. BBC researched outcomes for MBE/WBEs and majority-owned businesses in terms of:

- Participation in public versus private sector markets;
- Participation as prime contractors and subcontracts;
- Sizes of contracts bid on and performed;
- Businesses discontinuing operations;
- Businesses expanding or contracting;
- Business receipts and earnings; and
- Size distribution of gross revenue.

Figure H-1 provides a framework for the analysis, the components of which will be examined in this appendix.

Figure H-1.
Business success

Source:
BBC Research & Consulting.



The study team begins this section by examining data collected from interviews with Portland area businesses as part of BBC's availability analysis. Those data included information about firms' involvement on public and/or private sector work, including:

- Whether firms had bid on and won contracts in study industries and the size of those projects; and
- Whether firms had worked as prime contractors, subcontractors or both.

After examining data from the availability analysis, the study team then turns to federal data for the Portland Metropolitan Statistical Area (MSA), Oregon and the nation concerning business closures, expansion and contraction.¹ Using those data and information collected from availability interviews, BBC concludes this appendix with an analysis of business earnings.

Markets and Contract Roles

As part of the disparity study, the study team performed telephone availability interviews with construction and professional services firms in the Portland MSA. The study team conducted interviews with local businesses in late 2009 and early 2010. Results provide information on public and private sector work, prime and subcontracts, and past bidding success. The study team also examined data on the largest contract that each firm was awarded. Firm owners and managers were also asked about potential difficulties in the marketplace. Appendix D describes the interview methodology in detail.

Results that the study team examined from the availability interviews pertain to businesses with Portland locations that reported working within the local construction industry.

- Because of the relatively small number of firms representing specific minority groups, BBC reports results from the availability interviews in aggregate for MBEs ("MBE," regardless of whether they are certified as such).
- Responses for white women-owned firms are shown as "WBE." Results for minority women-owned firms are reported under MBE.
- "Majority-owned firms" are all firms not owned or controlled by minorities or women.

¹ In the marketplace appendices, the Portland MSA comprises the following 7 counties (unless otherwise noted): Clackamas, Clark, Multnomah, Washington, Skamania, Yamhill and Polk. Collectively these counties are referred to as the Portland MSA, or simply Portland.

Public sector versus private sector work. BBC examined whether minority- and women-owned firms involved in construction and professional services work were less likely to work in the private sector than the public sector.

The study team separately examined responses for firms in construction and professional services (including engineering firms) subindustries. Results indicate whether a firm had pursued public or private sector work.^{2,3}

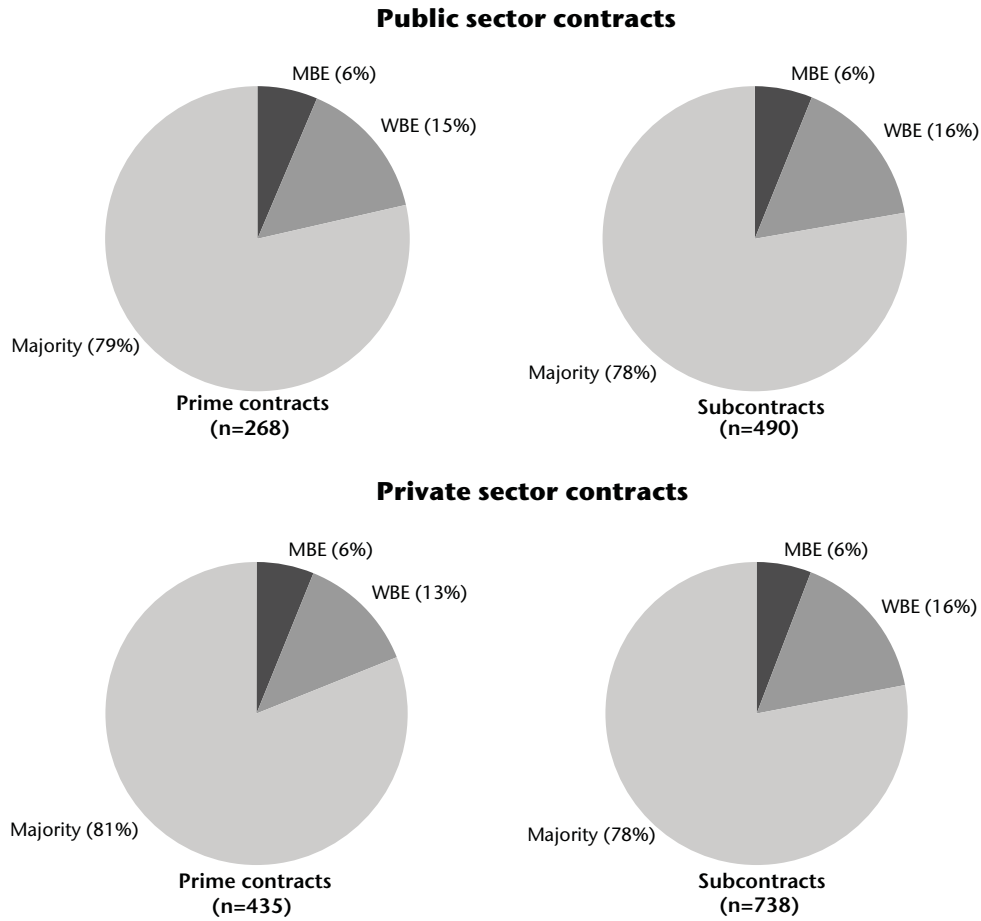
Construction firms. The pie charts in Figure H-2 present the distribution of majority-, minority- and women-owned firms competing for government and private sector prime contracts and subcontracts, based on responses from availability interviews.

- Of the 268 construction industry firms that reported bidding on public sector prime contracts in the past five years, 79 percent were majority-owned, 6 percent were MBEs and 15 percent were WBEs. The share of firms bidding as primes that were MBE/WBEs was about the same for private sector work.
- Among the 490 firms that reported competing for public sector subcontracts, nearly 80 percent of the firms were majority-owned, 6 percent were MBEs and 16 percent were WBEs. The share of MBE/WBE firms bidding on subcontract work was the same for private sector contracts.

² A firm was deemed to have performed or bid on public sector work if it answered “yes” to either of the following questions: (a) “Next, I have a few questions about your company’s role in construction [professional services] work. During the past five years, has your company submitted a bid or a price quote to any part of a government project in the Portland area?”; or (b) “During the past five years, has your company received an award for work as a prime contractor [consultant] or as a subcontractor [subconsultant] to any part of a government project in the Portland area?”

³ A firm was deemed to have performed or bid on private sector work if it answered “yes” to either of the following questions: (a) “During the past five years, has your company submitted a bid or a price quote [proposal or qualifications] for any part of a private sector contract in the Portland area?”; or (b) “During the past five years, has your company received an award for work as a prime contractor [consultant] or as a subcontractor [subconsultant] for any part of a private sector contract in the Portland area?”

Figure H-2.
Share of construction industry firms bidding on public sector and private sector of work in Portland in the past five years



Note: "WBE" is white women-owned firms.
 Total may not add to 100 percent due to rounding.

Source: BBC Research & Consulting from 2009 and 2010 Availability Interviews.

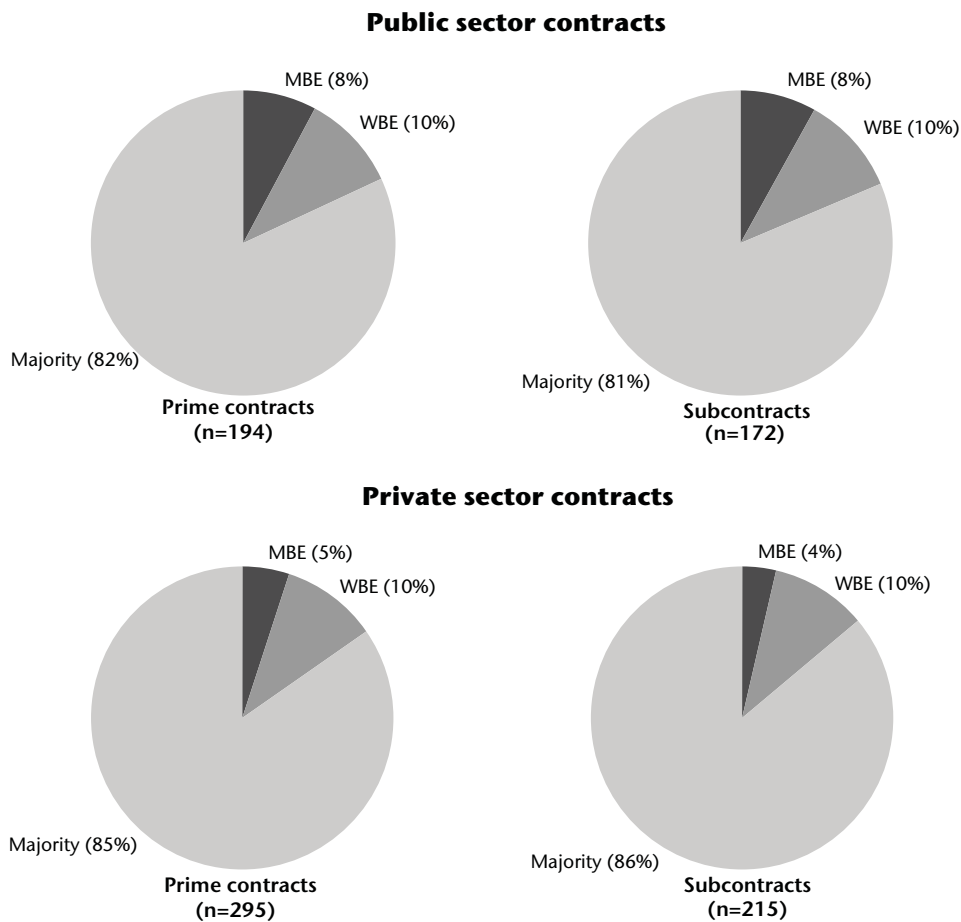
Firms competing for public sector work in Portland were also asked if they had been awarded any public sector contracts (including both prime contracts and subcontracts). When asked to consider the past five years, 77 percent of MBE and 80 percent of WBE construction firms bidding on public sector work reported that they had been successful in obtaining some work. That percentage was about the same for majority-owned construction firms bidding in the public sector (81%).

About 93 percent of MBEs and 91 percent of WBEs bidding on private sector work indicated that they had received such work. About the same share of majority-owned firms (91%) had received private sector construction prime contracts or subcontracts.

Professional services firms. As with construction firms, the study team analyzed the distribution of majority-, minority- and women-owned professional services firms competing for government and private sector prime contracts and subcontracts, based on responses from availability interviews.

- As shown in Figure H-3, MBE/WBEs comprise a slightly smaller share of professional services firms competing for public sector prime contracting work than for private sector prime contracting work (18% for the public sector versus 15% for the private sector).
- MBE/WBEs also comprised 18 percent of firms pursuing government professional services subcontracts, more than the MBE/WBE representation among firms seeking subcontracts in the private sector (14%).

Figure H-3.
Share of professional services industry firms bidding on public sector and private sector work in Portland in the past five years



Note: "WBE" is white women-owned firms.
Total may not add to 100 percent due to rounding.
Source: BBC Research & Consulting from 2009 and 2010 Availability Interviews.

As with construction firms, professional services firms competing for public sector and private sector work were asked if they had received any such work in the past five years. About 57 percent of WBEs and 61 percent of MBEs indicated that they had received some public sector work. More than three-quarters (78%) of majority-owned firms said that they had received public work.

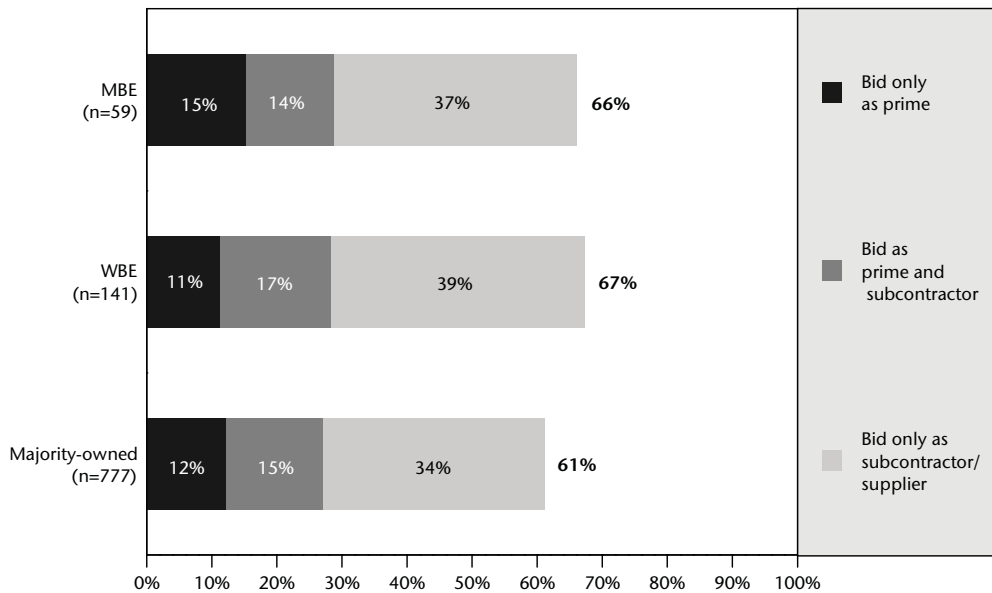
About 94 percent of MBEs and 97 percent of WBEs reported receiving at least some private sector work. A similar share of majority-owned firms (94%) reported receiving private sector work.

Bidding as prime contractors and subcontractors/suppliers. Figures H-4 through H-7 present the share of majority-, minority- and women-owned firms that bid on public sector or private sector work within the past five years. For the construction and professional services subindustries, the figures indicate what percentage of firms bid as a prime contractor, a subcontractor or as both. Results are reported separately for each subindustry. The following analysis draws from availability interview data.

Construction firms. Figure H-4 examines the share of majority-, minority and women-owned Portland construction firms that reported bidding on public sector work as a prime contractor, a subcontractor or as both.

- Approximately 61 percent of majority-owned construction firms that reported being qualified and interested in future construction work bid on public sector work as a prime contractor or a subcontractor in the past five years (including submitting price quotes). About 12 percent had bid only as a prime contractor and 34 percent had bid only as a subcontractor.
- Just over two-thirds (67%) of WBEs reported bidding on past public sector work, as shown in Figure H-6. About 11 percent had bid only as a prime contractor, and 39 percent of WBEs had bid only as a subcontractor on public sector construction work in the past five years.
- Compared to WBEs, a similar share of MBEs reported bidding on public sector work as a prime contractor or a subcontractor in the past five years. Nearly 40 percent of MBEs bid only as a subcontractor, and 15 percent bid only as a prime contractor.

Figure H-4.
Percent of construction firms that reported submitting a bid for any part of a public sector project in the past five years



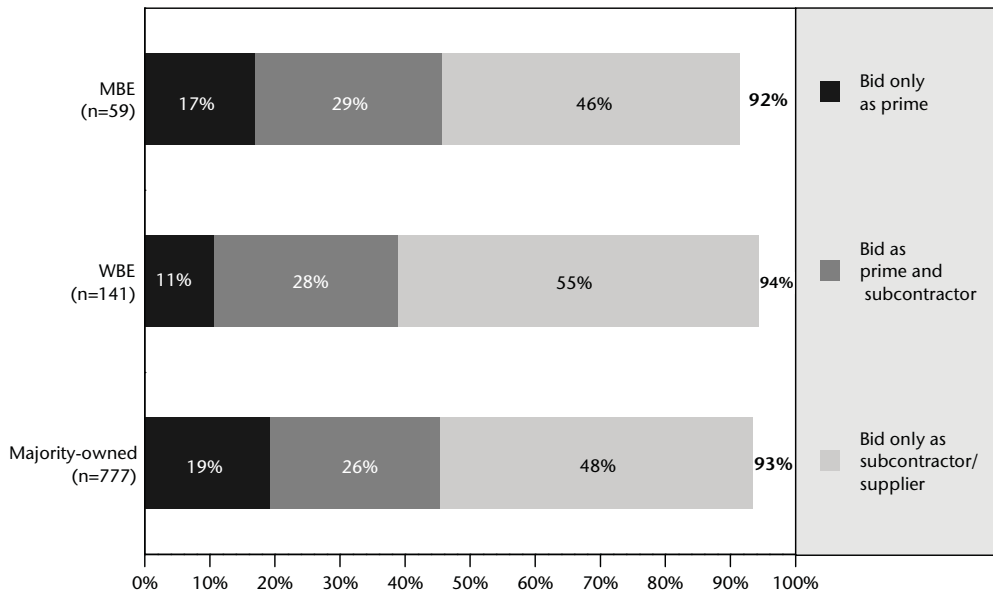
Note: "WBE" is white women-owned firms.

Source: BBC Research & Consulting from the 2009 and 2010 Availability Interviews.

The study team also asked firm owners and managers if the firm had bid on a private sector construction project in the past five years. The proportion of construction firms that bid as prime contractors or as subcontractors on private sector work in the past five years was similar for majority-owned firms, MBEs and WBEs (see Figure H-5).

- Approximately 93 percent of majority-owned firms, 92 percent of MBEs and 94 percent of WBEs reported submitting bid or price quotes for private sector work in the past five years.
- The share of majority-owned construction firms (45%) and MBEs (46%) that bid on prime contracts was similar. The proportion of WBEs that bid on prime contracts was slightly lower (39%).

Figure H-5.
Percent of construction firms that reported submitting a bid for any part of a private sector project in the past five years



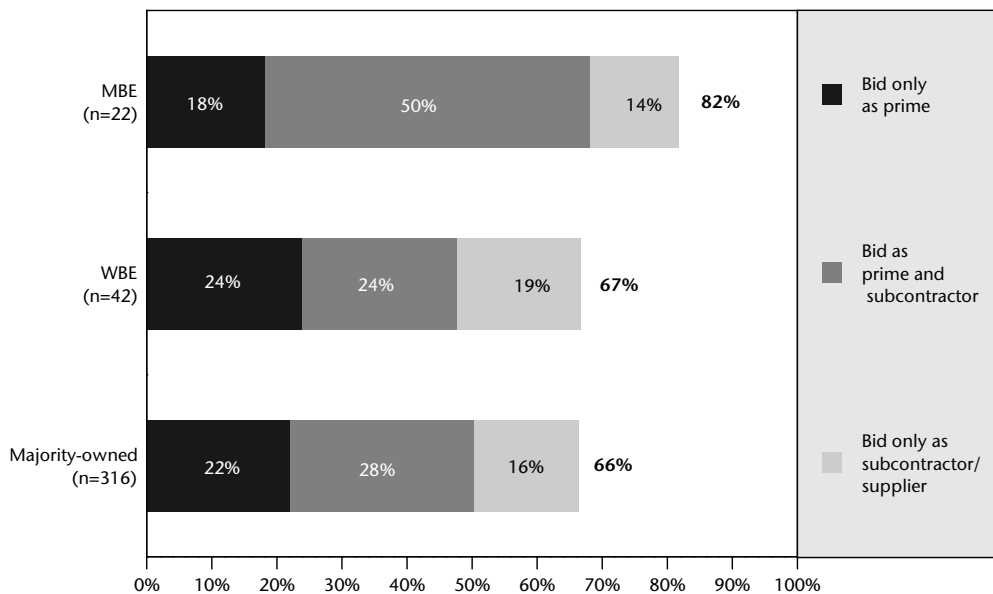
Note: "WBE" is white women-owned firms.

Source: BBC Research & Consulting from 2009 and 2010 Availability Interviews.

Professional services. Figures H-6 and H-7 examine prime contract versus subcontract bidding on professional services contracts, based on data from the availability interviews.

- Figure H-6 shows that WBEs were about as likely as majority-owned firms to bid on public sector professional services contracts as prime contractors. Half of majority-owned firms and 48 percent of WBEs had bid as a prime contractor on public sector work in the past five years.
- Relative to WBEs and majority-owned firms, MBEs (68%) were more likely to bid as a prime contractor on public sector work in the past five years. Overall, a larger share of MBEs reported bidding on public sector professional services contracts within the past five years.

Figure H-6.
Percent of professional services industry firms that reported Submitting a bid for any part of a public sector project in the past five years

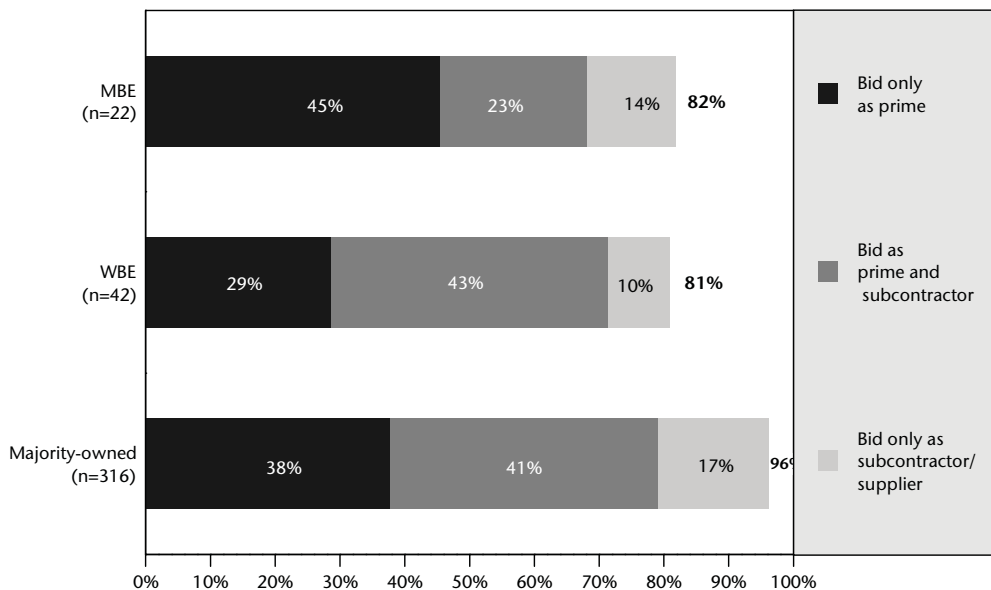


Note: "WBE" is white women-owned firms.
 Source: BBC Research & Consulting from the 2009 and 2010 Availability Interviews.

Figure H-7 presents results for professional services firms bidding on private sector work in the past five years.

- Approximately 96 percent of majority-owned firms had bid on private sector professional services work in the past five years. Figure H-7 shows that a smaller share of both MBEs (82%) and WBEs (81%) had bid on private sector contracts within the past five years.
- Majority-owned professional services firms were also more likely to bid on private sector prime contracts. About 80 percent of majority-owned firms had submitted a bid or price quote as prime contractors in the past five years. About two-thirds of MBEs and 72 percent of WBEs had bid on such prime work in the past five years.

Figure H-7.
Percent of professional services industry firms that reported
Submitting a bid for any part of a private sector project in the past five years



Note: "WBE" is white women-owned firms.
 Source: BBC Research & Consulting from the 2009 and 2010 Availability Interviews.

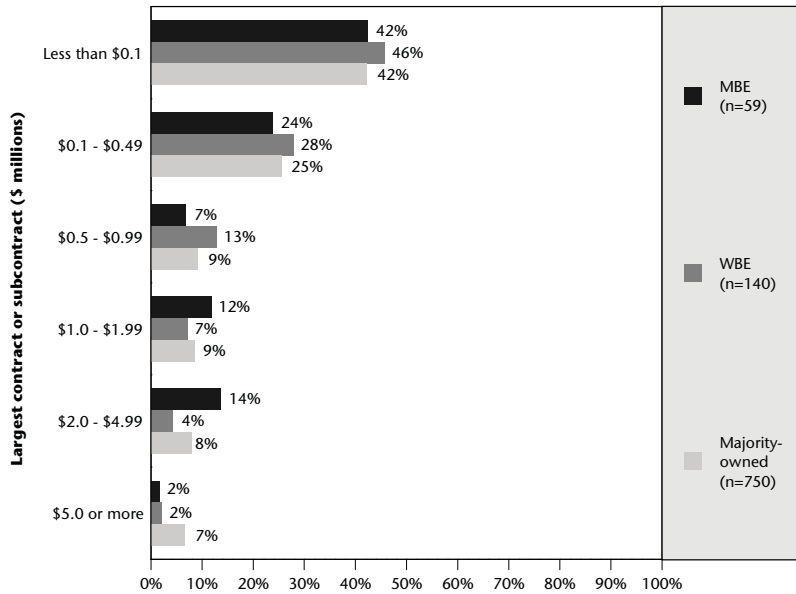
Largest contract. As part of the availability interviews, the study team asked firms to identify the largest contract each firm was awarded in Portland in the past five years.

Construction firms. Among construction firms in the availability interviews, 24 percent of majority-owned firms reported that the largest contract they received was worth \$1 million or more. A slightly larger share of MBEs (28%) reported that they had received a contract of this size, while only 13 percent of WBEs won work worth \$1 million or more. Only 2 percent of MBE/WBEs received work worth \$5 million or more, whereas 7 percent of majority-owned firms were awarded contracts of that size or larger.

Figure H-8.
Largest contract or subcontract that the company received in Portland in the past five years, construction firms

Note:
 "WBE" is white women-owned firms.

Source:
 BBC Research & Consulting from 2009 and 2010 Availability Interviews.

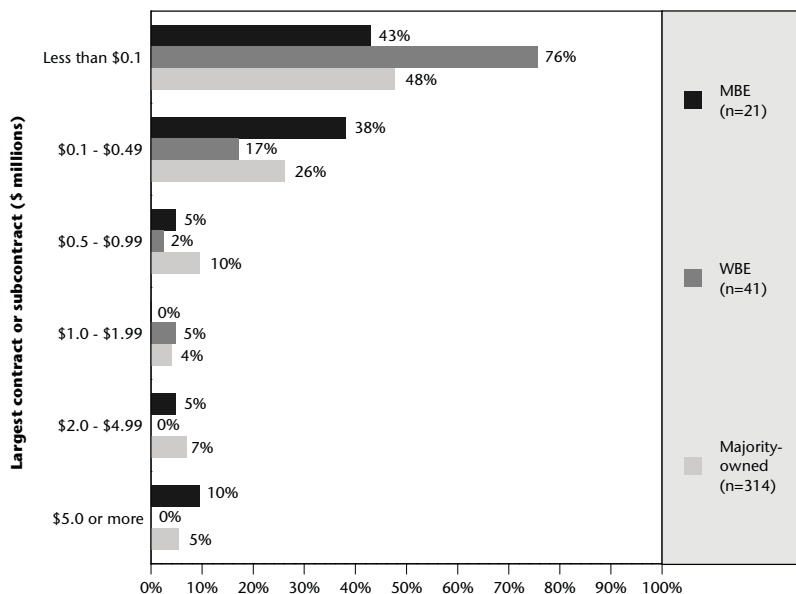


Professional services firms. Among professional services firms, a larger share of MBEs (10%) than majority-owned firms (5%) reported that the largest contract that they received was worth \$5 million or more. No WBEs reported receiving any work worth \$2 million or more. Over three-quarters of WBEs reported that the largest professional services contract that they won in the past five years was less than \$100,000. Only five percent of WBEs indicated that they had been awarded a contract worth \$1 million or more. Compared to majority-owned firms (74%), a larger share of MBEs (81%) reported that the largest contract they had been awarded in the past five years was worth less than \$500,000.

Figure H-9.
Largest contract or subcontract that the company received in Portland in the past five years, professional services firms

Note:
 "WBE" is white women-owned firms.

Source:
 BBC Research & Consulting from 2009 and 2010 Availability Interviews.



Summary of public versus private sector and prime versus subcontracting analyses.

The availability interviews revealed some similarities and some differences between MBE/WBEs and majority-owned firms related to public versus private sector work:

- The telephone interview results for firms in the transportation construction industry found no indication that MBE/WBEs are less likely to have pursued work in the private sector than the public sector. MBE/WBEs that had bid on public and private sector work were also about as successful in obtaining work as majority-owned firms.
- More MBE professional services firms reported pursuing prime contracts in the public sector than majority-owned professional services firms. Majority-owned firms were more likely to have bid or proposed on private sector professional services prime contracts than MBE/WBEs. There is some evidence that MBE/WBE professional services firms bidding on public sector prime contracts or subcontracts were not as successful in obtaining at least some public sector work as majority-owned firms.

BBC identified some differences in bidding as primes versus subcontractors/suppliers between WBE and majority-owned construction and professional services firms:

- For both public and private sector work, WBE construction firms were more likely than majority-owned firms to have only bid as subcontractors or supplier. WBEs were less likely than majority-owned firms to have bid as primes on private sector construction work.
- Among professional services firms, WBEs were less likely to bid as prime contractors on both public and private sector work than majority-owned firms.

Among available construction firms, more majority-owned firms than MBE/WBEs had received contracts or subcontracts of at least \$0.5 million in size. However, relative to majority-owned firms, a larger share of MBE professional services firms received contracts or subcontracts of at least \$0.5 million in size. No WBE professional services firms indicated that they had received work worth \$0.5 million or more.

Bid capacity. Some recent legal cases regarding race- and gender-conscious contracting programs have considered the issue of the “relative capacity” of firms included in an availability analysis.⁴ One approach to accounting for differing capacity between types of firms is to examine relatively small contracts, a technique noted in *Rothe*. In addition to examining small contracts, BBC directly measured bid capacity in its availability analysis.

Measurement of bid capacity. “Bid capacity” for a firm is measured as the largest contract or subcontract the firm bid on or performed in Portland within the five years preceding when BBC interviewed the firm. BBC uses bid capacity as one factor in determining whether a firm would be available to bid on specific prime contracts and subcontracts.

Assessment of possible disparities in bid capacity of MBE/WBEs and majority-owned firms. The availability analysis produced a database of 1,536 firms potentially available for City of Portland work.^{5,6} The following analysis of bid capacity relies on the results of availability interviews.

One factor that affects bid capacity is the industry specializations of firms. Some industry segments, such as construction of water, sewer and utility lines, involve larger projects. Other segments, such as landscape architecture and surveying, involve smaller-scale assignments. One way of controlling for variation in bid capacities in different subindustries is to assess whether a firm has a bid capacity above or below the median level of firms in a particular subindustry. BBC can then test whether minority- and women-owned firms bid on larger or smaller contracts or subcontracts compared with other firms in the same subindustry.

Figure H-10 indicates the median bid capacity among Portland-based firms in each of the 26 industry segments within the construction and professional services subindustries included in the disparity study. Note that the survey questions regarding the largest project that firms had bid on or been awarded captured data in dollar ranges rather than in specific dollar amounts.

⁴ See, for example, the decision of the United States Court of appeals for the Federal Circuit in *Rothe Development Corp. v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).

⁵ One hundred and seventy-nine of these firms were not included in the availability marketplace analysis reported in this section, because they did not supply answers to survey question D2 or D4 on the Availability Survey.

⁶ See Appendix D for further description of the survey sample and process.

Figure H-10.
Median bid capacity by subindustry

Subindustry	Median Bid Capacity
Architecture	\$200,000 to \$500,000
Bridge construction and repair	No observations
Building construction	\$1 million to \$2.5 million
Concrete supply	\$200,000 to \$500,000
Concrete work	\$200,000 to \$500,000
Construction equipment rental	\$200,000
Construction management	\$2.5 million
Consulting services - environmental, transportation and planning	\$200,000 to \$500,000
Electrical work	\$200,000 to \$500,000
Engineering	\$200,000 to \$500,000
Excavation	\$500,000
Highway and street construction	\$1 million to \$2.5 million
Landscape architects	Less than \$200,000
Landscaping	Less than \$200,000
Other construction materials	\$200,000 to \$500,000
Other professional services	\$200,000 to \$500,000
Painting	\$200,000 to \$500,000
Plumbing and HVAC	Less than \$200,000
Roofing	\$200,000 to \$500,000
Specialty trades and other construction	\$200,000 to \$500,000
Structural steel supply	\$500,000 to \$1 million
Surveying	Less than \$200,000
Trucking	Less than \$200,000
Water, sewer and utility line construction	\$200,000 to \$500,000
Water, sewer and utility lines	Less than \$200,000
Wrecking and demolition	\$1 million to \$2.5 million

Source: BBC Research & Consulting from 2009 and 2010 Availability Interviews.

Firms with bid capacities above the median for their industry segments are counted as available for larger projects than most of the firms in their line of business (as well as being counted as available for smaller assignments). Thus, these firms figure more prominently in the availability analysis than firms with smaller bid capacities. An initial question is whether minority and women-owned firms are as likely as majority-owned firms to have above-median bid capacity for their industry segment. Figure H-11 compares the proportions of firms with above-median bid capacity by ownership.

Figure H-11.
Proportion of firms with above-median bid capacity by ownership

Firm ownership	Proportion with above-median bid capacity	
	Construction	Construction-related professional services
African American	77.7 %	60.3 %
Asian-Pacific American	44.4	14.3
Subcontinent Asian American	66.7	0.0
Hispanic American	36.0	0.0
Native American	50.0	100.0
Female	34.3	12.8
Majority-owned	<u>37.2</u>	<u>30.3</u>
All firms	37.2 %	28.0 %

Source: BBC Research & Consulting from 2009 and 2010 Availability Interviews.

Construction. The results shown in Figure H-11 indicate that, in aggregate, the proportion of MBEs that have an above-median bid capacity (44%) is higher than the share of majority-owned firms with above-median bid capacity (37%). Over three-quarters of African American-owned firms have an above-median bid capacity. Hispanic-owned firms had the lowest share of MBEs with an above-median bid capacity (36%). In aggregate, WBEs had the lowest share of firms with above-median bid capacity in the construction subindustry (34%).

Professional services. Figure H-11 shows that about 30 percent of majority-owned firms have an above-median bid capacity. In aggregate, 24 percent of professional services MBEs had an above-median bid capacity, a figure lower than MBEs in construction subindustries. No Subcontinent Asian American- or Hispanic American-owned firms had an above-median bid capacity. Figure H-11 shows that all Native American-owned firms had an above-median bid capacity, but this figure is based on two observations. As with construction WBEs, professional services WBEs had the lowest share of above-median bid capacity when compared to MBEs and majority-owned firms. About 13 percent of WBEs had an above-median bid capacity.

BBC then considered whether neutral factors account for differences among groups in the probability of having above-median bid capacity and if there are statistically significant disparities in bid capacity after accounting for neutral factors.

There are a number of variables from the availability interviews that may be correlated with bid capacity — for example, annual revenues, number of employees and, potentially, whether a firm has multiple establishments in Portland. However, the direction of causation for these variables is unclear. Do firms have greater bid capacity because they have more employees, or do they have more employees because they bid on and win larger projects?

After considering the array of variables from the availability interviews, the study team determined that the age of firms was the neutral factor that might best explain differences in bid capacity (within a subindustry) while being truly external to that capacity. Theoretically, the longer firms are in business, the larger the contracts or subcontracts they might pursue.

To test this hypothesis, the study team conducted separate logistic regression analyses for the construction and professional services industries to determine whether bid capacity could be at least

partly explained by the age of the firm and whether minority- and women-owned firms differ from majority-owned firms of similar ages (after controlling for subindustry).

Bid capacity results for Portland construction industry. The results for the Portland construction industry are shown in Figure H-12. The results of the logistic regression indicated the following:

- The age of the firm was a significant predictor of having above-median bid capacity. The older a firm, the more likely it is to have an above-median bid capacity;
- Minority or female ownership did not have a statistically significant effect on having above-average bid capacity for firms in the construction industry.

Figure H-12.
Portland available
construction industry bid
capacity model

Note:
 ** Denotes statistical significance at the 95% confidence level.

Variable	Coefficient	Z-Statistic
Constant	-1.11	-8.98 **
Age of firm	0.02	6.14 **
Minority	0.51	1.85
Female	-0.13	-0.61

Source:
 BBC Research & Consulting from 2009 and 2010 Availability Interviews.

Bid capacity results for Portland professional services industry. The results for the Portland professional services industry are shown in Figure H-13. The logistic regression model for the industry indicated:

- The age of the firm was a significant predictor of having above-average bid capacity for professional services firms. The older a firm, the more likely it is to have an above-median bid capacity; and
- Neither MBE nor WBE ownership had a statistically significant effect on having above-median bid capacity for firms in the professional services industry.

Figure H-13.
Portland available professional services industry bid capacity model

Variable	Coefficient	Z-Statistic
Constant	-1.67	-7.31 **
Age of firm	0.04	4.66 **
Minority	-0.10	-0.18
Female	-0.88	-1.71

Note:

** Denotes statistical significance at the 95% confidence level.

Source:

BBC Research & Consulting from 2009 and 2010 Availability Interviews.

Businesses Closures, Expansions and Contractions

Having examined different markets for work, Appendix H now turns to an examination of different businesses outcomes, including closure, expansion and contraction. BBC used U.S. Small Business Administration (SBA) analyses to examine outcomes for minority- and women-owned firms in Oregon and the nation. The SBA analyses pertain to MBEs, by demographic group, in comparison with all firms.

Business closure. High rates of business failures may reflect adverse business conditions faced by minority business owners.

Rates of business closures in Oregon. BBC explored possible data sources that might indicate whether MBEs were more likely to close than other firms. Using data on firms first surveyed in the 1997 Survey of Minority- and Women-Owned Business Enterprises, conducted by the U.S. Census Bureau, the SBA reported on employer firm survival rates for MBEs between 1997 and 2001 across sectors of the economy (“employer firms” are firms with paid employees other than the business owner and family members).^{7,8} The SBA report examined patterns in each state but not individual MSAs.

Figure H-14 shows that 56 percent of African American-owned firms operating in Oregon in 1997 had closed by 2001, a higher rate compared to that of other groups. Hispanic American- and Native American-owned firms also had above-average closure rates during this time period, while the closure rate for Asian American-owned firms was similar to the average for all firms. Disparities in closure

⁷ Lowrey, Ying. 2005. “Dynamics of Minority-Owned Employer Establishments, 1997-2001.” U.S. Small Business Administration Office of Advocacy. Washington D.C.

⁸ Results from the 2007 SBO will be available by the end of 2010.

rates for African American- and Native American-owned firms, compared to all firms, appear to have been somewhat higher in Oregon than in the United States during the same time period.

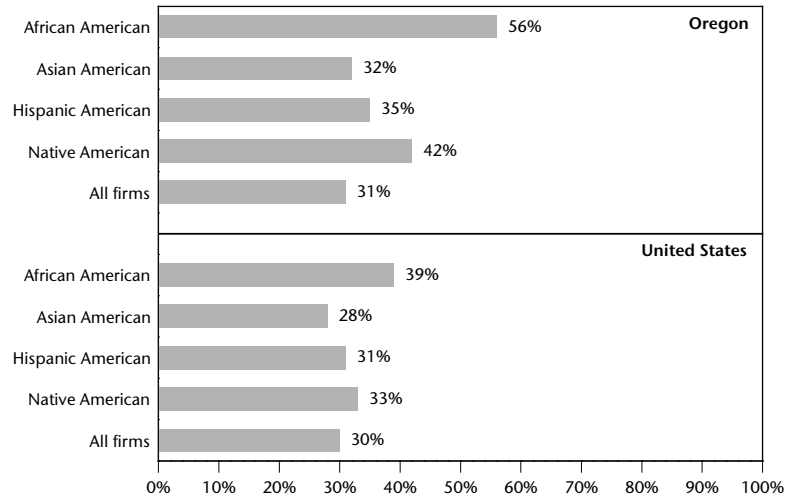
Figure H-14.
Rates of firm closure, 1997-2001, Oregon and the U.S.

Note:

Data refer only to employer firms. As sample sizes are not reported, statistical significance of these results cannot be determined; however, statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2005. "Dynamics of Minority-Owned Employer Establishments, 1997-2001." U.S. Small Business Administration Office of Advocacy. Washington, D.C.



Rates of business closures by industry. The SBA analysis examined national firm closure rates by race/ethnicity for ten industry sectors. Figure H-15 compares national rates of firm closure for two of these industry sectors: construction and services (which includes professional services). Closure rates for all industries by race/ethnicity are also shown for comparison.

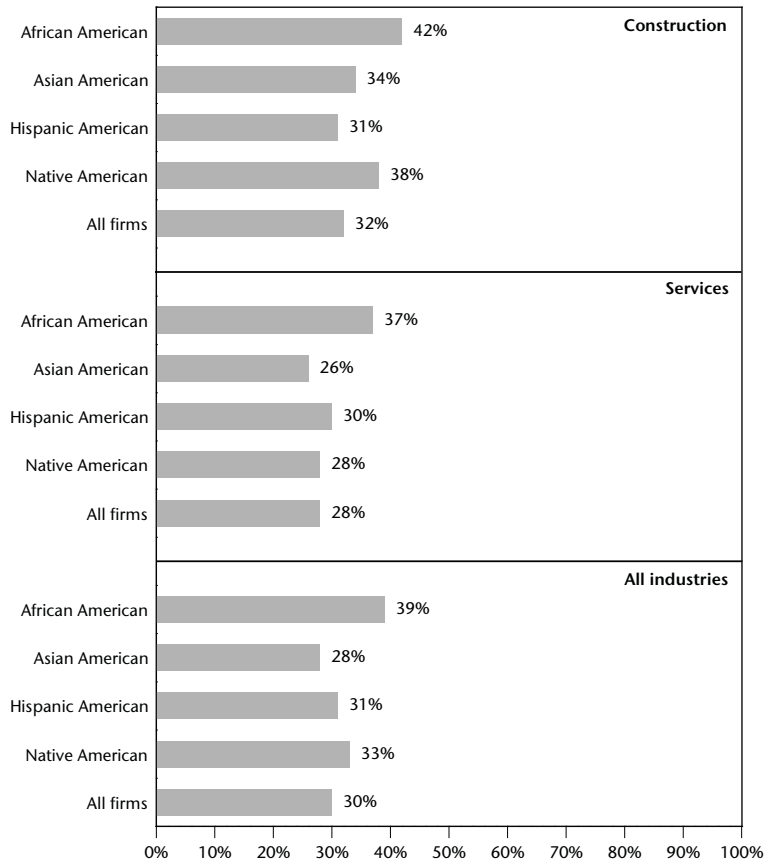
African American-owned firms had a higher than average rate of closure in the construction and services industries. Compared to all firms, Native American-owned businesses were more likely to have closed in the construction industry. Differences between the closure rate for other minority groups and that for all firms were smaller or non-existent.

The study team could not examine whether these patterns also existed in Oregon, as the SBA analysis by industry was not available for individual states.

Figure H-15.
Rates of firm closure, 1997-
2001, construction, services
and all industries in the U.S.

Note:
 Data refer only to employer firms. Sample sizes not reported, but statistics are consistent with SBA data quality guidelines.

Source:
 Lowrey, Ying. 2005. "Dynamics of Minority-Owned Employer Establishments, 1997-2001." U.S. Small Business Administration Office of Advocacy. Washington, D.C.



Successful versus unsuccessful closures. Not all firm closures can be interpreted as a business “failure.” Firms may also close when an owner retires or a more profitable business alternative emerges, both of which represent successful closures.

To date, the 1992 Characteristics of Business Owners (CBO) Survey is the only dataset released by the Census Bureau that classifies firm closures into successful and unsuccessful subsets.⁹ The CBO survey, completed in 1996, asked owners of businesses that had closed between 1992 and 1995 the question, “Which item below describes the status of this business at the time the decision was made to cease operations?” Only the responses “successful” and “unsuccessful” were permitted. A firm that reported to be unsuccessful at time of closure was understood to have failed. Figure H-16 shows comparative data for the proportion of firms that closed for failure in the U.S. between 1992 and 1995.¹⁰ Failure rates are shown for all businesses and for the construction and services industries.

⁹ CBO data from the 1997 and 2002 Economic Censuses do not include statistics on successful and unsuccessful closure. To date, the 1992 CBO is the only U.S. Census dataset that includes such statistics.

¹⁰ All CBO data should be interpreted with caution due to the fact that firms that did not respond to the survey cannot be assumed to have the same characteristics of ones that did. This report does not include CBO data on overall firm closure rates because firms not responding to the survey were found to be much more likely to have closed than ones that did. Holmes, Thomas J. and James Schmitz. 1996. “Nonresponse Bias and Business Turnover Rates: The Case of the Characteristics of Business Owners Survey.” *Journal of Business & Economic Statistics*. 14(2): 231-241.

This study includes CBO data on firm success because there is no compelling reason to believe that closed firms responding to the survey would have reported different rates of success/failure than those closed firms that did not respond to the

According to the CBO, African American-owned firms were the most likely to report being “unsuccessful” at the time in which their business closed. About 77 percent of the African Americans who had owned and closed a business reported an unsuccessful business or business status. In contrast, only 61 percent of non-minority men who had owned a business said that the business was unsuccessful at time of closing. Differences in the successful versus unsuccessful closing of firms were only somewhat narrower for other groups:

- About 71 percent of Hispanic Americans who had owned and closed businesses reported the business to be unsuccessful at time of closing, a substantial difference from the result for all firms.
- About 73 percent of other minorities who had owned and closed firms reported the business to be unsuccessful, also higher than the rate for all firms.

The difference in successful versus unsuccessful closure rates for women-owned businesses was similar to that of all businesses.

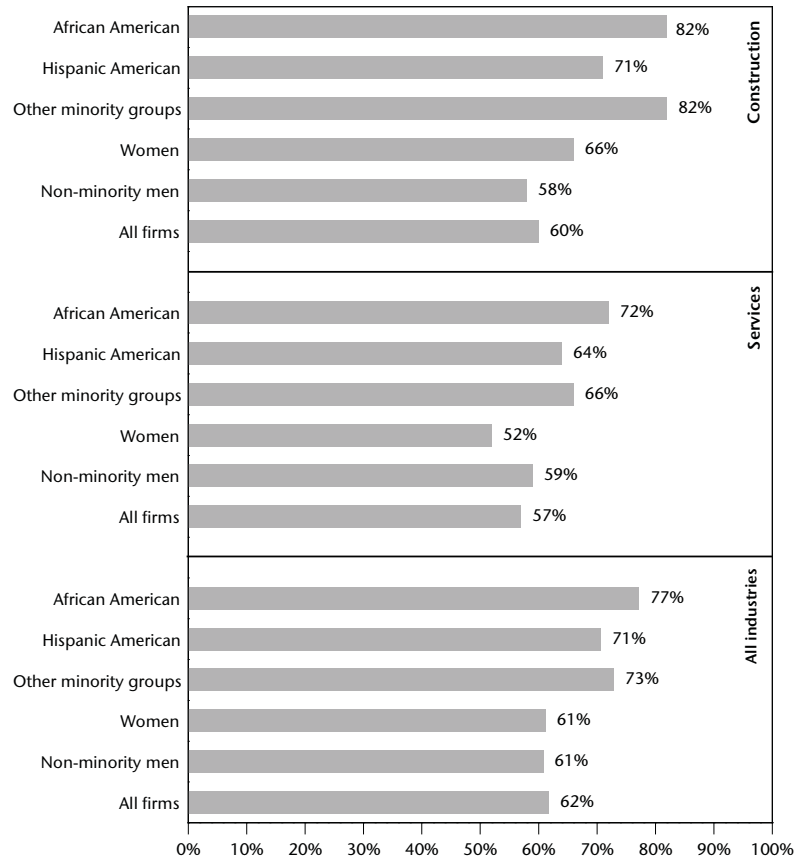
In the construction industry, African American- and Hispanic American-owned businesses were more likely to report an unsuccessful closure than all firms, as were businesses owned by other minorities. Women-owned businesses were also more likely to report an unsuccessful closure compared to all businesses in the construction industry.

The pattern was similar in the services industry with one exception: women-owned businesses were less likely to report an unsuccessful closure than all businesses in the services industry: about 57 percent of all firms but only 52 percent of women-owned businesses reported unsuccessful closure.

survey. Headd, Brian. U.S. Small Business Administration, Office of Advocacy. 2000. *Business Success: Factors leading to surviving and closing successfully*. Washington D.C.: 12.

Figure H-16.
Comparative “failure” rates for
firms that closed between 1992
and 1995

Source:
 U.S. Census Bureau, 1996 Characteristics of
 Business Owners Survey (CBO).



Reasons for differences in failure rates. Several researchers have offered explanations for higher rates of successful closure among non-Hispanic white-owned firms and higher rates of failure among MBEs:

- MBE failure is largely due to barriers in access to capital. Regression analysis has identified initial capitalization as the most significant factor in determining firm viability. Because African American-owned businesses secure smaller amounts of debt equity in the form of loans, they are more liable to fail. Difficulty in accessing capital is found to be particularly acute for minority firms in the construction industry.¹¹
- Prior work experience in a family member’s business or similar experiences are found to be strong determinants of business viability. Because African American business owners are much less likely to have such experience, their firms are less likely to survive.¹²
- Level of education is found to be a strong determinant in business survival. Level of education explains a significant portion of the gap in firm closure rates between African Americans and non-minority firms.¹³

¹¹ Bates, Timothy and Caren Grown. 1991. “Commercial Lending Practices and the Development of Black-Owned Construction Companies.” Center for Economic Studies, U.S. Census Bureau.

¹² Robb, A. and Fairlie, R. 2005. “Why are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital.” University of California, Santa Cruz.

¹³ Ibid. 24.

- Non-minority business owners have the opportunity to pursue a much wider array of business activities, which increases their likelihood of closing successful businesses to pursue more profitable business alternatives. Minority business owners, especially those who do not speak English, have greatly limited employment options and are less likely to close a successful business.¹⁴
- The possession of greater initial capital and the generally higher levels of education among Asian Americans determine the high rate of survival of Asian American-owned firms compared to other minority-owned firms.¹⁵

Summary. Available data suggest that closure rates for African American-, Native American- and Hispanic American-owned firms in Oregon are higher than for other firms. Based on national results for the construction and services industries, African American-owned firms had higher rates of closure in study industries than other firms; Native American-owned firms had higher rates of closure in construction.

National data indicate that African Americans, Hispanic Americans and other minorities who owned and closed firms are more likely than all firms to have done so because the firm was unsuccessful. Several studies have examined why business failure rates are higher for firms owned by certain minority groups at the national level.

Comparative rates of expansion and contraction. Comparative rates of expansion and contraction of MBE and non-MBE firms are also useful indicators of the success of minority-owned businesses. Again, only some of the data available for the nation are also available at the state level, and none is available for the Portland MSA.

Expansion. The SBA's 2005 study of minority business dynamics from 1997-2001 also examined the relative number of firms expanding and contracting for firms in Oregon that had paid employees at the starting time period for the analysis ("employer firms").

Figure H-17 compares the percentage of firms that increased their total employment between 1997 and 2001. Slightly less than one-third of all Oregon firms expanded according to the SBA study. Compared to all Oregon firms, African American-owned firms were much less likely to expand during the 1997-2001 time period. The relative number of Native American-owned businesses expanding was only slightly less than the rate for all firms. Results for Asian American-owned businesses were similar to that for all firms, and firms owned by Hispanic Americans were more likely to expand than all firms.

¹⁴ Bates, Timothy. 2002. "Analysis of Young Small Firms That Have Closed: Delineating Successful from Unsuccessful Closures." Center for Economic Studies, U.S. Census Bureau.

¹⁵ Bates, Timothy. 1993. "Determinants of Survival and Profitability Among Asian Immigrant-Owned Small Businesses." Center for Economic Studies, U.S. Census Bureau.

Nationally, African American-owned firms were less likely to expand than all firms — a much smaller disparity compared to that observed in Oregon. A 2009 SBA study of business dynamics found that, nationwide, a similar percentage of African American-owned firms expanded during 2002-2003 compared to firms owned by other race and ethnicity groups.¹⁶

Figure H-17.
Percentage of firms that expanded employment, 1997-2001, Oregon and the U.S.

Note:

Data refer only to employer firms. Sample sizes not reported, but statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2005. "Dynamics of Minority-Owned Employer Establishments, 1997-2001." U.S. Small Business Administration Office of Advocacy. Washington, D.C.

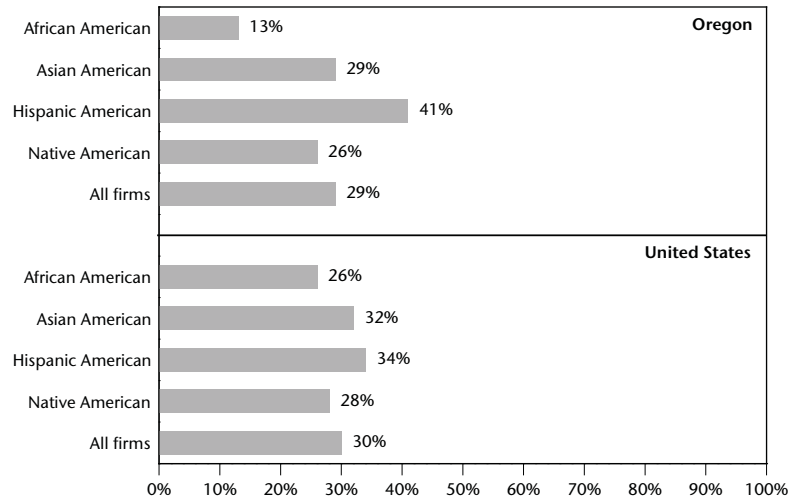


Figure H-18 shows the percentage of firms expanding in the construction and services industries in the United States. The 2005 SBA study did not separately report results for firms at the state or MSA level in individual industries. Nationally, the patterns evident for individual industries were similar to those observed for all industries:

- African American-owned firms were less likely to have expanded than all firms in construction between 1997 and 2001.
- Hispanic American-owned firms were more likely to have expanded in the construction industry than all construction firms.
- Compared to all firms, Native American-owned firms were slightly less likely to expand in the construction industry but slightly more likely to expand in the services industry.
- Asian American-owned firms were as likely as all firms to have expanded in the construction and services industries between 1997 and 2001.

¹⁶ Lowrey, Ying. 2009. "Dynamics of Employer Establishments, 2002-2003." U.S. Small Business Administration Office of Advocacy. Washington D.C.

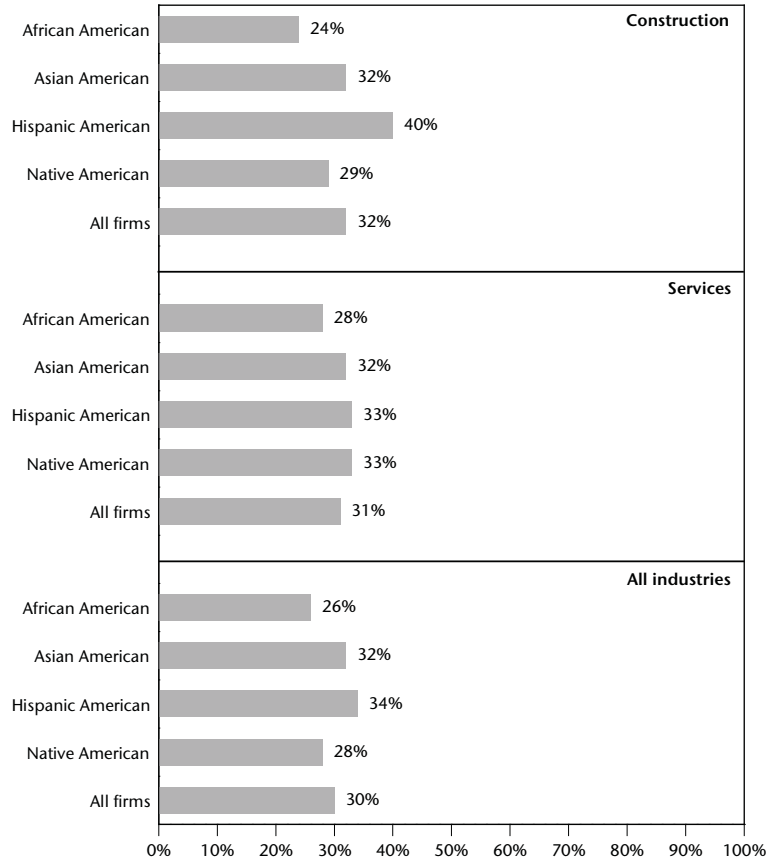
Figure H-18.
Percentage of firms that
expanded employment, 1997-
2001, construction, services
and all industries in the U.S.

Note:

Data refer only to employer firms. Sample sizes not reported, but statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2005. "Dynamics of Minority-Owned Employer Establishments, 1997-2001." U.S. Small Business Administration Office of Advocacy. Washington, D.C.



Contraction. Figure H-19 shows the percentage of firms that reduced their employment between 1997 and 2001. As with the analysis of expanding firms, these data track the activity of firms that had paid employees in 1997. In Oregon, African American- and Hispanic American-owned firms were less likely to have contracted during 1997-2001 than all firms. Compared to all firms, Asian American-owned firms were slightly more likely to have contracted. The percentage of Native American-owned firms contracting was similar to the average for all firms.

In the United States as whole, MBEs were similar to all firms in terms of the percentage that contracted employment.

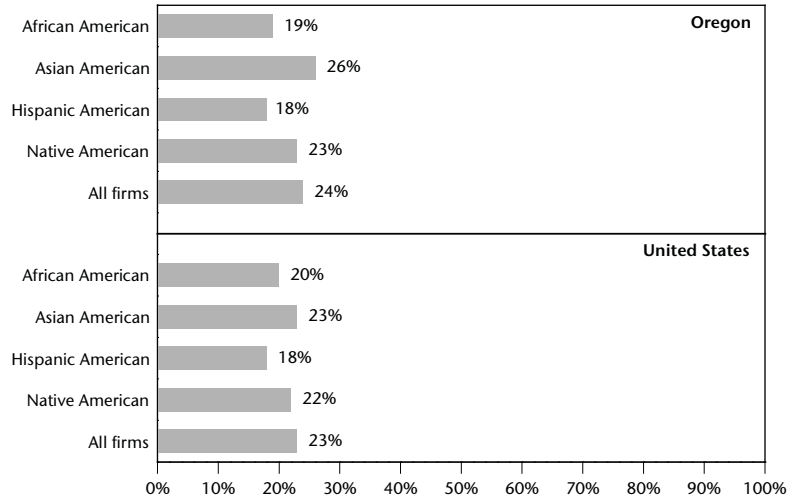
Figure H-19.
Percentage of firms that
contracted employment, 1997-
2001, Oregon and the U.S.

Note:

Data refers only to employer firms. Sample sizes not reported, but statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2005. "Dynamics of Minority-Owned Employer Establishments, 1997-2001." U.S. Small Business Administration Office of Advocacy. Washington, D.C.



The SBA study did not report state-specific results relating to contraction in individual industries. However, Figure H-20 shows the share of firms contracting for the construction and services industries at the national level.

Compared to all construction firms in the United States, a similar or smaller percentage of MBE construction firms contracted employment between 1997 and 2001. However, in the services industry, Asian American- and Hispanic American-owned firms were slightly more likely to have contracted than all firms, whereas African American- and Native American-owned firms were marginally less likely to have contracted.

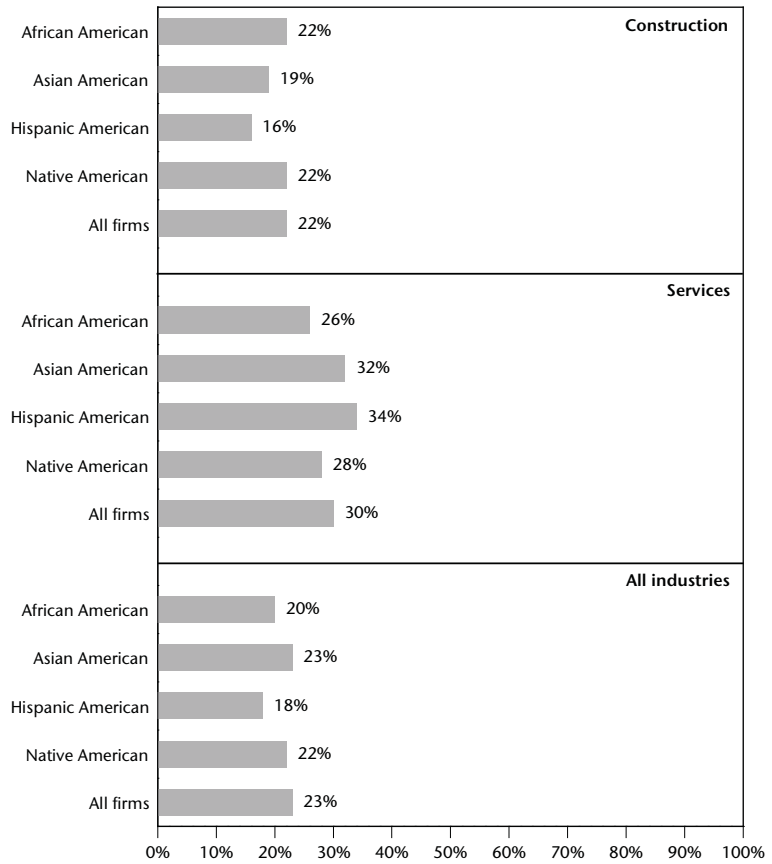
Figure H-20.
Percentage of firms that
contracted employment, 1997-
2001, construction, services
and all industries in the U.S.

Note:

Data refer only to employer firms. Sample sizes not reported, but statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2005. "Dynamics of Minority-Owned Employer Establishments, 1997-2001." U.S. Small Business Administration Office of Advocacy. Washington, D.C.



Summary. Between 1997 and 2001, the SBA study found that 29 percent of Oregon employer firms (i.e., those with paid employees other than the business owner and family members) had expanded employment, 24 percent had contracted employment, and 31 percent had closed. In Oregon:

- Among groups examined, African American-owned firms were the most likely to close and the least likely to expand. However, African American-owned firms were less likely to contract than all firms.
- Compared to all firms, Native American-owned firms were more likely to close and less likely to expand, but not more likely to contract.
- Hispanic American-owned businesses were more likely to close than all firms. However, they were less likely to contract and more likely to expand than all firms.
- Asian American-owned firms were similar to all firms in the proportion that expanded employment and that closed during this period. However, firms owned by Asian Americans were slightly more likely to contract than all firms.

With the exception of African American-owned firms, MBEs generally fared as well or better than all firms in Oregon in terms of the percentage that expanded employment. Among businesses owned by minorities, only Asian American-owned firms were more likely to have contracted than all firms (and this difference was only marginal). Rates of firm closure for firms owned by African Americans, Hispanic Americans and Native Americans were greater than the average for all firms.

Business Earnings/Receipts

Annual receipts and business earnings are also an indicator of the success of a business. The study team examined:

- Business receipts data published by the U.S. Census Bureau;
- Data on business earnings for business owners from the 2000 Census and 2006-2008 American Community Surveys (ACS); and
- Annual revenue data for construction and professional services firms in Portland collected as part of the availability interviews.

Business receipts from 2002 survey of business owners. BBC examined receipts for firms in the Portland MSA, Oregon and the U.S. using data from the 2002 Survey of Business Owners (SBO), conducted by the U.S. Census Bureau. BBC also analyzed receipts for firms in individual industries. The SBO separately reports business receipts for employer firms (i.e., those with paid employees other than the business owner and family members) and for all firms.¹⁷

Receipts for all firms. Figure H-21 presents 2002 mean annual receipts for employer and non-employer firms, by race/ethnicity and gender. The SBO data for firms across all industries in Oregon indicate that average receipts for minority- and women-owned businesses were much lower than the average for all firms, with some groups faring worse than others.

Businesses owned by African Americans had average receipts that were roughly 45 percent of the average for all firms in 2002. At about \$111,000, average receipts for Native American-owned firms were less than one-third the average for all firms. Asian American- and Hispanic American-owned firms had higher average receipts than other minority groups in 2002. Nevertheless, average receipts for both groups were still below the average for all firms, as were average receipts for women-owned firm in Oregon.

As shown in Figure H-21, disparities in business receipts for minority and women-owned businesses compared to all firms in Oregon are broadly consistent with those seen in the United States as a whole. However, disparities in average receipts between African American- and Hispanic American-owned firms and all firms were larger in the U.S. than Oregon.

Because the SBO did not separately report receipts for publicly-traded and privately held companies in individual MSAs, the study team could not examine differences between minority- and women-owned firms and all privately held businesses in the Portland MSA. However, results for different racial/ethnic and gender groups in the Portland MSA were very similar to those found in Oregon.

Consistent with the results shown in Figure H-21, a more recent SBA study (2007) found similar differences when examining firms in all industries across the U.S.¹⁸

¹⁷ The SBO data used in this analysis include incorporated and unincorporated firms, but not publicly-traded companies or other firms not classifiable by race/ethnicity and gender.

¹⁸ Lowrey, Ying. 2007. *Minorities in Business: A Demographic Review of Minority Business Ownership*. Office of Economic Research, Office of Advocacy, U.S. Small Business Administration.

Figure H-21.
Mean annual receipts
(thousands) for all firms, by
race/ethnicity and gender of
owners, 2002

Note:
 Includes employer and non-employer firms. Does not include publicly-traded companies or other firms not classifiable by race/ethnicity and gender.
 Source:
 2002 Survey of Business Owners, part of the U.S. Census Bureau's 2002 Economic Census.

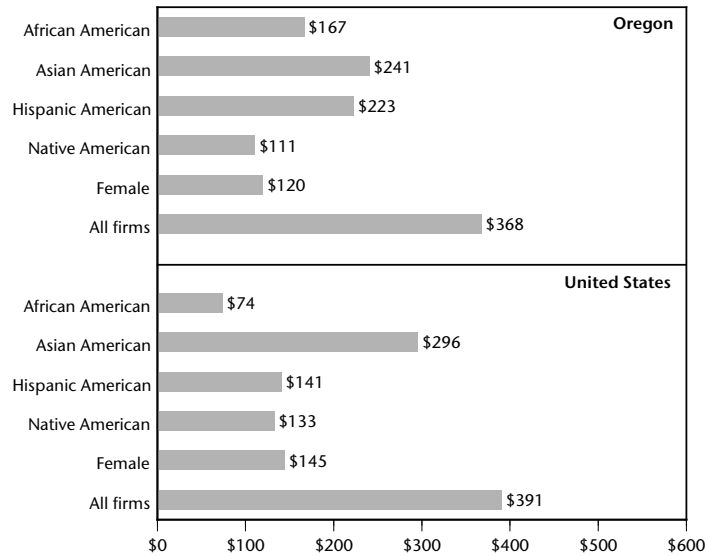


Figure H-22 shows mean annual earnings in 2002 for employer firms in Oregon and the United States. Minority- and women-owned employer firms had substantially lower average business receipts than all employer firms, both in the state and nation.

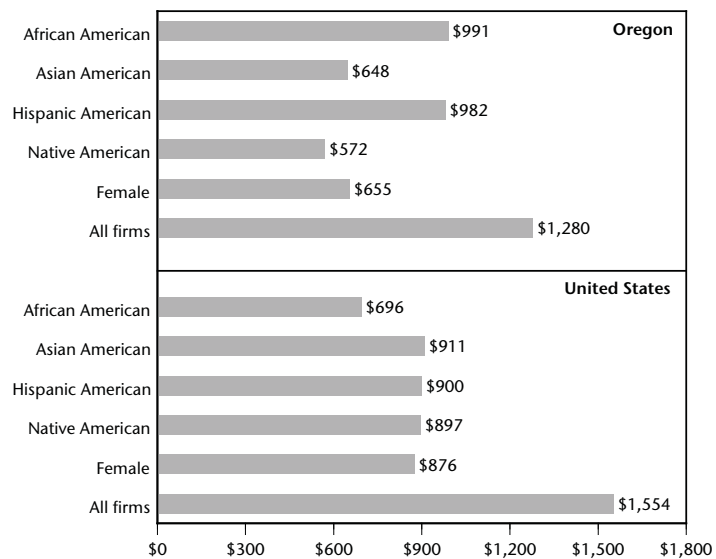
The 2002 mean annual receipts for African American- and Hispanic American-owned employer firms in Oregon were greater compared to firms owned by other minority groups but still below the average for all firms. Native American-owned firms had the lowest average receipts at about 45 percent of the average for all firms in the state.

Data were not available to allow comparison between minority- and female-owned firms and all privately held firms in the Portland MSA, but average receipts for minority- and women-owned businesses appear to be generally consistent with those found for the state as a whole. Firms owned by African Americans, however, appear to have lower average earnings in the Portland MSA than Oregon.

Figure H-22.
Mean annual receipts
(thousands) for employer firms,
by race/ethnicity and gender of
owners, 2002

Note:
 Includes only employer firms. Does not include publicly-traded companies or other firms not classifiable by race/ethnicity and gender.

Source:
 2002 Survey of Business Owners, part of the U.S. Census Bureau's 2002 Economic Census.



Receipts by industry. The study team also analyzed SBO data for firms in the construction industry and the professional, scientific and technical services industry. Figure H-23 presents mean annual receipts in 2002 for all firms (employer and non-employer firms combined) and for employer firms by racial, ethnic and gender group. Results are presented for Oregon and the United States.

Figure H-23.
Mean annual receipts (thousands) for firms in the construction and professional, scientific and technical services industries, by race/ethnicity and gender of owners, 2002

	All firms		Employer firms	
	Construction	Professional, scientific & technical services	Construction	Professional, scientific & technical services
Oregon				
African American	\$325	\$79	\$897	\$227
Asian American	153	132	425	650
Hispanic American	284	70	643	556
Native American	205	34	651	122
Female	259	63	689	318
All firms	\$389	\$137	\$1,003	\$500
United States				
African American	\$128	\$81	\$860	\$644
Asian American	250	177	1,100	779
Hispanic American	148	109	901	595
Native American	188	93	1,007	480
Female	339	85	1,206	429
All firms	\$400	\$180	\$1,398	\$699

Note: Does not include publicly-traded companies or other firms not classifiable by race/ethnicity and gender.

Source: 2002 Survey of Business Owners, part of the U.S. Census Bureau's 2002 Economic Census.

In the Oregon construction industry, average 2002 receipts for minority- and women-owned firms were lower than the average for all firms. Results for all firms (including employer and non-employer firms) indicate:

- Asian American-owned construction firms in Portland had average receipts that were about 39 percent of the average for all firms.
- Among minority groups, African American- and Hispanic American-owned construction firms had the highest average receipts, but these were still less than the average for all firms.
- Native American-owned construction firms had average receipts that were about 53 percent of the average for all companies.
- Average receipts for women-owned construction firms in Oregon were about two-thirds of the average for all firms.

The study team found lower than average receipts for minority- and women-owned construction firms, both when considering all firms or just employer firms in Oregon. This pattern was also evident in the national construction industry.

In the Oregon professional, scientific and technical services industry, minority- and women owned firms had lower average receipts than all firms. Results for all firms (including employer and non-employer firms) in this industry show:

- Native American-owned firms had average receipts of \$34,000, less than one-fourth the average for all firms.
- Among MBEs, businesses owned by Asian Americans had the highest average receipts at \$132,000, still slightly less than the average for all companies.
- Average receipts for firms owned by African Americans were about \$79,000, less than three-fifths the average for all firms.
- Hispanic American-owned firms had average receipts that were about half of the average for all companies.
- Women-owned firms' average receipts were less than half that of all firms.

An examination of employer firms in professional, scientific and technical services yielded similar results: minority- and women-owned firms had below average annual receipts in the Oregon in 2002.

Business earnings for business owners. In order to assess the success of self-employed minorities and women in the study industries, BBC examined earnings using Public Use Microdata Samples (PUMS) from the 2000 U.S. Census and 2006-2008 ACS. BBC analyzed incorporated and unincorporated business owners, age 16 and over, who reported positive business earnings. Since the 2000 Census reports business earnings for the previous year, figures presented here are based on earnings in 1999.

Business owner earnings in 1999. Figure H-24 shows average earnings in 1999 for business owners in the construction industry in the Portland MSA, Oregon and the United States. These results are based on the 2000 Census, in which individuals were asked to give their business income for the previous year.

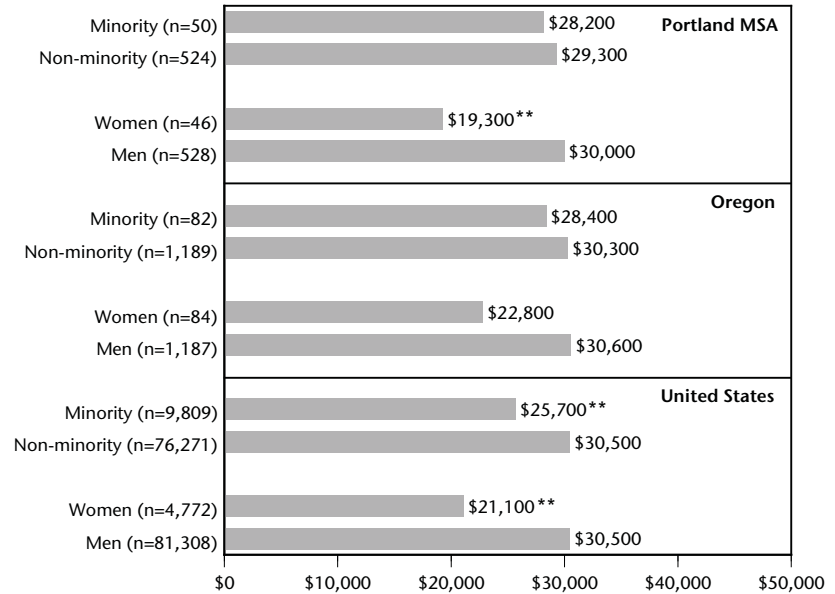
In 1999, female construction business owners in Portland earned \$19,300, substantially less than the \$30,000 earned by their male counterparts (a statistically significant difference). Mean annual earnings for minority construction business owners (\$28,200) were slightly less, on average, than non-minority business owner earnings (\$29,300).

Results for Portland are similar to Oregon and the U.S., where large disparities in average earnings existed between women and men who owned construction businesses. However, disparities in mean earnings between minority and non-minority construction business owners appear to be not as large in the Portland MSA and Oregon compared with the United States.

Due to small sample sizes, BBC was unable to report robust figures for average earnings in the Portland professional services industry in 1999. However, results suggest that there were disparities in earnings between female and male business owners and between minority and non-minority business owners.

Figure H-24.
Mean annual business owner earnings (thousands) in the construction industry, 1999

Note:
 The sample universe is business owners age 16 and over who reported positive earnings.
 ** Denotes statistical significance at the 95% confidence level.
 "Minority" includes African Americans, Hispanic Americans, Asian Americans, Native Americans and other race groups.
 Source:
 BBC Research & Consulting from 2000 U.S. Census 5% Public Use Microdata Sample.



Business owner earnings in 2005-2008. The 2006-2008 ACS three-year sample also reports business owner earnings. Due to the way each year's ACS survey is conducted, earnings for business owners reported in the three-year sample may be for any year between 2005 and 2008. However, all dollar amounts are given in 2008 dollars.

Figure H-25 shows business earnings in 2005-2008 for owners in the construction industry in the Portland MSA, Oregon and the United States. Similar to 2000, there were large, statistically significant disparities in earnings for female business owners compared to male business owners in the Portland MSA, Oregon and the United States. Differences in Portland between minority and non-minority earnings were less substantial yet still apparent.

As in 2000, the study team was unable to report robust results for 2005-2008 business owner earnings in the Portland professional services industry, due to small sample sizes.

Figure H-25.
Mean annual business owner earnings (thousands) in the construction industry, 2005-2008

Note:

The sample universe is business owners age 16 and over who reported positive earnings.

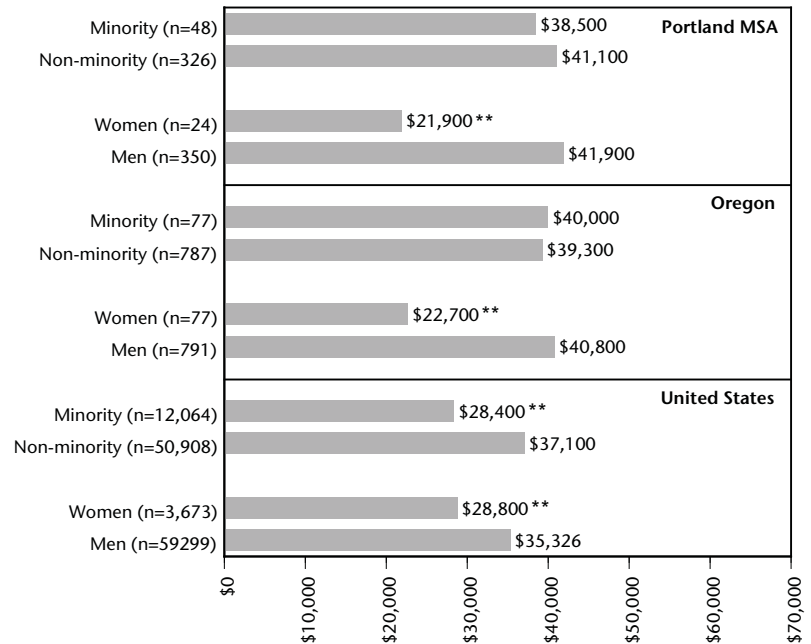
All amounts in 2008 dollars.

** Denotes statistical significance at the 95% confidence level.

“Minority” includes African Americans, Hispanic Americans, Asian Americans, Native Americans and other race groups.

Source:

BBC Research & Consulting from 2000 U.S. Census 5% Public Use Microdata Sample.



Regression analysis of business earnings. Differences in business owner earnings may be at least partially attributable to neutral factors such as age, marital status or educational attainment. BBC performed regression analysis using 2000 Census PUMS data to examine whether disparities in business earnings for 1999 remained after controlling for certain neutral factors. Consistent with past court-reviewed research, BBC applied an ordinary least squares (OLS) regression to the data.

Consistent with model specifications that have been reviewed by the courts, the dependent variable in this model is the natural logarithm of business earnings. Business owners reporting zero or negative business earnings were excluded, as were observations for which the Census Bureau had imputed the value of business earnings. Along with variables for the race, ethnicity and gender of business owners, the model also included available measures from the PUMS data considered likely to affect earnings potential, including age, age-squared, marital status, ability to speak English well, disability condition and educational attainment. This model is very similar to those reviewed by the courts after other disparity studies.¹⁹

For the construction industry, the study team developed two separate models:

- A model for business owner earnings in the Portland MSA construction industry that included 429 observations; and
- A model for business owner earnings in the Oregon and Washington construction industry that included 2,130 observations.

The model for Oregon and Washington included an indicator variable for the Portland MSA and interaction terms to represent minority and female business owners in Portland.

¹⁹ For example, National Economic Research Associates, Inc. 2000. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Minnesota Department of Transportation; and National Economic Research Associates, Inc. 2004. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Illinois Department of Transportation.

Due to small sample sizes, BBC took a different approach when examining business owner earnings in the professional services industry. BBC created a model for the professional services industry in the Pacific Census Division (referred to in the following discussion as the Pacific region) that included 1,027 observations.²⁰ The model included separate terms to take account of the effect of businesses being located in the Portland MSA. This approach is similar to that used by other researchers.

Construction industry in Portland. Figure H-26 shows the results of the OLS model for 1999 earnings in the Portland construction industry. The model indicates that some neutral factors are statistically significant in predicting the earnings of business owners in the construction industry: older business owners have greater earnings, but age has less of an effect for the oldest individuals.

Other neutral factors were not statistically significant in predicting business earnings, possibly due to the small number of observations in the estimation sample. However, after taking account of neutral factors, there are statistically significant disparities in business owner earnings in the Portland construction industry in 1999 for women and other race minorities.

Results indicate that female and other race business owners in the Portland construction industry earned significantly less than male and non-Hispanic white business owners, respectively, even after controlling for neutral characteristics.

Figure H-26.
Portland MSA construction business owner earnings model, 1999

Variable	Coefficient	t-statistic
Constant	5.852	5.37 **
Age	0.137	4.18 **
Age-squared	-0.002	-4.92 **
Married	0.259	1.44
Speaks English well	1.251	1.39
Disabled	-0.316	-1.20
Less than high school	-0.127	-0.49
Some college	-0.137	-0.86
Four-year degree	-0.286	-1.14
Advanced degree	-0.302	-0.69
African American	0.283	1.44
Asian American	0.352	0.86
Hispanic American	0.256	0.83
Native American	-0.063	-0.18
Other minority group	-1.056	-2.91 **
Female	-0.695	-2.43 **

Note: ** Denotes statistical significance at the 95% confidence level.
* Denotes statistical significance at the 90% confidence level.

Source: BBC Research & Consulting based on analysis of 2000 Census Public Use Microdata Sample.

²⁰ The Pacific region includes Alaska, California, Hawaii, Oregon and Washington.

Construction industry in Oregon and Washington. BBC also developed a separate model for the Oregon and Washington construction industry using 2000 Census data.²¹ The model includes an indicator variable for the Portland MSA and interaction terms to represent minority and women business owners from Portland. Figure H-27 shows the results of this OLS model for 1999. This model includes 2,130 business owners.

Figure H-27.
Oregon and Washington construction industry
business owner earnings model, 1999

Variable	Coefficient	t-statistic
Constant	7.302	14.11 **
Age	0.101	5.88 **
Age-squared	-0.001	-6.75 **
Married	0.258	3.71 **
Speaks English well	0.665	1.77 *
Disabled	-0.251	-2.00 **
Less than high school	-0.151	-1.45
Some college	-0.129	-1.81 *
Four-year degree	-0.094	-0.92
Advanced degree	-0.054	-0.27
In Portland MSA	-0.086	-1.02
African American	-0.760	-2.38 **
African American in Portland MSA	0.948	2.73 **
Asian American	0.729	2.02 **
Asian American in Portland MSA	-0.525	-1.21
Hispanic American	-0.083	-0.32
Hispanic American in Portland MSA	0.302	0.75
Native American	-0.236	-1.11
Native American in Portland MSA	0.236	0.60
Other minority group	0.837	1.94 *
Other minority group in Portland MSA	-1.950	-4.24 **
Female	-0.627	-3.70 **
Female in Portland MSA	-0.128	-0.38

Note: ** Denotes statistical significance at the 95% confidence level.
 * Denotes statistical significance at the 90% confidence level.

Source: BBC Research & Consulting based on analysis of 2006-2008 ACS Public Use Microdata Sample.

The following neutral factors are statistically significant in predicting business earnings in the 1999 Oregon and Washington construction industry:

- Older business owners have greater earnings, but this marginal effect declines for the oldest individuals;
- Married business owners tend to have greater business earnings than unmarried business owners;
- Business owners who speak English well generally have greater average business earnings;

²¹ The study team included the model for the Oregon and Washington construction industry to account for there being few observations in the estimation sample for the Portland-specific model and for the corresponding lack of statistical confidence.

- Being disabled results in lower average business earnings; and
- Business owners with some college (but no degree) have lower average business earnings than business owners with just a high school degree.

After controlling for neutral factors, a number of statistically significant disparities in business owner earnings remain in the Oregon and Washington construction industry:

- African American business owners earned less than non-Hispanic white business owners;
- Female business owners earned less than male business owners;
- Asian American and “other minority” business owners earned more than their non-Hispanic white counterparts.

The indicator variable for the Portland MSA is not significant, indicating that on average, construction business owner earnings in the Portland area were not significantly different from those in Washington and Oregon. However, for some individual groups, there is evidence of significant differences in earnings between Portland and the wider geographic area in 1999:

- African American construction business owners earned significantly more in the Portland MSA than in Washington and Oregon; and
- Among construction business owners, members of the “other minority” group earned significantly less in Portland than in Washington and Oregon.

Professional services industry. Figure H-28 presents the results of the OLS model of business owner earnings specific to the Pacific region professional services industry in 1999. This model includes 1,027 observations and uses interaction terms for evaluating the effect of owning a business in the Portland MSA.

A number of neutral factors are statistically significant in explaining business earnings in the Pacific region professional services industry:

- As in the construction models, older business owners had greater earnings, but this marginal effect declined for the oldest individuals; and
- Business owners who were married tended to have greater business earnings;

After accounting for neutral factors, the model indicates that female business owners earned significantly less on average than men in the professional services industry. The model also indicates that Native Americans and members of the “other minority” group earned significantly more, on average, than similarly situated non-Hispanic white business owners in professional services.

The indicator variable for firms located in the Portland MSA and the interaction terms for minority and women business owners in the MSA suggest that these groups did not have significantly different earnings in the wider Pacific region, even after controlling for other factors.

Figure H-28.
Pacific region professional services industry business owner earnings model, 1999

Variable	Coefficient	t-statistic
Constant	7.001	7.73 **
Age	0.111	4.96 **
Age-squared	-0.001	-5.88 **
Married	0.318	2.92 **
Speaks English well	0.544	0.90
Disabled	0.012	0.07
Less than high school	-0.163	-0.33
Some college	0.150	0.48
Four-year degree	0.252	0.83
Advanced degree	0.281	0.89
In Portland MSA	-0.333	-0.93
African American	-0.047	-0.15
African American in Portland MSA	NA	NA
Asian American	-0.038	-0.27
Asian American in Portland MSA	0.123	0.31
Hispanic American	-0.078	-0.42
Hispanic American in Portland MSA	-0.023	-0.03
Native American	0.285	2.00 **
Native American in Portland MSA	NA	NA
Other minority group	0.399	1.77 *
Other minority group in Portland MSA	NA	NA
Female	-0.570	-5.21 **
Female in Portland MSA	0.046	0.09

Note: ** Denotes statistical significance at the 95% confidence level.
 * Denotes statistical significance at the 90% confidence level.
 "NA" indicates that the variable was dropped from the model due to too few observations.

Source: BBC Research & Consulting, based on analysis of 2000 Census Public Use Microdata Sample.

Gross revenue of construction and professional services firms from availability

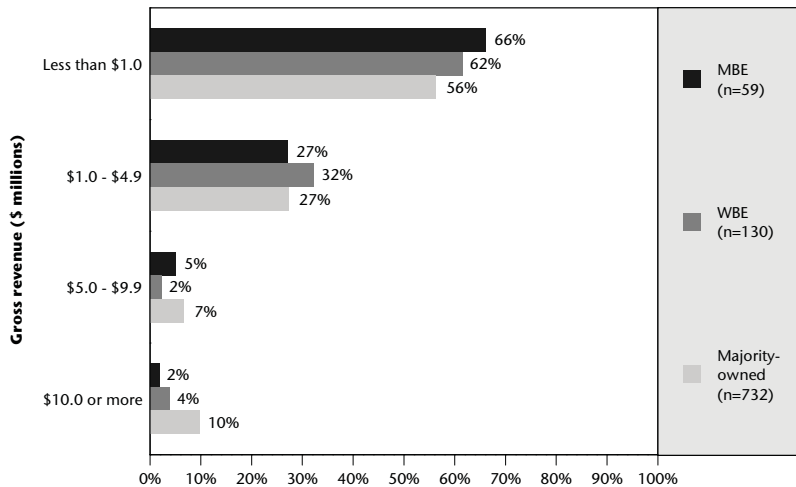
interviews. Respondents were asked to identify the size range for their gross revenue for 2009. A second question asked for gross revenue across all locations for multi-location firms. Results for all Portland locations are reported in Figure H-29 and Figure H-30.

Construction firms. Figure H-29 examines the distribution of MBEs, WBEs and majority-owned construction industry firms by revenue class. More MBE/WBEs than majority-owned construction firms in Portland had gross revenue of less than \$1 million. Two-thirds of MBEs and 62 percent of WBEs reported revenue of less than \$1 million. A smaller share of majority-owned firms (56%) reported the same revenue for 2009. Compared to MBEs (7%) and WBEs (6%), a larger share of majority-owned firms (17%) reported gross revenue of \$5 million or more.

Figure H-29.
Gross revenue of company
for all Portland locations,
construction industry

Note:
WBE is white women-owned firms.

Source:
BBC Research & Consulting from 2009 and
2010 Availability Interviews.

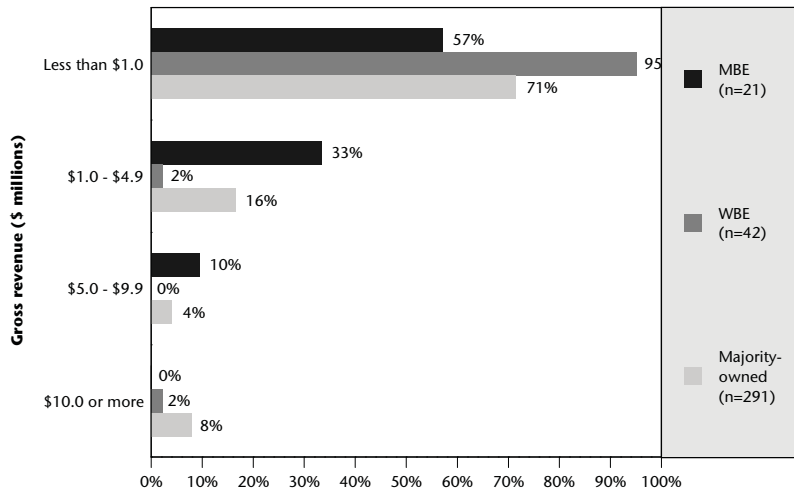


Professional services firms. Professional services firms were also asked to identify gross revenue across all Portland locations. As shown in Figure H-30, over 95 percent of WBEs reported gross revenue for 2009 to be less than \$100,000. No WBEs reported gross revenue of \$5 million or more for 2009. A relatively larger share of MBEs than majority-owned firms reported gross revenue of \$5 million to \$10 million in 2009, but no MBEs said that they had gross revenue of \$10 million or more.

Figure H-30.
Gross revenue of company for all Portland locations, professional services industry

Note:
 WBE is white women-owned firms.

Source:
 BBC Research & Consulting from 2009 and 2010 Availability Interviews.



Summary of analysis of business receipts and earnings. BBC examined a number of different data sources for business receipts and earnings for firms in the Portland MSA.

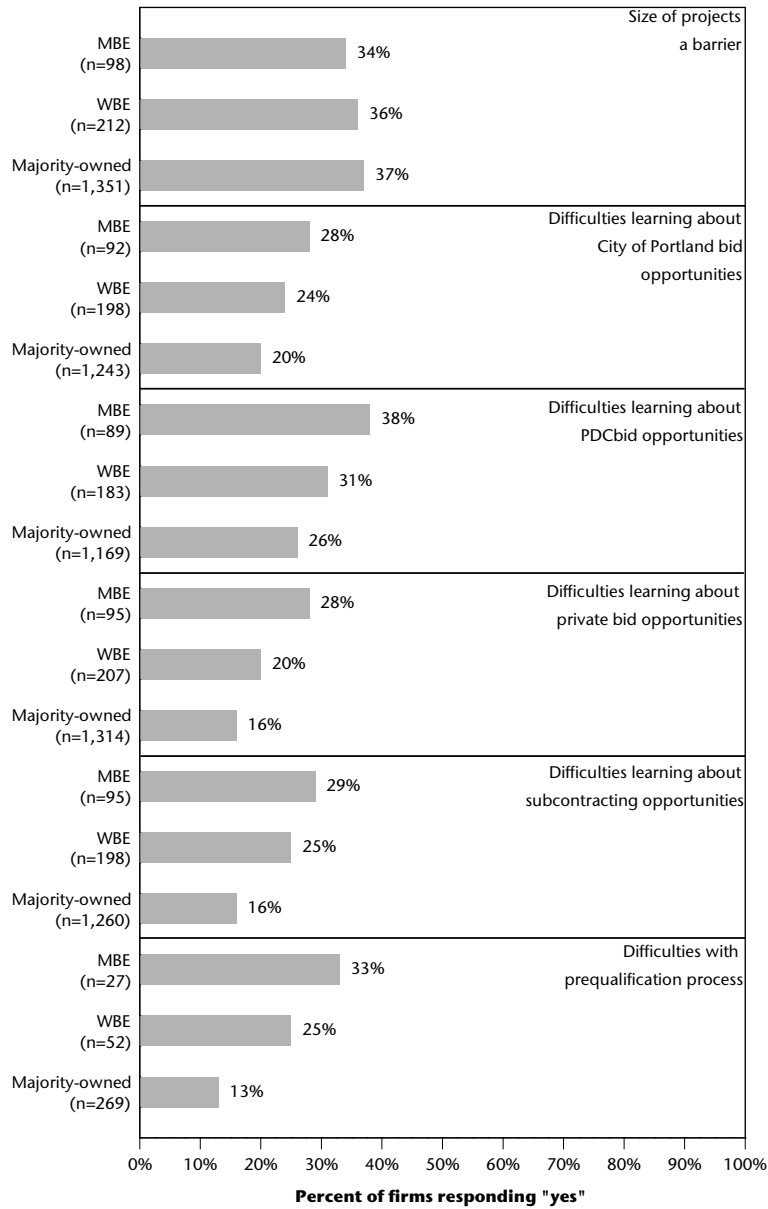
- Analysis of 2002 data indicate that, in the Portland MSA, mean receipts for minority- and women-owned firms were lower compared to that of non-Hispanic white- and male-owned firms in the construction industry and the professional, scientific and technical services industry.
- Regression analyses using Census data for business owner earnings indicate that there are statistically significant disparities in earnings for some groups, even after taking account of neutral factors:
 - Other minority construction business owners tend to earn less than non-Hispanic white construction business owners in the Portland MSA;
 - Female business owners tend to earn less than male business owners in the Portland construction industry.
 - Native American-, female- and other race-owners tend to have lower business earnings in the Pacific region. Model results suggest that results for these groups were not statistically different in the Portland MSA.
 - Data from the availability interviews indicate that — across all subindustries — a larger share of majority-owned firms than of MBE/WBEs reported gross revenues of \$5 million or more. A smaller portion of WBEs than of MBEs reported gross revenues of \$5 million or more.

Results concerning potential barriers in the local marketplace. The study team asked firm owners and managers responding to the availability interviews if they had experienced barriers or difficulties associated with starting or expanding a business. BBC asked if:

- The size of projects had presented a barrier to bidding;
- The firm had experienced difficulties learning about bid opportunities with Portland;
- The firm had experienced difficulties learning about bid opportunities with local governments or private companies;
- The firm had experienced difficulties learning about subcontracting opportunities in Portland; and
- The prequalification process for the City of Portland work had presented difficulties for the firm.

Figure H-31 summarizes responses to these questions. Responses for construction and professional services firms have been combined.

Figure H-31.
Responses to 2010 availability interview questions with construction and PTE firms



Note: "WBE" represents white women-owned firms, "MBE" represents minority-owned firms and "Majority-owned" represents non-Hispanic white male-owned firms.

Source: BBC Research & Consulting.

As shown in Figure H-31, MBEs and WBEs were less likely than majority-owned firms to report that the size of projects had been a barrier to bidding. MBEs and WBEs were more likely than majority-owned firms to report difficulties learning about:

- City of Portland bid opportunities
- Portland Development Commission bid opportunities
- Private sector bid opportunities; and
- Subcontracting opportunities.

Considering those firms that had looked into or applied for prequalification for City of Portland prime contracts, MBEs and WBEs appeared to be more likely than majority-owned firms to report difficulties with the prequalification process.

BBC also asked questions related to access to capital, bonding and insurance; Appendix G reports results.

APPENDIX I.

Description of Data Sources for Marketplace Analyses

To perform the marketplace analyses presented in Appendices E through H, BBC used data from a range of sources, including:

- U.S. Census Bureau Public Use Microdata Samples (PUMS) from the 1980 and 2000 Census;
- U.S. Census Bureau PUMS data from the 2006-2008 American Community Surveys (ACS);
- The Federal Reserve Board's 1998 and 2003 Survey of Small Business Finances (SSBF);
- The 2002 Survey of Business Owners (SBO), conducted by the U.S. Census Bureau; and
- Home Mortgage Disclosure Act (HMDA) data provided by the Federal Financial Institutions Examination Council (FFIEC).

The following sections provide further detail on each data source, including how it was used in marketplace analyses.

PUMS Data

Focusing on the construction and construction-related professional services industries, BBC used PUMS data to analyze:

- Demographic characteristics;
- Measures of financial resources;
- Educational attainment; and
- Self-employment (business ownership).

PUMS data offer several features ideal for the analyses reported in this study, including historical cross-sectional data, stratified national and state-level samples, and large sample sizes that enable many estimates to be made with a high level of statistical confidence, even for subsets of the population (e.g., ethnic and occupational groups). PUMS data also enable analysis of Metropolitan Statistical Areas (MSAs) within states (e.g., the Portland MSA).

BBC obtained selected Census and ACS data from the Minnesota Population Center’s Integrated Public Use Microdata Series (IPUMS). The IPUMS program provides online access to customized, accurate data extracts.¹ For the analyses contained in this report, BBC used the 1980 and 2000 Census 5 percent samples and the 2006-2008 ACS three-year sample.

2000 Census data. The 2000 U.S. Census 5 percent sample contains 14,081,466 observations. When applying the Census person-level population weights, this sample represents 281,421,906 people in the United States. The 2000 Oregon sub-sample contains 171,666 individual observations, weighted to represent 3,424,928 people; the Portland MSA sub-sample, 88,512 observations representing 1,937,526 individuals.

Categorizing individual race/ethnicity. To define race/ethnicity for the 2000 Census dataset, BBC used the IPUMS race/ethnicity variables — RACED and HISPAN — to categorize individuals into one of seven groups:

- Non-Hispanic white;
- Hispanic American;
- African American;
- Asian-Pacific American;
- Subcontinent Asian American;
- Native American; and
- Other minority (unspecified).

An individual was considered “non-Hispanic white” if they did not report Hispanic ethnicity and indicated being white only — not in combination with any other race group. All self-identified Hispanics (based on the HISPAN variable) were considered Hispanic American, regardless of any other race or ethnicity identification.

For the five other racial groups, an individual’s race/ethnicity was categorized by the first (or only) race group identified in each possible race-type combination. BBC used a rank ordering methodology similar to that used in the 2000 Census data dictionary. An individual who identified multiple races was placed in the reported race category with the highest ranking in BBC’s ordering. African American is first, followed by Native American, Asian-Pacific American and then Subcontinent Asian American. For example, if an individual was identified as “Korean,” this person was placed in the Asian-Pacific American category; if the individual was identified as “Korean” in combination with “Black,” the individual was considered African American.

¹ Steven Ruggles, J. Trent Alexander, Katie Genadek, Ronald Goeken, Matthew B. Schroeder, and Matthew Sobek. *Integrated Public Use Microdata Series: Version 5.0* [Machine-readable database]. Minneapolis: University of Minnesota, 2010.

- The Asian-Pacific American category included the following race/ethnicity groups: Cambodian, Chamorro, Chinese, Filipino, Guamanian, Hmong, Indonesian, Japanese, Korean, Laotian, Malaysian, Native Hawaiian, Samoan, Taiwanese, Thai, Tongan, and Vietnamese. This category also included other Polynesian, Melanesian and Micronesian races as well as individuals identified as Pacific Islanders.
- The Subcontinent Asian American category included these race groups: Asian Indian (Hindu), Bangladeshi, Pakistani, and Sri Lankan. Individuals who identified themselves as “Asian,” but were not clearly categorized as Subcontinent Asian were placed in the Asian-Pacific American group.
- American Indian, Alaska Native and Latin American Indian groups were considered Native American.
- If an individual was identified with any of the above groups and an “other race” group, the individual was categorized into the known category. Individuals identified as “other race” or “white and other race” were categorized as “other minority.”

For some analyses, those in which sample sizes were small, BBC combined minority groups into a single “other minority group” category.

Business ownership. BBC used the Census detailed “class of worker” variable (CLASSWKD) to determine self-employment. Individuals were classified into eight categories.

- Self-employed for a non-incorporated business;
- Self-employed for an incorporated business;
- Wage or salary employee for a private firm;
- Wage or salary employee for a non-profit organization;
- Employee of the Federal government;
- Employee of a State government;
- Employee of a local government; or
- Unpaid family worker.

BBC counted individuals who reported being self-employed — either for an incorporated or a non-incorporated business — as business owners.

Study industries. The marketplace analyses focus on two study industries: construction and construction-related professional services. BBC used the IND variable to identify individuals as working in one or the other industry. This variable includes several hundred industry and sub-industry categories. Figure I-1 identifies the IND codes used to define each study area for the 2000 Census (and 2006-2008 ACS) analyses.

Figure I-1.
2000 Census industry codes used for construction and construction-related professional services

Study industry	2000 Census IND codes	Description
Construction	77	Construction industry
Construction-related professional services	729	Architectural, engineering and related services

Source: BBC Research & Consulting from the IPUMS program: <http://usa.ipums.org/usa/>.

Industry occupations. BBC also examined workers by occupation within the construction industry using the PUMS variable OCC. Figure I-2 summarizes the 2000 Census OCC codes used in the study team’s analysis.

Figure I-2.
2000 Census occupation codes used to examine workers in construction industry

Occupation	2000 Census OCC codes	Description of 2000 Census OCC code
Manager	22	Construction managers
First-line supervisor	620	First-line supervisors/managers of construction trades and extraction workers
Selected construction occupations	626, 625, 913, 635, 632	Construction Laborers; Cement Masons, Concrete Finishers, and Terrazzo Workers; Driver/Sales Workers and Truck Drivers; Electricians; Miscellaneous Construction Equipment Operators

Source: BBC Research & Consulting from the IPUMS program: <http://usa.ipums.org/usa/>.

Portland MSA. The study team used the METAREAD and PUMA variables to define the Portland MSA as comprising the following counties: Clackamas, Multnomah, Washington, Yamhill and Polk counties in Oregon; and Clark and Skamania counties in Washington. Due to data reporting constraints, the counties comprising the Portland MSA, as defined for the marketplace appendices, may differ from MSA definitions used elsewhere.

Education variables. BBC used the variable indicating respondents’ highest level of educational attainment (EDUCD) to classify individuals into four categories:²

- Less than high school;
- High school diploma;
- Some college or associate’s degree; and

² In the 1940-1980 samples, respondents were classified according the highest year of school completed (HIGRADE). In the years after 1980, this method was used only for individuals who did not complete high school, and all high school graduates were categorized based on the highest degree earned (EDUC99). The EDUCD variable merges two different schemes for measuring educational attainment by assigning to each degree the typical number of years it takes to earn.

- At least a bachelor's degree.

Definition of workers. The universe for the class of worker, industry and occupation variables includes workers 16 years of age or older who are gainfully employed and those who are unemployed but seeking work. "Gainfully employed" means that the worker reported an occupation as defined by the Census code, OCC.

1980 Census data. BBC compared 2000 Census data with data for the 1980 Census to analyze changes in worker demographics, educational attainment and business ownership over time. The 1980 Census 5 percent sample includes 11,343,120 observations weighted to represent 226,862,400 people. The sample includes 131,981 observations in Oregon, weighted to represent 2,639,620 individuals, and 67,231 observations in the Portland MSA, weighted to represent 1,344,620 people.

A number of changes in variables and coding took place between the 1980 and 2000 Censuses.

Changes in race/ethnicity categories between censuses. Figure I-4 lists the seven BBC-defined racial/ethnic categories with the corresponding 1980 and 2000 Census race groups. Combinations of race types are available in the 2000 Census but not in the 1980 Census. The Bureau of the Census introduced categories in 2000 representing a combination of race types to allow individuals to select multiple races when responding to the questionnaire.

For example, an individual who is primarily white with Native American ancestry could choose the "white and American Indian/Alaska Native" race group in 2000. However, if the same individual received the 1980 Census questionnaire, she would need to choose a single race group — either "white" or "American Indian/Alaska Native." Such a choice would ultimately depend on unknowable factors including how strongly the individual identifies with her Native American heritage.

In addition, data analysts do not have information about the proportions of individual ancestry in 2000 and can only know that a particular individual has mixed ancestry. The variability introduced by allowing multiple race selection complicates direct comparisons between years with respect to race and ethnicity. Even so, 98 percent of survey respondents in 2000 indicated a single race.³

³ Grieco, Elizabeth M. & Rachel C. Cassidy. "Overview of Race and Hispanic Origin," *Census 2000 Brief*, March 2001, page 3.

Figure I-3.
BBC race/ethnic categories compared with Census race and Hispanic Origin survey questions, 1980 and 2000

BBC-defined race/ethnic categories	2000 Census	1980 Census
African American	Hispanic origin: no Race: Black/Negro alone or in combination with any other non-Hispanic group	Hispanic origin: no Race: Black/Negro
Asian-Pacific American	Hispanic origin: no Race: Chinese, Taiwanese, Japanese, Filipino, Korean, Vietnamese, Cambodian, Hmong, Laotian, Thai, Indonesian, Malaysian, Samoan, Tongan, Polynesian, Guamanian/Chamorro, Native Hawaiian, Pacific Islander, Micronesian, Melanesian, or other Asian, either alone or in combination with any non-Hispanic, non-Black, or non-Native American groups	Hispanic origin: no Race: Chinese, Japanese, Filipino, Korean, Vietnamese, Native Hawaiian, Pacific Islander or other Asian
Subcontinent Asian American	Hispanic origin: no Race: Asian Indian, Bangladeshi, Pakistani or Sri Lankan, alone or in combination with white or other groups only	Hispanic origin: no Race: Asian Indian
Hispanic American	Hispanic origin: yes Race: any race groups, alone or in combination with other groups	Hispanic origin: yes Race: any or Hispanic origin: no Race: Spanish
Native American	Hispanic origin: no Race: American Indian or Alaskan Native tribe identified alone or in combination with any non-Hispanic, non-Black group	Hispanic origin: no Race: American Indian/Alaska Native
Other minority group	Hispanic origin: no Race: other race alone or in combination with white only	Hispanic origin: no Race: other race
Non-Hispanic white	Hispanic origin: no Race: white alone	Hispanic origin: no Race: white

Source: BBC Research & Consulting from the IPUMS program: <http://usa.ipums.org/usa/>.

Business ownership. BBC uses the Census “class of worker” variable (CLASSWKD) to determine self-employment. This variable is the same for 1980 and 2000 with one exception: the 1980 variable does not include a separate category for individuals who work for a wage or salary at a non-profit organization.

Changes in industry codes between Censuses. The Census definitions of some industries and sub-industries changed between 1980 and 2000. As a result, 1980 codes for the industry variable (IND) are not the same as 2000 IND codes in all cases. However, for the construction and construction-related professional services industries, the 1980 code corresponds directly to an equivalent 2000 code.

Geographic variables. For the analyses presented in the marketplace appendices, there were no substantial changes in geographic variables. BBC used the same variable (STATEFIP) available for 2000 Census data to identify Oregon in the 1980 data. To define the Portland MSA in 1980, the study team used the METAREAD and the CNTYGP98 variables and included the same 7 counties from the 2000 definition.

Changes in educational variables between Censuses. The 1980 Census PUMS data includes the same educational variable found in the 2000 Census data, although the questions used for each Census to capture educational attainment differed between the two surveys.⁴

2006-2008 American Community Survey (ACS) data. BBC also examined 2006-2008 ACS data from IPUMS. Conducted by the U.S. Census Bureau, the ACS uses monthly samples to produce annually updated data for the same small areas as the 2000 Census long-form.⁵ Since 2005, the ACS has expanded to a roughly 1 percent sample of the population, based on a random sample of housing units in every county in the U.S. (along with the District of Columbia and Puerto Rico). Since 2008, the Census Bureau has released ACS PUMS files that cover multiple years of data. The 2006-2008 ACS three-year file, released at the end of 2009, combines previously released one-year files from 2006, 2007, and 2008, documenting a total of 3 percent of the population. Note that all dollar amounts reported in the three-year file are expressed as 2008 dollars.

Applying the person-level population weights to the 8,965,060 observations included in the data, the 2006-2008 ACS dataset represents 301,237,703 people in the U.S. For Oregon, the 2006-2008 ACS dataset includes 110,795 observations representing 3,735,524 individuals; for the Portland MSA, 60,502 observations representing 2,182,044 people.

With the exception of a few minor differences, the variables available for the 2006-2008 ACS dataset are the same as those available for the 2000 Census 5 percent sample.

⁴ For a more detailed explanation, see footnote 2.

⁵ U.S. Census Bureau. *Design and Methodology: American Community Survey*. Washington D.C.: U.S. Government Printing 2009. Available at http://www.census.gov/acs/www/SBasics/desgn_meth.htm

Changes in race/ethnicity categories between 2000 Census and 2006-2008 ACS data. The 2000 Census 5 percent sample and the 2006-2008 ACS PUMS data use essentially the same numerical categories for the detailed race variable (RACED). However, in both samples, any category representing fewer than 10,000 people was combined with another category. As a result, some PUMS race/ethnicity categories that occur in one sample may not exist in the other, which could lead to inconsistencies between the two samples once the detailed race/ethnicity categories are grouped according to the seven broader categories. This issue is unlikely to affect all but a very small number of observations. PUMS categories that were available in 2000 but not 2006-2008 (or vice versa) represented a very small percentage of the 2000 (or 2006-2008) population. Categories for the Hispanic variable (HISPAN) remained consistent between the two datasets.

Other variables. Other variables used by BBC did not change between 2000 and 2006-2008. The variables CLASSWKD, LABFORCE, IND, OCC, PUMA, METAREAD and EDUCD were consistent between datasets, with variable codes in each case representing the same categories.

Survey of Small Business Finances (SSBF)

The study team used the SSBF to analyze the availability and characteristics of small business loans.

The SSBF, conducted every five years by the Federal Reserve Board, collects financial data from non-governmental for-profit firms with fewer than 500 employees. This survey is a nationally representative sample, structured to allow for analysis of specific geographic regions, industry sectors, and racial and gender groups. The SSBF is unique as it provides detailed data on both firm and owner financial characteristics. For the purposes of this report, BBC used the surveys from 1998 and 2003, which are available at the Federal Reserve Board website.⁶

Data for 1998. The 1998 SSBF includes information from 3,561 small businesses. The survey oversampled minority-owned businesses, allowing for a more precise analysis of how race and ethnicity may affect loan and financial outcomes.

Categorizing owner race/ethnicity and gender. Definition of race and ethnic groups in the 1998 SSBF are slightly different than the classifications used in the 2000 Census and 2006-2008 ACS. In the SSBF, businesses are classified into the following five groups:

- Non-Hispanic white;
- Hispanic American;
- African American;
- Asian American;
- Native American; and
- Other (unspecified).

⁶ The Federal Reserve Board. *Survey of Small Business Finances, 1998* and *Survey of Small Business Finances, 2003*. Available online at <http://www.federalreserve.gov/pubs/>.

A business is considered Hispanic American-owned if more than 50 percent of the business was owned by Hispanic Americans, regardless of race. All businesses reporting 50 percent or less Hispanic American ownership are included in the racial group that owns more than half of the company. No firms reported ownership by “other.”

Similarly, firms were classified as female-owned if more than 50 percent of the firm was owned by women. Firms owned half by women and half by men were counted as male-owned.

Defining selected industry sectors. In the 1998 SSBF, each business was classified according to SIC code and placed into one of eight industry categories:

- Construction;
- Mining;
- Transportation, communications and utilities;
- Finance, insurance and real estate;
- Trade;
- Engineering;
- Services (excluding engineering); or
- Agriculture, forestry and fishing.

Region variables. The SSBF divides the United States into nine Census Divisions. Along with Alaska, Washington, California and Hawaii, Oregon resides in the Pacific Census Division (referred to in marketplace appendices as the Pacific region).

Loan denial variables. In the 1998 survey, firm owners were asked if they have applied for a loan in the last three years and whether loan applications were always approved, always denied, or sometimes approved and sometimes denied. For the purposes of this study, only firms that were always denied were considered when analyzing loan denial.

Data for 2003. The 2003 SSBF differs from previous surveys in terms of the population surveyed, the variables available and in data reporting methodology.

Population differences. Similar to the 1998 survey, the 2003 survey records data from businesses with 500 or fewer employees. The sample contains data from 4,240 firms, but in 2003, minority-owned firms were not oversampled. In the 1998 data, 7.3 percent of the survey firms were owned by Hispanic Americans, but that number dropped to 4 percent in the 2003 data. Representation in the sample also dropped for African American-owned (7.7% to 2.8%) and Asian American-owned firms (5.7% to 4.2%). The smaller sample sizes for minority groups in the 2003 SSBF affects the ability to conduct analyses related to differences in loan application outcomes for race and ethnic groups.

Variable differences. In the 2003 SSBF, businesses were able to give responses on owner characteristics for up to three different owners. The data also include a fourth variable that is a weighted average of other answers provided for each question. In order to define race/ethnicity and gender variables consistently from the 1998 to 2003 surveys, BBC used the final weighted average for variables on owner characteristics. Firms were then divided into race, ethnicity and gender groups according to the same guidelines used for the 1998 data.

Industry, region and loan denial variables for the 2003 survey were defined by the study team along the same guidelines as the 1998 survey, with one exception: the 2003 survey did not include any firms in the agriculture, forestry and fishing industry.

Data reporting. Due to missing responses to survey questions in both the 1998 and 2003 datasets, data were imputed to fill in missing values. For the 1998 SSBF data, missing values were imputed using a randomized regression model to estimate values based on responses to other questions in the survey. A single variable includes both reported and imputed values, and a separate “shadow variable” can be used to identify where missing values have been imputed. However, the missing values in the 2003 data set were imputed using a different method than in previous studies. In the 1998 survey data, the number of observations in the data set matches the number of firms surveyed. However, the 2003 data includes five implicates, each with imputed values that have been filled in using a randomized regression model.⁷ Thus there are 21,200 observations in the 2003 data, five for each of the 4,240 firms surveyed. Across the five implicates, all non-missing values are identical, whereas imputed values may differ. In both data sets, therefore, when a firm answered a survey question, the response was not altered. However the method for filling in missing values differed between surveys.

As discussed in a recent paper about the 2003 imputations by the Finance and Economics Discussion Series, missing survey values can lead to biased estimates and inaccurate variances and confidence intervals.⁸ These problems can be corrected through use of multiple implicates. In order to provide the most accurate analysis, BBC utilized all five implicates provided with the 2003 data in analysis of the survey.

Multiple implicates were not provided with the 1998 data, making the method of analysis used for the 2003 data inapplicable. To address this, the study team performed analysis two different ways, first only with observations whose data was not imputed and second with all observations. Differences in results were insignificant. For summary statistics using SSBF data, BBC included observations with missing values in the analyses. For the probit regression model presented in Appendix H, the study team did not include observations with imputed values for the depended variable, loan denial.

⁷ For a more detailed explanation of imputation methods, see the “Technical Codebook” for the *2003 Survey of Small Business Finances*.

⁸ Lieu N. Hazelwood, Traci L. Mach and John D. Wolken. *Alternative Methods of Unit Nonresponse Weight Adjustments: An Application from the 2003 Survey of Small Businesses*. Finance and Economics Discussion Series Divisions of Research and Statistics and Monetary Affairs, Federal Reserve Board. Washington, D.C., 2007. <http://www.federalreserve.gov/pubs/feds/2007/200710/200710pap.pdf>

Survey of Business Owners (SBO)

BBC used data from the 2002 SBO to analyze mean annual firm receipts. The SBO is conducted every five years by the U.S. Census Bureau. Data for the most recent publication of the SBO was collected in 2002. (Data for the 2007 SBO are due to be released starting in mid-2010). Response to the survey is mandatory, which ensures comprehensive economic and demographic information for business and business owners in the U.S. All tax-filing businesses are covered in the survey: firms with and without paid employees. In 2002, almost 23 million firms were surveyed.

BBC examined SBO data relating to the number of firms, number of firms with paid employees and total receipts. This information is available by geographic location, industry, gender and race/ethnicity.

The SBO uses the 2002 North American Industry Classification System (NAICS) to classify industries. BBC analyzed data for firms in all industries and for firms in selected industries that corresponded closely to construction and construction-related professional services.

To categorize the business ownership of firms reported in the SBO, the Census Bureau uses standard definitions for women-owned and minority-owned businesses. A business is defined as female-owned if more than half of the ownership and control is by women. Firms with joint male-/female-ownership were tabulated as an independent gender category. A business is defined as minority-owned if more than half of the ownership and control is African American, Asian American, Hispanic American, Native American or another minority group. Respondents had the option of selecting one or more racial groups when reporting on business ownership.

BBC reported business receipts for the following race/ethnicity and gender groups:

- African American;
- Asian American;
- Hispanic American;
- Native American; and
- Women.

BBC also reported business receipts for all firms.

Home Mortgage Disclosure Act (HMDA) Data

BBC used HMDA data provided by the Federal Financial Institutions Examination Council (FFIEC) to analyze mortgage lending in the Portland MSA, Oregon and the nation. HMDA data provide information on mortgage loan applications received by financial institutions, savings banks, credit unions and some mortgage companies. These data include information about the location, dollar amount, and types of loans made, as well as race and ethnicity, income, and credit characteristics of loan applicants. Data are available for home purchase, home improvement and refinance loans.

The definition of the Portland MSA in HMDA data differs slightly from the study team's definition for analyses involving PUMS data. Consistent with the official definition, the Portland MSA as defined in HMDA data includes the following counties: Clackamas, Columbia, Multnomah, Washington and Yamhill counties in Oregon; and Clark and Skamania counties in Washington.

Financial institutions are required to report HMDA data if they have assets of more than \$32 million, have a branch office in a metropolitan area, and originated at least one home purchase or refinance loan in the reporting calendar year. Mortgage companies are required to report HMDA data if they are for-profit institutions, had home purchase loan originations exceeding 10 percent of all loan obligations in the past year, are located in an MSA (or originated five or more home purchase loans in an MSA) and either had more than \$10 million in assets or made at least 100 home purchase or refinance loans in the calendar year.

BBC used these data to examine loan denial rates and subprime lending rates for different racial and ethnic groups in 2006 and 2008. Note that the HMDA data represent the entirety of home mortgage loan applications reported by participating financial institutions in each year examined; these data are not a sample. However, BBC did not report loan denial rates or subprime lending rates in cases where there were fewer than 25 loans in a particular category. Appendix G provides detailed explanation of the methodology used for measuring loan denial and subprime lending rates.

APPENDIX J.

Summary of Anecdotal Interviews

Appendix J provides a summary of anecdotal interviews for the City of Portland and Portland Development Commission disparity studies. A table of contents for Appendix J is provided on the following pages.

Table of Contents

Introduction and Background.....	4
Summary of Anecdotes.....	6
I. Certification.....	6
A. The Certification Process.....	6
B. Perceived Value to Certification.....	10
C. Recommendations Regarding the Certification Process.....	20
II. Prime and/or Subcontractor Work.....	24
A. Anecdotes Regarding Businesses Acting as a Prime or a Subcontractor.....	24
B. Contractor Reported Utilization of MBE/WBE/DBE and Non-MBE/WBE/DBE Subcontractors in the Public and Private Sectors.....	29
C. Subcontractor / Minority- and Female-Owned Businesses’ Perception of Utilization in the Public and Private Sectors.....	45
III. Experiences in the Private Sector and Public Sector.....	66
A. Trends in Public Sector Work Versus Private Sector Work.....	66
B. Private Sector Work Experience.....	69
C. Public Sector Work Experience.....	70
D. Identified Differences in Securing and Performing Work in the Public and Private Sectors.....	72
IV. Experiences with the City of Portland and PDC.....	83
V. Marketplace Conditions.....	106
VI. Anecdotes Regarding Potential Barriers and/or Discrimination Based on Race, Ethnicity, or Gender.....	119
A. Financing.....	119
B. Bonding.....	124
C. Insurance.....	1288
D. Equipment.....	1300
E. Labor and Personnel.....	133
F. Working with Unions.....	1355
G. Being a Union or a Non-Union Employer.....	1400
H. Obtaining Inventory or Other Materials and Supplies.....	1422
I. Prequalification Requirements.....	1444
J. Experience and Expertise.....	1488
K. Licenses and Permits.....	1500
L. Notification of Work Opportunities / Marketing.....	1522

M.	Contract Specifications and Bidding Procedures.	1544
N.	Bidding Process.	1577
O.	Factors Public Agencies or Others Use to Make Contract Awards.	1600
P.	Bid Shopping.....	1633
Q.	Bid Manipulation.	1666
R.	Treatment by Prime Contractor or Customer During Performance of Work.	1688
S.	Approval of the Work by the Prime Contractor or Customer.	1711
T.	Payment by the Prime Contractor or Customer.....	1733
U.	Other.....	1777
VII.	Anecdotes Regarding Whether Any Race, Ethnicity, or Gender Discrimination Affects Business Opportunities.....	1811
A.	Price Discrimination in Obtaining Financing, Bonding, Materials and Supplies or Other Products or Services.....	1822
B.	Denial of the Opportunity to Bid.	1844
C.	Stereotypical Attitudes on the Part of Customers and Buyers.	1866
D.	Unfair Denial of Contract Award.	189
E.	Unfair Termination of Contract.	1900
F.	Double Standards in Performance.	1911
G.	Discrimination in Payments.	1944
H.	Other Predatory Business Practices.	1955
I.	Unfavorable Work Environment for Minorities or Women.....	1977
J.	The 'Good Old Boy Network' or Other Closed Networks.	2011
K.	Governmental Resistance to Use of MBE/WBE/DBEs.....	2066
L.	MBE/WBE and DBE Fronts or Fraud.....	2088
M.	False Reporting of MBE/WBE/DBE Participation or Falsifying Good Faith Efforts.....	2122
N.	Any Other Related Forms of Discrimination Against Minorities or Women.	2144
VIII.	Neutral Measures.....	2166
A.	Technical Assistance and Support Services.....	2200
B.	On-the-Job Training Programs.	2222
C.	Mentor/Protégé Relationships.....	2255
D.	Joint Venture Relationships.	2288
E.	Financing Assistance.....	2300
F.	Bonding Assistance.....	2322
G.	Assistance in Obtaining Business Insurance.	2344
H.	Assistance in Using Emerging Technology.	2355
I.	Other Small Business Start-Up Assistance.....	2377
J.	Information on Public Agency Contract Procedures and Bidding Opportunities.	23939
K.	Online Registration with a Public Agency as a Potential Bidder.	2411

L.	Hard Copy or Electronic Directory of Potential Subcontractors.	2422
M.	Pre-Bid Conferences Where Subcontractors Can Meet Prime Contractors.	2444
N.	Distribution of Plan Holders’ Lists or Other Lists of Potential Prime Bidders to Subcontractors.	2466
O.	Other Agency Outreach.	2477
P.	Streamlining or Other Simplification of Bidding Procedures.....	24949
Q.	Segmenting Larger Contracts into Smaller Pieces.	2511
R.	Price or Evaluation Preferences for Small Businesses.	2544
S.	Small Business Set-Asides.....	2566
T.	Mandatory Subcontracting Minimums.	2577
U.	Small Business Subcontracting Goals.....	260
V.	Formal Complaint / Grievance Procedures at the Public Agency.	2611
IX.	Race, Ethnicity, or Gender-Based Measures.	2633
X.	Recommendations from Interviewees.	26969

APPENDIX J.

Summary of Anecdotal Interviews

Introduction and Background

This Anecdotal Interview Report (“Report”) was prepared by BBC Research & Consulting (BBC) and Holland & Knight, LLP with assistance from Montesi & Associates and F.M. Burch & Associates, Inc. The Report sets forth the summaries of 60 personal interviews conducted for the City of Portland and the Portland Development Commission (“PDC”). The interviews include perceptions and anecdotes regarding the utilization and participation of minority-owned businesses, women-owned businesses, disadvantaged business enterprises and emerging small businesses, contracting and procurement in the public and private sectors, and the contracting and procurement policies, practices and procedures of the City of Portland and PDC. The interviews were conducted by Montesi & Associates, F.M. Burch & Associates, Inc. and Holland & Knight, LLP.

Interviews. Interview participants included prime contractors, subcontractors, professional service providers, and trade and professional organizations that have a membership base of numerous minority-, Caucasian woman-, and Caucasian male-owned firms. Interview participants were obtained primarily from a random sampling of businesses generated by BBC Research and Consulting and stratified by type of firm, location, and ethnicity, race and gender. Most of the interviews were conducted with the owner, president, chief executive officer, or other officer of the business or organization. The interviewees are identified in this report by their random interview number.

Firms. Of the businesses interviewed, some work exclusively or primarily as prime contractors or subcontractors, and some work as both. Some businesses are minority-owned (MBEs), woman-owned (WBEs), Caucasian male-owned and some are emerging small businesses (ESBs). All of the businesses were located throughout the Portland Metropolitan area in the State of Oregon.

Trade and professional organizations. The following trade associations and business organizations agreed to be interviewed in connection with the disparity study and report on the experiences, anecdotes, and perceptions of their members or clients:

- Albina Community Bank;¹
- Evening Trades Apprenticeship Preparation Program;²
- Hispanic Metropolitan Chamber;³

¹ The Albina Community Bank (TA #1) is the sole subsidiary of Albina Community Bancorp. The bank provides commercial and consumer lending in the greater Portland, Oregon area. Many of the bank's customers are small businesses.

² The Evening Trades Apprenticeship Program (TA #2) was established in 1998 by the Housing Authority of Portland to assist public housing residents. The program provides job training and job placement services to its participants. The program currently provides services to approximately 183 participants.

³ The Hispanic Metropolitan Chamber (TA #3) was founded in 1994. The mission of the organization is to support the economic advancement of Latino-owned businesses in Oregon and Southwest Washington. The organization has 850 members and is the largest Hispanic chamber in the Northwest. The organization provides technical assistance, assistance with licenses and permits, identification of contract opportunities and financing assistance to Latino-owned businesses.

- Pacific Northwest United Brotherhood of Carpenters;⁴
- The National Association of Minority Contractors of Oregon;⁵
- African American Chamber and Alliance of Minority Chambers of Commerce;⁶
- Native American Chamber of Commerce of Oregon;⁷
- Associated General Contractors, Oregon Columbia Chapter;⁸
- Hacienda Community Development Corporation;⁹
- The Northwest College of Construction;¹⁰
- The Port of Portland;¹¹
- Columbia Pacific Building Trades Council.¹²

⁴ The Pacific Northwest United Brotherhood of Carpenters (TA #4) was founded in 1865. The organization has approximately 36,000 members located throughout Idaho, Montana, Wyoming, Washington and Oregon. The organization offers its members an area-standard wage package which includes medical benefits, a living wage, and the portability to work throughout the brotherhood.

⁵ The National Association of Minority Contractors of Oregon (TA #5) was founded approximately five years ago. The organization has approximately 70 members located in Oregon and Washington. The organization's mission is to educate and assist minority contractors.

⁶ The African American Chamber and Alliance of Minority Chambers of Commerce (TA #6) provide their members referrals, mentoring, networking opportunities, education and community outreach. The African American Chamber of Commerce was founded approximately 12 years ago to assist primarily African American businesses in the community. The Alliance of Minority Chambers of Commerce was founded approximately five years ago to assist other minorities.

⁷ The Native American Chamber of Commerce of Oregon (TA #7) was founded in 1996. The organization has approximately 50 members. The organization holds monthly meetings and networking opportunities for its members.

⁸ The Associated General Contractors, Oregon Columbia Chapter (TA #8) was founded in 1922. The organization has approximately 1,100 members, consisting of commercial contractors, subcontractors and industry associates. The organization provides its members three primary services: public policy advocacy, networking opportunities, and access to group products.

⁹ The Hacienda Community Development Corporation (TA #9) was formed in 1992. The organization owns approximately 425 apartment units and serves the families that live in those units. The organization provides small business start-up assistance and other assistance to its residents.

¹⁰ The Northwest College of Construction (TA #10) is a non-profit private technical school serving the construction industry. The organization was formed in 2006 and administers apprenticeship programs for multiple trades. The organization's apprenticeship program is a combination of on-the-job training and classroom training and lasts for approximately two to four years.

¹¹ The Port of Portland (TA #11) was chartered by the State of Oregon in the late 1800s but is considered a local agency. The agency has approximately 750 employees and owns and operates several airports and marine terminals. The agency's Small Business Development Program has four facets: the DBE program to comply with the Federal DBE regulations, a mentor/protégé program to facilitate mentoring relationships for certified small businesses, the small business initiative to achieve inclusion of certified small businesses on projects, and the workforce initiative to achieve greater participation of women and minority apprentices working on the agency's larger construction projects.

¹² The Columbia Pacific Building Trades Council was founded in the early 1900s. The organization has approximately 20,000 members including active workers, apprentices and retirees. The organization represents the unions to project owners and developers and negotiates collective bargaining agreements.

Public forum and written testimony. Appendix J also summarizes oral testimony from individuals in response to solicitations for comments about current marketplace conditions in the Portland marketplace and about the disparity study report. Individuals had the opportunity to give verbal testimony in person at a public forum held in Portland, Oregon on April 21, 2011.

Individuals had the opportunity to submit written testimony to the City of Portland as well. The City received written testimony via mail, electronic mail, and fax.

Public forum participants represented businesses and organizations throughout the state. Their comments are identified by numbers with a “PF” prefix, designating oral testimony submitted at the public forum or a “WT” prefix, designating written testimony submitted directly to the City of Portland.

Summary of Anecdotes

I. Certification.

A. The Certification Process.

Some interviewees reported a positive experience with the certification process. [Interviewees #: 2, 7, 8, 9, 10, 11, 12, 17, 20, 22, 23, 24, 25, 26, 27, 31, 40, 44, 48, TA #4, TA #5, TA #7, TA #11]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, said that the State of Oregon’s certification process “was easy.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, said that the certification process was “pretty easy.”

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, said that the staff of the Oregon Office of Minority, Women and Emerging Small Business (OMWESB) provided excellent assistance throughout the certification process. She said, “[The OMWESB staff] was very supportive in telling me what I needed to do, the documentation I needed to provide.” She reported that she needed assistance during the certification process because she experienced “pushback from other people in the industry who wanted to fight my [WBE] certification.”

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, reported that his wife was primarily involved in the firm’s WBE certification, but stated that he did not “think [the certification process] was too hard.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that the level of difficulty in the certification process was “acceptable. I don’t think it’s too much to do. I think the re-certification process is easy.” They said that the State of Oregon has simplified the paperwork required for re-certification.

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that the State of Oregon’s certification process was “fairly easy. For me it was pretty simple — get the paperwork, fill it out, and send it in. I had to call ... a couple of times

to ask questions about some things that [were] on the forms, but [the staff] was accessible, and explained to me what I needed to do and what they were actually looking for on the form.”

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, reported that Oregon’s certification process was “fairly easy. I just did this business plan, got a hold of the people in charge of [certification], and turned in all the paperwork.” She said that the amount of paperwork required for certification “wasn’t bad.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, stated, “The ESB [certification process] was easy.” She said that she sought ESB certification for her firm “because the ESB was the easiest one to get certified for. The other one, I have all of the paperwork — I put it all together. I just haven’t submitted it.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that the certification “process is great. The people were helpful.... We didn’t hit some of the classification [codes]. We put down HVAC, but then everybody thinks its plumbing ... I probably lost two years [of potential business] because of that, because all I got was plumbing requests.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that the certification process “was pretty easy.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that the certification process “was easy for me.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that the level of difficulty of the State of Oregon’s certification processes was “okay.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that the certification process “was pretty simple.” He said that the certification process verifies that the people who claim to run the business are actually running the business. He said that it took the firm approximately three years to obtain the 8(a) certification. He said that the certification process is a “rigorous process because you need to show that you are in fact in whatever category you are proclaiming to be.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, reported that the certification process is “an easy process” and that the renewal process is “pretty straightforward.” He said that the certification process took approximately five to six months to complete.

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, said that compliance with the certification process is very easy. He noted that when he had challenges with the process, he received assistance.

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, stated that the certification process, and particularly the renewal process, has been very simple.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that the certification process “is fairly straightforward.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that the certification process is “fairly easy.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that the certification process is straightforward as long as you are able to fill out the application. He said that absent a certification process, a lot of people would attempt to claim that they were a small business without actually meeting the requisite qualifications.

Interviewee TA #11, a representative from the Port of Portland, stated that in Oregon the certification process is “very easy” because there is one entity that facilitates the certification. She noted that “the paperwork can be daunting for a small business, especially ... the DBE certification.”

Some interviewees reported challenges in connection with the certification process.

[Interviewees #: 3, 4, 6, 14, 19, 20, 21, 30, 42, 43, TA #3, TA #6, TA #12]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that the certification process “was time consuming. It was, you know — it was a project.”

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that the certification program has now changed significantly for the worse. She stated, “[B]efore, you were only certifying that you were a woman, that you were minority, or ... an emerging small business... [I]t really didn’t have anything to do with your skill [or] ability, [just] that you were willing, ready, and able.” She said that the program now is a test of a firm’s abilities because the State’s certification requires her to pass test of every scope of work that the firm performs. She said that this “weed[s] out the competition” and limits the range of projects on which her firm can bid. She stated, “You have to be certified in order to even qualify to bid on the specific types of work.” She said that without the State’s certification of a certain scope of work, “they will not count you as [a] certified business in that category, and the company that you’re bidding to could lose points.”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported that the certification processes requires “voluminous amounts of materials that everybody wants to look at, and there were different materials [required] for the two entities that certified us. For our company, because we have such a long history — in fact, the company existed before my father bought it, so I had to go back in the corporate records to the 1920s, and kind of pull [information] about the name changes and the ownership changes.” She reported that the process the State of Oregon used to certify her firm as a WBE was “time-consuming but relatively straightforward.” She stated that after all of the work she put into collecting and assembling the documents, the State of Oregon required for her firm’s certification to be in a seven-inch thick binder. She said, “I guess I would like to be certain that someone’s really looking at all that stuff. If they’re not, it would seem to make sense that you wouldn’t have to spend the time to compile it all.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that the certification process “for me, where we’re at, would be difficult,” because of the test she would be required to take to become certified as a general contractor. Interviewee #14 reported that

the certification process was “kind of lengthy and a pain.” She stated, “personally, I’d rather have somebody come out and interview us and say, ‘yeah, this is what we do and this is what we’ve done’ and [have the person certifying] use some common sense and say, ‘obviously this woman is an integral part of this whole process and, yeah, I can certify it as woman-owned.’” She stated that the firm has not become certified “partly because, I believe, that [certification is] going to require me to go take the test, and partly because we really don’t agree with the program.” She reported that she believes the program “[is] not right; it doesn’t work.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that she initially found the certification process challenging. She said, “You know, the first time is a little difficult because you’re trying to get all the requirements. But after that, it’s easy. The yearly reports are easy.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, said that the process for the Office of Minority, Women and Emerging Small Businesses MBE/WBE certification appears daunting. She said, “I don’t know; it looks like a really long, lengthy packet. I have some of the stuff ... I just haven’t gotten around” to submitting it.

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, stated that becoming certified as an ESB was “easy [but certification as] women- [or] minority-owned is very difficult.” Interviewee #21 stated that she has “checked into [being certified as a minority-owned business] for the last 20 years, and I’ve even brought attorneys in on it. The problem is, to become minority-owned — which I am, okay — is they say, you have to carry, in my case, a plumber’s license. I’d have to be a plumber, physically, out in the field. Like I’ve explained to them ... everyone needs to be able to do different things. The reason I stepped in to diversify the company was [because] when my father was doing it, he was trying to do it all by himself. You can’t run a business that way; you’ve to have people specialized in one area or the other. The way the State is set up ... you’ve got to have been able to go out and physically run a job, have the license ... and I said, ‘Well, I run the crews from here. I dispatch from here, I do some of the estimating from here’ ... but we just can’t get past that. I’ve talked to them umpteen times.”

Interviewee #30, the Caucasian female owner of a WBE-certified construction firm, reported that the company was founded by a minority male and was a very large established minority-owned company for 25 years. She reported that she has had some struggles with maintaining her WBE certification status as a result of the firm’s original ownership classification, and that it was a long, extensive challenge.

Interviewee #42, the vice president of an Asian-Pacific American woman-owned ESB-certified materials supply firm, stated that he and his wife sought State of Oregon certification as an MBE/WBE but their application was denied because his wife does not hold a welder’s license. He stated that the application process was easy but noted that they had some privacy concerns.

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, stated that he does not hold any certifications with the State of Oregon. He reported that he was previously certified as an MBE with the State of Oregon, but that he let his certification lapse due to his frustrations with having to renew the certification annually. He said, “I was a minority contractor for a while, but I let it go because they want me to renew it every year, like

my skin color and stuff is going to change. It became a hassle so I stopped doing it. Instead of doing it every year they could do it like every five years or 10 years, like with business licenses.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that the problem with the certification process is “not how difficult it is to fill out the forms, [but] it is the ridiculousness of all the requirements that are made to become certified. It does not reflect the true business world; it is stuck in the 1960s perception of how a small minority owner might become a business owner ... [and] that world is antiquated.”

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that the “certification process is not taken seriously by the agencies that administer it.... They are underfunded [and] they are understaffed; any application could take four to six weeks. They have [fewer] people working on [certifications] than they do animal control.” He said that the way that the certification process is run “tells me [that] this program is not a real priority for the State, because if you are a contractor or a builder you can get permits issued and done faster than this process.... But when it comes to people of color, they can wait.”

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that he has heard that the paperwork for certification can be “pretty lengthy and onerous, but I don’t know that that is [the] universal” sentiment.

Other interviewees reported having little to no experience with the certification process.

[Interviewees #: 1, 16, 17, 18]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that his firm has not sought certification by the State of Oregon as an ESB or DBE. He stated, “I just never pursued it.” He reported that a couple of years ago he “considered ... selling the business to my wife, but I don’t know how much that would really do” to improve the firm’s access to jobs, “especially in this economy and cash flow. We probably couldn’t find enough jobs to get into the minority stuff, anyway.”

B. Perceived Value to Certification.

Some interviewees perceived a value to certification. [Interviewees #: 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 19, 21, 26, 27, 38, 40, 47, 48, TA #2, TA #4, TA #5, TA #7, TA #8, TA #9, TA #10, TA #11, TA #12]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, said that the firm obtained its certification because “we realized that there was an actual niche that made available extra work, and we just wanted to work as much as we could.” She reported that “there were definite benefits [to the firm’s certifications] when we started all this and I still think there’s benefits. I don’t suppose we have as many benefits as ... a minority, but I don’t know that for sure, because I don’t know what benefits they’ve received. I know we’ve lost a lot of highway work because we’re not one of those ethnicities. But there’s sometimes aspirational goals and DBE goals and ESB goals on a lot of big projects, and we want to participate in those projects.” She reported that approximately 50 percent of her firm’s work is on projects with MBE/WBE/ESB or DBE goals.

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that she sought the certifications because she “believed the program and certifications [were] meant to help with access into the industry [and] to level the

playing field [because] you were disadvantaged [as] a woman [or] a person of color who had been underutilized in the industry.” She reported that 50 percent of her firm’s work is from projects with MBE/WBE goals.

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that the firm “wouldn’t be working on [certain] projects without [its certifications].” Interviewee #7 stated that “large consultants ... wouldn’t sub that work out if they didn’t have to. The good faith effort that people talk about — they’re only doing it in good faith because of the clients telling them to.” He reported that 10 to 15 percent of his contracts were the result of projects with ESB goals and approximately 15 to 20 percent of his contracts were the result of projects with DBE goals. He stated that his firm’s certification as an MBE provides it no benefits, as “there really isn’t anybody who uses MBE [contractors] right now. It’s all DBE or ESB [contractors].” Interviewee #7 stated that none of his contracts were the result of projects with MBE goals.

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that its WBE certification has provided it the opportunity to work on projects for the Portland Development Commission. She stated that approximately 10 percent of her firm’s contracts were the result of work on projects with WBE goals. She stated that her firm received calls from general contractors because of the firm’s WBE certification, but that “if we’re not low, we don’t get [the] job.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, reported that the vast majority of the firm’s revenue came from its work on projects with MBE goals. Interviewee #10 stated, “Almost every project we bid has a goal.”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that 100 percent of the projects on which he worked had aspirational goals. He said that 10 percent of those were projects with MBE goals, and the remainder were projects with DBE goals. He reported that 10 percent of his work on DBE projects was on projects with DBE goals only for African American or Asian-Pacific Islander firms. He stated that “you really have to [get certified] to get prevailing wage projects, you have to be a DBE to get those federal prevailing wage projects.” He stated, “ESB, to get the City of Portland projects, you have a certification. Unless you’re going to stay private, and just do private work, then no certifications.” He stated that a primary benefit of his firm’s DBE certification has been the Oregon Department of Transportation’s (ODOT) recent focus on DBE-certified firms owned by African Americans and Asians. He said, “The advantage of being a DBE, is I’m an African American DBE, and so a lot of the projects coming out have aspirational goals for DBEs, African American or Asian-Pacific Islander DBEs, so that narrows the field.”

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, reported that a benefit of ESB certification is that “you might get some work that would normally go elsewhere. I know that cities, counties, [and the] State try to [have] work [performed by] certified firms.” She stated that “not many” of her company’s contracts come from projects with MBE/WBE/ESB goals.

Interviewee #13, the Caucasian male owner of a residential construction company, said that there are benefits to certification. He said, “We want to be a good citizen; not only do we want to build quality

homes and remodels and additions, we want to be a contributor to the community. We're all pretty liberal thinkers around here, so we want to help minorities advance, and for women to have equal pay; we're for all of those things."

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that State certification as a WBE "would save us effort in some respects ... because, as a woman-owned business, then we get out of part of the good-faith effort requirements of having to solicit because we would be a certified firm. It would be nice to save us the effort of having to solicit to hundreds of people who don't respond." Interviewee #14 reported that WBE certification would also provide her firm "with special opportunities that we don't get otherwise since we're owned by a [Caucasian] male, it's kind of become a reverse discrimination effect at this point. There are certain projects that are only open to certified firms, meaning that if we're not a certified firm, we don't have the opportunity to bid on those projects, where certified firms have the opportunity to bid on practically any project they feel comfortable bidding. So, since we're not a certified firm, then that kind of discriminates back against us, and does not allow us the same opportunities."

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, said that the certifications benefit his business. He said, "They are forced to use you to get the necessary quota and, because we are so desperate to work in our trade, we are lower bidders."

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that she decided to seek certification because "It just makes it easier to bid. We get more jobs that way." She stated, "I think there's a lot of benefits for us on both sides of the house" from her firm's MBE, WBE, DBE and ESB certifications. She said, "We get in the doors where other people can't get in." She reported that 80 percent of her firm's sales were the result of working on projects with MBE/WBE goals.

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, said that there are several benefits of ESB certification. She said that the Office of Minority, Women and Emerging Small Business "has had some great seminars that we have attended. It's a great networking [mechanism], to find out what's available out there ... especially for emerging small businesses, to help get them grounded." She said that about 20 percent of her firm's revenue is attributable to projects with MBE/WBE/ESB goals.

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said, "If you are certified as a minority, woman, or very small business there is nothing you can get for that, but you may miss out on everything if you are not certified." He said that he encourages businesses to get certified because "if there is an opportunity ... you need to have that done so that you are ready to go." He said that some people think "'Oh, I have gotten certified and the doors are going to open up and they are just going to run in and give me business,' and that doesn't happen. And then you have to actually be qualified; certified is not the same as qualified." He said that certifications are just "precursors" to business, but they are a good thing to have. He said that he has obtained most of the firm's work because of his capabilities and relationships, and not because of certifications. He said that he would attribute 5 to 10 percent of his business to the certifications. He said that businesses will ask if the firm is certified even if there are no points or goals on the project because they may "get some recognition for having hired or used a certified firm." He said that the

certification has an economic component in that some contracts give priority to MBE/WBE/ESBs. He said that Oregon companies use the MBE/WBE/ESB certifications and that you see DBE certification on federal contracts.

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, reported that the firm is certified as an MBE/ESB because “I think it is a great opportunity to get into doors.” He said that about 15 to 20 percent of his business is attributable to his certifications. He said that certification is a “great benefit if you really want to go out and work with firms that are trying to get more minority type jobs, public jobs.” He said that firms have to seek other work because there is not enough public work to “carry you.” He said that the certification is “a great deal” to pick up projects here and there, but it will not sustain a firm.

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said, “Yes, there are benefits to certification and working in the public sector has big-time benefits, or I would not be getting these opportunities.”

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, said, “[MBE/DBE certification] has also been helpful for my firm, though there are those who make the assumption that it has a stigma, that we can only be expected to do [inferior] work, and I enjoy proving them wrong.”

Interviewee #47, the Caucasian female owner of a WBE/DBE/ESB-certified trucking firm, said, “The ownership is Caucasian female and certification is very important to the success of the business. Other trucking firms are jealous because I was able to get our firm through the certification process.” She said, “Certification is important, because we get more work and we are asked [to perform projects] more often because they need to count me for goals, and those calls account for about 50 percent of our work.”

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported that the firm’s certification serves as a marketing tool in the public sector, and sometimes assists the firm in being chosen for a project. He said that approximately 40 percent of the firm’s work is a result of its MBE certification.

Interviewee TA #2, the director of an apprentice preparation program, said that she believes the certification program “would be a good thing if people abided by the rules and regulations.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that contractors obtain MBE/WBE/ESB certifications “to be able to procure work.” He said that in his opinion the MBE/WBE/ESB programs are “great.” He said, “I think it is wonderful that we have a very progressive attitude towards those kinds of programs.” He said that some of the benefits of certification are “the ability to bid and procure work with the government entities [and] the ability to tap into a workforce that they may not be able to tap into.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that certification is “beneficial” because you can identify opportunities. He noted that a businesses must be certified as an MBE before they can become a member of his organization.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that the majority of their members have some manner of certification (MBE, WBE, ESB, or DBE). He said that their members utilize the ESB certification to do business with the City of Portland, and the DBE certification to do business with the federal government; he said that not many members utilize the MBE or WBE certification program. He said that their members have generally had a good experience with the ESB program and the City of Portland has done a good job of emphasizing the need to utilize ESB-certified companies.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, stated that the members who are certified as an MBE/WBE/ESB apply for the certification “to compete ... or to qualify for the programs that are offered.” He said that MBE/WBE/ESB programs “are desirable to the extent that they remove barriers for people that might otherwise have those barriers up. If [certifications] provide a portal of entry into the industry, I think that’s a very good thing.” He said that there are advantages to certification “only to the extent that there are areas of emphasis by [the] government on public contracts that direct work in a particular way ... it gives them the advantage in qualifying for work that they might not otherwise have.”

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that the MBE/WBE/DBE programs are “good programs” but he noted that the organization has not had much experience with these programs to date. He said, “I think it is an essential program.”

Interviewee TA #10, three representatives of the Northwest College of Construction, said, “I assume [certification] is probably a real asset to starting a business.” They said that it is difficult to start a business in the construction industry.

Interviewee TA #11, a representative from the Port of Portland, said that “the certification will not get you any work, but it could be the decision factor that keeps you from getting work because there are entities, such as the Port ... that value doing business with minorit[ies] and women and other small businesses.” She said that, in her career, she has been presented with largely equal businesses in terms of price and experience, but one was certified as a minority-owned business so that “tipped the scale in [the certified firm’s] favor and I would choose them instead.” She said, “I think that is the only benefit, if [the business is] trying to do work with entities that value participation of certified businesses, and not everyone does.”

Other interviewees perceived limited or no value to certification. [Interviewees #: 2, 6, 9, 10, 20, 23, 24, 25, 28, 31, 44, 45, TA #1, TA #3, TA #6]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, said that the firm’s owners sought the WBE/ESB certifications “because ... we thought it made a difference in the market.” Interviewee #2 reported that he has not experienced any value to certification. He said that none of the firm’s work can be attributed to projects with MBE/WBE/ESB goals.

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported, “I’m not sure that the State [of Oregon] certification has provided much benefit to us.” She stated, “On a commercial level, a lot of entities acknowledge [the WBENC certification of the firm as a WBE]; whether it actually provides a concrete benefit in any kind of bidding process, I would be less inclined to answer affirmatively to that.” She stated, “I don’t believe that it ever really

has made the difference for us.” She said, “We did the WBENC [certification] first. We have a number of commercial customers and they indicated to us that, you know, ‘if everything else is equal, we will choose the smaller, disadvantaged, woman-owned, minority-owned enterprise, if everything else is equal.’ Of course, in the real world, it’s very rare that everything else is equal.”

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that he did not see any benefit to pursuing certification as an MBE at the time the firm received its WBE certification. He reported that at the time of the certification “things were really going good. I had people calling me almost every day.... It’s kind of hard to pursue other things when you’ve got milk and honey coming in every day.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that the amount of work the firm has done for the Oregon Department of Transportation has declined since that agency changed its DBE program last year to focus on increasing its use of services provided by DBE-certified firms owned by African Americans and Asians. They stated that the primary benefit of being an MBE- or DBE-certified firm doing projects for the Oregon Department of Transportation (ODOT) was that, “before last year, you were included in the percentage [ODOT contractors] were trying to fill, so you were needed.” She stated that last year ODOT “changed the goal, and so now we’re not in that DBE goal, and so they tried to fill those voids — and it’s not necessarily that another electrical contractor is getting the work, it’s that it’s feeding out into different areas, so that maybe, like, more trucking is getting done ... so that’s it’s not necessarily electrician for electrician are we getting swapped out, it’s that the electricians aren’t getting used, and we’re not getting used.” Interviewee #10 stated that an MBE certification “doesn’t mean anything anymore.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, said that “I haven’t really [obtained] a job from anybody asking me about [certification]. I present it, but I haven’t really had anybody say, ‘Hey, I’m looking for somebody that’s minority-owned ... for employment or work.’” She reported that none of her firm’s work resulted from projects with MBE or WBE goals.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that he sought those certifications from the State because he thought doing so “would help my business grow, but over the years, I don’t think it’s done too much. I think the way it’s set up, it’s probably [that primes or project owners] use you just enough to get what they need, and the rest of it is, ‘bye bye.’ So it makes it hard.” He reported that little of his firm’s work is a result of projects with MBE/WBE/ESB goals.

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that she previously saw benefits to her firm’s certifications, but “not recently. Before, it definitely created opportunities, but the only certification that has value right now is the ESB, but not for me. I think the value for the ESBs is just for a certain group; typically Caucasian men or Caucasian women are the only ones who are benefiting from the ESB Program.” She said that about 90 percent of her firm’s work “used to be” the result of work on projects with MBE/WBE goals. She reported that when projects are looking for women-owned businesses, those companies seek firms owned by Caucasian women, and when they look for minority-owned firms, they are looking for those owned by men who are racial or ethnic minorities. She stated, “I thought that my certification as a woman, I thought that I counted as a woman, as part of their requirements, but ... somebody

[explained to] me that—because I always argued that if I went somewhere and I said I was a woman, they said, ‘no, you’re a minority,’ and then if I went into a minority it usually meant the men, so they said, ‘no, you’re a woman.’ But at the end of the day I was a minority woman, but I didn’t fit into [either] of the two [categories]. So there’s a big discrepancy there in that gap for minority women because we just get bounced back and forth between the group of the males, because regardless if they’re a minority, [men] fit in the male group, especially in construction. You don’t fit in when you’re a woman, but when you’re a minority woman you don’t fit in [to the woman category] because ‘woman’ usually [means] ‘Caucasian.’ So even in the groups I have joined, you know, like [trade associations for] women’s businesses. One time there [were] two minority women there, one African American woman and myself [and] she had the same issue.... she mentioned there should be something to support us, and the [Caucasian] president of that Alliance group said, ‘Well, you should go to the African American Chamber of Commerce.’ It was just like I was saying — we get bounced back and forth and we really don’t have any support.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that she has “not found a benefit, or [gotten] work because of [her certifications].” She said that while 90 percent or more of the firm’s projects are in the public sector, “out of our government contracts, maybe 10 percent” of the firm’s work is attributable to projects with goals for MBE/WBE/ESB participation.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that he is not aware of many benefits of the MBE/WBE certifications. He said that none of his clients are certified as MBE/WBE/ESBs and that his clients have not sought certification because they were not aware of the certifications or the value, “so it is our job to educate and create that opportunity for them.” He stated, “We are looking into getting some of [the MBE/WBE/ESB] certifications in place for our clients so they could take advantage of [the certifications].”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, said that the state-level MBE certification offers no benefits to his business. He stated, “There are not established goals or targets for this category.” He said that none of the firm’s revenues are as a result of the state-level MBE certification. He reported that he does believe that on the local level the firm has received some benefit from certification. He said that most of his work and benefits from certification are a result of the DBE program. Interviewee #31 reported feeling that the DBE program has more specific goals and targets which allow certified firms to achieve success and access opportunities.

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, said that there is little benefit to the MBE/WBE certifications because of the contractor’s tendency to utilize ESBs rather than MBE/WBEs. He said, “If there is a decent benefit, it’s sparse. I mean it’s basically the way it’s set up. It’s M/W/ESB, and ESB takes precedent. ESB is inclusive of everyone, and so what has a tendency of occurring is general contractors — we’ve seen it for 13 years — the general contractor will create these ESBs. Then firms utilize them for the utilization [requirements], ignoring all other groups, and then once they max out of their size standard, they create another one, and create another one. So they tend to self-generate ESBs and utilize them to keep that certification. That’s where it’s challenging on the public sector, because they look at the whole pool as one giant pool. The federal level only recognizes the DBE Program and I’d say there’s

probably more benefit to the DBE Program because they don't recognize ESBs. So I would say that the DBE Program has more opportunities available than the M/W/ESB."

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said, "My firm is not currently certified but I was previously MBE-certified and SBA 8(a) certified and I received a MED [Minority Enterprise Development] award. I got recognition, but no business benefits, so now I primarily pursue the private sector and they do not ask for [certification]."

Interviewee TA #1, the vice president and credit administrator of a commercial bank, reported, "I see it where they highlight that they're [a] minority or emerging small business [enterprise], kind of all these designations that they have. You know, it's not as if you have that designation you get more points or you get more credit, or we loan you more, so in the loan process, does it help? I don't think it does. I think it's more on them obtaining bids and contracts that they need to be certified as a minority or to tap into this market. So from a lending perspective, it doesn't add anything."

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that "most of [our members] become certified because they are hopeful that there might be an opportunity to contract with city, county, [or] state government, and that there might be an additional opportunity based on the certification." She said that "very few" of their members are certified because "many of them don't see the value in it and those that have been certified, like myself, are no longer certified because ... you just don't see any value in it." She said that the "biggest benefit [of certification] is for those in construction. It puts them on the list and that list goes out to various contractors. Unfortunately, the contractors do not use that list very often because they use the same people that they have been using all along."

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that "very few" of his members are certified as MBE/WBE/DBEs. He said that many of his members do not seek certification because "it doesn't work." He said, "The only time a contractor wants to do business with me ... is because he is going to get points from doing business with a minority. In mainstream they could [not] care less about me or anybody else, [so] they don't do business with us." He said that certification is "okay" as "an avenue to get your foot in the door so you can be able to move on to other things. If you are going to go into business just by certification and you never come out of this, then you are in a cocoon." He said that "DBE certification does not guarantee you anything, and if anything it will only allow you to become a secondary player." He said that the African American Chamber asked the State of Oregon to provide them with information about the MBE/WBE programs. He said that the State of Oregon showed the organization the number of firms certified and then the organization inquired as to how many contracts were awarded based on the certification and the State of Oregon said "we do not know." He said, "I am told that only 17 percent of the estimated minority businesses in the State are even in the certification pool. Asians do not necessarily even want to participate." He said, "Our posture has probably been very different compared to other groups [because] we are not a big supporter of M/W/ESB Programs. They don't work. They just do not work and that is why you are doing a study again right now. Because at the end of the day after 20 years you [have] the same disadvantaged groups that are still crying the blues about [not] get[ting] their fair share.... They trusted people to implement these plans years ago and it didn't work." He said that he believes "we are certifying the wrong people."

Some interviewees identified certain disadvantages to certification. [Interviewees #: 4, 8, 10, 13, 23, 24, 25, 26, 48, 29, TA #3, TA #4, TA #6, TA #7, TA #8]. Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that having to be certified in every scope of work her firm performs is a disadvantage of certification.

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that there are downsides to WBE certification, including contractors underestimating the firm's capacity and service offerings. She stated, "We kind of joke [about the certification] because we don't know if it's a blessing or a curse. They look at us like they don't know who we are, and they don't know what we're capable of doing. They look at us as a WBE. They think of us as not being able to perform a larger-scale contract, so they want to hand us the small stuff, or [they] say 'come look at this [portion of a project],' when we can do the whole scope." She said, "I hate the other things that often go on and refuse to participate in pass-through offers or suggestions from others like, 'just buy the equipment.'" Interviewee #8 reported experiencing being listed on a bid and not utilized.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that one disadvantage of MBE certification is the amount of paperwork the firm is required to complete.

Interviewee #13, the Caucasian male owner of a residential construction company, stated that the only disadvantage to certification is "the time issue involved."

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that one disadvantage of his firm's DBE, MBE, and ESB certifications is exposing his financials to scrutiny. He said, "I think showing your financials and all to be certified is probably why a lot of people don't want to be certified, because we're exposing all of our financials out there.... I think the financial thing shouldn't have anything to do with it. I think they should look at you and say — I know why you have to have financials, so they know that you're not over your [income] thresholds, but in some of these, [certification as a] minority or emerging small business, disadvantaged — I don't know. But I'm sure that the MBEs ... [The Office of Minority, Women and Emerging Small Business] shouldn't have to ask for anything. If you are [a minority], you are [a minority]."

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported, "Typically, if you're a DBE, they do think that you are a minority and they tend to think that you have no experience. And in many cases that is the case, but in my case, I started a business because I was not given the opportunity to perform [projects in] my [previous] job that [were] going to give me skills. So yes, they are correct, we don't have the skills, but it's because they set us up to not have those skills. We don't have [them], but it's not because we can't, it's because we're not exposed to gain that experience. And that is the same thing in contracting. I'm a small business, and many times I don't have the experience, but it's not because I can't do it, it's because I have not [been] given the opportunity to gain those skills ... so we definitely are disadvantaged, because when you see other firms [certified as women-owned businesses, the owners] typically held a big position in a big firm, and they had those relationships which I was never allowed because I never had a high position in a big firm."

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, stated, “Sometimes there is” a disadvantage to being certified by the State of Oregon as a DBE, MBE, WBE, and ESB, “because when someone sees you, that you’re a minority contractor, an ESB, they assume that you’re a small company and that your volume of work is very small, [when in fact] you have the capacity to do larger contracts.” Interviewee #25 reported that another disadvantage to her firm’s certification “is when they set goals on projects, when there’s a general contractor, they have to meet that goal, and they sometimes have to hire you. They’re kind of obligated, so they give you the piece, little crock of work that they could allocate to you, that 10 percent, which doesn’t have a good feeling.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that there are some disadvantages to certification because “some people hate the idea that there are any special categories for anybody for anything, and they intentionally ... give you less of a priority.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “Some of the disadvantages to certification are that we are pigeonholed and assumed to be incompetent and that the burden of proof rests with us over and over again.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated there are disadvantages of being certified because firms on the certification list can fall prey to what he described as predatory general contractors. He reported that these contractors are financially unstable, yet retain the services of certified firms knowing that it was unlikely that these subcontractors would be paid in full, if at all. He said, “One of the examples I could bring up is that there are predatory contractors out there. Those contractors will look at that list as a list of a group of contractors or subcontractors that can be manipulated. We’ve had it where a contractor, right before — it actually happened to us twice — right before they close their doors — and of course payment issues — and things like that follow. They realize that they can go out to be able to do some projects that they are trying to at least get started up. They would go off of the certification list and hire those contractors where they wouldn’t hire them in the past, knowing more than likely that they’re not going to get completely paid because the project will go into default. That happened to us last year. The general contractor went aggressively after minority contractors for utilization and when their numbers are backwards, prior to that they really didn’t [solicit minorities], in my opinion.”

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported that a disadvantage of the firm’s certification is that sometimes clients believe that being an MBE-certified firm is a limiting factor.

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that there is not a disadvantage to being certified but there are disadvantages to getting certified. She said that there “are so many hoops and so many disclosures and so many limitations about who can be certified.” She said that there are limitations based on what degree you have because to become certified you must hold a degree for the industry in which you seek certification. She said that most business owners in the community own several businesses and it has nothing to do with a degree, but rather it has to do with their ability to invest in a business opportunity. She said that it is “frankly ridiculous” to require a certain degree to become certified. She said that business owners “do not have to spend 99 percent of your day overseeing that business because you might have several businesses.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that a disadvantage of certification is that the certified firms “get taken advantage of by general contractors that need a certified minority contractor on the job and they don’t let them perform their work 100 percent so [the general contractor] will try to cut corners ... and then basically use those certifications from those individuals to be able to gain work for themselves and not allow the minority contractor to succeed.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that one disadvantage to certification is that a firm can get “pigeonholed” into a certain type of work; but once the firm grows and expands outside of the program, that firm may then have nowhere to go.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that one of the disadvantages to certification is that it provides a disincentive to companies to gain the skills that they need to compete.

Other interviewees reported that they were unaware of any disadvantages to certification.

[Interviewees #: 1, 3, 6, 12, 19, 20, 21, 22, 27, 28, TA #10, TA #11]. Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that he does not perceive any disadvantages of certification unless the certification process is “bureaucratic and time-consuming ... which I don’t know to be the case. That would be a downside. Also, the potential that [certification] would build false expectations for businesses ... again, those [disadvantages] are just alerts [and] I don’t know whether they would be true or not.”

Interviewee TA #11, a representative from the Port of Portland, stated that she does not see any disadvantages to the certification. She said that many businesses do not get a certification that they may qualify for and she thinks “they are just shooting themselves in the foot ... [certification] can be a competitive advantage, why wouldn’t you do that?”

C. Recommendations Regarding the Certification Process.

Some interviewees recommended that the City of Portland and PDC provide more assistance with the certification process. [Interviewees #: 2, 10, 42, TA #9, TA #10]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, recommended that government agencies provide a glossary of terms so that there is a better understanding by the public about what is meant by those particular terms.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that certification agencies in other states use newsletters to communicate with DBEs about upcoming classes, renewals, and other certification-related issues. Interviewee #10 stated, “We get one from Idaho every month; it’s nice to be updated on that. It helps with the communication. I think the biggest struggles you have with the DBE entity itself is that your communication back and forth is very limited. [ODOT] has these new [certification] codes, and we were trying to inquire about ours, and I think it was like three weeks before we were able to get an answer back.”

Interviewee #42, the vice president of an Asian-Pacific American woman-owned ESB-certified materials supply firm, stated that the staff should return calls and have a more personable approach during the certification process.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, recommended that there be someone available to explain the certification process to those applicants who are not familiar with the process.

Some interviewees recommended that the certification application or renewal process be simplified or condensed. [Interviewees #: 1, 20, 26, TA #11]. Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, recommended that the Office of Minority, Women and Emerging Small Business better integrate elements of the various certification processes. She said, “I think they should say, ‘Hey, if you bring these three or four other documents, you can actually be certified for the rest of it, not have to worry about taking the whole thing back again, but only whatever you need.’”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that the certification process “is a little simpler now and it should be even simpler.” He said that the certified businesses should not have to resubmit information for renewals unless that information has changed. He said that the certifying agency is “getting closer to that now; they’re not there, but they’re closer.” He recommended that the certifying agency “speed the process” up a little because “sometimes it is a little slow.”

Interviewee TA #11, a representative from the Port of Portland, said that the database could be modernized so that it is easier to use because people who do not use it very often find it cumbersome.

Some interviewees recommended that the certification eligibility or certification criteria be modified. [Interviewees #: 4, 21, 23, 24, 26, 40, 41, 42, TA #3, TA #5, TA #11]. Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, recommended that the State keep in mind that the programs were meant “to help women and minorities, especially underutilized firms, [obtain] greater access and opportunity where really it’s still very limited.” She said that many ESB-certified firms do not need the benefits of the certification. She stated, “The ESB is non-gender, non-ethnicity, but who’s the major[ity of the] people getting the work? Why do we even need that [program]? The original [certification] program was for women, minorities, and disadvantaged” businesses. She said that some ESB-certified firms “are still in the same category; they’re already up front, now, with these relationships, [having worked] for these companies. They come out, journey, and start their companies.” She said that women and minorities “don’t get to journey. We don’t get the experience. We just try to come out [and start businesses] just on the fact that we want to do something, and we have some experience.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, stated that the State of Oregon should “reevaluate” some of the restrictions — especially the requirement that owners of those firms must be licensed as plumbers and run jobs from the field — that it places on firms seeking certification as a minority- or woman-owned business.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, recommended that the Office of Minority, Women and Emerging Small Business be much more rigorous about verifying the gender and race of persons controlling firms that the State

certifies as WBEs. He stated that the WBE certification process used by the State of Washington is more rigorous than that used by the State of Oregon, and results in fewer WBE fronts.

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, said that the women-owned businesses need to be examined more closely. She stated, “The women [owners of firms certified by the State of Oregon as women-owned businesses] who are there, typically it’s a male behind it, and I don’t know how you solve that. That’s definitely an issue that affects every woman. I have nothing against having a certification for women because we do [face] disadvantage[s]. But when a woman [owner is really a front] for a [Caucasian] male then the disadvantage gets washed out [compared to] when you’re a truly woman-owned [business], and that affects every woman, even Caucasian women.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, recommended that the certifying agency not go too fast. He said that the initial certification process should “dig deep” to make sure that all of the information is thoroughly reviewed. He said that everyone wants the process to move faster, but he does not have much sympathy for those people who wait until an opportunity arrives before they seek certification.

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, recommended that the personal net worth criteria be adjusted upward. He said, “The personal net worth in some fields of work is not high enough, because you have to raise your fees — showing more revenue in order to pay increased fees in the industry for materials and insurance adjustments.”

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, said that they would like to see changes to certification programs so that the firm would again be eligible in Oregon and other states.

Interviewee #42, the vice president of an Asian-Pacific American woman-owned ESB-certified materials supply firm, stated that they feel the qualifications should be modified to allow for administration to be an acceptable category for WBE certification.

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, recommended that certification requirements be “broader” so that a person can demonstrate that he or she is engaged at some level in the business. She said that she understands that the requirements are meant to prevent fraud and abuse, but “it is hindering the true entrepreneur, the true businessperson that is going to be successful.”

Interviewee TA #5, the president of the National Association of Minority Contractors, recommended that the certifying agency look at the experience of the person applying for certification and verify that the firm is capable of performing the work that they say they can perform.

Interviewee TA #11, a representative from the Port of Portland, said that because of the certification criteria, “women-owned businesses have to prove themselves more than the other businesses.” She said, “If a woman owns a demolition company, she actually has to get on the equipment and prove that she can demolish a building, whereas the reality is ... you can own a business but you don’t necessarily have to be the one driving the backhoe,” you just have to be able to manage the project.

Some interviewees recommended that the City of Portland and PDC provide greater oversight of the certified firms. [Interviewees #: 44, TA #2, TA #5]. Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, recommended that the agencies check references of firms applying for certification. He said, “I know the certification office has in their application, references — this is one of the things I found out later on — is that we were reference[s] for a company that was a male-owned company, who wanted to then become a [woman]-owned company and actually the owner had talked to me about it and said, ‘Hey, I’m looking at putting it in my wife’s name so that we can look at doing contracts and general contractors are saying they can give us more work.’ I said, ‘You don’t need to do that; you’re an ESB, why don’t you work on growing out of the ESB and doing it the right way.’ In turn, they went ahead and did that anyway and got certified as a woman-owned company. What I would say, to improve that? They also listed our company as a reference point. No one ever called me and said, ‘All right, is this a real woman-owned company?’ No one called references; they okayed that firm to be certified as a woman-owned firm and that firm they actually changed ... so the State really didn’t do any real justice to legitimate women-owned firms by certifying them. So, to make sure those firms that are certified are actually what they say they are.”

Interviewee TA #2, the director of an apprentice preparation program, said, “I think that the watchdogs or the gatekeepers really need to be screened better, and that there should be a periodic [audit] — I don’t mean every three years, but like every three months or so, and really looking at who’s coming into, getting the advantages. And there needs to be accountability on the end of that.” She reported, “I think that it’s always about that dollar, so if people had to pay certain types of fines, or had to be eliminated from being selected the next time for an opportunity, it would change things.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that the certification process for ESB/WBEs “could be improved.” He said there are concerns by their members that there are businesses that are certified with an “absentee owner.”

Some interviewees recommended that certification criteria or goals be modified to address concerns about the ESB certification. [Interviewees #: 29, 44]. Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “My firm is not certified as an ESB because I feel strongly that it is a program specifically designed to diminish the focus of what civil rights programs were created to do. It moves towards race- and gender-neutral when race is a major factor in leveling the playing field. While I am sure ESB certification has value, its effectiveness ought to be tested to see how it’s working, and that when successful, [businesses] ought to graduate out of the program.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, said, “One of the problems I see with the certification process is just like I said with the ESBs. You allow the ESB firms to be used as the funnel to ignore all other certifications. Improve it by setting goals to set in, whether you set, 3 percent for ESBs, 3 percent for MBEs, 3 percent for WBEs — something to correct the utilization of those ESBs.”

One interviewee recommended that the City of Portland and PDC eliminate MBE/WBE certifications. [Interviewee #: 14]. Interviewee #14, the Caucasian female co-owner of a non-certified construction company, said that she had no recommendations for improving the

certification process. She stated, “Get rid of it. I think it should just go away completely. They could do an emerging small business [program]; I would be okay with that. If they want to have some sort of a tiered structure for emerging small businesses to help people who want to learn about how to run a business, I’m okay with that. Help them understand their financial statements, help them understand how to bid work ... but don’t give them special opportunities that nobody else has.”

II. Prime and/or Subcontractor Work.

A. Anecdotes Regarding Businesses Acting as a Prime or a Subcontractor.

Some interviewees reported principal work as a prime contractor. [Interviewees #: 2, 4, 6, 9, 13, 14, 16, 18, 20, 22, 25, 26, 30, 33, 34, 35, 36, 39, 41, 45, 48]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, stated that while his firm performs as a prime, he would like the opportunity to perform work as a subcontractor.

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that “about 60-65 percent of our work is prime work, and then the other 35 percent is sub work.” She stated, “But when it comes to dollar volume, it’s just the opposite.” She said that her firm prefers to work as a prime contractor because it provides her firm with the opportunity “to offer [ourselves] to our clients as a general contractor.”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported that her firm works as a prime contractor for “85 to 95” percent of its work. She said that the firm performs work as a prime contractor because “that’s the nature of the business. The GSA certification is an example; we just recently got that. Up until that point in time, we did do some GSA work, but we did it as a subcontractor. We sought certification, obviously, so that we can go in on our own, which is better.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that her firm works as a prime contractor “99 percent of the time.” She stated, “We have very specific ways that we like things done. We like to have the control over the quality; we like to be able to interact with the owner. When you’re in the sub role, you’re subject to yet one more person in between you and the owner. We just haven’t been placed in that role often, and therefore the people that we’d be working for, I don’t want to get to know them at this point and have a bad experience of not getting paid.”

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, reported that his firm performs work as a prime contractor for approximately 90 percent of its jobs, but has also worked as a subcontractor on commercial projects.

Interviewee #18, the Caucasian male owner of an excavation firm, stated that his firm operates 80 percent of the time as a prime contractor, and 20 percent of the time as a subcontractor.

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, stated that his firm operates as a prime contractor on 90 percent of its projects “because we can control the quality, and we do everything in-house.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that about 70 percent of the time the firm works as a prime contractor.

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that the firm performs work mainly as a general contractor. He said that he chooses to perform work as a general contractor because “you are in control of the total project.” He said that for “small firms who are struggling just to exist,” it can “be very detrimental” to perform as a sub because of the lack of control over the project. He said that subs are “at the mercy of whenever that general chooses to give you some money.” He said that the biggest obstacle for small businesses performing work as a subcontractor is the “money and timing of everything; they have no control.” He said that project owners can help cultivate the relationship between primes and subs because they need “to understand the value of each other.”

Interviewee #30, the Caucasian female owner of a WBE-certified construction firm, reported that her work as prime contractor represents 65 percent of her total workload.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, reported that her firm performs work as the prime contractor on 80 percent of projects and performs work as a subcontractor on 20 percent of the projects.

Interviewee #34, the manager of a Caucasian male-owned non-certified specialty plumbing and general construction firm, reported that approximately 65 to 75 percent of the firm’s work is performed as the prime contractor.

Interviewee #35, the Caucasian male president of an employee-owned non-certified construction services firm, stated that the firm always bids as a general contractor or construction manager. He stated that one of the firm’s greatest strengths is the way they manage projects.

Interviewee #36, two representatives of an employee-owned general engineering firm, reported that the firm serves as the prime contractor on 98 percent of its projects.

Interviewee #39, two representatives of a Caucasian male-owned general contracting firm, stated, “We only prime projects because there is no specialty that we self-perform. Our company primarily manages projects.”

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, said, “Most of the time we work as a prime but there are times, when the situation fits, that we have offered the M/W/ESB firm to serve as the prime.” She said, “In most cases the subs want us to take the lead because we have an established system in place.”

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, stated that his firm performs work as a prime contractor 65 percent of the time.

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported that the firm works as a prime contractor on 60 percent of its projects and as a subcontractor on 40 percent of its projects. He stated that this role distribution is due to the nature of its business.

Some interviewees reported principal work as a subcontractor due to the nature of their work, size of the job, a general preference to work as a subcontractor, or other reasons. [Interviewees #: 1, 3, 5, 8, 10, 11, 15, 17, 19, 27, 29, 32, 38, 40, 42, 43, 44, 46, 47, TA #5, TA #8, TA #9, TA #10]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that his firm works as a subcontractor “90 percent of the time” due to the type of work his firm performs.

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that her firm “generally” serves as a subcontractor on projects, largely because of the type of services it provides.

Interviewee #5, the Caucasian male owner of an excavation firm, reported, “Right now ... I’m about 90 percent working for other folks.” He stated, “I’ve just been doing a little trucking for some guys ... because we’re down to the point where that’s all that’s going on.”

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, said that the firm usually provides services as a subcontractor, not as a prime. She stated, “We’re usually a third-tier contractor.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that the firm has worked as a prime contractor on only 1 or 2 percent of its projects in the last two years. Interviewee #10 stated, “We’re primarily a sub ... because of the type of work that we do. Normally a job is just not electrical — you’re going to have paving, sidewalks, or storm or sewer. So we can’t man it and we’re not big enough [to manage all of it].”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that his firm performs work only as a subcontractor, never as a prime. He said, “All of the projects that come out are for excavating, paving, so the person doing the bulk of the work would be the prime.”

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, said that he performs work as a subcontractor 80 percent of the time.

Interviewee #17, the Native American male owner of a non-certified excavation firm, stated that his firm works as a subcontractor on 60 percent of its projects, and as a prime contractor on the remaining 40 percent.

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that her firm always works as a subcontractor “for flagging. For weatherization, we are the [prime] contractor.” She stated that her firm assumes those roles because “traffic control really isn’t a [prime] contracting item. It’s more of a subcontractor.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, reported that the firm performs 100 percent of its work as a subcontractor. He said that he performs work as a subcontractor because “it is enough [work] running my own people.” He said that he does not want to be responsible for managing the other subcontractors on the project.

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “I primarily prefer to work as a subcontractor because operating as a prime requires a high level of responsibility. I have on occasion, but it is taxing for my firm.”

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, reported that approximately 99 percent of the firm’s work is performed as a subcontractor.

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said that, “Subcontracting is my market right now and it has grown my company tenfold or more over the last few years.” He said that while he has not worked as a prime contractor, he believes his firm has the ability to do so in the future.

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, stated that approximately 95 percent of their work is performed as a subcontractor. He said, “We actually avoid work as a prime so that we are not accountable for specifications or for other areas out of our specialty area.”

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “I have the capability to be a prime and have, during the history of my business, participated on very large projects.” He said, “However, things are moving at a much slower pace at this stage of business, and I am now taking on a few projects at a time as a subcontractor, and doing residential design for single and multifamily units.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that the majority of the organization’s members perform work as a subcontractor. He said that the members perform as subcontractors because many of them are specialty contractors. He said that because there are so many general contractors in the market, the members “see more opportunity as a subcontractor.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, reported that of the organization’s 1,100 members, approximately 450 perform work as a subcontractor, approximately 290 perform work as a prime contractor, and the remaining members are industry associates (professional services). He stated that those members who choose to work as a subcontractor do so primarily because of their type of business and “they have been successful to the degree that they wish to be ... when the economy is in balance and growing, [the subcontractor role] is a very good place to be.”

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, reported that two of their members own construction businesses and they perform work as a subcontractor.

Some interviewees reported acting primarily as a subcontractor due to their limited capacity which is sometimes related to an inability to secure bonding or financing. [Interviewees #: 23, 24, 28, 31, 37, TA #3, TA #4, TA #6]. Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that his firm generally performs work as a subcontractor. He reported that his firm serves as a subcontractor on approximately 70 percent of its projects, and as a prime contractor on 30 percent of its projects. He stated, “The costs of being a prime — the dollar value is so high, we can’t get bonded — it’s not that we can’t do the work. I

mean, I can go into the private sector and do a \$1 million project, and they're not requiring me to be bonded. The State, the federal, all of them are [requiring that our firm be bonded for their projects], and that makes it difficult for us as a small business people to get anywhere." He said that he served as the prime contractor on a \$1.2 million, 9-unit condominium project, and did so "with backing from another contractor." He stated, "That's the kind of work we can do. We can do the work if given the chance to do the work, but it's just not happening."

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that her firm generally works as a subcontractor on projects because "the bundles are too big; the contracts are too big" for her firm to handle alone. She said, "You could never compete to that level." She stated that NAICS code allocations limit her firm's opportunities to serve as a prime contractor. She stated, "If I just have one NAICS code, how can I compete anywhere? It doesn't allow me. So that's why [her firm serves as a] sub. You're tied to one NAICS code, to start with. The process doesn't allow you to get the experience to get other NAICS codes." She reported that cost is another reason her firm serves as a subcontractor, and not a prime. She stated, "There's a huge cost, expense in the process, and usually you learn that when you put proposals, it has to do with relationships the agencies have with large firms, and they don't have the confidence in [small] firms to deliver projects. I have learned in the hard way that it's not meant for small businesses, so I just stop, I don't even try [to bid a job as a prime]." She stated that public agencies "don't believe [a small firm can complete a large job], and don't set up the projects so that it can be achievable [or] reachable" for a small firm.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, said that his clients "almost always" work as a subcontractor. He stated that his clients work as subcontractors rather than as primes because of their size. He said, "They are mostly one- to five-person companies."

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that he primarily performs work as a subcontractor. He said that he has a desire to do more prime contract work, but the public sector creates larger projects and prices projects out of his market and bonding capability. He stated "prime contract work opportunities fitting my capacity are hardly ever available."

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, stated that he primarily performs work as a subcontractor. He said that "Public agencies often make insurance requirements and front end time extremely excessive when working with me on projects even as small as \$5,000." Interviewee #37 referenced a specific TriMet project that he had lead in time for months and eventually the project manager told him that someone else (higher up in the organization) decided to go with a larger firm that they know. He stated that smaller engineering firms are discouraged from pursuing public engineering projects as the prime contractor. He said that general contractors and project owners, including the City of Portland, "treat you like an idiot, they speak to me loudly as if I can't hear and when meeting me constantly repeat — Are you a structural engineer? Are you licensed? Where did you get licensed? — having nothing to do with necessary qualifications for a simple job but because of my heritage they assume that I cannot be who I actually say I am. Often their mouths are open in awe." Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, stated that he feels that "Larger engineering firms buy into stereotypes to keep smaller firms working for them in their

offices in obscure positions and unable to prime on their own.” He stated that “I would like to see more interest from the public sector in growing our firms instead of this comfort level that we all see in keeping us at the subconsultant level.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that most of the members perform as subcontractors. She said that 99.9 percent of their members perform as a subcontractor, and that they do so because of their capacity, bonding, and experience.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that his members “hardly ever” work as a prime. He said that his members assume the role of a subcontractor because of bonding requirements and the competition in the marketplace.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that to the best of his knowledge his members perform as subcontractors 100 percent of the time. He said that his members work as subcontractors because when they are certified as an MBE/WBE/ESB, “that is the first sign that we are only going to use you as a secondary.” He said that insurance and bonding requirements also prevent his members from working as a prime. He said that “the biggest insult to a person of color is that you are only qualified for subcontracting.”

Some interviewees reported acting equally as a prime and subcontractor. [Interviewees #: 7, 12, 21]. Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, reported that her firm has worked as the prime contractor on numerous smaller jobs in the residential market and has served as a subcontractor on commercial projects. She reported that 50 percent of the firm’s work is as a prime contractor, and 50 percent is as a subcontractor. She stated that she prefers being a subcontractor to being a prime contractor because “there are a lot less hassles, but being a prime is okay, too.”

Some interviewees reported being a project owner or being employees for either a subcontractor or prime on a project. [Interviewees #: TA #11, TA #12]. Interviewee TA #11, a representative from the Port of Portland, stated that the organization is the project owner and hires the primes for their projects and sometimes the subcontractors.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, stated that the organization’s workers work for both subcontractors and prime contractors. He stated that some unions have ‘hard dispatch halls’ and when an employer needs a worker the union ‘calls the hall.’ He said that workers are selected based on their position on the dispatch list. He said that some unions do not have ‘hard dispatch halls’ and the workers are free to seek their own work. He said that the way that workers get on jobs “varies from local [union] to local [union] and it is governed by the collective bargaining agreement.”

B. Contractor Reported Utilization of MBE/WBE/DBE and Non-MBE/WBE/DBE Subcontractors in the Public and Private Sectors.

Some interviewees reported utilization of minority- and woman-owned subcontracting firms in both the private and public sectors. [Interviewees #: 2, 3, 4, 14, 26, 35, 41, 48, TA #5]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm,

reported that his firm solicits bids from MBE/WBE/ESBs on both public and private sector projects. He reported, “I haven’t done any public sector projects, but if I had one, I’m sure we would have [MBE/WBE/ESB subcontractors]” on the project.

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that her firm uses MBE/WBE/ESB-certified subcontractors in both the private and public sectors. She stated, “It’s just whoever’s available.”

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, stated that her firm uses some MBE/WBE subcontractors on both private and public sector projects. Interviewee #4 stated that her firm uses some MBE/WBE subs on public projects that it does not use on private sector projects, depending on the project owner’s criteria for selecting her firm’s subcontractors. She said that wages tend to be higher on public projects, so her firm sometimes has difficulty getting the subcontractors (and employees) her firm uses on public sector projects to work on projects in the private sector. She reported that her firm solicits bids from MBE/WBE/ESB subcontractors. She stated that her firm does so “usually, when it’s required, and also because I have a relationship with M/W/ESBs [who] tend to network within a lot of the same organizations and projects.” Interviewee #4 reported that she also solicited bids from MBE/WBE/ESB firms with whom she has worked, “and [I] am attuned to help to grow small businesses like myself, and people who have a like mind.” She said that the firm usually selects subcontractors “who are members of organizations that promote the growth [of] women, minorities, and also companies who have a positive attitude in working with a woman-owned [or] minority[-owned] firm.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, stated that her firm uses MBE/WBE/ESB subcontractors on projects on which it serves as the prime contractor. She said that there are MBE/WBE/ESB-certified subcontractors her firm would use on projects in both the public and private sectors. She stated, “We, on our preferred bidders list, have a mix of non-certified and certified firms. You know, what we look for is people who can give us fair pricing, and will bid a complete scope, and that we’ve got experience with that do good quality work.” Interviewee #14 stated that her firm “frequently” solicits bids from MBE/WBE/ESB-certified firms, and does so by “either calling them up or faxing them an invitation to bid.” Interviewee #14 reported that her firm solicits bids from certified firms because “there are certain contractors out there that do good work; they just happen to be certified, so we’re going to solicit to them.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, reported that the firm solicits MBE/WBEs for “everything.” He said, “I don’t use anybody for anything that is not a minority worker.” He said that he does not believe that majority firms need his help. He said that as long as there is a qualified minority- or woman-owned firm to perform the work, then that is who he is going to use. He said that he has to “walk the talk and I do.”

Interviewee #35, the Caucasian male president of an employee-owned non-certified construction services firm, stated that they frequently solicit quotes from MBE/WBE/ESB firms by phone calls, electronic invites, e-mails, informational meetings that target MBE/WBE/ESBs, like OAME, and use of the OMWESB database. He stated that they do this outreach to satisfy good faith effort requirements and because it is often the project owner’s requirement. He stated that some private sector firms set and try to achieve diversity goals. He stated that the firm solicits MBE/WBE/ESB

firms regardless of the goal requirement, and he noted that on a previous project they reached 18 percent MBE/WBE utilization.

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, said that they use MBE/WBE/ESB subcontractors frequently and that they use them for both public and private work.

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported that his firm solicits bids and price quotes from MBE/WBE/ESB subs, as doing so is part of the firm's business model. He reported that the firm solicits bids from MBE/WBE/ESB subs by working with groups that represent MBE/WBE/ESB firms. Interviewee #48 reported that, as an MBE, his firm solicits bids from MBE/WBE/ESB subcontractors, as it understands the need to support up-and-coming firms. He reported that there are MBE/WBE subcontractors that the firm uses for both public sector (goals) projects and private sector work.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that the members also look at the organization's membership roster to select MBE/WBE subcontractors for bids and quotes. He said, "They recognize the challenges that minority contractors face." He said that his members solicit MBE/WBEs for every project.

Other interviewees reported utilization of minority- and woman-owned subcontracting firms in either the private or public sector, but not necessarily both. [Interviewees #: 7, 8, 10, 15, 16, 19, 21, 23, 24, 29, 36, 38, 39, 40, TA #3, TA #6, TA #7, TA #8, TA #10, TA #11]. Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that he solicits bids from MBE/WBE/ESB subs based on his relationships with a subcontractor. He stated that he uses ESB subcontractors for private sector work, and "had been trying to use ESBs where we can."

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that she frequently solicits MBE/WBE/ESB subs to bid on her subcontracting work because "we're kind of a unique M/W/ESB because of our size, and I've always thought to help somebody get started and get a foot in the door, because somebody did that for me."

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that the firm solicits bids from MBE/WBE/ESB firms. They reported that the firm "frequently" uses the same MBE-certified subcontractor to provide painting services. They stated that the firm solicits bids from MBE/WBE/ESB firms because "sometimes it is required, and we have to make a good faith effort to contact them." Interviewee #10 stated, "a lot of times, because we are [a] DBE, we bring in other DBEs to keep our minority status."

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, said, "I do hire other second-tier subs from the OMWESB Directory or firms that I know — small companies like mine."

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, reported that he has hired subcontractors that were minority- or women-owned businesses. He said, "Of course, of course, all kinds. In my trade, you'll find all kinds of people."

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated that her firm actively looks for MBE/WBE/ESB subcontractors and uses them frequently. She stated that, when choosing subcontractors, “we look for minorit[ies]. We do. We do the best we can.” She reported that her firm uses a few methods to find and hire MBE/WBE/ESB subcontractors. She said, “We belong to a few organizations around town. We run into people, or we look them up on the website for the State to figure out who they are.” Interviewee #19 reported that her firm takes those steps “because I feel I was given the opportunity by the big [general contractors], and I feel I need to give it back to the smaller companies in town.” She reported, “We actually try to get other companies [that we work with] that are not certified [to become] DBE-certified.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that her firm solicits MBE/WBE/ESB subs “if they’re available.” She stated that the process her firm uses to solicit M/W/ESB subs is, “basically, we call and talk to them, basically ask them” if they are interested in submitting a bid. She stated that her firm solicits MBE/WBE/ESB subs to “just try to diversify.... I like to always try to give anyone the opportunity to help them out.” But Interviewee #21 stated that her firm “rarely” solicits MBE/WBE/ESB subcontractors.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, said he uses minority subcontractors “because we’re the ones who don’t get a fair chance and a fair shake.” Interviewee #23 stated that he solicits bids from MBE/WBE/ESB-certified firms “about 95 percent of the time,” and for public projects with and without MBE/WBE/ESB goals.

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated that she solicits bids and prices from MBE/WBE/ESB firms, but that “typically I don’t go to the [OMWESB] website, I just go based on relationships I have or people that I know. I try to build ... relationship[s] with people, even people I don’t know, so that we can team up and go after other projects.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “I have had occasions to hire subcontractors, and I often hire smaller minority-owned firms that I know, like me, are constantly struggling to get viable work opportunities.”

Interviewee #36, two representatives of an employee-owned general engineering firm, stated that their firm frequently engages MBE/WBE/ESB subcontractors. Interviewee #36 stated that the firm frequently solicits DBE subcontractors due to federal government requirements and they reported that the firm uses MBE/WBE/ESB subs even when there is no requirement in order to maintain diversity. They said that they have many ways of recruiting female and minority employees and MBE/WBE/ESB subcontractors. They stated that the firm’s personnel attend meetings with the National Association of Minority Contractors of Oregon and the Oregon Association of Minority Entrepreneurs. They reported that the firm advertises on client websites and in minority publications and other DBE outreach services. Interviewee #36 reported that they make good use of their reputation for maximizing diversity, as it makes DBEs very responsive to the business. They noted that they also use word of mouth and referrals from DBEs that have worked with the firm as another recruiting resource.

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, stated that when second-tier sub opportunities are available on his projects, he generally uses MBE/WBE firms and that it feels very good to support other MBE/WBE firms.

Interviewee #39, two representatives of a Caucasian male-owned general contracting firm, stated, “We frequently request bids from M/W/ESB firms because their bids are lower, and we use the OMWESB website as a guide to solicit.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that the members “regularly” solicit MBE/WBEs for bids or quotes, “but they usually end up using the same ones that they normally use.” She said, “They make more effort [to solicit MBE/WBEs] in the public sector because the public sector is more concerned ... they want more demonstrated effort.”

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that most minority subs will use “other folks that look like them, now that’s more prevalent in the Latino community than it is [in the] African American [community].... Asians have the same mindset”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that his members do try to seek out and partner with other Native American-owned firms.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the organization’s members solicit MBE/WBE/ESBs “all the time, particularly in the public side where it is usually required.” He stated that he is not aware of how often his members use MBE/WBE contractors in the private sector, but in the public sector his members use MBE/WBE contractors regularly and they often exceed the goals set by the State and local governments. He said that in the public sector “we are rocketing past what we are being asked to do” because his members are reporting utilization of MBE/WBEs in excess of the goals on public projects.

Interviewee TA #10, three representatives of the Northwest College of Construction, reported that their contractors solicit MBE/WBEs “often.” They said that some general contractors say that there are not enough qualified MBE/WBE contractors to solicit for bids. They said that many of the contractors are active in minority associations and those associations help contractors get in contact with minority subcontractors.

Interviewee TA #11, a representative from the Port of Portland, stated that the agency frequently solicits MBE/WBE/ESB subs for bids and quotes. She said that for any project under \$5,000 the agency only has to go to one business and “we encourage our staff to go directly to a certified small business.” She said that if the project is between \$5,000-\$100,000, the agency must get three bids and two of those three bids must be from certified small businesses. She reported that prior to the agency’s 2009 disparity study, only one out of the three bids had to be from a certified small business. She stated that the agency’s larger projects “have either goals or small business in the evaluation criteria.” She stated that the agency solicits MBE/WBE/ESBs because “Oregon is a small business state, somewhere around 90 percent of the businesses in the State of Oregon are small businesses, you look at our community and the small businesses contribute ... they are stakeholders for the Port of Portland, they travel through our airports ... we just consider them our stakeholders and so we want to make sure that they have opportunity to compete for our work.”

Some interviewees reported limited to no utilization of minority- and woman-owned subcontracting firms. [Interviewees #: 1, 5, 6, 9, 12, 13, 17, 20, 27, 43]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that he does not solicit bids from MBE/WBE/ESB-certified subcontractors. He said, “The only reason for that is [that] the people that we sub work out to, we’ve been dealing with for years, and secondly, I don’t know of any minority-owned businesses that do what we sub out.” Interviewee #1 stated, “If their quality and price was in line [with that provided by the subs we currently use], I wouldn’t mind.” He reported that he had no experience working with minority- or woman-owned businesses.

Interviewee #5, the Caucasian male owner of an excavation firm, reported that he does not solicit bids from MBE/WBE-certified subcontractors. He stated, “I was probably the first guy in this area that even hired women truck drivers, 15 years ago,” but right now, he stated, “times are so tough, you’re not going to go out looking for minorities. I mean ... nobody’s going to do that. You don’t look for them to start with ... You don’t say, ‘hey, I’m going to go down and hire minorities to help me out ... nobody does that; it wouldn’t matter what business you’re in.” He said, “You have to understand, too, that minorities — they’re actually smart enough, to wait, they know the work will come to them. Minorities don’t have to go out and hustle, because they already know they’re going to get work.”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported that her firm does not solicit MBE/WBE subcontractors for bids on public- or private-sector projects. She stated, “Our assumption has always been that our WBE status should be sufficient for anybody seeking to meet a goal.”

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, reported that he has not solicited bids from MBE/WBE/ESB subcontractors.

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that she does not solicit bids from MBE/WBE/ESB-certified firms. She stated that she did not know if she had worked with MBE/WBE/ESB-certified subcontractors in the past. She said, “We may have been working with them, we just didn’t know. I spend more time asking people where they’ve heard of us.”

Interviewee #13, the Caucasian male owner of a residential construction company, said that he does not have a lot of experience working with MBE/WBE/ESB subcontractors, but reported, “I wouldn’t have any prejudices against using” MBE/WBE/ESB firms as subcontractors. He said that his firm has used contractors “that kind of came to us through the gay and lesbian phone book.” He stated that his firm does so “whenever the opportunity arises.” Interviewee #13 said, “If we can find somebody that we think is super-qualified, and we’re going to choose between somebody that we might be able to give a break to, but we still have complete trust in, we’re going to go that way.... Everybody needs a break.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, stated that she has “never needed” to solicit bids or quotes from MBE/WBE/ESB-certified firms. She said, “I mean, I would if I had the opportunity to do that, but I’ve never really needed to do that. There really isn’t that much work right now.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, reported that he does not regularly solicit MBE/WBE-certified subcontractors. He said that he would solicit MBE/WBE firms if time permitted, but generally he is trying to get someone in to get the job done and he does not want to slow down the process. He said that most of the time he meets all of the MBE/WBE goals himself, and, therefore, he is not required to subcontract work out to MBE/WBEs to meet goals.

Some interviewees reported that there is no difference in hiring subcontractors for public and private jobs. [Interviewees #: 1, 3, 6, 8, 9, 10, 12, 19, 20, 21, 22, 23, 24, 27, 31, 35, 36, 48, TA #5, TA #8]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated, “It doesn’t make any difference” in his sub selection process whether he is hiring the sub for a public or private sector job.

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that she uses the same method for choosing subcontractors on public and private sector jobs. She said, “[The process for selecting subcontractors is] the same, and it depends on the jobs, I guess, because if it’s a small job, it’s an easy phone call, if you’re talking \$30,000 you’re going to go out to bid.”

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, reported that his firm has done public sector work and that he uses the same subcontractor selection process for private and public sector projects.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that the firm uses the same subcontractor selection process for its work in the private and public sectors.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that his subcontractor selection process is the same for both public and private sector projects. He stated, “I don’t care if you’re public or private. It’s a relationship that you build [with subcontractors]. I still use minorities, regardless.”

Other interviewees reported that sometimes there is a difference in hiring subcontractors for public and private jobs. [Interviewees #: 2, 4, 14, 26, 39, TA #3]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, reported that his firm’s subcontractor selection process could vary based on whether the project is in the public or private sector. He stated, “It would probably need to fit all of the needs of my contract with the government agency because they have been pretty explicit about that.”

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, stated that her firm’s subcontractor selection process differs on public sector and private sector projects. She stated, “If it’s private, the owner can say, ‘we want you to work with all union firms,’ or ‘we want you to work with these selected’” subcontractors, or require that the sub can meet financial or have experience requirements.

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that her firm’s subcontractor selection process on public projects differs from the one her firm uses for private projects. She said in the “private sector, there’s not the requirements [for] the minority-

and woman-owned certification stuff. The private sector seems to trust us to be able to get good contractors in there to do the work for them.” She said that the firm spends more time choosing subcontractors for public sector projects. She stated, “A lot of times on public jobs, there’s the core list [of subcontractors] that check our website to see what jobs we’re bidding; they’re looking at the same kind of work; they’ll call us to see if we’re bidding.... [In] the public sector, if it’s [a project] subject to the good faith effort program, then of course it’s going to require a whole lot more effort. The results might not be any different, but it will require a whole lot more effort.” Interviewee #14 reported, in addition, “There’s a chance, that with all the extra requirements [on public contracts] it would not be uncommon for us to put a little extra in our bid to cover those reporting requirements. So, in actuality, it can end up costing the [public client] a little bit more.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that the process to select subcontractors varies some between the private and public sectors because the government has certain rules that must be followed. He said that the thoroughness of the selection process does not differ.

Interviewee #39, two representatives of a Caucasian male-owned general contracting firm, said that, with respect to soliciting bids from MBE/WBE/ESB firms, “the OMWESB website is more often used on public projects or for owners that request M/W/ESB participation and that are more actively seeking goals.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that the process to select subcontractors varies slightly between the public and private sectors because “the public sector has so many more requirements.”

Some interviewees reported that there is no difference in hiring subcontractors for goal projects versus non-goal projects. [Interviewees #: 8, 10, 19, 21, 22, 24, 26, 27, 48, TA #6].

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that she uses the same method for choosing subcontractors for jobs with and without M/W/ESB goals.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that her firm solicits bids from MBE/WBE/ESB firms through the same subcontractor selection process for projects with and without goals. Interviewee #10 stated, “Sometimes it doesn’t matter, because the goal has already been met on the contract by the time it gets down to our tier, so our subcontractors aren’t necessarily listed on the project goals.” Interviewee #10 stated, “We normally don’t get subs until we have the project; we don’t go in bidding with them normally, so it’s after we get the jobs that we look for subs.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, said that her firm uses the same selection criteria for projects with and without MBE/WBE/ESB goals. She said, “We use the same steps.”

Other interviewees reported that there is a difference in hiring subcontractors for goal projects versus non-goal projects. [Interviewees #: 7, TA #3]. Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that the process he uses for soliciting bids/quotes from MBE/WBE/ESB subs for goal projects versus non-goal projects differs slightly, because clients with goal projects have greater influence on his subcontractor

selection process. He stated that projects with goals require him to determine the contract participation of its MBE/WBE/ESB subcontractors, and if he needs greater participation of MBE/WBE/ESB subcontractors, he adds to the scope of work for one of them. He stated that non-goal projects do not require him to estimate the percentage of MBE/WBE/ESB project participation.

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that she “absolutely” sees a difference in MBE/WBE solicitation on projects with goals and non-goal projects.

Some interviewees reported selecting subcontractors based on price, reliability, and quality of work. [Interviewees #: 1, 7, 9, 10, 14, 20, 24, 26, 35, 40, TA #3, TA #8]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that he selects his firm’s subcontractors based on price and performance.

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that private sector clients commonly want to use only the lowest-priced subcontractors. He stated that tribal authorities “just [want] to see some competition, so we’ll get quotes from different surveyors, different geotech firms.”

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, reported that he hires subcontractors that give him a really good deal on the cost of their services and who do good work.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that his firm selects subcontractors based, in part, on the subcontractor’s experience.

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that her firm prefers to use subcontractors with whom they have an existing relationship, but ultimately the firm must select the low bidder. She said, “Hopefully, they’re somebody you’ve heard of when they’re low bid, but typically, if it’s low bid, that’s the one you [have] to take, and hope for the best.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, said that she hires subcontractors based on their work quality and reliability. She said, “As long as I know that they do really good work, and that I am able to rely on them to get the job completed, that’s what matters.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated that her firm’s method for selecting subcontractors depends on the type of service she’s subcontracting out. She said, “I try to select my subs on the basis that they can do better work than I do.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that he selects subcontractors by identifying the required skill set for the project, finding those people with the requisite skill set, and then walking those people through the other issues and requirements of the project.

Interviewee #35, the Caucasian male president of an employee-owned non-certified construction services firm, stated that during the subcontractor selection process, the firm tries to identify four or

five qualified subcontractors for each trade. He stated that as a result of this process minority or woman-owned firms are retained only when they are the low bidder. He noted that project owners may have their own specifications for the subcontractor selection process. He stated that project owners often have an in-house database of subcontractors that his firm can use to identify qualified subcontractors or to post bid opportunities to the list.

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, reported that his firm selects subcontractors based on their knowledge of projects and their reputation in the industry.

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, reported that the members select subcontractors based on “their knowledge and the relationship with those individuals. Are they capable? Can they be trusted? Will they finish the job on time? Do they have the management capability to do the job? Can I rely on them? It is mostly reliability.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, stated that the organization’s members select subcontractors based primarily on cost. He said that established relationships and quality of work are also considered, but “the primary driver still is cost.”

Some interviewees reported that they prefer to use subcontractors with whom they have an existing relationship. [Interviewees #: 1, 2, 3, 4, 6, 7, 8, 10, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 31, 36, 39, 40, 41, 43, 45, 47, 48, TA #6, TA #7, TA #8, TA #10, TA #11]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, said that the firm does not put out formal bids. He said that there are usually two or three peers that he is familiar with and they negotiate the terms of the project. He said, “Our capacity to work together and accomplish something that we couldn’t do separately is critical to ... exceeding the expectations of the customer.”

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that there are subcontractors with whom her firm has developed relationships and uses regularly. She said, “It’s a small little world. Everybody knows everybody. So we know everybody and they pretty much all know us, you know.”

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that there are several subcontractors with whom her firm has established relationships, and uses frequently. She stated that these subs “are members of OAME, members of NAMCO, are based within a 20-mile radius of our shop, and who I know live in the community, and whose dollars are spent in the community.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that some of his private-sector clients only want to work with specific individuals or firms, such as persons familiar with the tribe’s cultural resources. Interviewee #7 stated, “Indian [tribe] preference is important.” He stated that there are some subs that he has established relationships with and uses frequently.

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that she chooses subcontractors from a network of firms with

whom she has worked with before or is familiar. She said, “You have your comfort zone with subs. We have people we work with, and we’ll flip and work for them. And it’s also a ‘tit for tat’ thing.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that his firm selects subcontractors primarily based on the firm’s previous working relationship with a subcontractor. They stated that the firm uses the same subcontractor for drilling services on all of its projects because “he’s the only one who really does what we need done.”

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that her firm occasionally subcontracts work out to others, and selects them from a pool of people “we’ve been using for years and years.”

Interviewee #13, the Caucasian male owner of a residential construction company, stated that he selects subcontractors “very carefully. We don’t take any out of the Yellow Pages ... we have to have several referrals. Most of the contractors we’ve worked with, we’ve worked with a long time. Some are second and third generation companies. We know their work; they know our work, [and] they know what we expect.” Interviewee #13 stated that his firm is willing to “pay a little more for our subcontractors,” because “we want the best ones out there.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that her firm typically selects subcontractors with whom the firm has worked previously. She said, “Typically we have our list of people that we’ve done work with in the past ... they frequently will call in to see if we’ve got any work that they can bid. [For] certain jobs we’ll call them specifically and ask them to bid it.” She reported, “We’ve got a few electrical subs that we’ve gotten familiar with how they work, so they’ll be on our first call list. Not to say, I mean, we get phone calls all the time from subs who want to be on our bidders’ list, and they’ll take the effort to call us, come out and meet us, get to know us — we’ll give them the opportunity. ‘Great, if you can be competitive, we’re going to have you bid this job against two other people, and if you can be competitive and win this, we’ll give you the opportunity; show us what you can do.’”

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, reported that he works with a group of subcontractors with whom he has established relationships and uses on all of his jobs. He said, “I don’t have to look in the paper ... I mean, in my trade, I’ve been doing this for 15 years, almost 16 ... I just find them, and I like the people, or I work[ed] with them before, I just recommend them, or I use them myself.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that her firm has a set of subcontractors with whom she regularly works. She said, “It’s taken us a while to get those tested out to see if they would be able to grow with us, and financially stay up with us.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, reported that there are some subcontractors that her firm has used often. She said, “People that we know; we get along, we share tools, we do job-sharing sometimes, you know what I mean? We help each other out, and we know we can rely on each other.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that he uses many of the same subcontractors on his firm's projects, especially plumbers and electricians. He stated, "We have our main line people that we know we can pull favors from."

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that he selects subcontractors through referrals. He said that he would call someone he knows and ask them to refer an available and qualified subcontractor for the job.

Interviewee #36, two representatives of an employee-owned general engineering firm, reported that they do have a base of subs that they use a lot due to the subcontractors' areas of specialization, but they noted that the firm is always looking to increase that base.

Interviewee #39, two representatives of a Caucasian male-owned general contracting firm, stated, "We have several firms that we try to work with for repeat work because they provide a good product."

Interviewee TA #7, the president of the Native American Chamber of Oregon, stated that he believes that the prime contractors select subcontractors based upon existing relationships although this is more prevalent in the private sector; he said that in the public sector, a prime contractor is required to perform more outreach. He stated that his members do have subcontractors that they use all the time and that everyone has existing relationships, and that is how trust is built.

Interviewee TA #11, a representative from the Port of Portland, stated that there are subcontractors with whom the firm has established a relationship with and prefers to use often.

One interviewee reported limited involvement in the subcontractor selection process.

[Interviewee #: TA #11]. Interviewee TA #11, a representative from the Port of Portland, stated that the agency is the owner of its projects. She reported that the agency is sometimes involved in selecting subcontractors. She said that if the project is a low-bid project, the agency will set a small business subcontracting goal. She said that sometimes prime contractors request her assistance to identify a small business in a particular job category. She said that when the agency has a negotiated contract rather than a low-bid contract, the agency is much more involved in subcontractor selection. She said that the nature of the project determines the agency's involvement in subcontractor selection.

Some interviewees reported that there are certain subcontractors that they choose not to work with. [Interviewees #: 1, 2, 3, 7, 8, 10, 13, 14, 19, 20, 21, 22, 23, 24, 26, 47, 48, TA #2, TA #6, TA #8, TA #11]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that there are subcontractors he will not work with because of performance issues.

Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, reported that there are "always" subs he will not use. Interviewee #2 reported that his decision to not work with a particular sub "tends to be a function of who they are ... as business people." He said that his decision not to work with particular firms is not related to whether the subcontractor is certified as an MBE/WBE/ESB.

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that there are subcontractors she will not work with. She stated, "Well, sure — people who don't do a good job make you look bad when you're bringing them to your customer, so you

just want to bring the best possible quality of subcontractors.” Interviewee #3 said that the quality of work delivered by subcontractors is not related to whether the subcontractor is an MBE/WBE/ESB-certified firm or non-certified firm.

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that he refuses to work with some subs based on mistakes the subs have made, the quality of their work, or because they have gone over budget.

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that there are subs with whom she would not work, “but they’re not M/W/ESBs.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that the only subcontractor with whom the firm would not work was a one particular MBE-certified contractor.

Interviewee #13, the Caucasian male owner of a residential construction company, reported that there are subcontractors with whom he will not work because of “performance- and cost-based [reasons]. That’s what it’s all about. It’s not about what they look like or their background, it’s about whether they can get the job done and make my clients happy.” He reported that he has only had one client “that was uncomfortable with a certain group of people on their job site. We said that we ... weren’t [going to] not use them, that we would just make sure that we were present there. [The client] was a little old lady ... and we spent some time explaining to her how we knew these people, why we used them, how long we’d been using them, and that we would have them in our house with our children alone.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that some of the firm’s clients will request that the firm not use certain subcontractors. She said “Some of the [project] owners in the private sector do have a list of subs they don’t want working on their projects for one reason or another, so that when we submit our proposals, they want us to put on our subs that we plan to use, and if [the subs] are on their list, their black list, then we need to find someone else to use.” Interviewee #14 reported that “there is one sizeable industrial firm that we work for, and that is a requirement — they want to see on our proposal who our subs are [going to] be because they do keep that list.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that she will not work with some subcontractors. She said, “And we’ve given them the try, and we’ve given them the bone, and seen if they could run with it, and they didn’t run, and we have pretty high expectations, and if they don’t meet them, we kick them to the side.” She said that her process for choosing the subcontractors with whom she would not work was the same for firms that were MBE/WBE/ESB-certified and those who were not. She said, “We play the same game across the field.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, reported that there are some subcontractors with whom she will not work. She said, “I would not work with somebody [if] I heard that they already messed up a job. Because even before I go on the job, I would ask about them. I would call around and ask at least five people, have they heard anything, do they know them, to make sure I’m covering my side.” Interviewee #20 stated she follows the same process regardless of

whether the subcontractor in question is a minority- or woman-owned business. She said, “It’s just to protect myself because, you could end up in a lawsuit or something, so you just want to make sure you’re protected. It doesn’t matter who it is, just if it is anybody new, or somebody I don’t know, I’m going to call and ask about them.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, stated that there are some subcontractors that she will not work with. She said, “I’m sure there’s a few out there,” but that it is not dependent on whether or not they are MBE/WBE/ESB subcontractors.

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that there are subcontractors with whom he would not work. He said, “Yeah, bunches.” He reported the primary reasons he will not work with those subs are “quality, speed, [and] cost.” He stated, “Performance is a big factor, and there’s some — they shouldn’t be there.” He reported that some subcontractors he no longer works with have problems communicating. He said, “They need to explain and communicate with their customers ... and especially when they don’t complete [their work] on time.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that there are subcontractors with whom she will not work, “but I always leave the door open because, you know, there may be something on that project that [was] not good, but that maybe they will be good at something else.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that there are subcontractors with whom he will not work because “their history shows that ... they just want to be paid; they’re not concerned about the quality of their work.” He said that there are poor contractors but “it’s not about their ethnicity, gender, or a disadvantaged status.”

Interviewee #47, the Caucasian female owner of a WBE/DBE/ESB-certified trucking firm, stated that there are some subcontractors she would prefer not to work with “because of their lack of dependability and lack of experience.”

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported that his firm will not work with subcontractors that have not performed well on previous projects. He stated that the firm does not base its decision not to work with a subcontractor on MBE/WBE certification.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that there are second-tier subcontractors with whom their subcontractor members will not work because of poor work performance.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, stated that there are some subcontractors with whom his members will not work with because of quality of work issues, ethical issues, lack of experience, or cost.

Interviewee TA #11, a representative from the Port of Portland, stated that there are certified and non-certified subcontractors that the agency prefers not to use.

Other interviewees reported that there are no subcontractors with whom they would not work. [Interviewees #: 6, 9, 12, 31, 40, TA #5, TA #7]. Interviewee TA #7, the president of the Native American Chamber of Oregon, said that he was not aware of any subcontractors that his members will not work with although he suspected you could always have a project that did not go well.

Some interviewees reported limited or no utilization of subcontractors in general. [Interviewees #: 11, 17, 25, 37, 46].

Some interviewees reported positive experiences working with minority- and female-owned subcontracting firms. [Interviewees #: 7, 24, 39, 41, TA #5, TA #7]. Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, reported that working with both MBE/WBE and non-MBE/WBE subs was a positive experience. He stated that he makes a point of talking and meeting with any sub “to make sure we’re comfortable with them before going forward.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated, “The non-minority [subs] come and try and tell me how to do my job. They feel that they are more competent than [I am].” She stated that working with “other minority subs, for me, has been a good experience because they see me as a mentor and as a role model ... sometimes it is hard to work with them because I’m learning, too, and I’m not much more different than they are, and sometimes [it] carries a lot of responsibility, because they expect a lot from me and [that] makes it difficult, because I wish I could be at that point, but I’m not.”

Interviewee #39, two representatives of a Caucasian male-owned general contracting firm, said, “Our experiences [with MBE/WBE/ESBs] are positive and there are not any M/W/ESB firms, to my knowledge, that we will not work with again.”

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, said, with respect to working with MBE/WBE/ESB subcontractors, “For the most part they all put forth a great effort, and those that do not put forth that effort, we do not work with again because it defeats the purpose.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said, “There are some really good relationships that I have seen form between” the organization’s members and MBE/WBE subcontractors. He said that “they utilize each other.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that their members do utilize MBE/WBE-certified subcontractors and their experience has generally been good.

Other interviewees reported challenges working with or attempting to work with minority- and female-owned subcontracting firms. [Interviewees #: 2, 4, 10, 14, TA #8]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, stated, “The difference is that, for the emerging small businesses ... what I find is that, while we have an emerging small business, both my partner and I are fairly mature businesspeople. I have owned another business; she has owned another business. We have both worked for management consulting firms. I’ve taught and she’s taught, so we end up oftentimes having to consult with [their ESB subcontractors] about the business part of the work, as opposed to having to deal just with content.” Interviewee #2 stated that the assistance he and his partner provide to owners of DBE-certified firms extends “even to helping

them understand the components of a contract [or] a billing process.... There is an unspoken dimension that falls to the prime in that regard [that] I think wasn't in our awareness, and I don't find it discussed ... so it was kind of a surprise.”

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that access to work opportunities is the primary reason for the difference in her experience working with subcontracting firms owned by women and racial and ethnic minorities and subs owned by Caucasian males. She stated that subs owned by Caucasian males “have a tighter team because they have had sufficient work to develop their skills, team communication, and efficiency.” Interviewee #4 stated, “A lot of time I see that the MBE/WBE firms don't get enough work to help them increase their productivity rate and understanding of what is expected on projects ... so their team is not working together consistently.... [T]he subs who are always getting the work, they're dialing in unit rates because they know one another, they've consistently worked with one another on two or three projects—in a row—or they're constantly working so that they understand” what a job requires.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated, “I've worked around some companies that are MBE that seem like they need help. You know what I mean?” They stated that “it seems like sometimes you get a person (MBE) who's in there just to fill [a goal] — who's not as qualified as they should be.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that there is at least one MBE/WBE/ESB-certified subcontractor her firm no longer uses. She stated, “We don't solicit to them anymore. After you get burned so many times, they get off the list. You get a bid [from that subcontractor], and you throw it in the garbage can.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, stated that “in general ... the spectrum of companies in that arena (MBE/WBEs) are of uneven quality at best ... many of them are there because they think there is big money to be had ... there are some who are just outstanding.... The general perception is that these folks (MBE/WBEs) need a lot of help in terms of basic business practices.” He said that he often hears contractors complain that no MBE/WBEs are bidding for the work. He stated that there generally are not problems “getting people to be active in bidding for work from the Hispanic community.” He stated that there have been difficulties getting the African American contractors to bid on certain work because “they view the kind of work they are being asked to bid on as below them.” He said that the organization's members tend to “shy away from” the minority-owned contractors and women-owned contractors that do not have sound business practices. He said that there are not a lot of minority- and women-owned contractors in the Portland area because “the Portland metropolitan area remains a pretty homogenous population ... it [has] become much more diverse but it is still a pretty small proportion of the overall population.”

Some interviewees reported that there was no difference between working with minority- and female-owned subcontracting firms and majority firms. [Interviewees #: 3, 6, 8, 21, 23, 26, 31, 48, TA #10, TA #11]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, stated that her experience working with MBE/WBE/ESB subcontractors compared to that with non-MBE/WBE/ESB subs is “just like anything else — there's good ones and

there's not so good ones, and you deal with the good ones more than you deal with the not so good ones.”

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that the company's experience with subs was “kind of infrequent, so I wouldn't say there was any disadvantage or advantage” to working with subcontractors certified as M/W/ESBs versus non-certified subs. She said, “Smaller M/W/ESB subs are more open, honest and direct and there are less filters to dealing with them [than majority firms].”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, said the MBE/WBE/ESB-certified firms “are just as good. They're just as good. They're smaller, so they generally have to have a little more time to do things, but they're just as good as the rest of them. I haven't seen much difference.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that both MBE/WBE and non-MBE/WBE subs are competent. He said that historically MBE/WBEs have not been given as much of an opportunity in the marketplace and, therefore, may not have as much experience.

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported that his experience with MBE/WBE/ESB subcontractors was the same as that with non-MBE/WBE/ESB subcontractors: some you work with again, and others you don't.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that working with MBE/WBE subcontractors “runs the gamut” and some experiences are successful and some are not.

Interviewee TA #11, a representative from the Port of Portland, stated, “I don't see any difference between the minority- and women- [owned] businesses and a [Caucasian] male-owned business [because] they all seem to generally know whatever trade they are going into.” She said that the obstacles businesses face seem to have more to do with their size and experience, rather than their gender or ethnicity.

C. Subcontractor / Minority- and Female-Owned Businesses' Perception of Utilization in the Public and Private Sectors.

Interviewees who act as subcontractors reported a number of different ways in which they secure work with prime contractors. [Interviewees #: 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 37, 38, 41, 45, 46, 47, 48, TA #3, TA #4, TA #5, TA #6, TA #7, TA #8, TA #9, TA #10, TA #11]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, said, “Generally, we have a request from general contractors to provide them with pricing.” He said that his firm does not market to prime contractors because “we've been in business long enough.”

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that her firm gets work in both the public and private sectors through repeat jobs with previous customers, and by bidding on projects. She reported that her firm markets to primes in a

number of ways. She stated, “We have a website. We know the primes, we like to find out who is bidding what, we send them bidding letters off of anything that’s bidding that has dirt work involved in it; we send them letters. We send them ‘congratulations, you got the job letters’ after [a general or a prime contractor] gets a job. We’re in constant contact with not only contractors and their guys on the ground, the main guys that hire the trucks, but we also talk a lot to other trucking companies so that we’re involved in their trucking if they need extra trucks. So we all kind of need to work together. It’s weird — it’s very little. You don’t get to not get along; everybody has to get along because we have to make each other’s success or failure our own.”

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that her firm gets on projects as a subcontractor through a number of methods. She stated, “Usually I’ll receive an invitation to bid, I attend pre-bid meetings, I’m following through plan centers and registered websites.” She said that the firm has a website but she is not sure how helpful it has been. She stated, “I’ve selected 5 to 10 different primes both on the vertical, which is the building side, and on the horizontal side. Usually I try to either send them an e-mail, make a call, let them know that we are still around, you know, please think about us.”

Interviewee #5, the Caucasian male owner of an excavation firm, said that he gets on projects because “people seek me out. We have people that, you know, when I had 50 home builders and 15 concrete [firms], we worked two or three weeks out, all the time.... Now, you’re lucky if you know what’s going on tomorrow.”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported that her firm finds out about subcontracting opportunities in a number of ways. She stated, “Prior to our own certification [as a GSA-certified vendor], there are some construction firms who will solicit bids for moving portions of a contract, and that’s the most typical.” She said that in “the public sector, typically you’re going to have access to [opportunities] via the Internet, websites. The private sector — honestly, I think that is usually developed on the branch level through relationships that they have developed.” She said that the firm’s marketing to prime contractors is “typically done on the branch level. Typically, the way we would do it is we would become aware of an upcoming project, be it through Internet, newspaper, or radio, driving by it, whatever. Then you’d go in search for the information on how the work was going to be awarded and then we’d make a call, or contact somehow.”

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that the firm obtains work by being the low bidder. She stated, “You just [have] to be low.” She said that there is no difference in how the firm obtains work in the public and private sectors. She stated that she networks often to learn about projects and work. She noted that her firm is a member of ASTRA and the Oregon Association of Minority Engineers. She said that she searches websites for bid opportunities. She stated that she makes personal calls to prime contractors and tells her personal story in order to build relationships for future business opportunities.

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that prime contractors, aware of his reputation for performing good work, contact him about subcontracting opportunities. He said that he does little marketing of his firm to primes. He stated that he learns

about primes' projects because at least one company faxes him invitations to bid on subcontracting work.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that the firm receives "a lot" of its work as a subcontractor by bidding for projects, and that "other times people call up, throw a job at us, and we give them a number. I would say it was 95 percent standard bid." They stated that the firm learns about upcoming projects by getting bid solicitations from ODOT, the City of Portland, and other clients. They said, "We're hooked up to the websites so we get solicitations that way; we get them via fax, phone calls from the primes asking if you're bidding the project. And for each project, we get a project list that we call to verify who's bidding and who's not bidding a project." They said that the firm does little marketing. Interviewee #10 stated, "The only solicitation that we ever do is the week before, when I call to find out who's bidding the job." They said that the owner's long-term relationships with general contractors assist the firm in getting work.

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that his firm gets on projects as a subcontractor by bidding for work. He reported that he uses information posted on the City of Portland's website and pre-bid meetings as opportunities to market his firms to primes. He said that on the City of Portland website "You can pull up the pre-bid [attendees'] meeting lists and see who's on it. The same thing with ODOT; with ODOT you can look and see who the plan holders are. They don't have a list — or I haven't seen it — of the pre-bid attendees." Interviewee #11 reported that he calls the firms on the plan holders' list and asks them if they are going to bid a particular project.

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that her firm gets work from a group of contractors with whom the firm has worked with in the past. She said, "We have our own pool of contractors; they like our work so they use us." She stated that the firm regularly bids for new work. She said, "We're always doing an estimate and sending it out. We do lots of estimates — we don't get them all, but we do them." She stated that her firm learns about jobs and the primes bidding on them through e-mails and faxes.

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that his most effective marketing efforts are referrals from general contractors he has worked with in the past, his registration with the OMWESB office, and plan center registration.

Interviewee #17, the Native American male owner of a non-certified excavation firm, stated that he does not market his firm, but gets work through repeat business and client recommendations. He said that he does not market to primes, "they just call me."

Interviewee #18, the Caucasian male owner of an excavation firm, reported that long-standing professional relationships and recommendations have generated many of his firm's subcontracting jobs. He said, "A lot of the stuff that I do is just from the personal relationships I have with these people, and from word of mouth." He said, "I've gotten jobs where I'm doing a land clearing on one piece and another couple says 'Gosh, I didn't know that that [machine] existed.' So people aren't aware of that type of clearing process."

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that her firm markets its subcontracting services to primes. She said, “We go to bids. Mandatory bids, we show up to all those.” Interviewee #19 stated that the firm attends these bids because, “It allows [primes] to see us, and put a face to the name. [It shows] we are legit, we’re not just sitting in the office.” She said that her firm finds out about which primes are bidding because “we get a lot of e-mail notifications from the [City of Portland’s] Sheltered Market Program, MCIP [Minority Contractors Involvement Program], NAMAC, [and] OAME [Oregon Association of Minority Entrepreneurs]. [General contractors] actually send us information.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, reported that she gets jobs as a subcontractor because “I call and ask and I bug people and I tell people I need work, and eventually they call me, because probably they feel sorry for me, I don’t know. And if I don’t work for one or two weeks, I’m calling them every other day saying, ‘Hey, remember me? I need work.’” Normally, if they know or hear of somebody [who needs a flooring subcontractor], they’ll remember me because I’ve called them, like, five times.” Interviewee #20 stated that she does not have a plan center membership or use online notification systems to find flooring jobs. “It’s all word of mouth.” She said, “I hand cards out.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that there are two ways her firm obtains projects as a subcontractor. She said, “If we’re invited by that [prime or general] contractor to bid [or] if it’s open bids, we can find out who the generals are, and we can submit our bids to them.” She reported that her firm does market to primes. She said, “To some of them, we do. They have some online programs. A lot of times it is a requirement, to be able to bid with them, you have to go online and give them a whole bunch of information, just so they can make sure you are credible, and also so they can make sure you can handle a job of a certain size.” She stated that she has been successful in getting jobs with these primes. She stated, “A lot of the jobs we bid on are invitations, but a lot of them are in the *DJC*, and a lot of them are [from] the plan rooms and such. So, with those three [methods], we can normally saturate the area pretty well.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that most of his firm’s work as a subcontractor comes from repeat work with certain prime and general contractors. He reported that his firm seldom markets itself to primes. He said, “We advertise very little. We’re opening that up the larger we get, but we’re going to have to start looking for more jobs.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that his firm obtains projects with general contractors “based on the relationships that we’ve developed.” Interviewee #23 stated that the general contractors “will call and ask” if his firm is interested in working on various projects.” He stated, “I have a list” of primes with whom he has developed relationships and prefers to work. He said, “We go to meetings like NAMC, OAME, and then I go to networking things and try to do a lot of networking out there to meet up with general contractors.” He stated that his firm does “get tons of faxes. All those faxes, we don’t have time to go through. We don’t have a big enough staff for that.” Interviewee #23 stated, “Some of these people just solicit so [they can say], ‘Yeah, we solicited all these guys,’ but you sent out thousands of [faxes], no relationship built at all. So why would I put a bid together for this guy? Is he going to shop my bid, or is he going to be a legitimate guy? Until I meet him face-to-face ... we’ve

gone on that road before, where we throw all these numbers together [for a bid] ... and guess what? Never heard from them again.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, said that she obtains projects as a subcontractor by “working very hard; that’s how I get on [projects]. Begging, trying to show them that I can perform and it’s very tough, especially not having a certification that reinforces and helps you at least get the foot in [the door]. It’s very hard.” She reported that she markets her firm to primes. She stated, “I try to, when the work that is done, usually they give me work that is not meaningful. I went to four years of engineering, and usually they give me low-end engineering, so I guess the answer is, be humble, and take whatever they give me, and [hope] that they’ll give me something better. But so far it hasn’t happened; it’s the same type of work and since I don’t push — I try to push [for them] to give me something else — but they [are] just happy that I don’t push for more.” She said that she pursues opportunities with agencies that are interested in being inclusive.

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that the firm secures its subcontracting work, “by going to the walk-through [and] pre-bids on the sheet.” She reported that she markets her firm to primes “sometimes, for a specific project, not for an ongoing relationship, because of the type of work that we do, they hardly ever want to deal with us.” She stated, “I think you can get close communication with [a] project manager for [a] specific project and ask them project-specific questions [so] that they understand that we understand the scope of work of the project, and that they feel comfortable with our numbers.” She stated, “If it’s a public agency, we go on their website [and] we are part of non-profit organizations that usually send invites via e-mail or faxes. We get invites.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that he gets on projects as a subcontractor by showing the firm’s resume of work accomplishments and reaching out to primes. He said that “networking is absolutely important” when you are going out and getting work with prime contractors.

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that he has worked with many of the same companies for the past 10 years and, as a result of this long-standing relationship, these companies e-mail him about projects. He said that many of these companies work on public sector projects. He said that he gets on projects in the private sector through his personal contacts and relationships.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, said that the organization’s clients obtain work as a subcontractor through existing relationships. He stated that the organization’s clients that have marketed to primes through existing relationships have been successful.

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “I do market my firm, but I could do more. I participate in an AGC partnering group; I attend pre-bid meetings and I make phone calls and face-to-face visits.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, said that he identifies prime contractors to market to

by “the type of work they do; their reputation for fair play with minorities; and their size projects.” He reported that he responds to faxes that he receives and is successful one in nine times or 11 percent of the time. He said he goes online to identify opportunities for work, to view job plans and submittals. He said that he also reviews contract awards and, when the information is posted, the amount of the winning bid.

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, stated that he is often solicited to achieve DBE Asian (DOT) goals on projects. Interviewee #37 said that he is frequently invited and also used frequently at this level. He said that he finds out about most jobs through networking, solicitation systems, e-mail lists, lists for TriMet and keeping in touch with colleagues.

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, stated that he is continuously trying to grow and maintain his business. He reported that he always attends business outreach meetings, open house events, the National Association of Minority Contractors of Oregon and other opportunities to meet and greet. He reported that he has been told that his personality, dependability and business administration are the reasons that prime contractors have opened the door and worked so closely with him to develop his business capacity. He stated that “Once I get the work, I have to perform exceptionally well. With all companies, the administration is great, but the field mentality is different. They constantly tell me and my employees that I am only here because I am a DBE and that the XYZ Company should be in here doing this work because this is their field. I just keep my head down and keep working like I don’t hear them, because I’m used to it. I let it roll off of me. It makes the day longer and harder, but I’m not going to give up my work because that’s what they want me to do.”

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, said, “We regularly market the firm to primes. When our firm is used as a subcontractor we are sometimes able to get teaming opportunities by being patient and continually meeting people and sharing information about our work.”

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, stated that the majority of his projects are gained from relationships he has built in the private sector over time.

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “We market to previous customers and receive frequent calls from general contractors and developers familiar with our work.” He stated that one of their primary marketing techniques is to charge a flat fee. He noted that the flat fee structure allows him to work with his clients from start to finish on projects, and that the clients really appreciate that and refer business to him due to this arrangement. He stated that he recently attended a larger engineering firm marketing event and met several great contacts.

Interviewee #47, the Caucasian female owner of a WBE/DBE/ESB-certified trucking firm, said, “Word of mouth and one-on-one visits have been our most successful marketing tool.”

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported that his firm does not market to primes. Instead, it relies on long-term relationships with projects owners as its path to serving as a subcontractor on projects.

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that the subcontractor members obtain projects through relationships. She said that it is “hard to break in” to those established relationships. She said that the organization tries to create opportunities for the members to meet people and establish relationships. She said that there is a difference in how the members obtain work in the private sector because the private sector has more of the “buddy system.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that the organization maintains a database of upcoming projects to help its members get on projects as a subcontractor. He said that he also refers members to contractors when he learns of projects that have existing carpentry needs. He said that his members market to primes. He said that members can learn about job opportunities through the permit process for the City of Portland and the counties.

Interviewee TA #5, the president of the National Association of Minority Contractors, reported that his members get on projects as subcontractors by contacting primes, reviewing upcoming PDC projects, and going through the MCIP (Metropolitan Contractor Improvement Program). He said that the organization has relationships with some project owners and primes in the private sector and those companies will try to notify the organization of projects. He said that the members market to primes through flyers and mailers, and other events, including meet and greets.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that their subcontractor members obtain projects by connecting with the primes and by “putting yourself in the shoes of the prime contractor.” He said that in some cases the prime will call the Chamber to locate a qualified subcontractor. He said that his members market their firms to prime contractors “as much as they can.” He said that his members distribute their business cards, attend networking events, and the organization works to get its members in front of primes. He said, “We have to go through a constant training and retraining of some of our members so they can understand how to interact with mainstream [businesses].” He said, “You just can’t say that ‘I am only going to do business with [African American] people. I am only going to do business with Latino people. I am only going to do business with Asian people.’” He said that they work with their members to develop the confidence and skill set to be able to interact “with other folks that may not look like you because you all have a common goal ... and not feel intimidated.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that his organization will bring in a speaker or a project manager to meet their subcontractor members in order to assist them in securing work on a project. He stated that his members market their firms to prime contractors in a number of ways including through brochures, websites, and business cards; he said that these marketing efforts may also take place at meetings for specific projects.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that his members who act as subcontractors get on projects a variety of different ways, including through word of mouth and direct solicitation from the general contractors. He stated that the subcontractors do market to primes.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, stated that one member with a construction firm attempts to get on projects as a subcontractor through leads and other contacts with the organization. He said that the organization tries to help the member get in contact with the property managers at the organization’s various

apartment complexes. He said that this member has been successful in obtaining a few projects with larger contractors.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that their members get on projects as a subcontractor through the bid process and networking. They said that they suspect that some of the subcontractors market to prime contractors. They said that they are aware of networking events for highway contractors. Interviewee TA #10 said that they are more familiar with primes contacting subs for particular projects than the sub seeking out a prime for a particular project.

Interviewee TA #11, a representative from the Port of Portland, stated that the agency has a supplier registration system where all suppliers can register to be a potential vendor for the agency. She said that part of the registration includes identifying whether the firm is certified. She said that the supplier catalogue is the agency's primary sourcing tool. She stated that businesses in the supplier registration system receive e-mails from the agency notifying them of projects over \$100,000. She said that small business participation is a component of the evaluation criteria for all RFPs, and small businesses must be allotted at least 10 percent of the evaluation points. She reported that in the past small businesses had to be allotted only 5 percent of the evaluation points, and the primes kept participation at 5 percent so "it wasn't making much of a difference."

Some interviewees reported that there is no difference in the process for acquiring projects with MBE/WBE/DBE goals and projects without goals. [Interviewees #: 1, 11, 21, 25, 27, 48, TA #4]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated, "A lot of the projects we bid ... request minority participation. That doesn't stop us from bidding them."

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, stated that her firm uses the same methods to find projects with and without MBE/WBE/ESB goals. Interviewee #21 reported that general contractors on goals projects "sometimes do seek me out, just because I am an ESB and a woman-owned company."

Some interviewees reported that there is a difference in the process for acquiring projects with MBE/WBE/DBE goals and projects without goals. [Interviewees #: 4, 23, 24, 26, TA #7].

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that there is a difference in the way her firm gets on public sector projects with and without MBE/WBE/ESB utilization goals. She stated, "If there [are] no goals, no hard goals — forget it. Period. They say, 'oh, we have good faith,' ... we don't see [any]thing! Ain't seen it! Ain't happening!"

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, stated that there are differences in the way he becomes a contractor on certain public-sector jobs, versus others, and on private-sector jobs. He said, "Some public work will call you, because they want minority [subcontractors], but they don't give you enough work to sustain yourself.... The job is \$6 billion [and] they'll give you a \$2,000 job [and say], 'Well, we used a minority. That's enough.'" He said, "On the private sector, they don't care if you're a minority or not, because they're going to use you" because they know that he's a good worker, they know he does a good job, and his company stands behind what they do, so they give him a larger scope of work.

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that it is much more difficult for her firm to find work as a subcontractor on a private sector project. She reported, “The private sector is very hard. They don’t even think about bringing you on. There’s nothing. [In the] public [sector], you only get on those projects [sponsored by] agencies that are responsive to women and minorities. I only get on the projects [with] agencies that support minorities and women. Those are the only projects I get.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that the firm’s process for getting work differs slightly for projects that have goals. He said that on goal projects “we let the fact that we are confident be the leader.... Then secondarily ... I happen to be a minority-owned firm, too.” He said that if you lead with the fact that you are a minority firm, the business will think that a minority firm is all they are getting.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that on public sector projects, prime contractor outreach efforts may differ dependent upon whether the project has an MBE/WBE/ESB goal.

Some interviewees reported having worked with an MBE/WBE/DBE prime contractor.

[Interviewees #: 4, 7, 8, 10, 11, 21, 22, 24, 26, 27, 29, 38, TA #4, TA #5]. Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that her firm has worked “several times” with one MBE prime. She stated, “I really felt [the prime was] really pursuing [growth], and [was] really committed to helping other M/W/ESBs, but something happened ... they needed some support ... and they got it at the end, which was too late.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that he has performed services as a subcontractor for an MBE prime contractor. Interviewee #7 said his experience working for the MBE prime contractor on a federal project was a good one.

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that the firm had an “exceptional” experience working as a subcontractor to an MBE-certified general contractor. She stated that she enjoyed working with this company because “they pay great, they’re great to work with, and their contracts are good.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that there is not any difference in the firm’s experience working for primes with MBE/WBE/ESB certification and those without MBE/WBE/ESB certification.

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, stated that he has worked for a few DBE primes, but that this experience did not differ from his work with non-DBE primes. He said that he did not know which prime contractors were MBE/WBE/ESB firms.

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that she has worked with primes who are MBE/WBE/ESB firms, “but I really couldn’t tell you what the difference is. I couldn’t really see a difference.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that his firm has worked as a subcontractor for primes owned by minorities and women. He stated that his experience working with primes owned by minorities was the same as his experience with non-minority primes. He stated that the experience of working as a subcontractor for woman-owned primes did differ from his experience with male primes. He reported, “The women seem more aggressive than men. I kind of like working with them. They know when they’re in the construction field, and that they have to be better [than men], and they see it.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that her firm has served as a subcontractor to an MBE/WBE/ESB prime contractor. She stated, “The minority prime was interested in helping me financially to do whatever I could, but it was also a challenge for him, because I didn’t have the experience equal to other firms, and I appreciate that he was frustrated, but I am very appreciative that he [was interested in helping me] financially, even though I was short on experience.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, reported that the firm has worked with other MBE-certified primes. He said that there are not many MBE/WBE/ESB primes. He said that in his experience “if they are at the level to be a prime, they can absolutely do a fabulous job. Because the fact that they got to be a prime, they really had to go through a little bit.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, reported that he has worked with an MBE prime. He said, “I didn’t have any problems working with him.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “I have had issues that break down communications and trust with both minority and non-minority primes, and you sometimes have to take a loss, which makes it very difficult to stay in business and realize a profit.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said, “I have had two experiences with nonpayment and they are both with minority-owned prime firms. Payment is long overdue and I will no longer work with those firms.” Interviewee #38 stated that he has very positive relationships with other minority-owned prime contractors and does not have that problem. He said that slow payment is not just specific to minority-owned business but to small businesses in general.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, reported that the non-MBE/WBE primes “are probably a little more established ... everything runs a little smoother, whereas some of the MBE/WBE [primes] are trying to get off to a fresh start so there might be some hiccups ... in their processes.”

Interviewee TA #5, the president of the National Association of Minority Contractors, reported that his members have worked with MBE/WBE primes and that their experiences have been “pretty positive and I haven’t heard any complaints.” He said that the organization served as a prime on a project and “MBE contractors (working as subs for the organization) had really good outcomes.”

Other interviewees reported having limited to no experience working with an MBE/WBE/DBE prime contractor. [Interviewees #: 3, 6, 9, 12, 17, 19, 20, 23, 25, 28, 48, TA #3, TA #6].

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, said that she “couldn’t say for sure” whether her firm has worked with a woman- or minority-owned prime contractor. She stated, “I’m thinking we probably have, but I can’t say for sure.”

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that her firm has not worked for an MBE/WBE/ESB-certified prime contractor, “as far as I know.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that his clients do not have experience working with MBE/WBE primes and that “we want to try to connect them to those [MBE/WBE primes].... That is the next phase of what we are working on” for their clients.

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that there are “very few” MBE/WBE-certified primes.

Some interviewees reported that the same prime contractors solicit them for work in both the public and private sectors. [Interviewees #: 1, 3, 6, 8, 10, 21, 25, 26, 27, 47, TA #3, TA #4, TA #5, TA #7, TA #8, TA #10]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that the same primes use the firm on both public and private sector jobs because “they like to work with us. We bring a quality to their jobs. They can rely on us.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that primes that use the firm on private sector work also use her firm on their work in the public sector. She said that the reason for this was mostly price, and because of the firm’s experience. She said, “We’re known for getting in and getting it done.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that primes who use her firm as a subcontractor on public sector work also use it on private sector projects “because we do a good job for them.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that primes using her firm as a subcontractor on public sector projects “sometimes” use it as a subcontractor on private sector projects.

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that the same primes use his firm on public and private sector projects. He said that the primes use his firm in both sectors because of the relationships that the firm has established. He said that he tries to bring new people on board because he realizes that once these relationships are established it is hard for a new firm who does not have these established relationships to get work.

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that he bids on jobs for primes who work in both the public and private sectors. He said

that the same primes use his firm in both the public and private sectors because “I have been able to go in and do a good job for them.” He said that he does not “nickel and dime” the primes over every change.

Interviewee #47, the Caucasian female owner of a WBE/DBE/ESB-certified trucking firm, said, “We have experience working with some of the same primes [from public sector projects] on private sector projects.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that primes “probably” use the organization’s member on both private and public sector work.

Interviewee TA #5, the president of the National Association of Minority Contractors, reported that the primes that use his members in the public sector also use those members in the private sector, in part, because “they understand the ins and outs of construction.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, reported that the prime contractors who utilize their members in the public sector will also utilize them in the private sector; the team is the same across the public and private sectors.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the primes who use the organization’s subcontractors in the private sector will sometimes use the same subcontractors in the public sector.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that they suspect that the subcontractors are being used by the primes in both the private and public sectors.

Other interviewees reported that the same prime contractors do not solicit them for work in both the public and private sectors. [Interviewees #: 4, 9, 12, 22, 23, 24, 31, TA #6, TA #11].

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, said that the primes his firm works for as a subcontractor in the private sector do not do public work, and the primes his firm has worked for in the public sector do not do work in the private sector. He stated, “The people I know are either one or the other.”

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that primes that use her firm as a subcontractor on private-sector projects have not asked the firm to serve as a contractor on public-sector projects.

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that his firm “is doing so much public sector work, that we haven’t crossed the line yet” into private sector work.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that primes using his firm on public-sector work do not use it on private-sector work. He stated, “I’ve never seen it happen. But if it happens, you wake me up, and I’ll kick myself.” He stated, “If it’s not required, they’re not going to do it.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that the primes who use her firm as a subcontractor on public sector work do not use her firm on work in the private sector “because there’s no requirements; they don’t have to.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, said that the same prime contractors that hire his firm on public projects do not use his firm for private projects. He said that this is because there are no MBE/ESB/DBE goals on private projects.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that “the only time a prime would ever want to reach out to M/W/ESB [businesses] is when it is required by a city, state, or federal contract. On the private side it is very few and far between that they would use those same [MBE/WBE/ESB] contractors.” He said that the Chamber has looked into it and for the most part the primes are not using the minority subcontractors in the private sector. He said that for the most part “the only time [primes] ever want to use minorities is because it is going to be to their financial advantage. They are meeting a contract requirement.” He said that developers in the private sector could not care less about using minority contractors.

Interviewee TA #11, a representative from the Port of Portland, stated, “The prime contractors don’t take the small subcontractors with them from their public work to their private work as much as you would think that they would. You would think that if the subcontractor performs well on a public job they would take them with them on the private job, but we’re not seeing that they do that.”

Some interviewees reported that they have been denied the opportunity to submit a bid or price quote to a prime contractor. [Interviewees #: 4, 6, 9, 10, 21, 22, 26, 31, 44, TA #8].

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that at least one prime has denied her firm the opportunity to bid on a project or submit a price quote. She stated, “When I have submitted my bids, they haven’t received them, or something’s not happening right.” She reported, “I show up to the meetings, submit my bids, I follow all their paperwork [requirements] and they tell me, ‘we didn’t receive any of your bids,’ or ‘we received it but we don’t understand it.’” Interviewee #4 stated that she believes the prime’s treatment is intentional “because ... I know I’m faxing it to the same number everybody else is faxing it to — what’s the problem?”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported that a prime has “probably” denied her firm the opportunity to submit a bid or a price quotes, “but maybe for legitimate reasons. I mean, maybe we didn’t meet a deadline — I don’t know.”

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that his firm has been denied the opportunity to bid a project because it was a “Hub Zone only” project, for which he did not qualify.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, reported that the firm has been denied the opportunity to submit a bid on a project. They stated, “That job was [only] for pre-qualified bidders, and one of the generals that we were

going in with was denied, so we would have to go in with one of the three pre-approved bidders. But that didn't really exclude us, it excluded them."

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that a prime contractor has denied her firm the opportunity to submit a bid or price quote. She said, "I don't know; I couldn't tell you why he wouldn't accept" her company's bid. Interviewee #21 reported, "We did get one job — this happened this year — with a prime to do a re-pipe in Salem. We were the low bid. And they first told us we had the job, we got all geared up, then they turned around and gave it to a higher bid than us. We weren't very happy about that." She stated, "Those are some of the games I have seen out there.... We have seen the same games up here, too. And that's very frustrating to us."

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that a prime or general contractor has never denied his firm the opportunity to submit a bid or price quote, "other than [for] insurance reasons." He stated that his firm had not submitted bids to a prime for jobs "that required a lot of general liability insurance that was extreme, for no reason."

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that he has been denied the opportunity to submit a bid or price quote "more than I can count." He recalled a situation from the 1980's where he entered a business to drop off a business card and the owner said 'we are not looking for affirmative action candidates.' He said that denial of the opportunity to bid "is a little slicker" now than it was in the 1980's. He said that some businesses do not hire minority firms because they feel that the firms do not fit into the corporate culture. He said that denial of the opportunity to bid can be worse in the public sector than the private sector because the "public service is run by civil service." He said that you have to be concerned about the personnel in the civil service because of their longevity. He said, "ODOT has gone through a whole bevy of allegations" of denying firms the opportunity to bid. He said that TriMet "I think has probably worked best at filling the gap between the expectations of disadvantaged women, minority, [and] emerging small business[es] and how the organization operates."

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated "I have been denied an opportunity to bid work based on the assumption that I could not complete the work."

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he has been denied the opportunity to bid. He said, "The supplier refused to give us pricing. In the industry they call it protection. I would call up and say I need a price for X, Y, Z, and they say, 'Well, we can't give you a price for it.' And so therefore, I can't submit the bid because my bid is incomplete." He said that this situation occurred on a City project. He said, "As another example, on the work at the airport, basically for any data jack or phone jack, you had to be a Kron-certified installer to be able to do the work, to pull the cable, to terminate it — you have to have this certification. We had people in our office that were certified, and we had field guys that were certified to do the work. So I said, 'Okay, great.' But then they said, 'Okay, well, your company needs to be certified.' Okay, not a problem, 'What do we need to do?' But they wouldn't allow my company to get certified and I brought it up, I said, 'Well on your certification, on your list of contracts, you don't have any minority or women.' They said, 'We don't care, we're not going to let you get certified.' So therefore what that did is, as the airport is building all this work, I couldn't bid it or I

had to go to this person that I'm competing against and ask them to give me a price on a section of work that my guys are capable of doing, but give me a price for you to do it and in several scenarios their low voltage price that usually runs around 30 percent of the overall cost is now at 100 percent. So their low voltage price matches all my electrical work, therefore again, making it so there's no way I can be competitive. The suppliers not selling me product is a bigger problem, and the certification basically saying that we're not going to give you a reason why you can't get certified, we're just going to tell you we're not going to certify you. A different company bought the company and allowed us to get certified." He stated that on larger projects he encounters suppliers who refuse to sell him equipment. He stated that some suppliers give him what he termed moving pricing. He said, "The day of the bid, if I have to get a bid to out to Salem, and the supplier's here in town that's quoting me, I get a price for \$100,000 the night before. Bids have to be hand delivered and the price will go from — as my person is driving to Salem — the price will continue to go up. They'll continue to send modifications to the price. Usually this stuff is all typed up, notarized. They're trying to, in a sense, if you filled in all the spaces, and they come back to you and say, we've seen it go up to 45 percent increase, faxes coming in, 'oh, we're going to modify your price.' They're basically telling us 'don't bid the project.' I would say that happens at least a few times a year, costing us, effectively, millions of dollars."

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, reported that he has heard of the organization's members being denied the opportunity to bid, but it is "usually because of past business issues that they have had."

Other interviewees reported never having been denied the opportunity to submit a bid or a price quote to a prime contractor. [Interviewees #: 1, 3, 5, 11, 12, 20, 23, 24, 25, 27, 28, 48, 29, 36, TA #3, TA #6, TA #7, TA #9, TA #10]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that her firm has never been denied the opportunity to submit a bid or a price quote to a prime. She stated, "They tried to, but I wouldn't let them." We were bidding on a City of Portland job, and [the City] said, 'There's this one place you have to get the rock, because they have they only kind of rock that you can use.' So we called [the rock supplier] and they said, 'Oh, we're using this other trucking company.' I said, 'I don't think you can do that. You have to let me at least try.' And he goes, 'I don't care. I've already picked who we're using.' So I said, 'Okay.' So we drove out to where he was, and he wasn't there and we talked to someone in the office and got a price on rock and submitted our own bid and won, [we] went around him, and he was furious. But — ever since then he's been very respectful and he calls us all the time because we did a really good job. He just wasn't going to let us have an opportunity." She stated, "I just think he thought ... no one was going to tell him what to do. So I ended up, I had to buy the rock, so I had to pay him, but the City of Portland didn't pay me for a time, so he was just on me all the time.... It was a struggle, but we got through it, and he has a huge respect for our company."

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that no prime or agency has ever denied his firm the opportunity to bid on a project, but he said that he believes there have been times, "My bid has been ignored. That's the nature of the construction industry; it's a 'Good Old Boys' industry."

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that a prime contractor has never denied his firm the opportunity to

submit a bid or price quote. He stated, “You can bid all day long. They don’t care about that.” Interviewee #23 stated, “The reason they don’t want my bid, is because it’s useless to them ... because of the unions. That’s the only time I have problems with that. Because if I’m non-union and [the prime] is union, that’s the only time I can think of when they wouldn’t want my bid unless I do an agreement, or something like that.

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that a prime has never denied her firm the opportunity to submit a bid. She stated, “They always ask you to submit it ... there was one case ... where they asked me to submit it [but] I found out that they’d given out all the work, but they still asked me to submit” a bid. She said, “So no, they won’t stop you from submitting, they just won’t give you the work.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that his clients have not been denied the opportunity to submit a bid, but he said that “we [have] a small pool of examples to draw from” as an organization because only three of their clients work as subcontractors.

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “I have not directly been denied the opportunity to bid but we never really know where our bids are going and if they are being evaluated.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that she has not “officially” heard of a member being denied to opportunity to submit a bid or price quote. She said that they may have not heard of the opportunity.

Interviewee TA #7, the president of the Native American Chamber of Oregon, stated that he was not aware of any of his members being denied the opportunity to submit a bid or a price quote but noted that a prime contractor may tell a subcontractor that he already has his team established.

Some interviewees reported that there are certain prime contractors with whom they prefer to work due to established relationships or for other reasons. [Interviewees #: 1, 3, 7, 8, 9, 10, 11, 19, 21, 22, 25, 26, 27, 29, 31, 41, 43, 47, 48, TA #3, TA #4, TA #5, TA #7, TA #8, TA #10, TA #11]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that there are primes his business has established good relationships with and works with regularly. He said, “We found some good contractors that staffed the job properly, that had knowledgeable superintendents, that don’t try and pay you in 90 days. We found the ones that are really good to work for. They like working with us, so they now send us bid requests.”

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that there are prime contractors with whom her firm prefers to work. She stated, “We pretty much work with anybody. I’m extremely pro-active in my collection procedures. I don’t like people who don’t pay me, especially when I know they’re getting paid, so I follow up on that.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that there are primes with whom he prefers to work and/or with whom he has established a relationship, primarily because those firms have good project management systems, and treat their subs well.

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that there are primes with whom she prefers to work because they “pay good, [and] they run a good job.”

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that there are primes with whom he has established a relationship and prefers to work for.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that the firm prefers to work with certain primes because “they pay on time, there are no surprises.”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that there are two primes with whom he prefers to work because “those are two companies that I’ve worked with that [have gone] above and beyond in working with me and helping me when I needed help.” He reported that the firms have paid him early, “helping me make payroll, or to cover payroll taxes.” He said that his relationships with the owners and managers of those firms were the reason the firms extended such assistance.

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that there are “probably a few [primes] that we would prefer to work with. Number one, they’re very professional, their offices are very professional to work with, they are good with payments ... communication. I’ve worked with other contractors in the past, and I think they sometimes get in over their head, and it’s sometimes overwhelming. If you’ve never been on a public works job ... there’s a lot of paperwork involved, and a lot of times — and with the economy, you’re getting a lot of people involved who’ve never dealt with them before. It’s overwhelming for them.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that there are primes with whom his firm prefers to work. He stated, “We try to give them whatever we can back.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that there are certain primes with whom he prefers to work because of their good work product and because they are inclusive.

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that there are primes with whom he prefers to work. He said that he tries not to have too many jobs with one prime at a time because he does not want his firm to be severely affected if that prime slows down.

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “I prefer to work with primes who are serious about doing work with minorities and are not out to do damage.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that “Yes, there are preferred primes [with whom I prefer to work] that have protected work environments. For minorities and as a minority, I know where they come from, and they are not out to get my firm.”

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, said, “We prefer to work with engineering firms who have a commitment to clients and [a] code of ethics.”

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, said, “I have a couple [of primes] that I like to work with. They do their end of the bargain. They say they’re going to pay you at a certain time and they pay you on a certain time. Some guys say that, but they’ll string you out. They tell you that they’ll have it prepped and ready to go, you show up and it’s not prepped and ready to go.”

Interviewee #47, the Caucasian female owner of a WBE/DBE/ESB-certified trucking firm, said, “Primes that we enjoy working with pay us on time. They are clear about what is expected of us and they work with us on the job.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that there are primes with whom members prefer to work because some primes pay better, some primes will work with you on a project rather than penalize you, and some primes provide resources. She said, “There are just some primes that are trying to help develop the capacity of some of their subcontractors.” She said that it is in the prime’s best interest to work with the subcontractors to complete the job.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, reported that there are prime contractors with whom the organization’s members prefer to work. He said that some of the large general contractors in the area use the same subcontractors on most projects and if you can get on as a sub with those general contractors it is pretty steady work.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that there are prime contractors that “don’t game the system” and with whom his members prefer to work. He said that there are certain primes that “everyone kind of flocks to as far as minority contractors because they are not gaming the system.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the subcontractors most likely have prime contractors with whom they prefer to work, but he does not hear members speak about a preference for certain primes.

Interviewee TA #11, a representative from the Port of Portland, stated that there are primes with whom the agency has established a relationship and prefers to use, but “we can’t give them any special treatment.”

Some interviewees reported that there are no prime contractors with whom they prefer to work with over others. [Interviewees #: 4, 20, 28]. Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that her firm has “established relationships with many primes,” but there are no primes with whom she prefers to work.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that he is not aware of any primes with whom the organization’s clients have established a relationship.

Some interviewees reported that there are certain prime contractors with whom they will not work for a variety of reasons. [Interviewees #: 1, 3, 4, 7, 8, 9, 10, 11, 19, 20, 21, 22, 23, 24, 25, 31, 38, 44, 45, 48, TA #3, TA #4, TA #5, TA #6, TA #8]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that there are primes with whom he will not work because of payment issues. He said that he submitted an invoice for \$62,000 and “they didn’t pay it. I [have to] get paid.” He stated that the prime offered to pay him \$45,000, or Interviewee #1 could take him to court. He said, “I can’t wait two to five years for 45 grand ... So I settled for the 45 grand.... That was the last job I did for [them]. They still send me bid requests.” He said that he will not work for another prime in the Portland area because the prime “is really well-known for beating up their subs.”

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported, “I don’t like being stiffed, so there’s probably several [primes] I wouldn’t work with, but most of those guys have fallen by the wayside, simply because of the economy, and if you don’t play nicely, nobody wants to play with you after a while.”

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that there are primes with whom she will not work, primes that “don’t really support you or help you in areas where it seems like you may not understand, or you got it wrong.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that there are primes with whom he will not work, as they do not treat their subcontractors well, or they “divvy up the work into too small of a package, and don’t give the sub enough” of it, or allow the sub “to do the work as well as make a profit. They don’t want to release control, is what it is, so they give you a little piece of work, and give you 5,000 bucks to do it.” Interviewee #7 said that, ideally, a prime would not limit a sub’s participation only to that portion required to fulfill the project’s goals. He stated, “If it’s a 20 percent goal, they’re going to keep exactly 80 percent.”

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that there are some primes with whom she will not work. She reported that she has “not been treated fairly” on some jobs. She stated, “When you’re a third-tier contractor, you’re relying on the second-tier contractor to make your case to the general contractor, because they won’t allow you to state your case to the general contractor.... [S]o if there’s a gap in the specification or in the plans and they’re expecting you to cover it, but it wasn’t in your section, you’re looking to someone else to defend you. [S]ometimes they won’t represent you.” She said that she would not work with certain contractors because of slow payment. She stated, “When you’re three tiers down, your customer gets upset if you call the owner to find out if payment’s been made, they get real defensive.” She stated, “In contracting, usually it takes me 90 days to get paid, and when I have to wait 190 [days], then I have issues.” Interviewee #8 stated that she will not work with primes who “don’t run the job well, or [there is] poor communication, [or] poor information.” She stated these were all reasons she was “trying to move further up the food chain,” and have her company perform more work as a second-tier subcontractor or as a prime.

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that there are some primes with whom he would not work because “they didn’t pay me.” He stated that his firm has “lost \$30,000 a couple of times” when primes did not pay for work his firm performed.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that there are primes with whom the firm will not work because of “slow pay, no pay, [or the primes] don’t know what they’re doing with the paperwork.”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that there are some primes with whom he would not want to work. He said that he will not work for one prime because “the person I worked with [on one project with DBE goals] was difficult ... I had to argue with him all the time about paying employees, how he gave them their hours.” He said he did not know if this prime treated him differently than he treated other subcontractors on that job.

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that there are primes with whom she will not work. She said, “They are either slow [with] payment — and that’s most of it. We know who’s going to be slow, and when we got to bid for those primes, we are kind of like, ‘Okay, we need three big payments,’ because we know they’re going to be slow.” Interviewee #19 stated that timely payments are especially important to her firm. She said, “It’s [about] cash flow. We can tie up \$400,000 in 90 days, easy.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, stated that she would not work with certain prime or general contractors. She said, “The ones that are bad. The ones that don’t pay. The ones that have a bad name out there — you hear it, and you know it, and you don’t go to them.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that there are some primes with whom she won’t work. She said, “There’s a few we wouldn’t work with. The main reason, with a few of them, was payment.... The other one is, even if we do the best job possible, and they say, ‘we’re going to do extras, and we’re going to pay you for this’ ... when it gets down to it, we’re fighting with them all the time. And we don’t have time to fight with everyone. We’ll give you a good day’s work, we’ll do what you ask us to do, but we do expect to get paid for it. If you want to play games with us ... some contractors out there ... think it’s fun — this is well known in the industry — to try to destroy as many subcontractors as they can every year. They’ll treat their subs really poor. They don’t care; they just want their bottom line, they don’t care about the sub. If the sub ends up going bankrupt or ... out of business, they think it’s fun. It’s a game to them. So we don’t work with people like that.” She said that her firm does not work for primes who shop her firm’s bids. She said, “If you ... shop our bid around, no, we don’t want to work with you, because that’s not ethical and that’s not the kind of company we want to work with.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, stated that there are primes he will not work with for several reasons. He said, “Absolutely. One is the pay — it’s very slow.” He reported his firm’s experience with one prime, and stated that his firm did not receive its retainage of \$65,000-\$70,000 until three years after doing the work. He stated that the project was sponsored by the City of Portland “and a couple of other entities.” Interviewee #23 stated that such slow payment “makes it hard for [a small] company. They do that two or three times, [and] you’re gone.” He said, “[A] couple of them I don’t like to work for because they ask you for bids, they get the job, they don’t ever call you back. If it happens again, they call you at the spur of the moment, and so I finally turned myself off to them.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that there are primes that she will no longer work with. She stated, “Oh definitely, they just use my name, they just ... put you in [their bid] proposals, and they never use you again, and then, if they use you again, they make sure that you fail, so that you don’t have to ask them for work again. So they’re not interested in your growth, they’re just interested in the media, and then they have something against you so that they don’t use you again and they have a reason why not to, instead of helping.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that she “could think of one or two” prime contractors with whom she prefers not to work “because it’s one of those generals that you’ve worked [with] that one time, [and it was] the last time.” Interviewee #25 reported, “We ended up working with this general contractor because I think there were some set goals on the project, and our number was attractive.... When you’re trying to coordinate work in the field and when there’s more than one subcontractor on the project — that, when you’re doing your scope of work and you’re done — and then someone behind you comes in and start[s] doing their work and ... damages something, and they try to get you for it? [It’s] not a good feeling, so it’s like, ‘you know, I know it wasn’t us; I’m done working with you.’”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that “there are firms that I prefer not to work with or bid to because they continuously let you know that the reason you are on the job is to achieve a goal and they intend to make the job as difficult as they can for you.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that there are some primes he won’t work with “mainly because their intent, from the beginning to the end, is to cost us money; to cost us a loss on the project, and they’re not working as a team on the project. They express the fact that the only reason why you’re out here is because you’re a minority, so with that it becomes really a difficult relationship to actually endure throughout the project so we don’t try to repeat that.”

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said, “There are primes I previously worked with and would prefer not to work with again that are slow or non-payers and I have no level of trust for them.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that she believes that there are some primes with whom her members will not work because of payment issues.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that there are not many primes with whom their members will not work. He said that there may be a wage difference and that may cause a sub to not work with a certain prime, but “other than that ... they will work for anybody.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that there are prime contractors with whom his members prefer not to work. He said that there are primes that have one minority contractor that they use and that is it. He said the other minority contractors do not bother trying to work with these primes.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that there are certain primes with whom their members will not work because of payment and management issues. He said that some primes have “a good reputation, some people have a mediocre reputation, and some people you just do not want to do business with, period.” He said that he was told by a very large prime that “basically, your people bring nothing to the table ... and that nobody was going to compete against them (the prime) for these federal construction projects.” Interviewee TA #6 said that this reaction “did not surprise me.” He said that shortly after the meeting this prime entered into a joint venture with an African American firm because of “fear of outside competition.” He said that this joint venture was “very successful.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, stated that there are some prime contractors with whom their members prefer not to work. He said that generally this preference is based on personality.

Other interviewees reported that there are no prime contractors with whom they would not work. [Interviewees #: 6, 12, 17, 27, 28, 36, 41, TA #7]. Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that there are no primes with whom her firm would not work, but she said that “there are some” primes with whom she would prefer not to work. She said, “Some contractors think that we’ll be so glad to get the job that we’ll go here and there at a moment’s notice. That can get on your nerves.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that he is not aware of any primes with whom his clients will not work.

Interviewee #36, two representatives of an employee-owned general engineering firm, said that, “While there are tough challenging relationships, there are not any primes that we would prefer not to work with.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that he has not heard of any specific situations of a prime contractor with whom his members would not work, although there is always a project that does not go well, and issues related to payment sometimes arise.

III. Experiences in the Private Sector and Public Sector.

A. Trends in Public Sector Work Versus Private Sector Work.

Some interviewees reported that their mix of private and public sector work has remained approximately the same over time. [Interviewees #: 2, 24, 28, 35, 41]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, said, “We’ve tried to trend away from [the private sector and] ... our attempt was to [obtain] more public sector [work, but] we’ve been complete failures at it.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated that the proportion of her firm’s work in either sector remains relatively constant. She reported, “I stick with the public.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that he has not experienced a trend toward or away from the public or private sector.

Other interviewees reported a trend toward private sector work. [Interviewees #: 10, 14, 18, 19, 23]. Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that the firm has trended away from public service work in the last year because of ODOT's changed DBE focus. Interviewee #10 stated, "Over the last year we've tried to seek out even more private work because we've been shut out in [public work]." Interviewee #10 stated that the firm's mix of public and private sector work varied year to year, and would likely continue to do so, especially because of the ODOT DBE refocus.

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that her firm's business "is trending towards the private work ... mostly because of the economy.... [In] [t]he public sector right now, relationships don't typically mean anything, [but] in the private sector you have the opportunity to build a relationship and that means something. And in the public sector, it's also based strictly on low bid."

Interviewee #18, the Caucasian male owner of an excavation firm, reported that his firm performs 80 percent of its work in the private sector, and 20 percent in the public sector. He said that his work is trending solidly toward the private sector. He said, "I noticed even toward the end of last year that most of my stuff is private because a lot of big homeowners that still have money are still working on their property.... I call it 'the Home Depot Effect,' because I'll go in there and prep a lot of stuff for them, and they'll have a guy finish it up."

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated that she has seen a slight increase in the volume of her firm's private sector projects. She said, "There's a slight [increase] due to the weatherization. That's more private, because it's residential" work her firm performs.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that his work lately has been trending toward private work. Interviewee #23 stated that it was much easier for his firm to get work in the private sector than in the public. He said, "I [have] a lot of private work because I don't have to go through all the whoops and hollers and all that" that he has to do to win a public sector bid.

Other interviewees reported a trend toward public sector work. [Interviewees #: 1, 3, 6, 7, 8, 9, 21, 30, 31, 40, 46, 47, 48, TA #1, TA #3, TA #4, TA #7, TA #8, TA #10, TA #11, TA #12].

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that her firm is focused primarily on the public sector because "private sector work [has] completely dried up. Nobody's doing subdivisions anymore; it's been a hard, hard, hard winter." She stated, "We're probably doing a lot more public work right now, and we're pursuing that hotly."

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported, that her firm's work is almost evenly split between the public and private sector, but that "I think we're shifting more towards the public [sector], just because of what's happening in the economy. Of course, the military, which is 25 percent of our business, is public — I would say

beyond that, an additional 15 percent, maybe 20 percent of our business may have traditionally been city, county, [and] state [projects], but I think that's going to increase."

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that the market trend over the last two years has been toward the public sector. He stated, "They're the only ones who've had the money."

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated, "Right now, there's not a lot of private sector work bidding." She stated that there seems to be plenty of opportunities in the public sector. She stated that work in the private sector has just not been available since the economic downturn for the size of projects that she pursues.

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that his firm "should be heading towards public, because the government is the only one who's got any money right now."

Interviewee #30, the Caucasian female owner of a WBE-certified construction firm, reported that there has recently been a trend away from the private sector due to the economy. She stated that she expects to begin marketing to the private sector again very soon.

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, said, "For me the trend is away from the private sector due to the market availability and, it appears, funding for those projects."

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, stated that he has worked successfully for the last 10 years in the private sector, and noted that he feels that a lot of the resources are drying up and projects are sitting unfunded in the private sector. He stated that most of the projects that are ready to go are public projects.

Interviewee #47, the Caucasian female owner of a WBE/DBE/ESB-certified trucking firm, said, "There is not a lot of work in the private sector right now and we have seen a big reduction. We are focusing our efforts on government." She said, "Most of the available work is with the public sector right now."

Interviewee TA #1, the vice president and credit administrator of a commercial bank, reported that the bank's construction industry clients were moving away from the private sector and moving toward the public sector. He reported, "I'd say probably away from [the private sector], just because [of] the economy. It seems like the private sector business or the contractor that does residential remodel[s] or something, that's just really, really dried up. You couple that with some of the stimulus money, which is coming to the cities and states and opened up business. I think there's been a move to try and obtain those contracts ... because that's really where the business is right now."

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that the trend in the marketplace is toward the public sector because "right now the only people who have money and whose projects are moving forward are those in the public sector." She said that the private sector cannot obtain financing for a lot of their projects.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that recently there has been more public sector work.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that the trend is toward public sector work (and away from the private sector) due in part to stimulus funds.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, stated that there has been a shift toward public sector work. He said that private work “has pretty much dried up.” He reported that before the economic downturn, his members worked approximately 60 percent in the private sector and 40 percent in the public sector. He said that because of the economy, 95 percent of the work his members perform is in the public sector and 5 percent is in the private sector.

Interviewee TA #11, a representative from the Port of Portland, stated that “because of the economy, most of the work ... is in the public sector right now but I think it is purely driven by the economy and as the economy comes back we will start to see the private work again.”

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that the “overwhelming majority of work is public sector work because the private side [has] just dried up.” He said that before the economic downturn the organization’s members were working equally in both sectors.

B. Private Sector Work Experience.

Some interviewees reported working predominately in the private sector, success working in the private sector, or a preference for work in the private sector. [Interviewees #: 1, 2, 5, 8, 9, 12, 13, 16, 17, 18, 20, 23, 27, 34, 39, 43, 44, 45, TA #3, TA #5, TA #9]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that 70 percent of his firm’s work is in the private sector and 30 percent is in the public.

Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, reported that 100 percent of his firm’s work comes from the private sector.

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that the firm performs most of its work in the private sector, but that the percentage of work done in the private versus the public sector varies from year to year.

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that 90 percent of his firm’s work is in the private sector, and 10 percent in the public sector, and that the ratio of his public versus private work depends on the state of the economy.

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that her firm continues to receive most of its work from the private sector.

Interviewee #17, the Native American male owner of a non-certified excavation firm, reported that he works exclusively in the private sector.

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, reported that approximately 80 percent of the firm's work is in the private sector.

Interviewee #39, two representatives of a Caucasian male-owned general contracting firm, said, "Our firm's work is pretty consistently 80 percent private sector work and 20 percent public sector [work]."

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that the private sector accounts for approximately 40 percent of their work, and this share is increasing.

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, estimated that 60 percent of their members work in the private sector.

C. Public Sector Work Experience.

Some interviewees reported working predominately in the public sector, success working in the public sector, or a preference for work in the public sector. [Interviewees #: 4, 10, 11, 14, 19, 22, 24, 25, 33, 36, 37, 40, 41, 48, TA #4, TA #7, TA #8]. Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, stated, "I would say about 60 percent [of the work is] from public and 40 percent [of the work is] from private." Interviewee #4 reported that the firm's mix of public versus private sector work varies from year to year.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, reported that 80 percent of the firm's work is on public sector projects, and 20 percent is on private sector projects. Interviewee #10 stated, "Our private work is for public. It would be like a permit job in downtown Portland. So someone's building a building, and that building has to pay for the streetlights and the traffic signals. So basically we're doing the exact same thing, and who we're doing it for is the exact same people, but we're getting paid from the private [sector] to do public [sector] work."

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, said that he works exclusively in the public sector because of the cost of labor. He stated, "I'm a union shop, so I have to pay the prevailing wage. It would be stupid for me to bid a private job where I'm only going to make \$17-\$18 an hour, when I [have] to pay these employees \$22 an hour."

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that 70 percent of the volume of work her firm performs is in the public sector, and 30 percent is in the private sector.

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that 70 percent of her firm's work comes from the public sector, and 30 percent from the private sector.

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that 80 percent of his firm's work is in the public sector and 20 percent is in the private sector.

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that “about 90 percent” of her firm’s work comes from public sector projects, and the remaining 10 percent comes from projects in the private sector.

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and site preparation firm, reported that 95 percent of the work her firm performs is done in the public sector. She stated, “We hardly ever do private” sector projects, but “the other 5 percent is repeated, ongoing [private sector] customers that we have [established a] relationship” with.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that 80 percent of the firm’s work is in the public sector and 20 percent is in the private sector. She noted that before the economic downturn her business was evenly divided between the public and private sectors.

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, reported that he can best compete in the MBE/WBE/DBE/ESB market (public sector).

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, said that his firm is more in tune with fees and compensation in the public sector and that the public sector understands and appreciates his firm’s services.

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, said that the approximately 95 percent of the firm’s work is performed in the public sector.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that recently there has been more public sector work. He said that in a normal economy he estimates that 40 percent of the work is in the private sector and 60 percent in the public sector. He said that the mix of work varies from year to year depending on the budgets for schools and the activity in the hospitality industry.

Some interviewees reported challenges in connection with pursuing or performing work in the public sector. [Interviewees #: 23, 29, 45, TA #4].

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that many primes on public sector jobs do not supply subs with the all the information they need, which causes difficulty for the prime and the subs. He said, “When you get on the public side, and start to do the work, this [sub] forgot one piece of paperwork, that one forgot — and they just hold everything up. Well, it’s easy [for the prime] to tell them, ‘Look, this is all what you need.’ You give them a checklist, they check it all off, they send it to you, and everybody’s happy. But no, what [generals] do on the public side ... you turn in all the work you think you need to turn in, there’s no check list of what they want you to turn in, and they say, ‘Oh, you’re missing this one piece of paper.’ Well they did that so they can hold you up for another four, five weeks. So now, you can’t get in this [payment] cycle, you [have] to get in the next cycle. [Then it’s] ‘Oh, it’s sitting on my desk and I forgot it.’ So now, you’re in another cycle. Next thing you know, you’re six months ... out. It’s just not the right way of doing business, but they do it and they get away with it.” He said

that public sector work is more difficult because more primes negotiate bids with subcontractors. He said, “With all the public work, I never see” primes negotiating bids, even if only one sub submits a bid for the job. Interviewee #23 stated that the attitude among primes is, “we only had one bidder show up. Now we’ve got to take it off the table and rebid so the whole world shows up.” He said, “If you’re going to help somebody [who is] a small contractor, then, by golly, if they’re the only ones who show up, [say] ‘let’s sit down at the table, you give us a bid, we’ll see how fair it is, and see if we can make it work.’”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “The public sector is inundated with bureaucratic [processes] with no scale of support for the administrative burdens they cause and barriers they create for those with fewer resources.”

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said, “Since I am not certified, I do not get any calls for public sector work.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that the organization has experienced problems in the public sector because some contractors will “cheat the system” and pay less than the prevailing wage.

D. Identified Differences in Securing and Performing Work in the Public and Private Sectors.

Some interviewees identified differences in the timeliness or certainty of payment for work in the public and private sectors. [Interviewees #: 4, 8, 14, 19, 24, 31, 33, 40, 43, 46, TA #1, TA #8]. Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that the timeliness of payment differs radically in the public and private sectors. She said, “In the private sector, you do the work [and] get your money up front. [O]n the public side, you are paying to do the work before you can get paid.”

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that clients in the private sector sometimes pay more quickly than those in the public sector. She said, “You get paid faster and retainage is not held as long” on private projects.

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that processing paperwork in the public sector can take a lot longer which can delay payment. She stated, “I have had public agencies that can pay us very quickly, and process paperwork very quickly, [but] there are public agencies that take 45 days to process a change order.” She said that getting one metro area county to pay her firm in a timely fashion “was awful, and they need some help.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that certainty of payment is the major difference between her firm’s work in the public versus the private sector. She said, “I think public is much safer financially ... because we know we’re going to get paid. [In] residential, you always run the risk of not getting payments, so you have to get money upfront, and you normally don’t” have to do that on the public side.

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated, “With the government, you may get paid after 90 days, but you’ll get paid. With the private, you’ll never get paid, and you’ll have all kinds of legal issues.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that the City’s two-week turnaround on invoices is faster than payments from the private sector.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that the difference between working in the public sector versus the private sector is that the public sector has fair, guaranteed payment systems.

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, said that in his experience the private sector expects you to delay compensation or contribute some of your services, which can be difficult for smaller firms.

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, reported there are substantial differences in public versus private sector work. He said, “In the private side, there’s less stress, you get paid when you’re done, that type of thing. I usually ask for half down and the rest upon completion, and I get that. Where with public stuff if you submit it by a certain date and they’ll pay you by, you know, the 15th of the following month. I’ve had public jobs where it takes a long time to get paid, you know, 60 to 90 days before they pay you. I had a fire station that took about a 100 days before we got paid up in Lyle, Washington.”

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “Public projects pay you for every hour that you work, and that is very different than private. The public retention system leaves a lot to be desired, as [general contractors] hold it for longer than necessary, and I feel like they try to find some ways to ding you and keep from returning it all.”

Interviewee TA #1, the vice president and credit administrator of a commercial bank, stated, “One of the differences might be, especially as a sub when the general is getting paid by the City of Portland or whatever, I think just generally people understand that a city or a state is going to pay slower. There’s a lot more red tape, and so the general doesn’t get it in 60 days, he gets it in 90. And the general’s going to stretch it out maybe longer, and so I would say that’s a difference, definitely.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said cash flow can be a problem for companies in the public sector because “the government sometimes will retain payments [until the] work is done to some bureaucrat’s satisfaction and it can literally take years to get paid.” He said that the City of Portland has been known to have payment issues.

Many interviewees reported that the private sector is more profitable than the public sector. [Interviewees #: 1, 7, 19, 23, 25, 29, 38, 39, 48, TA #1, TA #6, TA #7, TA #8, TA #9]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated that his firm’s private-sector work was “definitely more profitable” than the work in the public sector.

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that his private sector work was more profitable than the public sector work. He said that in the private sector, “They want to get it out the door, so you have to work fast. Seems like you don’t always spend your budget, so you can make that back as profit if it’s a lump sum.” Interviewee #7 stated also that public agencies have a harder time increasing their budgets, whereas private clients have more financial flexibility.

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that work in the residential portion of the private market is more profitable for her firm than the commercial subsector of the private marketplace. She said, “You have a bigger markup on residential than you do commercial, because of the standards they set on commercial.” Interviewee #19 reported that “we do profit on [private-sector jobs], but not as much as on residential.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that his firm’s private-sector work is more profitable than its work in the public sector. He said, “I’m making pretty good money on the private side. The public side is where I have a hard time making money,” and he said his certifications do not help. He said, “They only use you for the little bit they need to so they can keep people happy. They think they’re keeping us happy, but they’re not.” He stated that the small size of the public sector projects he worked on caused them to be less profitable than his work in the private sector. He said, “First of all, they don’t give you enough [scope] for you to make a profit margin [in the public sector]. There’s no profit margin when you have 12 guys out there, working in the field ... and you’ve got a job that [is] only \$2,000. Where are you going to keep these guys busy?”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that work in the private sector is more profitable than public-sector work. She reported, “With the public sector, your margin [is] a little bit lower, because you’re competing with everybody else. You’re bidding with 10 competitors, where, in the private sector, it might be the only one [bidding], so it’s a better profit margin.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “Profitability is much more flexible in the private sector; there are no requirements for prevailing wage, pressure tests and compaction tests.”

Interviewee #39, two representatives of a Caucasian male-owned general contracting firm, said that profit margins vary on projects. They said, “The variable in profit margin is due to Davis Bacon, BOLI wages and the amount of time to administer those systems on projects; private work is more profitable for our company.”

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported that cash flow might make profitability in the private sector greater than that in the public sector.

Interviewee TA #1, the vice president and credit administrator of a commercial bank, reported that he thinks his customers in the construction industry have greater profitability on work in the private sector. He reported, “In the private sector ... there’s more opportunity there for more of a profit on a

project, but I'm not sure exactly.... [A] public project is going to have some constraints on what is paid and it's just a lot more" restricted.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that the public sector is "less profitable" for minority businesses and small businesses. He said that he has heard "that it costs more to produce goods or services on the public side because of all these additional requirements."

Interviewee TA #7, the president of the Native American Chamber of Oregon, stated that the private sector is more profitable because securing work on a project is not necessarily based upon a low bid.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the profitability can be greater in the private sector. He said that public work is more expensive for the contractors, in part, because of prevailing wage requirements. He said that a contractor's cost in the private sector is approximately 15-30 percent less than in the public sector.

Some interviewees reported that the public sector is more profitable than the private sector.

[Interviewees #: 21, 31, 41, TA #4]. Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, stated, "In a different economy than what we have right now, I would say the public works, the profit is higher, which really surprised me. We go after different types of public works jobs that other people don't. We go after the re-pipes, things that people don't want to do; we specialize in this stuff.... We go into the basic bid, and then when we get in there, sometimes we're able to find a better way to do the job, to excel in some way, so we're able to shave off some labor ... and then, at the end, it comes out very nice for us."

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that in the private sector "it is a little tougher to be profitable because it is such a competitive market."

Many interviewees reported that it is easier to secure work in the private sector. [Interviewees

#: 1, 5, 9, 12, 14, 20, 22, 25, 27, 43, TA #5, TA #6]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that it is easier to obtain work in the private sector. He said, "A lot of this private-sector stuff that we do for the generals that we bid, the generals don't go out and put a lot of this stuff on the street for anybody to bid. They'll go to two or three select fabricators that they feel comfortable with."

Interviewee #5, the Caucasian male owner of an excavation firm, reported, "I don't ever get a public job anyway. Most of what we do is private, individual stuff." He said that he has not worked on projects that have utilization goals for minority- or woman-owned businesses. He stated, "I've never worked on light rail or looked at any projects that are funded by the State or the government. There's no way we could ever get on those projects. There's no way for a small guy like me to get a job like that," because government agencies "don't care about me. When they let those jobs, there's so much politics [involved]. You can't believe the amount of politics that are in these jobs that get let.... It's not a square deal. It depends on who you are, what you are, and who you know on these jobs."

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that it has been easier for his firm to get work in the private sector because "on a lot of the work [in the private

sector], they don't get that many bids." He stated that public sector projects were more competitive because they attract many more bidders. He also stated that when work was more readily available he had repeat business in the private sector and did not have to bid on the projects.

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that it is easier for her firm to get work in the private sector because "most of the jobs in the public sector are so big, we can't man them; we don't even try."

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that her firm's "time and energy" are used in different ways when securing jobs in the different sectors. She said, "In the private sector, we put in the energy and the time [in] building the relationships. We start off with small jobs, we get our foot in the door, they give us opportunities for bigger jobs. We build up [the] relationship; they allow us to bid larger projects. Sometimes we become their contractor of choice, and they give us their jobs. So, over time, after you've built the relationship, yeah, it's probably a little bit easier to get the work. In the public sector, you don't work those relationships. You're [going to] spend some time and energy, especially if it's a good faith effort program, you're going to spend a whole lot of time and energy before you get the job, just trying to bid the thing. The good faith effort, too, has got all the reporting requirements of 'are you paying your subs, and how many hours does everybody have, and are you meeting apprenticeship requirements, and how about your DBE goals and minority goals, and are your subs certified, and are they meeting their goals' — there's all those paperwork issues that go along with some of the government [projects]."

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that it is easier to get work in the private sector. He stated, "There's less paperwork in the private [sector]. That's a major thing — following up on all of the paperwork [required for public sector bids]. We've got somebody that handles the paperwork, and she handles it fantastically, [but] it's tough."

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that obtaining work in the private sector does not require her firm to submit the lowest bid in order to win a contract, "that's where the public sector could improve. It [only has] the low bid, and ... the low bid is [not always] a good number ... but they're obligated to give you that work because [you have the] low bid." Interviewee #25 reported, "[In the] private sector, you know, they choose whoever they want to work with."

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, stated that it used to be "a little easier" to get work in the public sector because "when the market was really busy there [weren't] as many people going after [the] public work." He said that currently there is a lot more competition for the public jobs because of the downturn in the economy. He said that now it is easier to get work in the private sector because "if you have a good in with the people who you work with [in the private sector] they are going to call you."

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, stated that it is easier for him to get work in the private sector. He said, "Maybe it's easier for me because I don't have to go through as many loopholes. To bid the public job, you [have] to bid it, then you [have] to submit all these bond certificates. They may want a special license you have to get issued from the City, and it's just a lot of hoops you have to go through to get the job."

Where I'm licensed, I'm bonded, all this stuff. I can give the people my license number on my card, they can punch in L & I, and they can say, 'Okay, he's active. He's got everything he needs to have and I'm going to hire him.' I don't have to go get a special license for them."

Interviewee TA #5, the president of the National Association of Minority Contractors, reported that the majority of the members work in the private sector because "it is easier to have those opportunities." He said in the public sector the members are working with federal agencies and not necessarily state agencies. He said that his members' experiences working in the public sector compared to the private sector "depends on the contractor." He said that one general contractor member felt that he would not be able to obtain work with the PDC or other agencies and so he created his own development firm and "was very successful at it" until the economic downturn. He said that this member "felt like [PDC wasn't] really considering him as a viable contractor." He said that "there were several [members] that were building their own opportunities because the opportunities weren't available for them."

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that his members are "trying to survive." He said that his members are "trying to scrape to get anything whether it be public or private." He said that the public sector is "tougher" because there are "so many hoops in programs and mazes that you have to go through in order for you to even be at the table." He said the private side is "all based upon personality and performance."

Some interviewees reported that it is easier to secure work in the public sector. [Interviewees #: 10, 26, 31, 38, 40, 44, TA #1, TA #4, TA #10, TA #11]. Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, said that identifying work in the private sector requires more research than that in the public sector. They said, "You have to find out about the jobs, so sometimes there's a little more work [to acquire private sector jobs], or it's with people that you haven't worked for." Interviewee #10 said that the private contractors contact the firm for projects in the private sector. Interviewee #10 stated, "Somebody's usually called us and solicited a quote," while the firm's public work is all done through the bid process.

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that there are fewer rules in the private sector and some minority- and women-owned businesses "consider that business a little more difficult to get." He said, "I think people are gravitating toward the public sector because there are rules and they figure they can operate within the rules." He said that it can be difficult for minority- and women-owned businesses to obtain work in the private sector because there are not established rules for contract awards like there are in the public sector. He said that he does not think that majority firms plot against minority- and women-owned firms. He said, "They don't even think about it at all." He said that the federal government's rules for contract awards have made it easier for his firm to obtain work in the public sector. He said that he has found that the City's procedures are "as good as it comes." He said that the City is very inclusive. He said that counties and municipalities are "very conservative."

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that "it is easier to get work in the public sector because of the goals and requirements, and that, honestly it is just about the only work that minorities can count on."

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, said, “It’s easier probably to get work on the federal side than it is on any of the others.”

Interviewee TA #1, the vice president and credit administrator of a commercial bank, reported that it might be easier for MBEs and WBEs to find more work opportunities in the public sector. He reported, “If you are a minority- or a woman-owned business, and given some of that preferential treatment ... maybe for both there’s a sense that it’s easier for them to tap into the public projects, whereas on a private, it’s probably going to be based more on the bid.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, stated that the bidding process is more competitive in the private sector so it is harder to secure work.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that it is easier to get on projects in the public sector right now because there is more money available for public projects, but the actual process for getting on projects does not differ much between the sectors.

Interviewee TA #11, a representative from the Port of Portland, stated that based on her conversations with small businesses, attempting to get work in the public sector is “a little bit easier to compete for ... because it is much more transparent.” She said that there are rules that require the public agencies and general contractors to advertise the projects, whereas the private entities do not have to advertise their projects. She said that “especially for small businesses trying to grow their businesses where they don’t have those established relationships, it can be harder on the private side because that work is not as evident.”

Some interviewees identified differences in performing the work in the public and private sectors. [Interviewees #: 9, 12, 14, 21, 43, TA #3, TA #8, TA #9]. Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that with public projects “you have to jump through a lot more hoops,” such as more paperwork and bonding requirements. He said, “That’s time it takes out of your day. When you’re doing public work, you almost need someone doing paperwork all day long. With private work, there’s not as much paperwork.”

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that the primary difference between work in the public and private sectors is that “the private sector is simpler; there isn’t as much paperwork, red tape” as there is for public-sector projects.

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that “A lot of times, the public sector has so many rules, that it’s hard to get paperwork processed sometimes. Some owners just don’t know what they’re doing, and we have to hold their hands through the process.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, stated, “On the private sector, there’s less paperwork, you can turn the jobs [around] faster, usually. The public just takes a little more energy to put out [a bid], but it can be done.”

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, said that the “Private [sector is] a little bit easier. I mean, you can go out to a project and bang on the job shack and talk to them, where[as] in public you don’t know who to talk to, you go down to one of the offices in downtown Portland and they are going to send you to two, three different people and no one’s going to know, have any answers for you. It’s really hard to find out who you need to talk to.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that “the private sector is, generally speaking, a lot less complicated” than the public sector. She said that it is easier to perform the work in the private sector because you are able to develop a relationship with the prime contractor. She said the problem is that the privately-funded projects have dried up.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that public work is more “cumbersome” because of the processes and environmental requirements.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, stated that it is easier to perform work in the private sector.

Some interviewees identified differences in the timelines for performing work in the public and private sectors. [Interviewees #: 7, TA #7]. Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that the primary difference between working in the public sector and working in the private sector is that public projects stretch out over a longer period because of frequent public reviews and meetings.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that performing work across the public and private sectors is about the same although work in the private sector may be more difficult because the clients expect a quick turn-around and the schedule may be more aggressive.

Some interviewees identified other differences in securing or performing work in the public and private sectors. [Interviewees #: 1, 4, 6, 21, 24, 25, 27, 31, 44, 48, TA #6, TA #8, TA #10, TA #11]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated, “A lot of those generals I prefer to work for do more private sector work. Generally, public sector jobs tend to be larger.”

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that the volume of paperwork, including financial information, required on public sector projects is significantly higher than that for private projects. She stated, “In the private sector, there is an attitude out there ... based on perceptions overall about people, so it’s about who you know. And then on the public side, because they do have [MBE/WBE/ESB utilization] requirements, it’s more that they have to do it and they have to use you.” She reported that her employees are subjected to more harassment and intimidation on public projects. She said that she has been questioned by police officers on one job site. She stated, “We were out [installing] a fence, and the police show up. I have my employees [on the job site and] the trucks are marked ... and the police come up and say, ‘we’ve been called because there was a report there’s people stealing the fence.’ Or, we’re at a job site, and the police show up and they sit there for two hours and monitor and jaw jack with the project people from the entity basically, I feel like,

trying to intimidate my workers.” Interviewee #4 stated that she experiences this treatment on public sector projects “more so” than on private sector projects.

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, said, “Usually for the private sector, it’s all price-driven. You have to put the low price out there. There are, of course, challenges with [the] scope [increasing on projects] sometimes, with the public, because you know if you set the price at X, and then you realize — once you understand the scope has changed that the price is going to be Y, you have to deal with it that way — whereas in the private sector, there’s typically a little more flexibility, perhaps? But it’s a process, and sometimes you learn the hard way. Typically you learn through experience how to handle it.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, stated that there are differences between her experiences working in the public versus the private sector. She said, “Absolutely. When you’re in the private sector, of course, I guess the biggest thing for [me], is my employees. This is basic wage. You get into the public, you’ve got the prevailing wage. I think it’s great you can make that sort of money, but let’s be realistic: if I can put a plumber out here at \$28 an hour, and this same plumber is going to go over here and do the same job, why is he getting \$50-some dollars an hour here? With all that excess money going into these jobs, and we are having such a deficit problem right now, if they would bring it down. I’m not saying bring it down to the, you know, the area where the low bidders pay now, even if you bring it down a little. Use that money toward ... schools, health care ... I just really have a problem with that.” She said, “There’s some companies out there, that’s all they do is public works jobs, that works great for them, but I don’t. Now all of a sudden, here’s this employee making this big amount of money over here, and this employee is making this one over here, so it starts a little problem. So we try to balance it out the best we can, and it’s tough.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that there are “huge” differences in working in the public versus private sector. She reported, “With the private [sector], it’s very cutthroat, there’s lots of room for legal ramifications because there’s no control in who they hire, they are abusive to the employees, and I don’t want to be in [those] circumstances to just make a winning proposal. They take advantage of you because there [are] no restrictions, there is no one to [whom you can] go and complain, there is just nobody watching. And they ... completely abuse [you] as a small business, and I don’t want to be there. That’s why I just decided to stay with the public because, as bad as it is, at least I’ll have an office to go and say something, even though they may not do something.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that there are “a lot” of differences between working in the public versus the private sector. She stated, “Public projects [have] the high prevailing wages, so it’s high payroll, a lot of paperwork, and it’s just more involved. With the private [projects], you don’t have to deal with all that.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, reported that there is “tons of paperwork” in the public sector. He said that in the public sector the payroll may be higher.

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, reported that he considers private sector work in his

field to be more of a risk to his business because expectations and long term liability are different in the private sector.

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, said, “I think in the private sector, we have a little bit more communication with the owners. The owners usually want us there because they like what we’ve done in the past and they want to continue to see us on their projects. The relationship ends up being better between the general contractor, us and the owners. In the public sector usually there’s no communication between us as a subcontractor and the owner because that’s removed; it becomes a little more difficult to explain what’s going on to the project to the owner.” He stated that in both federal projects and private sector work the firm is more likely to be able to communicate with the project owner.

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported that the primary difference between working in the public versus the private sector was that the public sector required much more extensive documentation of the construction process.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that the private sector is “a lot more flexible” than the public sector. He said that in the private sector workers are either an asset or a liability, and if you become a liability you will be fired. He said that there is more job security in the public sector.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the government tends to have more extensive bonding and prequalification requirements than the private sector.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that one difference between public and private sector work is that on City of Portland projects there is an apprenticeship requirement. They said that there are some contractors that choose not to work in the public sector. They said that the City’s apprenticeship requirement generally requires 20 percent of the hours to be performed by the apprentice. They said that some projects cannot have apprenticeship requirements because it would be dangerous to have apprentices on certain projects. Interviewee TA #10 said that there can be multiple apprentices from different crafts on a City project. They said that there are generally more requirements on public sector projects and this can present a challenge for small businesses. They said that that wages are generally higher on public projects.

Interviewee TA #11, a representative from the Port of Portland, said that one difference between the public and private sectors is that the public entities have the small business participation goals on their projects and that “you don’t see many private businesses having small business goals on their projects ... at least in the Portland area you don’t.”

Some interviewees identified a number of similarities between their experiences pursuing and performing work in the public and private sectors. [Interviewees #: 3, 4, 9, 10, 12, 14, 22, 27, 46, 48, TA #4, TA #12]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that it was no more or less difficult to find work in the public versus private sector. She stated, “You have to find work where work is available.” Interviewee #3 reported that it was not harder to do work in one sector compared to the other and that the firm’s profitability does not differ between the sectors.

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that it is not easier for her firm to get on projects in one sector over the other. She stated, “They’re about the same.”

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that there is no difference in profitability between work done in the public versus the private sector.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, said that there is no difference in the profitability of the firm’s public and private sector work. Interviewee #10 said that the firm’s work for private clients was often for projects in the public sector and therefore the firm is still required to meet the Oregon Bureau of Labor and Industries’ prevailing wage requirements, and also pay union wages on the vast majority of the firm’s projects.

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that the public and private sector projects have had similar profitability for her firm.

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that work in one sector was no more profitable than the other.

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that he did not see any differences in performing the work in the public versus the private sector. He said, “You’ve got to take care of everyone.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, reported that performing the work in the private and public sectors “is all the same.” He said that in both the public and private sectors, “we have to go in and make sure that the customer is happy when we walk out the door.” He said that profitability in the private sector and public sector is “about the same.”

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “There are no substantial differences in expectations between the public and private sector in my industry. They only care about you doing a good job.”

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported that the level of difficulty in getting work was the same in the public sector and the private sector. He reported that it was no easier for his firm to attempt to do work in one sector compared to the other, as the firm needed to complete projects in either sector on time and on budget.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that generally performing the work in the public and private sectors is the same.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that from his members’ perspective, there is no difference between working in the private sector versus the public sector.

IV. Experiences with the City of Portland and PDC.

Experiences in general.

Some interviewees reported a positive experience performing or obtaining work for the City of Portland or PDC. [Interviewees #: 3, 7, 12, 21, 26, 27, 30, 31, 33, 40, 47, TA #2, TA #4, TA #7, TA #8, TA #10]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that her firm has work on projects for the City of Portland. She stated, “We love the City. The City has been very good to us.” Interviewee #3 reported that her firm has worked on the Bureau of Environmental Services’ Combined Sewer Overflow project. She stated, “That’s probably been just one of our biggest, wonderful things that we’ve been doing since it started.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that his experience with the City of Portland’s contract administration and payment methods has been generally positive, but he said that the experience did depend on the contract specialist with whom he was working.

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that working with the City of Portland on a contract was easy. She said, “They call, we go, and [the prime] pays us with a credit card.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that her firm performed a plumbing job on a City of Portland project, “and that was a very positive [project]; that was a good job. Paperwork-wise, the City was really good to work with, the general was really good. It was just one of those jobs that was really nice.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that working for the City has been a positive experience.

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, stated that he has done “fairly well” on the PDC projects. He stated that PDC projects require workforce training on projects over \$100,000.00. He said that the trainee must perform 20 percent of the work on projects over \$100,000.00. He said that this requirement is “my only [complaint] with Portland Development” because he has trained employees who could perform these tasks. He said he understands the goal of the workforce training program, but the goal was more appropriate several years ago during the robust economy because of the need to encourage workers into the construction industry.

Interviewee #30, the Caucasian female owner of a WBE-certified construction firm, stated that she has established relationships with both the City of Portland and PDC. Interviewee #30 stated that she enjoys working with PDC, and her business has done well as a result of working with them. She said that she also enjoys a very good relationship with the City of Portland, and she believes she understands them and knows exactly how to work well with them.

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that “I feel the City and PDC work opportunities are open to all.”

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that her firm continues to have good experiences performing work for both the City of Portland and PDC and that it is easier to work with the City of Portland and PDC than other public sector agencies because of her good rapport with the organizations' employees.

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, said, "My firm has had very good experiences bidding public work and in particular working on City of Portland and PDC projects as a sub."

Interviewee #47, the Caucasian female owner of a WBE/DBE/ESB-certified trucking firm, said, "It's been easier to find work with the City because just ESBs and WBEs can bid on SMP (Sheltered Market Program) work and it makes the odds more successful."

Interviewee TA #2, the director of an apprentice preparation program, reported, "It's been a really good experience [working] with the City, because I've seen them go through their process and make it work. I think they, too, need some improvements on some things, but in working with workforce hire, it thrills me to see them make people do what they need to do."

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that the PDC "has a very positive attitude towards getting minorities and women involved in the trades and in the construction field as business owners and as workers." He reported that his labor members have worked for signatory contractors on projects for the PDC and the City of Portland. He stated that his members' experiences with obtaining work with the PDC and the City of Portland has been "very positive" because "it is easy, it is a pretty transparent process." He reported that his members have worked on tenant improvement projects for the PDC and the City of Portland. He said that he has not heard about any negative experiences working with the PDC or the City of Portland and that the organization has been able to partner with both the PDC and the City of Portland.

Interviewee TA #7, the president of the Native American Chamber of Oregon, stated that his members have been successful in securing work with the City of Portland.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, stated, "The PDC tends to be a public-corporation-type entity.... PDC is business-oriented, it's driven toward business retention, expansion, recruitment, community development ... our guys understand the" process. He said that generally his members' experiences with PDC have been positive.

Interviewee TA #10, three representatives of the Northwest College of Construction, reported that "it seems that there are more new contractors working for the City or PDC than there are working for [the Oregon] Department of Transportation."

Some interviewees reported challenges in performing or obtaining work for the City of Portland or PDC. [Interviewees #: 3, 4, 7, 8, 14, 15, 19, 21, 23, 24, 25, 29, 31, 36, 38, 39, 41, TA #5, TA #6, TA #7, TA #8]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that she does not think her firm has done any work on a Portland Development Commission project. She stated, "I think those [projects] don't have any DBE goals. We don't get involved in any of those, because those all go to [a] really huge Washington

trucking company because of the rates.” She stated, “See, us women try to keep the rates up so we can pay a living wage. Those [Washington] guys don’t pay their drivers, they don’t have any benefits ... they don’t care, they have [poor] equipment, and because there [are] no DBE goals, they don’t have to, you know ... and there’s no prevailing wage, there’s no [Bureau of Labor and Industries] or Davis-Bacon which we pay. And a lot of these guys don’t pay that, which also irritates me.”

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that getting City of Portland work “is very difficult. It’s very hard to navigate through all of their procedural stuff.” She reported that she participated in the City of Portland’s Sheltered Market Program (“SMP”), and had the winning bid as the prime for two projects. Interviewee #4 reported that the SMP “is a fiasco.... [It] is nothing but another ‘Good Old Boys’ Club.’ She said that the Sheltered Market Program is not focused on providing participants with a learning environment. She stated, “When we don’t dot every ‘i’ and cross every ‘t,’ then we’re penalized. If we’re supposed to be in [a] sheltered market, that’s supposed to be where you can learn what’s required and how the City contracting works.” She said that SMP participants are required to bid on SMP projects at prices “below the value of what they’re asking for and asking you to perform like the genie on a lamp, and when the material costs are more than the contract itself ... perform magic.” Interviewee #4 stated, with respect to PDC work, “[T]he culture within [the PDC is] odd; [it] is racist [Caucasian] folks. They don’t want you to work; they don’t perceive you as being a valuable part of the community. They don’t perceive that you know what you’re doing.” Interviewee #4 reported, that PDC “called me, basically showing good faith, I guess,” and requested bids for some tram work. She stated, it “was ‘give us a quote for this, in the 11th hour and 55 seconds left ... make it happen.’ I bid...and supposedly had two contracts, [but] the next thing I know, they just disappeared.” She said that “Lately, I hear a lot of talk” about PDC’s interest in partnering and supporting small businesses, “but I’m not seeing it produce.” She said that PDC’s projects are challenging because “the stuff they give you is so unique, I mean, who [else] does it? And then they want you to perform like a genie out there.” She reported that the Oregon Department of Transportation (ODOT) has circumvented their ESB program requirements by making all of their pre-bids mandatory, “but not sending out [ORPIN] notices to all the ESB contractors [so they do not have] enough time ... to know when those mandatory pre-bids are. You find out a day or two [about the pre-bid] and you’re already committed.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that the ease or difficulty of working with the City of Portland depended on the bureau leading the project. He stated that the dollar limit on a bureau’s task order was sometimes a challenge, as bureaus did not extend contracts beyond that amount, even when a project required such an increase. He stated that the City of Portland’s documentation requirements for larger projects were more onerous than those of other public agencies. He stated, “Sometimes they want a mid-month estimate of your invoice, and then you have the invoice itself, which can be quite detailed.” He stated that it was difficult to see the value of providing a mid-month estimate “because two weeks later [you’re submitting the monthly estimate].” Interviewee #7 stated that some former City of Portland employees form their own ESBs, then link up with a prime and help the prime gain access to City of Portland projects. Interviewee #7 said that these types of situations pose a challenge to MBE/WBE/DBE/ESB firms lacking this access to City of Portland staff and information.

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that certain elements of the City of Portland's requirements for contractors' employee health insurance coverage present a challenge. She said, "The City of Portland requires that, if I provide health insurance for my employees, that I have to do it to domestic partners. If I don't provide health insurance for my employees, I don't have to. Is that a double standard, or what? I mean, if you're working for the City of Portland, either you're asking your subcontractors to provide insurance for your employees, or you're not. That's frustrating to me." She stated that meeting the City of Portland's minority goals was problematic for a firm utilizing union labor. She said, "When you're a union contractor, the [union hiring] hall doesn't let me call and say, 'I need another [African American] guy.' You can't call them off that way. You might guess by the last name — maybe."

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported on her firm's experiences working as a prime contractor on PDC projects. She recalled a preconstruction meeting attended by PDC and City of Portland staff members. She said, "The people from the government side totally outnumbered the number of people that we, as contractors, brought." Interviewee #14 reported, "Then we had a new twist [with PDC], where we had a whole separate person I was supposed to send certified payroll reports to, and her sole purpose was to review payroll reports and make sure they were accurate. We've been doing government work for 12 years now, and I've never had a sole person whose job it was to review payroll reports. And she caught a few things and we learned a few lessons and that was helpful, but new, nonetheless. It just seemed really management-heavy on that side." She said that the use of very generic plans for projects has created some problems for her firm. She stated, "they (the PDC) had a miserable set of plans, so there was a whole bunch of work that, when we bid it, of course it was very generic idea. So of course there's going to be a lot of change orders. But then as ... we'd come up with the scope, we'd be in the process of getting pricing, and they would change the scope. So you never knew what page you were on or what you were bidding, but you're just trying to get a project done. Realistically, in the taxpayers' eyes, [it] probably didn't even need to happen."

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he had a bad experience with a City of Portland project. He stated that the project manager did not want to work with him, but had to use him because he was the low bidder. He said, "In one instance the City project manager bent the pipe in order to state that me and my workers left it that way. We would not do that because our system would not work if we did. And in another instance, I had an employee supporting the electrical work doing non-electrical work, and the [project manager] reported me to the building codes agency and I was fined. They treat you like you don't know what you are doing. Then he was able to get his friend in there that he had continuously talked to me about anyway, and that was who he wanted to do the job." He stated that his other experiences with the City were fine.

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that her firm has "done a lot of work for the City. PDC is a struggle; we were having a lot of problems with them. We have a [PDC] project outstanding right now that should have been completed, probably, four months ago. We sent our customer to PDC to get financial help, and [PDC] pretty much ruled us out to work on the project."

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that her firm has done projects for the City of Portland and the Portland Development Commission. She stated, “It was interesting going through that process... The biggest concern is the other companies bidding ... were not plumbers, at all, so they were probably subbing a lot of the work out, which is just fine. But a lot of the rates were just crazy. You could tell these were reputable companies ... ones that I know that their prices are good out there. And then when you see someone come in extremely so much lower, you begin to question [it].” She reported that the City of Portland accepted all of the bids for that particular project. She said, “Putting a water heater in, for an example. One of [the bids] was for \$600-some dollars, and someone else...had a bid of \$3,000 for the same thing.” She stated, “I know there was a [City of Portland] job where, again, we were the low bid [but] did not get it. There was a lot of — I call it horseplay. So my general contacted [the project owner] and said, ‘Hey, this isn’t right, the bid was shopped out. It’s not right. What do we do?’ [He called someone at the City.] Finally, he got someone to call him back, and they said, ‘fill this grievance thing out.’ Well, we never heard anything back. All it was was a bunch of lip service, as far as we were concerned.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that he has worked on three City of Portland projects as a result of his participation in the City’s Sheltered Market Program. He stated, “And that was not very much fun.” He said that he performed a kitchen remodel project for the City of Portland and the job was not very profitable. He stated, “The thing with the City of Portland is that they only have major jobs. If you can’t bond for \$800,000 or a million dollars, you’re not going to really do any work for the City of Portland. I think they have maybe one or two [jobs that require bonds] that’s probably \$500,000, but you’re requiring a bond of 10 percent which is hard, really hard to get.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported, “With the PDC, there is just no room for my type of work, there is just no room at all. Maybe it’s just my nature of work, or I don’t know what to tag it on, but the few times I have pursued work [with the PDC], there is nothing that is [broken] down for the type of work that we do. And maybe it’s [because] I do mostly transportation, and they do more of the building type” of projects. She stated, “[With] the City of Portland, they have lots more work opportunities because they are broken down into bureaus so ... you can establish relations with one bureau, and continue to work with one. But ... if you don’t build on the relationship with that bureau that means, ‘that’s it’ — you’re out if you burn a bridge with somebody, which happens, nobody’s perfect, then you’re doomed.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, stated that her firm has worked as a prime contractor for PDC. She stated that the agency has “a very intensive paperwork process that requires too much information that sometimes, with a project that’s less than \$5,000 is just a waste of your time.” She stated, “You have to have your EEO current and if it’s expired you have to send them proof of that, and I don’t remember seeing anything like that mentioned in the specs when I was bidding the job, so if they want me to do something extra, they better put it on the spec.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “Much of what happens in these bureaus is driven by bureau managers and they seem to operate like the thin blue line code of ethics, doing what they want to do with City dollars, understanding how they work and the political elements that get involved is like chasing rabbits.” He

said, “PDC’s lack of compliance with what goes on in these communities like North and Northeast Portland and other areas are appalling. They sit in administrative towers ignorant of M/W/DBE issues, and the only important thing is how it affects them and their numbers.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated “I was so successful on my first big prime demo project with PDC it was historic. I decided to make it a focus of my business.... I made a decision and an investment to make [demo] a high priority for my business, and PDC essentially dropped me and slammed doors on me. From that point on, PDC would not work with me on any additional opportunities for my size or consider my business as a focus in that area. I was thrown back into the pool and wasn’t able to continue to pursue that as a business niche.”

Interviewee #36, two representatives of an employee-owned general engineering firm, said that the process with the City of Portland and PDC is sometimes slower than they are used to. Interviewee #36 stated that the firm keeps its pre-qualifications updated and that they do everything they can to keep the process moving.

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said that “The process of the Sheltered Market Program and currently extremely low bids and profit margins are not helpful to many businesses, because you cannot grow a business on those types of margins.” He said that “The City of Portland expects very low profit margins that are just not good for business and for staying in business. It’s a direct conflict with who they say they are and how they say they support small minority businesses.”

Interviewee #39, two representatives of a Caucasian male-owned general contracting firm, said, “We have performed work on several PDC-funded projects, but we have not worked directly with them. There were some M/W/ESB challenges or concerns, but the project was successfully completed.”

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, reported that the firm had an opportunity to work with PDC that did not go well. She stated that the person the firm sent did not match up well with PDC’s expectations. She said that PDC understood about how these things sometimes happen and said that would not be an indication to them that they are not a capable firm.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that the City has low-bid contracts and CMGC contracts (construction management contracts). He said that the CMGC contracts look at more factors than just price. He said that CMGC contracting opportunities “haven’t been open to our membership.” He said that this may be due to the large size of the CMGC contracts “and I don’t think it is intentional, but the effect is that our members can’t participate as general contractors if [CMGC is] going to allow a dollar threshold so high that it only benefits those larger general contractors.” He said that it is usually challenging for minority contractors to obtain work under the low bid method because of bonding requirements and the quantity of bidders. He said that sometimes the minority general contractors will not receive a quote from a specialty contractor. He said that the minority general contractor cannot compete in a low bid environment if the low-price specialty contractor refuses to give them a quote. He said that sometimes the specialty contractor will give the minority general contractor a quote, but it will be at a higher price than that subcontractor gave other general contractors. He said that subcontractors have reported that they were unable “to get a price for a major piece of equipment from a supplier [on] the

day of bid so they could not bid the project.” He said that this is a form of protectionism because the supplier wants a certain subcontractor to get the work. He said that the suppliers do this because these other contractors buy a much higher volume of goods than many of the minority contractors. He said that the members’ “larger disappointment” would be with the utilization of minority contractors on the south waterfront projects. He said, “They weren’t able to participate in that at all.”

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that there have “always been challenges” working with the City of Portland and the PDC. He said that “some of the dynamics have changed in the past year or so ... especially with the Portland Development Commission. They have done a [180]-degree turnaround.” He said that the PDC has publically acknowledged that “we have been less than in the past and we want to change our direction. In fact, I was at a presentation and they said ‘PDC stands for People, Diversity, Community.’” He said that under the old administration of the PDC “this town was sinking and it was sinking fast.” He said that the PDC has “done some things to try and repair community relations with a lot of communities that have been somewhat left out.” He said that the problem his members have had working with the City and the PDC is getting “access to a lot of these contracts and these services that are awarded by the City.” He said that the PDC has done more than the City to improve its outreach. He said that the organization does not have a member “making a living off of PDC contracts.” He said that he is not sure if he has any member that gets ongoing work from the PDC.

Interviewee TA #7, the president of the Native American Chamber of Oregon, stated that securing work with the PDC is more difficult than the City although the PDC has improved its minority-owned business participation.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the City of Portland’s current leadership “doesn’t understand business much at all.” He that his members have had a more positive experience with the PDC than the City of Portland because the PDC is a little more “business-savvy ... whereas the City is the City, classic bureaucracy.”

Very few interviewees reported that working with the City of Portland and PDC was similar to working on other public sector work. [Interviewees #: 32, 48].

Some interviewees reported limited to no experience working with the City of Portland or PDC due to challenges in securing work with those entities. [Interviewees #: 2, 5, 18, 20, 22, 37, 45, TA #3]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, reported that his firm has attempted to obtain work with the City of Portland, but has been unsuccessful. He said, “There were some bids, and there was some soliciting.”

Interviewee #5, the Caucasian male owner of an excavation firm, reported that he has not performed any work for the City of Portland or the Portland Development Commission. He said, “A lot of the problems with this whole program is the City of Portland, and basically a lot the way Portland has been run, the way Portland is run, and their policies towards everybody.” He said, “On a lot of these jobs, the City goes out and seeks minorities because they know they have to have it. So these guys — if you’re a minority or have minority status, you’re already guaranteed that you’re going to get to work on any government or state project because you’re a minority.” He said that the City of Portland does not practice the policies of inclusion and diversity that it tries to impose on contractors

working on City projects. He stated, “What cracks me up about the City of Portland is ... when you go out on these City jobs, you don’t see [African American] folks or Hispanics running around in these City trucks. You don’t see any of them running around. The City [does] put [minorities] in certain positions ... you’ll see [African American] people doing the flagging, but you don’t see them running the equipment. It’s a good-old-boy thing with somebody’s friend getting in there ... they don’t practice what they preach.” He stated, “The attitude that, when we bid these jobs, we have to let 10 percent go to minorities, well, they don’t practice that in their hiring at all. If you talk to them, well, they’ll pull out 10 percent minorities, but they’re not in the good jobs. [The racial and ethnic minorities] are in flagging, they’re stuck in the corner somewhere.”

Interviewee #18, the Caucasian male owner of an excavation firm, reported that his firm has not done work for the City of Portland or PDC. He said, “The things that I’ve bid on and tried to get on with the City, it’s like jumping through so many hoops. You know, I’d like to see it a little easier, the bidding process, and that kind of stuff.” He stated, “It’s the time it takes to jump on the phone and get the right person, who you need to talk to.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, reported that her firm has performed a project for the Portland Development Commission. Interviewee #20 stated that the experience of getting work from PDC “was hard.” Interviewee #20 stated, “It’s hard to find out about [PDC project opportunities], and it’s hard to work with them, because you don’t really have anybody that guides you, and there are special programs that you need to be registered for that nobody really is aware of or knows about, but you’re told about them. It’s hard.” She stated that she has the same difficulties seeking and doing work for the City of Portland that she had with the Portland Development Commission.

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “I constantly work with the City of Portland. However, with PDC, I have tried frequently, and can’t get on the short list for on-call services.” Interviewee #37 reported that he had bid with a team trying for a sub opportunity with a prime on a PDC project. He said, “First of all, they don’t notify you when they are awarded. Then they don’t call you for work from the list. They keep all of the work for themselves and PDC provides no compliance and obviously does not require that they do call people that they listed on their teams – even though PDC made it part of the selection criteria.” He said that on one PDC project “I took a half day to study the project. I went in with a reduced fee amounting to 25 percent of others and politics still won out.”

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said, “I tried working for these agencies many times several years ago and nothing I did brought me any work so I gave up on them.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said, “Well, for the City of Portland it is still very difficult. For PDC they have a better record of doing outreach and have been able to demonstrate success. Success meaning in terms of the percentage of women and minorities that have actually gotten a contract and the workforce as well.” She said that it has been very difficult for the members “to get a job with the City of Portland.” She said it is difficult to get a job with the City in all industries, including construction and professional services.

Some interviewees reported having limited to no experience pursuing work with the City of Portland and PDC. [Interviewees #: 1, 9, 13, 16, 17, 28, 42, 46]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that he has never attempted to work as a prime contractor for the City of Portland or the PDC. He reported that he worked as a subcontractor for the PDC on one project.

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, reported that his firm has not worked as a prime or subcontractor for any public agency, including the City of Portland or the Portland Development Commission. He said, “I didn’t get to the point that I wanted to [work for the City of Portland]. I think it’s a bunch of a hassle.”

Interviewee #17, the Native American male owner of a non-certified excavation firm, stated that he has not done work for the City of Portland or the PDC, and that he has not bid on projects for either agency. He reported that he does receive notifications of opportunities to bid from the PDC.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that the organization’s clients do not have any experience working with the City of Portland or the PDC.

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “I have had little contact with [the City and PDC] directly, and more with projects that they have funded. The processes appear to be easy to work with from what I know and I think they do a good job. I think that they provide leads and enough information, and I just need to learn to take advantage of what is available to me.”

Notification of work opportunities.

Some interviewees indicated that the City of Portland and PDC have good notification procedures in place to notify individuals of opportunities to bid. [Interviewees #: 2, 3, 4, 8, 10, 11, 19, 24, 26, 32, 39, 40, TA #3, TA #4, TA #5, TA #6, TA #8]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, reported that “it’s fairly easy” to find out about City of Portland work opportunities “once we got registered and so on, we were able to access the database.”

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that finding out about work with the City of Portland was easy. She stated, “They have websites, they have pre-bids you can attend. They have things you can sign up for so people will solicit your bids as a subcontractor.”

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that it was easier to find out about City of Portland opportunities than those of other public agencies. She stated, “Actually, it was easy. They do a great job with their procurement website.”

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that it was easy for the firm to find out about City of Portland or the PDC projects. She said, “You can sign up to be on their solicitation list, and we do

get those notices.” Interviewee #8 stated that it is easier to find out about City of Portland and PDC projects because of the public notice and solicitation requirements.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that finding out about City of Portland projects “was easy,” especially because of bid information posted on its website.

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that finding out about work opportunities on City of Portland projects was “fairly easy.” Interviewee #11 stated that, “about 95 percent of the time, [City of Portland personnel] would always send out e-mails” to the firm detailing solicitation opportunities. Interviewee #11 reported that he gets similar information from ODOT.

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that it is easier to find out about City of Portland work opportunities than those sponsored by other public agencies. She said, “The City’s a little bit easier, because they actually send out a notice saying, ‘this is coming out.’ PDC’s really doesn’t do that — you have to seek and find it yourself. And it’s kind of one of those things — it irritates me — people sit around and they expect everybody to come and put a job in front of them instead of looking for the job.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that “it has been easier” to find out about work opportunities with the City of Portland than with other public agencies. She stated, “But compared to TriMet [the City of Portland] still [has] a lot of work to [do to better inform businesses about bidding opportunities], or if you compare it to other cities, like the City of Denver, or even [the City of] Seattle, they still have a lot of work to [do].”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that “it’s pretty easy” to learn about work opportunities with the City and PDC. He said, “They (City and PDC) have it all. They have great websites. They come out in the community and ... pass the information along.... It’s tough to not know what is going on.”

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that it was easier to find out about the City of Portland’s work opportunities than other public sector work because of the electronic bid notification system employed by the agency.

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, said, “I receive the City’s e-mail notification about projects and that makes things very easy. Working with PDC, I received a direct call asking for a bid.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that people hear about job opportunities with the City and PDC, but “the same large contractors get the jobs and in the case of the City of Portland the same subcontractors get the work so it is really, really hard to break in.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, reported that PDC’s and City of Portland’s

notification of work opportunities is “pretty easy.” He said that the purchasing and procurement division of the City of Portland is “pretty open” and “people are really easy to get a hold of and talk to and they return your calls. There is not a real bureaucratic system.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that learning about work opportunities with the City and PDC is “probably easier” than other public agencies because “most of the stuff is put on a website.”

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, stated that finding out about work with the City of Portland is “not hard because the City has a[n] automated bid system.... They will send you notices” of RFPs and RFQs. He said that the PDC “is also on the same mode.” He said that both the City and the PDC use “various electronic avenues in order to get the information out and that’s the best way in this day and age.” He said that the City has done an “outstanding job” in notifying people of work opportunities and they “lead the way over the county, metro government and even PDC.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, stated that relative to other public agency work the City of Portland’s and PDC’s channels for communication of work opportunities “are pretty established.” He said “I have never heard anyone say ‘I didn’t know that was happening.’” He said that his members get frustrated when State of Oregon projects are awarded as a sole source contract, without the competitive bid process. He said that he does not hear complaints about sole source contracts on City of Portland projects.

Some interviewees reported challenges in connection with learning of opportunities to bid with the City of Portland and PDC. [Interviewees #: 6, 10, 12, 21, PF #1]. Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, said that “I’m thinking that it might not be that easy to be aware of the opportunities” for working with the City of Portland or the PDC, but “that wouldn’t be my job,” as it is performed by someone else at her firm. She stated, “I don’t have any direct experience at it.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that he did not “recall seeing much of anything from PDC [about work opportunities]. I don’t even know where you find those.”

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that finding out about City of Portland contracting and subcontracting opportunities “is kind of hard. It boggles the mind, to tell you the truth.” She said that it is difficult to find out who she should contact to find out about the City of Portland work. She said, “If most of our work is under \$5,000, it’s up to us to go out there to the people in the City to tell them who we are. But ... who are they?”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that she believes that it is harder to find out about work opportunities with the City of Portland and the PDC than with other public agencies. She reported a conversation with a City of Portland employee who “told me each department [in the City of Portland] has their own [contracting] entity, and I said, ‘Who or what do I need to go —’ He kind of [said], ‘well, you need to contact each one by yourself.’ There are so many departments down there; I don’t even know what they all are. And that would be

something that, as a contractor, I would love to know that. If it's a matter of sending in something off from the Internet, or filling forms out, we would like to have the opportunity to do more work with them." She stated, "The communication after the bid is very good, it's basically getting information prior to [the bid]. I know that with them now, I'm now on the automatic Internet, which is really nice, showing me the different jobs coming up.... It would just be nice to get a little more information on different departments that might be doing some of the work."

PF #1, the president of the Hispanic Chamber of Commerce, said that the City and PDC should "change how subcontractors are notified about upcoming sub-contracts and encourage their participation in bidding — [the City and PDC should] build relationships early!"

Some interviewees indicated that the City of Portland and PDC's notification procedures for work opportunities are about the same as other agencies' procedures. [Interviewees #: 14, 25, 33, 43, 44].

Bidding process.

Some interviewees reported positive experiences with the City of Portland and PDC's bidding process. [Interviewees #: 10, 19, 22, 32, 33, 34, TA #4, TA #7, TA #8]. Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that the City of Portland's bidding process was "pretty easy" because the City of Portland's bid process "mimic[s] ODOT, and we're used to ODOT." They stated that PDC's bid process "had a couple more 'oops,' but nothing too bad."

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that the City of Portland's bid process is easier than that of other public agencies. She said, "The City's easier, I believe, because they break it out better; they do it by line items, so we know exactly what we're bidding on."

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that the bid process is easier with the City of Portland than other agencies and that she appreciates the rules used by the City to make the process fair.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that the bid process for the City of Portland was easier compared to other public sector agencies.

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, stated that the bid process for the City of Portland and PDC is no more difficult than other public sector agencies.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that he would describe the PDC's and the City of Portland's bid process as "pretty transparent."

Interviewee TA #7, the president of the Native American Chamber of Oregon, said the City's bidding process is straightforward but a firm will need to know how the process works.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the bid processes “are very straightforward.”

Some interviewees reported challenges in connection with the City of Portland and PDC’s bidding process. [Interviewees #: 7, 14, 19, 24, 26, 31, 33, 36, TA #2]. Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that the City of Portland’s bid process was more onerous than that of other public sector agencies. He said that writing a City of Portland proposal was time-intensive and expensive. He stated that members of his staff would “talk to people and just kind of [size] up the competition” because his firm “had to be really careful and judicious about whether to chase [a City of Portland project] or not.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that the City of Portland’s bid process “was harder than the State of Oregon[’s], because the State of Oregon does not have all the minority requirements.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, said that PDC’s bid process is “convoluted. They have one big GC they work with, and it’s very hard to get in that door.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that the City of Portland’s bid process “is harder because ... at least in the professional services, it’s geared for the large firms and the relationships they have. There’s nothing in there that allows you to get [in].” She reported challenges in the bid process. She stated, “To start [with], the agency doesn’t have requirements [for the participation of minority- and women-owned firms] that are meaningful, so [a minority- or woman-owned firm interested in joining a team bidding for a public project] is already [going] against the wave. The second [challenge] is, the firms, now that they know these requirements are expanded to their closest friends by doing the ESB program [and] they’d rather use their own than someone else.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that the City’s and PDC’s bid process is “somewhat straightforward.” He said, “The City has bureaus and all these bureaus are little autonomous animals.” He said that all of the bureaus are assigned to a commissioner, and “they all run the bureaus the way they want to run them.” He said that the bidding process does not differ between the bureaus but there is “a little flexibility.” He said that certain bureaus “stretch the limits” of the rules.

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, said that the City of Portland has a more difficult bid process than PDC. He said, “The City of Portland requires the bid bonds, performance etc., and PDC does not always have the same requirements.”

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that the PDC bid process was harder than other public agencies.

Interviewee #36, two representatives of an employee-owned general engineering firm, stated that hard bid or low bid requirements make it difficult for the firm to meet its company’s diversity objectives.

Interviewee TA #2, the director of an apprentice preparation program, reported that the City of Portland's bidding process is challenging for subcontractors because "some of them are so small, and really don't have the time, the bodies, to do all of that, that they really need some handholding, and I really feel sorry for them sometimes. That's what makes it so that I've created relationships with some subs, because they really don't know. So I think that the City [needs to have] something in place, and realize that everybody [isn't] alike ... even minorities, you just [have] to know that it's an individual thing, and they need to work with them like that."

Some interviewees reported that the bidding process at the City of Portland and PDC was similar to the bidding process at other agencies. [Interviewees #: 2, 11, 21, 23, 25, 43, 44, 48, TA #3, TA #5, TA #6]. Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, stated that the bidding process for City of Portland work was about the same as the bidding process for ODOT work. He said that he is generally satisfied with the City of Portland's bid process.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that the City of Portland's bid process is no more difficult than that of other public agencies. He said that bidding on public agency jobs is difficult and "not just [on] the City of Portland [projects]. I think [bidding processes for] all agencies are hard [in comparison to bidding in] the private sector."

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that she does not think that the City's or PDC's bid process is any more difficult than other public agencies.

Interviewee TA #5, the president of the National Association of Minority Contractors, stated that the bid process with the City and PDC is similar to other public agencies. He said that the City, as the owner of the project, does not communicate with the subcontractor.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that the City's bid process is comparable to other government agencies. He said that the process is "pretty simple and straightforward." He said that there are often pre-bid conferences and sometimes those conferences are mandatory.

Prequalification.

Some interviewees reported that the City of Portland and PDC require prequalification. [Interviewees #: 4, 10, 14, 19, 21, 23, 24, 26, 27, 40, 43, TA #3, TA #4, TA #5, TA #6, TA #7, TA #8]. Interviewee #14, the Caucasian female co-owner of a non-certified construction company, stated that she believes that the City of Portland requires firms to be pre-qualified before bidding.

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, reported that the City and PDC require prequalification. He said that some businesses dislike prequalification because they feel that if they are certified they should not have to go through prequalification too.

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, stated that the City and the PDC require prequalification on some projects. He said that the primes generally seek out prequalified subcontractors.

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, said that the agencies' only prequalification requirement was to have the correct insurance in place.

Some interviewees reported that Portland and PDC do not require prequalification on some projects. [Interviewees #: 11, 22, 25, 47]. Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that the City of Portland does not require his firm to pre-qualify for its scope of work.

One interviewee reported a positive or successful experience with the prequalification procedure. [Interviewee #: TA #7]. Interviewee TA #7 the president of the Native American Chamber of Oregon, said the City's prequalification process is straightforward but a firm will need to know how the process works.

A couple interviewees reported challenges in connection with the prequalification procedure. [Interviewees #: 4, 43]. Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that the City of Portland required her firm to be pre-qualified before it was allowed to bid on SMP projects. She stated that prequalification was a barrier to business opportunities, "especially for a small business, especially for an underutilized business, where you already lack the access, lack the opportunities to perform."

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, said that he encountered challenges with the City of Portland's prequalification requirements. He said, "I had to get a license with the City even though I'm already licensed with the State. That's just one thing. They also usually make you get a higher bond, so I [have to] go to my insurance agent and get a higher bond, which is, you know, another \$400 or \$500 extra."

City of Portland and PDC staff and personnel.

Some interviewees reported a positive experience interacting with City of Portland and PDC staff and personnel. [Interviewees #: 14, 22]. Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that her firm recently served as the prime contractor on two PDC projects. She stated, "We really liked the people at PDC, however, from a taxpayer standpoint, I don't think these people had enough to do. The head project manager was great; he did a great job.... He was able to make decisions fairly and quickly, he knew what things should cost and what would be fair, and worked more like you would see on the private side. He was able to reason and use common sense and good judgment and decision-making. The guy who was actually working under him—mind you, a very nice person—he sent out a whole lot of e-mails, and did a whole lot of administrative stuff" that seemed unnecessary.

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, said that the City of Portland and PDC staffs make the process "easier" than staff at other agencies. He said, "They try to take care of more of the paperwork for you, or at least help you fill it out."

A couple interviewees reported challenges in connection with City of Portland and PDC staff and personnel. [Interviewees #: 4, 25]. Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that "the attitudes of [City] project managers and inspectors — they're out to sabotage you." Interviewee #4 reported that an SMP project manager "told me [that] I don't know how to do math, and [the experience is]

basically just very degrading and demeaning.” She reported that, in comparison to her firm’s work with other public agencies, she had a generally negative experience working with PDC staff. She stated, “I worked pretty good with the first project manager ... but when it got up to the next level ... [t]hey didn’t do a good job of explaining those processes, so when it came to change orders, change directives, they weren’t telling you jack ... if you don’t get it, you’re just out.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that the Sheltered Market Program staff should do a better job of notifying SMP participants of bidding opportunities. Interviewee #25 stated that SMP staff “should have a list of their SMP contractors; they should notify us. They do with everything else — information on trainings, and all this wasted-time information. If it’s a bidding opportunity, yeah, they better notify me.” She said there have been occasions where prime contractors contacted her firm to get her bid on Sheltered Market Program projects, but she did not receive notification from the SMP about these opportunities.

Payment.

Some interviewees reported a positive or successful experience receiving payment on City of Portland and PDC projects. [Interviewees #: 1, 3, 4, 7, 8, 14, 19, 21, 25, 26, 27, 31, 32, 33, 36, 40, 47, 48, TA #3, TA #4, TA #8]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that he was paid on time for his firm’s work as a subcontractor on a PDC project.

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that her experience getting paid on City of Portland projects was good. She stated, “They’re real good payers.”

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that her firm’s experience being paid for City of Portland and Portland Development Commission work was more positive than that with other public agencies.

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that the firm had no difficulty getting paid for work performed for the City of Portland, and that the City of Portland paid for his firm’s services within approximately 60 days.

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that the firm “has had no problems” receiving prompt payment for its work on Portland Development Commission projects.

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that her experience receiving payments for her firm’s work on projects for the City of Portland “has actually been good.... The [Accelerated Payment Program] we fell under a couple of times, where you invoice every 15 days and they pay you pretty quickly, so that’s been good.” She reported that she is satisfied, overall, with the method used to process and timeliness of PDC’s payments to her firm. She stated that “It (the payment process) was alright, until we got down to the bottom line and they wanted to reconcile a nickel. That was frustrating — we were wasting taxpayer’s dollars about a nickel. I could [not] have cared less about the nickel — they can have it. We discussed that nickel for

three days. They said they'd give it to me, I said, 'Great.' They wanted me to redo all this paperwork and juggle stuff and change stuff... it was at least several hours on my end ... and I know it involved at least two people on the PDC's end dealing with it."

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that "the City is getting better about working with GCs on large projects to pay [subcontractors] every two weeks, instead of once a month, which is starting to get money flowing faster. I think the two weeks is awesome." She stated that the process of receiving payment for her firm's work on City of Portland projects "is getting easier. We get hinged on, we don't get paid until the GC gets paid, so if they get paid on the first [of the month], we get paid on the 11th, because they have 10 days" to pay their subcontractors working on City of Portland projects. She said that she support the City of Portland's efforts to pay GCs every two weeks for their work on City projects. She said, "All that money [from the City] gets funneled to the GC, so if they paid the GCs every two weeks, then it makes it easier" on the GC's subcontractors.

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that, in comparison to her experience with other public agencies, "it's fairly easy" to get paid for her work on PDC projects.

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, stated, "As long as you submit all your close-out submittals, [the City and PDC will] pay you."

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that payment by the City and PDC is "good." He said that the federal government has strict rules regarding payment and if the federal government does not pay on time then they have to pay a penalty. He said that the City's payment procedures "are not that tight yet. We are pushing to actually put that in place [in Portland]."

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that it was easier to receive payment on City of Portland work than other public sector work because of the bi-weekly MBE/WBE/ESB payment schedule employed by the City.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that it was easier to receive payment on City of Portland work than other public sector work due to the payment schedule utilized by the City.

Interviewee #36, two representatives of an employee-owned general engineering firm, said that "The payment experience with the City of Portland and PDC is fantastic for us and great for subcontractor payments." They said, "We are willing to submit twice a month, and the subs like it, and everybody gets paid faster."

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, said that the payment process is "pretty good for both the City of Portland and PDC, especially in comparison to other public agencies."

Interviewee #47, the Caucasian female owner of a WBE/DBE/ESB-certified trucking firm, said, “The payment on your projects is most dependent on the prime contractor and we have been pretty successful — when there is a problem, I go straight to the owner.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said, “I am told that [the City and PDC] do pay.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, reported that the City of the Portland “pay[s] their bills” timely. He said that the City of Portland’s payment procedures are comparable to other public agencies.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, stated that he has not heard any complaints regarding payments by the PDC.

Some interviewees reported negative experiences receiving payment on City of Portland and PDC projects. [Interviewees #: 11, 21, 23, 24, TA #5, TA #7, TA #8, TA #10]. Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that the City of Portland’s practices for paying contractors for work performed during straight time versus overtime delayed his firm’s receipt of payment. He reported that the City of Portland requires primes to pay subcontractors on City of Portland construction projects within 10 days after primes receive payment from the City, and that the City pays contractors every two weeks. Interviewee #11 stated that the 10-day requirement “usually stretches out to about a month.” He reported, “I’ve had contractors tell me that the City of Portland [does not] always pay them like they should,” as a reason contractors have not paid him on schedule for his firm’s work on City of Portland projects. He stated that there is no difference in being paid for work on City of Portland projects compared to payment from other public agencies, such as ODOT.

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that her firm has had difficulty getting its retainage back for a job done for a City of Portland project. She said, “The problem we had ... which I’m still dealing with, even though it’s been about a year — was retainage.” She said that she called the City of Portland about the problem, and “It can really fire people up pretty fast ... no one likes to be checked on.” She said that the firm has had payment problems with another City of Portland-related agency. She said that many times when she complains about late payments, she is told that the contractor has been paid and “it is not our problem anymore.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, stated that the City of Portland paid him promptly when his firm worked as a prime contractor on City projects. He said, “The three jobs I did for the City of Portland, we got paid every two weeks, which I thought was pretty unique. I can testify to that.” Interviewee #23 stated that his firm is paid much more slowly when working as a subcontractor on a current “City-run” project. He said, “The fastest I’ve been paid is probably 40 days, and it’s been out to 45 to 60 days. My take is, if I turn the invoice in, I should be getting paid within two to three weeks.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated that she has had a “bad” experience being paid by contractors for work her firm performed on a City of Portland project. She stated, “It’s hard for me to say bad because I’m not a

prime, and everything is tied to my prime and the professional services is paid when they get paid, plus 30 days, so that can put you up to 60 days or 90 days, and there is no negotiation or anything that helps do anything different. So when they say that the small businesses are growing these [large] companies, [they are,] literally. Because ... to survive, I have to borrow money, so by the time I get my money," all of her profits on a job have been absorbed by her cost of borrowing money.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that his members' experiences with payment on City and PDC projects depends upon the general contractor on the project. He said that he is aware of a general contractor withholding three months of payments from a subcontractor because the general contractor felt that the subcontractor needed to submit paperwork for a one month period. He said that the subcontractors do not know where to complain and "they don't want to burn the bridge with the contractor by complaining because they feel like the City hires the general contractor a lot and so by them complaining they are going to reduce the amount of work" they may be able to obtain.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that sometimes someone on the project believes that the work was done to the appropriate quality (and so will withhold payment on that basis) and the entities are slow to make a determination as to the quality of the work. He said that the withholding of payment can be a big problem for a small business.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that he has heard complaints about the length of time for payments by the City of Portland. He reported that there have been contractors waiting for two to three years for payment from the City of Portland.

Interviewee TA #10, three representatives of the Northwest College of Construction, reported that there are complaints about City and PDC payments not being "timely."

Recommendations for the City of Portland and PDC.

One interviewee recommended that the City of Portland and PDC eliminate all good faith requirements and goals. [Interviewee #: 14]. Interviewee #14, the Caucasian female co-owner of a non-certified construction company, recommended that the City of Portland cease its efforts to encourage firms to increase their racial, ethnic, and gender diversity. She stated, "After we get the job, if we need to hire people, [the City of Portland] is going to tell me that I need to place an ad in a minority paper, or do all sorts of special recruiting programs — keep in mind we are EEO-certified. We have a diverse workforce. We do not do any of that stuff to create a diverse workforce. We're not prejudiced; we'll hire anybody who happens to be qualified and wants to work for us. It's that simple." She said, "get rid of all of those requirements, which really aren't necessary, all the good faith effort requirements. I really don't think it's the government's job one, to tell me that if I happen to land this job — there's a couple of things that really irk me." She stated, "[I]t's really irritating that [the City of Portland] make[s] me solicit minorities, specifically solicit to so many minority[-owned] and women-owned — these certified firms. If [certified firms] want work, they can go look for it they same way I go look for it. You don't need to hold their hands. If they're [going to] be a good contractor, they're [going to have to] learn how to find their own work; it's that simple. So don't tell me that I have to solicit these people to try and meet some quota."

Some interviewees recommended that the City of Portland and PDC improve their payment process. [Interviewees #: 11, 23, 26, 34, 36, TA #5, TA #7, TA #10, PF #1]. Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, recommended that the City of Portland require contractors to send the City “verification that they [have] paid [the subcontractors] like [the contractors] were supposed to.” He also recommended that the City of Portland “hire someone else in its accounting department to get the check cut ... as soon as that pay estimate comes in.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that the City of Portland’s “payment methods are good. I think they need to figure out a way to sort of hammer down [on generals and get them to] abide by them. Maybe [the City] should do an evaluation [of generals’ payment practices] after [projects are completed]. Go out and do a poll on the subs that were on your job ... and give their [assessments of] the general contractor. And I think [the results] should be based on points when [the generals] get ready to bid again” on City of Portland projects.

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, recommended that the City and PDC participate in “community loan funds” so that contractors can be paid immediately, because waiting for invoices to be processed and paid can threaten a contractor’s ability to stay in business.

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, recommended that public agencies increase the clarity of payment guidelines and payment expedition from the general contractor to subs.

Interviewee #36, two representatives of an employee-owned general engineering firm, stated that “The new ruling of materials on hand payment issue that requires subs to invoice the prime with proof of payment to the supplier as opposed to invoicing to purchase materials is very difficult for some smaller M/W/D/ESB firms and has caught many off guard. However the good thing is that they can get paid quicker with the two week invoice submittal process, but we would still like to see that process revisited.”

Interviewee TA #5, the president of the National Association of Minority Contractors, recommended that there be a “hotline for subcontractors to be able to voice payment concerns without any recourse from the general contractor.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, stated that the public entities can always improve upon payment.

Interviewee TA #10, three representatives of the Northwest College of Construction, recommended that the City and PDC “pick up the pace” with everything because cash flow is critical for small businesses.

PF #1, the president of the Hispanic Chamber of Commerce, recommended that the City and PDC should “insist on prompt payment of subcontractors” because “120 days is not acceptable.”

Some interviewees recommended that the City of Portland and PDC implement certain staffing changes. [Interviewees #: 4, 14]. Interviewee #4, the African American female manager and owner

of an MBE/WBE/DBE/ESB-certified general contracting firm, stated, “[The City and PDC] need to get some new people, or they need to offer some better training, or they need to ask them, ‘why do they act like that?’ New people, because they have the wrong attitudes — [they are] racists. Yes, they are.” She stated that this treatment from City of Portland contract administration staff “is across [the] board,” and familiar to minority and women business owners.

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, recommended that the City of Portland and the PDC “hire competent people that you could trust to make decisions; that would be awesome. But apparently, if we hire people that we don’t trust, then it requires multiple levels of management, which increases the amount of time it takes to get anything done.”

Some interviewees recommended that the City of Portland and PDC improve their notification of work opportunities, bidding processes, and administration of contracts. [Interviewees #: 8, 12, 25, 29, 31, 33, 35, 40, 41, TA #5, TA #7, TA #8]. Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, recommended that the City of Portland and the Portland Development Commission could improve bid opportunities for businesses through an outreach program focused on bringing together general City of Portland project managers with subcontractors. She stated, “If you get to meet the customer, sometimes you have a better opportunity; it’s [about] making the contact and getting the right person.”

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, recommended that PDC improve upon its processes for alerting businesses as to what projects are coming up.

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, stated that the PDC should reduce the paperwork burden on firms for small contracts, and that it should be clearer in its bid specifications about the paperwork required for a bid. She also recommended that PDC increase the dollar threshold on projects to be bid on exclusively by SMP participants, and reduce the number of bids sought for such projects.

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said that “the City and PDC should move back to public bid openings so everyone can see what is being done.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, recommended that there be more uniformity in the bid process between PDC and the City of Portland.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that having plans and specs available four days ahead of the pre-bid meeting would enable potential bidders to come to the pre-bid meeting prepared to ask questions. She stated that she would like to see two weeks between the pre-bid and walkthrough and the bid due date. She said, “There should be a little bit more time to get the bid together because they don’t realize we wear all the hats.”

Interviewee #35, the Caucasian male president of an employee-owned non-certified construction services firm, said that the City of Portland and PDC “could be more specific in the criteria for the actual award. On [a certain public project], there were some problems with management of the contract. The approval process took too long... I would have to say that the elected body makes moving through the chain of command heavy and delays projects.”

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, stated that the City of Portland’s e-mail process is so simple for busy MBE/WBE/DBE firms that if PDC would institute something similar, it would be very helpful.

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, recommended that the agencies “publish short lists of firms that have prequalified and where they place in the actual bid process.”

Interviewee TA #5, the president of the National Association of Minority Contractors, recommended that the City and the PDC improve the bid process by looking at those general contractors that only utilize one minority contractor and question why there is only one minority contractor on the project. He recommended that the City and PDC look at the past history of general contractor’s utilization of minority contractors. He said that there are some general contractors that will only utilize minority contractors when they feel like the City is asking them to and “they will not utilize them on any private work” regardless of the success on the public project. He said that one of his members had a very successful experience on a public contract and the general contractor never called him for a project again.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, recommended that public agencies focus on the transparency of projects. He stated that the City of Portland has top down initiatives, and he recommended that there should be periodic meetings with the business community so that the City can receive input from the business community. He stated that the higher tax rates in Portland are adversely affecting business opportunities in Portland. He said that today’s business community is more mobile and can relocate to avoid a disadvantageous tax structure.

One interviewee recommended that the City of Portland and PDC change the criteria for awarding contracts. [Interviewee #: 3]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, recommended that the City of Portland move away from awarding bids only on the basis of the lowest price. She stated, “I think that the City should not only take a bid because it’s the low bid. If they know [for example] that this is a \$750,000 project, and somebody bids it for \$300,000, there’s something wrong with that. They’re not going to pay their people, they’re not going to do a good job — they can’t. They cannot do that. So you just can’t just take the low bid.” She stated, “I think that people get desperate and bid any old thing that comes along, thinking that, ‘I’ll make it work.’ and then when [decent paying] work comes, they don’t want to honor that low rate that they said that they’d do it for. And that’s the reason the City shouldn’t take the low rate, or anyone else, either.”

Some interviewees recommended that the City of Portland and PDC make work more accessible to small businesses and MBE/WBE/DBEs. [Interviewees #: 7, 11, 22, 24, 44, TA #3]. Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, recommended that the City of Portland revise its proposal ranking and scoring

process to make it more equitable. He suggested that the City of Portland should focus its scoring on minimum criteria required for the job, versus scoring based on the number of times a firm has done similar jobs. He stated, “Often times [the City of Portland] says, ‘we want to know how many projects you’ve done on this type of work in the last five years.’ Those big firms might have [done] 100, and we’ve [performed] maybe five. So when they do an evaluation, we should get the same number of points if we meet minimum criteria. Right now, if I submit as a prime, I have to meet or beat the qualifications of larger firms, which is difficult.”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, recommended that the City of Portland require contractors to engage in more vigorous good faith efforts to hire MBE/WBE/ESB subcontractors. He stated, “The one thing I don’t like about the City is [that] contractors have to do what they call ‘good faith effort,’ but they get away with that good faith effort by just sending you a fax ... an invitation to bid, or by a phone call, asking, ‘Are you going to bid?’” He said that even though contractors take these actions to fulfill their good faith effort requirements, “They really aren’t planning on using you anyway; they want to fulfill the good faith effort. They don’t want to be bothered; they don’t want to use you, but they [have] to do it.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, recommended that the City of Portland and the PDC make it easier for subs that have not yet worked on City of Portland projects to do so. He said, “It’s like there’s a selected few [primes] that run the program, and you’ve got to follow them” to get work on City of Portland projects. Interviewee #22 reported that the City of Portland, “seem[s] to always go with the ones that have got the jobs before.... [I]t’s hard to break in, even if your costs [are lower than those of other subs that have worked on previous City projects].”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, recommended that the State agencies take steps to make work more accessible to small businesses in the professional services industry. She stated, “Especially for the professional services — at the very minimum, they need to start looking at it no differently than the construction [industry]. They need to implement the same rules. I mean, if the construction [industry] is having troubles, imagine the professional services. There’s nothing there, absolutely nothing. We have no sheltered market, we have no limitations on when we get paid, [and] there’s no ... reinforcement or enforcement of requirements as there has been in the construction [industry]. Nothing ... nobody’s looking at it.” She recommended that the City of Portland offer professional liability insurance to firms providing professional services on City projects. She stated that professional services firms should not be required to carry commercial automobile insurance because it is financially burdensome and unnecessary. She recommended that the City require “meaningful participation” of minority- and women-owned subcontractors. She stated, “If they’re not going to allow small firms to be prime — for the construction piece there is the mentor/protégé program. For professional services, there is nothing. We are totally in the dark.... The firms that have that experience, they are the ESBs. [Minority-owned firms] don’t have that experience. So if they create a sheltered market for the professional services, at least there is something.” She stated such a program “should be qualified-based, have a level playing field. Having all ESBs is not a level playing field. If it includes women, but not minorities, then it’s not a level playing field. If it’s going to be all-inclusive ... then there needs to be a fair percentage across, not just all ESBs.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, recommended that the City and Portland Development Commission reduce the size of contracts to provide more opportunities. He said, “As far as contracts I have found, create contracts that are, size standards so that they can have more contractors participate. A lot of times they’ll put a contract out for \$70 million dollars or \$30 million dollars or large sum that only a handful, if that — I can count on one hand — of general contractors that can bid it, so therefore, what it does is, those contractors determine utilization.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, recommended that the Mayor “take some of [the City’s] money and give it to community-based organizations and have them bid and perform the work, and that will open up a lot of opportunities because the City of Portland is just too cumbersome.”

Some interviewees recommended that the City of Portland and PDC provide greater oversight on their projects. [Interviewees #: TA #6, TA #7, TA #12]. Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that if you are going to do a “M/W/ESB minority contract ... with a prime you need to make sure that minority contractor is included in the contract, not an afterthought, because the prime contractor can get all the money and then make the minority sit around there and wait.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, recommended that the City of Portland improve upon its documentation of how much work is actually going to ESBs. He also said that the City should follow up with the prime contractors early on in the project to determine whether the prime contractor has contracts with the subcontractors listed on the bid and whether the subcontractors are actually performing work on the project.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that “there are a couple of projects where subcontractors have not performed ... [and] when it is the public’s dollars you want to [hire] contractors that are qualified.” He recommended that there be safeguards in place to ensure that the contractors competently perform the public work.

Other interviewees had no recommendations for the City of Portland and PDC because they thought that the City of Portland and PDC were doing well already. [Interviewees #: 19, TA #4]. Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated that she has no recommendations for improving the City of Portland’s bid process. She said, “I think the City’s doing great. We get notified on all of the big jobs when there’s traffic control, there’s no question about it. We get Sheltered Market [Program] e-mails about little jobs, seeing if want to tap our GCs. Yeah, they do really well.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that he does not have any recommendations for the PDC or the City of Portland because they have a “pretty good system.”

V. Marketplace Conditions.

Some interviewees indicated that marketplace conditions track the economy. [Interviewees #: 1, 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, 16, 17, 21, 23, 24, 28, 30, 32, 33, 34, 43, 45, TA #1, TA #3, TA #6, TA #7, TA #8, TA #9, TA #10, TA #11, TA #12]. Interviewee #1, the Caucasian male owner of a

steel fabrication firm, reported that local marketplace conditions were “depressed.” He stated, “I haven’t taken a paycheck since December. Our household income has gone from \$120,000 a year to below 30 [thousand dollars].” He reported, “Where I used to get one of [every] four or five jobs that I did, now I get one out of 20.” He said, “There’s a lot of out-of-state competition. They don’t have any work over there, so they come over here.” He said that out-of-state competitors generally have lower labor costs than Oregon fabricators.

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, stated, “The market right now, things are really down. A lot of people have gone out of business, in general.” She reported that a lot of minority contracting businesses “on the residential side have totally collapsed, and a lot of them are trying to come over to the commercial side, the public side.” She said that businesses’ limited access to credit is hurting the recovery.

Interviewee #5, the Caucasian male owner of an excavation firm, reported that the state of the economy has left his and other businesses in a crisis. He stated, “There aren’t that many Hispanics in the digging world and there’s being less and less of everybody else in the digging. I mean, people are going under, left and right. Businesses are bailing out here on a daily basis.” He stated, “I’m just trying to stay [afloat], and I’m not floating, and a lot of it is because the City of Portland, and the way they give all their jobs to minorities.” He said, “As you know, there’s no work. The Hispanics, in my area, that’s one of the greatest messes they have right now. Used to be, a long time ago, 20 years ago, you go on a job, you might see some Hispanics doing some sheetrock, maybe landscaping on some of these houses. Now they did it all. All you see is Hispanics on these residential jobs.... The only thing you won’t see them do is, they don’t do the plumbing and they don’t do the electrical.” He said, “The banks aren’t loaning any money to anybody. They don’t have to. They can make their money by buying their government bonds and sitting on them, and making a profit that way. They don’t need to throw their money at people, and they’re not. I’ve got hundreds of jobs, if the bank would only let them go, let people have the money ... but they’re not.”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, stated that current market conditions are “bad.” She stated, “Our Portland branch was down 33 percent last year in revenue, compared to the company [decline] in revenue of 17 and a half percent. So, it was a bad year, and it appears to me that we kind of saw that trend sort of in the whole southwest and Oregon locations.” She said that “we participate in a lot of industry groups and such ... but I don’t think there were really an inordinate amount of business closures.” She stated, “Our industry is kind of interesting, because it’s really low capital. I mean, anybody who can afford an old truck can kind of get in the business. There have been some changes ... the Oregon Department of Transportation did some massive changes in terms of allowing entry into the household goods moving business in the State of Oregon this year ... so they’re crawling out of the woodwork, but they’re different than we are. I’m not losing sleep over [the entry into the market of new, smaller firms]; maybe I should, but I’m not.”

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that the overall market was in a serious slump. She said, “I never experienced anything like it before. It’s worse than the mid-eighties.” She stated that profit margins are significantly lower than before. “People [are] bidding work for less than cost. I’m bidding work just to keep my guys going, and trying to keep [them] busy. [B]ut we’re talking 10 percent

margin and people are beating me by 40 percent.” She stated that the public and private markets were equally weak.

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that current market conditions “are poor.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that a number of projects were up for bid in the marketplace, but that primes are now “very selective of who they’re bidding to; the bids are tighter, so it’s a little harder ... when everybody’s coming in really close, so there’s not as much play room as there has been in the past.”

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, described current market conditions as “up and down, up and down; we’re getting the work, but not as much as we’d like.” She reported, “It’s getting to be more dog-eat-dog out there, it seems like.” Interviewee #12 stated that there has been significant increase in competition in providing customers with service work.

Interviewee #13, the Caucasian male owner of a residential construction company, reported that the current marketplace conditions are “a challenge, to say the least.” He reported that clients are not “pulling the trigger,” or moving forward with projects, but are only “investigating projects.” He said, “I’m not losing work to other contractors, I’m losing the work because [clients] aren’t doing the work.” He reported that conditions “were slightly improving, at least they’re working me harder in getting out estimates, quotes, and scopes of work, but I haven’t seen it affect my pocketbook yet.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that the “private [sector] declined a little bit, [the] government was increasing, we’re now starting to see things starting to even out a little bit. The private sector’s getting more comfortable and there [are] a few more jobs out there to bid in the private sector. The stuff that’s out there to bid in the public sector has finally come back around to where the plans and the specs — you can bid, for the most part, and a lot of the contractors have been weeded out, so things are a little more competitive again. It’s coming back to the norm, but it’s not there yet.”

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, said he would describe current marketplace conditions as, “very bad. [There are] very few projects available; you worry about their funding and you have to bid so low to continue working.”

Interviewee #17, the Native American male owner of a non-certified excavation firm, stated that conditions in the local marketplace are poor. He stated, “In the last three years, anyway, we don’t have any money.” He reported that normally at this time of the year, “I should be booked out about six weeks, and I have two days booked. This time of year, I work 14-15 hour days, and I worked five hours yesterday. Nothing today.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that current local market conditions were “tough right now. Public [is] still sort of clicking, but not as much as it was. That’s why we need to get more out of the public sector, because the private is sort of slimmed down.” Interviewee #23 stated that the main market changes he’s seen “are just lack of work. There aren’t enough projects coming down.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that the conditions in the current marketplace are “pretty bad, bottom line. Very little work, and the work, everybody’s trying to get it, and the only firms [that] get it are the firms that have those relationships, and I mean, large firms. And to get into those projects ... [the chances are] very slim.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that there is a high unemployment rate in Portland. He said that there are “a lot of dispersed small businesses in Portland relative to other communities; there is a huge entrepreneurial culture here and that is the market we are trying to support and facilitate.”

Interviewee #30, the Caucasian female owner of a WBE-certified construction firm, said that, “The marketplace conditions are pretty much the same for everyone right now, and they are not the best.” She said that the WBE certification keeps things afloat for her.

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that the “Current marketplace conditions are fierce and brutal. Companies are moving from private work over to the public side, increasing competition for the nearly non-existent work in the public sector.”

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, said that “The current marketplace conditions are tough, with companies moving from private work over to the public side and increasing competition for nearly nonexistent work in the public sector.”

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, said, “It’s pretty tough to get work right now. I mean, you can bid on jobs, but it’s tough to actually get the work. Usually I get about 70 percent to 80 percent of the work I bid on and now it’s down to 50 percent.”

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said, “It is the worst situation for business opportunities since I have been in business.”

Interviewee TA #1, the vice president and credit administrator of a commercial bank, reported that market conditions are severe. He stated, “We’ve stayed pretty busy as far as credit requests, loan requests, both from people wanting to start a business to existing ones — could be expansion or they need a line of credit to manage the work that’s coming in. In our market, there’s a lot of positive things going on. Generally, there’s some traction being made with work opening up, people getting more jobs.” He reported, “Generally speaking, it is still hard for people to get a loan right now. We’re a different kind of bank, but we can only do so many things. We have a limited market. If you go to somewhere in eastern Oregon, or central, there’s other banks, there’s other community banks that just have a different way of looking at things. It may be an easier process to get a loan from a small bank. But, again, you’re going to find some positives here and there, but I think the dominant story still is that it’s tight, and banks aren’t lending.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, described the marketplace conditions in Portland as “bleak.”

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that the general marketplace is “basically on life support.” He said that the marketplace is waiting on a “business transfusion that transcends over every zip code.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, stated that the marketplace conditions are “pretty much in line with what is happening nationwide with the economy and the recession.” He said that there are significant cuts in the public sector in the City of Portland and the State; a lot of their members are doing work for the public sector and a lot of that work has gone away. He stated that some of their members benefited from the stimulus funding from the federal government which is primarily in the construction field

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, stated that “This is the worst economy by all accounts in 75 years.” He said that there is high unemployment and that Portland has not experienced any economic recovery.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, reported that the local marketplace is “becoming a challenge.” He said that Portland “is not an easy market.” He said, “The main focus right now is just getting a job.”

Interviewee TA #10, three representatives of the Northwest College of Construction, reported that the “private sector is getting hammered in commercial construction.” They said that the private sector is starting to pick up.

Interviewee TA #11, a representative from the Port of Portland, said that the marketplace conditions are “tough right now.” She said that in the construction industry the vast majority of the work is in the public sector, there are numerous bidders, and there are bidders who will bid below market price to get the work. She said, “We tell some of our small businesses that if there is a lot of competition, they may be better off to not have the work than [to] lower their price so much that they are doing the work for free or maybe they are paying to do the work.”

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that the marketplace is “terrible.” He said that “the construction economy ... is probably the worst since the Great Depression.”

Some interviewees reported that they have performed well in today’s marketplace.

[Interviewees #: 3, 11, 19, 27]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, stated, “Right now, it’s very busy; it’s a good summer [but] last year was a bad year, very difficult. I thought we were going to fold a couple of times, but we made it through — because we didn’t have any work this winter, it was real slow [and] because we have new trucks and expensive equipment, we have a big monthly nut to meet, and we have to keep our employees going.”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, said that local market conditions are good.

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated that her firm has been able to do well right now, despite the challenges of the current weak economy. She said, “I think we’re in a niche [traffic control] that

we've succeed[ed in] pretty well. Our reputation is going to ride us out through the pinch. We're growing, instead of closing. In this market, people who have been around forever are closing their doors, and we just keep swallowing up their work. So for us, we're doing really well." Interviewee #19 stated, "Weatherization is a whole new game out there, and we're in at the beginning, so I think that is going to grow for us, as well. I think our niches are pretty well defined."

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said, "I don't think [the marketplace conditions are] horrible." He said that there are "peaks and valleys" and if you want to be successful you have to "knock on doors." He said that the marketplace conditions "cleared out a bunch of people" who were not complying with all the legal requirements, and he views this as a positive side effect of the economic downturn.

Some interviewees reported that particular aspects of the marketplace have affected their business. [Interviewees #: 2, 5, 20, 24, 28, 29, 33, 37, 38, 42, TA #1, TA #2, TA #4]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, reported that prior to working with his present firm and living in Oregon, he "did a lot of work in Oregon, before we moved here.... I worked for all the big companies, all the big ones, and now I'm trying to work for the next ones down. And what I'm finding is amazing numbers of those whose businesses are declining or are moving out [of Oregon]."

Interviewee #5, the Caucasian male owner of an excavation firm, said that often times a minority contractor obtains the contract and then subs the work out to other contractors. He said, "The minority gets the bid, but they don't actually do the work. They bid it out to these other trucking outfits. And the biggest thing that is going on right now, and it's been going on for years, is [that] the trucker has to pay back — has to pay to work. If you want to get your truck on something like [a] light rail [project], you have to pay \$5, \$10 an hour back to the guy that hires you. That's the way it goes now." He said that the minority contractor does not perform any work on the projects, but still gets paid by the other contractors. He said that other contractors sometimes use undocumented workers and therefore have lower costs than his firm.

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, said, "It's bad. Bad, because people are underbidding, and what's happening is, prices that [project owners] were paying 10 years ago, they're paying right now. I feel like, sometimes the people bidding the job are taking advantage of how the economy is right now, because [the project owners have said] 'Well, everybody's dropped their prices.' So I won't even do the work. I'm like, 'Well, find somebody else to do it, because it's not worth my time.'"

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that prime contractors are chasing projects previously sought only by subs. She stated that this increased competition makes it difficult for her firm to compete.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that he has noticed changes in the marketplace recently. He said that "there is an influx of talented people with degrees ... there is an extraordinary talent pool [of people] looking for work." He said that "we are interviewing for a job as a volunteer coordinator and we [received] 207 applications ... some with graduate degrees, and it is a \$28,000 to \$32,000 a year job; people want to live in Portland."

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “I have a steady private work client for the last 10 years and their work is starting to dry up due to the economy, and it’s really impacting my bottom line.”

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that many firms are “low-balling bids just to get work.” She reported that she has observed that some contractors are not paying Bureau of Labor and Industries wages properly.

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, stated that he feels the climate right now is focused on maintaining all of the larger firms. Interviewee #37 reported that he has had to provide as many as five submittals for very small bids before they eventually go with the larger firms. He said, “Things are very rough out here.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said that “In the private sector, you are continuously asked to gain more experience, but everybody has to start somewhere. As an example, it was difficult for me to get a start in health care, and just seems to be something they use.”

Interviewee #42, the vice president of an Asian-Pacific American woman-owned ESB-certified materials supply firm, stated that the current marketplace conditions are extremely competitive. He said, “Some [contractors] are bidding well below my costs.”

Interviewee TA #1, the vice president and credit administrator of a commercial bank, reported, “We’ve seen a lot of entrepreneurial spirit and activity” in the market right now. They said, “A lot are probably people that have lost their jobs, and they’ve had this business idea and they’re trying to act on it. There’s a lot of activity, definitely.”

Interviewee TA #2, the director of an apprentice preparation program, reported, “The people I work with [were] always the last to get hired and the first to get removed. It’s definitely like that now. They’re blaming it on the economy, but work is still going, and I know work is going strong, and there’s a lot of work out there, even though it’s related to government funding. There’s a lot of work, but my people aren’t getting called.” She reported that the current economy offers some Caucasian contractors who resist hiring racial and ethnic minorities “an opportunity for people to really, you know, start infusing what they always had — ‘We [don’t have] to do it, and this is a good time not to do it; I don’t want to go through the changes.’ Some of them, it’s really about the paperwork. ‘It’s too much paperwork; when I do [hire workers who are members of racial and ethnic minorities], it’s too much paperwork, but if I hire my father, my brother, I [don’t have] to do all that.’” She reported that such attitudes and behaviors “are more obvious now, and they’re using [the weakness of the economy as] the reason.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that the State of Oregon and the City of Portland have a “real big problem with ... the underground economy.” He said that in an underground economy, a labor broker will obtain a contract and then subcontract out almost all aspects of the job. He said that this is a cash system so the labor broker does not have to withhold taxes, workers’ compensation, or unemployment because they are subcontracting the work. He said that there is a system of labor brokers in the State of Oregon and it makes it very tough to compete in the market. He said that labor brokers are illegal. He stated that these labor brokers are present in

both the public and private sectors. He said that these labor brokers have been present in the Oregon economy for the past 15 to 20 years. He believes that this practice is very detrimental to the industry.

Some interviewees reported that the marketplace conditions in the public sector are better than in the private sector. [Interviewees #: 3, 19, 27, 31, 32, 35, 41, 45, 47, 48, TA #2, TA #3, TA #5, TA #12]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that the private sector “is pretty much toast. I don’t know of any subdivisions going in.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that the public sector “has been very busy for our niche, traffic control. Residential is pretty shut down.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that there are more projects in the public sector because of the stimulus projects. He said the private work is “slowly picking back up” because banks are starting to lend again.

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, said he is focusing on public sector work opportunities because it takes longer to cultivate relationships and pursue work and their funding is not always guaranteed in the private sector.

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, said, “Due to the economic situation and the near non-existence of excavation work in the private sector, firms are switching all into public work.”

Interviewee #35, the Caucasian male president of an employee-owned non-certified construction services firm, said, “The private sector is the slowest I have seen it in 10 years and there is a lot of positioning for future work asset distribution. The public sector is healthy, namely community colleges and higher education.”

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, said, “My firm is finding the private sector market very slim; they do not have much money to spend.”

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said, “The private sector is showing signs of slowing down and I might have to consider certification again” to obtain public sector work.

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported that current market conditions were challenging as work in the private sector has dried up. Interviewee #48 reported that most opportunities in the marketplace are in the public sector.

Interviewee TA #2, the director of an apprentice preparation program, reported that, for her clients, market conditions in the public sector differ from those in the private sector. She said, “The requirements in the private sector are the same old thing: if I don’t have to do it, I’m not going to do it. And it’s still the FBI [father, brother, in-laws], the ‘Good Old Boy Network.’”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that the public sector has “more money than the private sector right now and [the] public sector doesn’t have as much as it used to.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that the private sector is “greatly restricted.” He said that the stimulus money has increased public sector opportunities and there are currently more opportunities in the public sector. He said that that public and private sectors were “closer to equal before” the economic downturn, but now there is much more work available in the public sector.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that the private sector is “almost completely dried up.” He said that the public sector “is in pretty good shape right now but, again, the public [sector] cannot provide all of the work needed for a healthy construction marketplace ... there has to be a mix of public and private.”

One interviewee reported that the marketplace conditions are better in the private sector than in the public sector. [Interviewee #: TA #9].

Many interviewees shared their thoughts regarding what it takes to succeed in today’s marketplace. [Interviewees #: 1, 3, 4, 6, 8, 9, 10, 11, 13, 17, 19, 21, 22, 26, 27, 28, 29, 31, 32, 33, 34, 37, 39, 40, 42, 43, 46, 47, 48, TA #1, TA #3, TA #4, TA #5, TA #6, TA #7, TA #8, TA #9, TA #11, TA #12]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that, to stay competitive in today’s market, “you just [have to] cut everything to the bone. You can’t spend money.... We bought some new equipment when we moved in here. If that equipment breaks down, it won’t be replaced with new. It’ll be, you know, repaired as best we can, and that’s just the way it is.”

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that a firm seeking to stay competitive in the current market has “to be flexible as to the rate of pay you’re willing to take, to a certain extent. We have pretty fixed costs. We have our payroll, which is larger than most. We have fuel costs, which keep going up and up and up. They’re kind of stable now, but not like when they were 99 cents [a gallon] when we first started this. And we have our equipment costs, and we have our insurance costs. We have fixed costs, so we can’t negotiate too much on that.”

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, said that to be competitive in her firm’s line of business, “you have to have a business plan that has some strong objectives. You have to cut back to do a projection of what’s realistic right now.”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, stated, “What does it take to be successful? We have to differentiate ourselves. Many people tend to view transportation warehousing as a commodity, which is price-driven. We have to present ourselves as something more than that, because our overhead does not fit the ‘guy with one truck’ sort of thing. And, honestly, there is a difference. It has to do with your people, it has to do with your facilities, it has to do with your capital investment, and your training and your approach to quality, and to customer service.”

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that the weakness and extreme competition in the market has significantly affected the way clients purchase services. She stated that the bleak market conditions changed the way her firm bids for contracts, so that the firm can stay competitive in the marketplace. She said, “I joke about it, but it’s getting serious — you have to be more creative. So, I’ll bid it by your spec, by what you say you want; I’ll bid it by the cheapest way you can do it — which is the way someone else is going to submit it; [and] I’ll bid it by the way I think your spec is overkill, and this will do the job. So I’ll give you three prices.”

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that “doing a good job and a cheap price” were the primary ways he stayed competitive in the marketplace. He said, “Everybody’s after the lowest price. I try to do a good job so I get re-called.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that the firm has been able to stay competitive through the quality of its work, but that price was the most important factor. They stated, “Quality of work comes into play if you’re close [in your bid price to competing bids], and if you have a relationship with the contractor,” Interviewee #10 stated that the firm stays competitive by “trim[ming] the fat.” Interviewee #10 said that the firm’s profit margin is “way down. If you want to work, you’re going to have to cut it down, and that’s the only way you can do it when you’re bidding against non-union contractors.”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, said that for his firm to be competitive in this line of business, “You’ve got to be driven, you have to be optimistic. You have to make it possible — for any [ethnic] firm, what makes a difference is access to capital.” For this reason, he stated, “When a firm does the work, they should get paid, and the payment should be done most expeditiously.”

Interviewee #13, the Caucasian male owner of a residential construction company, said that a firm like his stays competitive in this market by “having better quality than the other guy, more customer service, more direct contact with the homeowners. Our niche seems to be homeowners that want somebody to be at their beck and call. All the people we’re working for are all referrals, and they’re all people kind of in the same ... economic group. We take good care of them and they hire us, and we work for the same people over and over.”

Interviewee #17, the Native American male owner of a non-certified excavation firm, reported that a firm could be competitive in the current marketplace only if “you work for nothing... [B]asically you’re working to keep money flowing through your company just so you can keep the doors open.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, said that there are several reasons a firm could become or remain successful in her markets. She stated, “Quality, setting expectations, working with the [general contractors], those are key things.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that her firm stays competitive in the market by “knowing where our bids have been, we know where we can shave things off. There isn’t a lot of profitability in any jobs out there right now. And basically,

sometimes we're doing it for cost, basically to keep the crew busy and keep people coming in. It's very tough right now."

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, said that to be competitive in the local marketplace, "you've have to be able to get in there and do it right the first time... You just have to have quality people that you don't have to follow [behind] when they get the job. They see a problem that you missed, they take care of it... That's the key." He stated that he is "big on training [his employees], so everybody's BPI [Building Performance Institute]-certified in the air blow tests and duct testing."

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that a firm needs to "be very good at what you do" to be competitive in the marketplace. He said that then the firm needs to market their business and use the best technology available.

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that to be competitive in the current marketplace, a firm must "be honest, work hard, and ... [not] cut corners."

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, said that for a firm to be competitive in the local marketplace, "they need a business plan, they need a network of support for various services ... they may require ... they may come with an idea but they need a structure."

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, "Right now agencies that have effective compliance are the only tool that we have to get opportunities and maintain our businesses, employees and families." He said, "We also have to keep our businesses competitive, learning sustainability and green techniques and performing as well as we possibly can."

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated, "To be competitive in this line of work it takes a person to own more equipment, have access to capital and an established bonding capacity."

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, said, "With everyone looking at the bottom line now, it takes dependable, quality work and face-to-face marketing, personal relationships, networking and constant contact to be successful in the excavation business."

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, said that "It takes good job cost systems, good subs, and good time and quality management to be competitive in this line of business."

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, said that "It takes quality work and skill and price to be successful in this line of work."

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “It’s most important to always make sure that you can deliver on the job before accepting it.”

Interviewee #39, two representatives of a Caucasian male-owned general contracting firm, said, “The current funding level in the private sector is scarcely available.” They said, “In order for our firm to be successful on a project, fees need to be razor-thin; we need to broaden areas that we are able to respond to in RFP and RFQ processes, and make sure our M/W/ESB database is up to date so we can meet M/W/ESB quotas.”

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, said, “I have found that you have to be diversified in skills to bring in work, and that niche markets are very tough to grow and be successful.” Interviewee #40 stated that he tries to control his overhead, keep his team’s professional skills up-to-date, and continue to offer clients solutions they need.

Interviewee #42, the vice president of an Asian-Pacific American woman-owned ESB-certified materials supply firm, stated that he believes communication, knowledge, quality work and knocking on doors are key ingredients of being successful in this line of work.

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, said, with respect to the qualities it takes for a firm to be competitive in his line of business, “You need professionalism when you go there. You know you are a business owner ... but you need to show up like you know what you’re talking about, perform the job, and quality.”

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “In order to take advantage and be competitive in this line of business, individual firms need to have a full range of services, be knowledgeable about the other components of your work, like the actual construction, stay up-to-date on materials, techniques, maintain good prices and have a fast turnaround and response time.”

Interviewee #47, the Caucasian female owner of a WBE/DBE/ESB-certified trucking firm, said, “In order to be competitive [in today’s marketplace], you have to be licensed, insured, experienced, financed and dependable.”

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported that a construction firm could best be competitive by providing clients with good service and developing and maintaining strong relationships with clients.

Interviewee TA #1, the vice president and credit administrator of a commercial bank, reported that firms that deliver superior customer service have the greatest opportunity to remain competitive in the current market. He stated, “A lot of it is the service aspect — and price, obviously is going to drive a lot of it.... It’s kind of like how [this bank] actually works at it. We’re not the cheapest bank, we’re not — if you get a loan from us, you might pay a little more of a fee, you might pay a little more on the interest rate, but the flip side is the service piece of what we do, and the relationship is going to be far better” than at another bank. “To stay competitive and to stay ahead, being able to bring that service level to a top-notch level — the price is almost secondary to that in a lot of

instances. We see it every day, where people are willing to pay a little more because they know they are going to have a good bank behind them and a good relationship.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that a firm needs experience, financing, bonding, relationships, persistence, and marketing skills to be successful in the marketplace.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that to be competitive in the local marketplace, firms need a “level playing field.” He said that firms need to pay taxes, workers compensation, and unemployment insurance. He said that if a firm cannot afford these expenses then it needs to subcontract the work out. He said that the marketplace is not level because the market is “infested with labor brokers.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that for a firm to be competitive in the marketplace, the firm must control their costs, including labor costs. He said that many minority firms do not have high margins and their overhead costs are very low, but the “challenge is the material costs [because] they are not given the same prices as some of the other [contractors].” He said that these price disparities are based on discrimination.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that small businesses need to participate in joint ventures to be successful in the local marketplace.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that a firm has to have a good staff to be competitive in the marketplace. He said that if minority- and women-owned businesses are competitively priced and their staff is qualified then some contractors are “giv[ing] the minority firms a shot.” He said that minority- and women-owned firms are expected to be in the same price range as non-minority firms.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, stated that to be competitive in today’s marketplace ,you must know how to run a business, have a good core team of people and pay them well, keep other costs low, network well for business development, and perform at the highest and best level.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that to be competitive in the local marketplace, a firm needs to be knowledgeable. He said that their members will struggle in the marketplace if they are not bilingual.

Interviewee TA #11, a representative from the Port of Portland, said that to be competitive in this line of business, a firm needs to understand these aspects of its business: the firm’s costs, how to price bids and proposals to cover their costs and make a fair profit margin, and how to identify the customers who best fit the firm’s model.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that a firm must have good bidding capabilities and job management to be successful in the marketplace.

VI. Anecdotes Regarding Potential Barriers and/or Discrimination Based on Race, Ethnicity, or Gender.

The interviewees were asked whether they were aware of or had experienced certain specific barriers to pursuing work in the local marketplace, and, if so, whether they believed that discrimination based on race, ethnicity, or gender had contributed to such a barrier.

A. Financing.

Some interviewees identified obtaining financing as a barrier to pursuing business opportunities. [Interviewees #: 1, 4, 6, 7, 9, 11, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 31, 33, 35, 36, 38, 44, 46, TA #1, TA #2, TA #3, TA #4, TA #5, TA #6, TA #7, TA #8, TA #9, TA #11, TA #12, PF #2, PF #6]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated, “It’s easier for minorities to get money than it is for me, since I can’t get any.... I’ve got a quarter million dollars worth of assets here, I’ve got a half million dollars of personal assets, and I can’t get anybody to loan me money.” He reported, “Our credit rating [is poor] because of the economy.” Interviewee #1 stated, “I know that minorities are getting loaned money, possibly because they have a better shot at picking up work, due to the bid process.”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, stated that “she had no personal experience,” but thought that access to financing “could be a problem” for firms in her industry.

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that “I know they don’t give loans like they used to,” but that the shortage of financing is not related to discrimination based on race, ethnicity, or gender, but is a barrier based on market conditions. He said that banks “are being more cautious, which they should have been years ago, before this happened.”

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, reported that he has experienced discrimination in obtaining financing because he is the owner of a small business. He said, “Being self-employed, it’s really hard to get money from [lenders].”

Interviewee #17, the Native American male owner of a non-certified excavation firm, stated that the dismal state of the economy has affected his ability to gain adequate financing because lenders have reduced their valuation of his equipment, which he uses as loan collateral. He said, “The only collateral I have is my equipment, and now that the market is down ... and [business owners] are selling everything they have to stay alive — like, my brand-new track hoe, which I paid \$138,000 for, they valued it at 33,000 bucks. They said, ‘Well, we can go get a brand new one at auction for 33 grand, so yours is basically worthless to us.’” He reported that he recently sought a loan and at least one lender would have required him to “use all my equipment [as collateral] to get a \$25,000 loan, and if I missed a payment, they were going to take it. And I had to sign it. [I said] ‘I’m not signing this, sorry. I’ll do something else.’”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, reported that obtaining financing could be a potential barrier to firms like hers. She said, “It could be, because work’s really slow right now, and maybe [lenders] could think that you can’t repay them.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, stated that obtaining financing “always is” a problem for small businesses. He stated, “Cash flow is a killer. You have to make sure you [have] that money in the bank for payroll. The bigger the job you get, the longer they’re taking.” Interviewee #22 stated, “There’s no way, when you’re running a business, [that] your profit and loss statement and everything else — when you’re growing, it always looks bad. You [have] money in the bank, you buy something to [help the firm] grow, and that, the banks don’t like. Whether I finance or nothing, if I can make it monthly [the bankers say], ‘Oh, you’re too stretched out monthly.’ If you pay cash for it [they say], ‘Oh, you don’t have any cash flow.’ There’s no win ... I probably, because of my finances right now, and the change in the environment, I’ll probably have less credit line, personally, than I had before starting the company.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that there is a “pinch in the credit market.” He stated that the barrier is not based upon race or ethnicity, “except to the extent that if you go deeper into the diversity of the community, [in] the traditional larger ethnic groups ... there are some leaders that sort of choreograph the relationships in the community, particularly in the African American and Hispanic communit[ies], the ones that are left out are the smaller minority communities.... It’s not the larger traditional minority communities as much, although, certainly on the fringe they are [left out] as well.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated he has experienced “different [interest] rates, more collateral required, and very lengthy and involved application processes” while attempting to obtain financing.

Interviewee #36, two representatives of an employee-owned general engineering firm, said that “We are familiar with firms that we have worked with experiencing this struggle (obtaining financing), especially if they are newer or inexperienced firms, and we have assisted wherever possible.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, stated that he was able to establish a line of credit, but noted that he is aware of others that have had difficulty obtaining financing.

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “Prior to the financial crisis, I had no difficulties [obtaining financing]. Now it is almost impossible because money is tight for everyone.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that obtaining financing is a barrier. She said, “I don’t know if it is based on race, but it is a barrier.”

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that obtaining financing is “definitely a barrier.” He said that “the banks have changed the rules so much and that is not only for MBE/WBE contractors, I know of male Caucasian-owned companies that have been in business for 20 plus years that [have had] their lines of credit cut back.”

PF #2, representing the Oregon Association of Minority Entrepreneurs, said that access to capital is a barrier for all small businesses: “The problem that we are seeing is access to capital. Right now getting financing is just almost impossible. Banks have closed the doors and have made it very difficult for

small business financing. ... It is my perception that we can keep going and set the base in how we can really build partnerships with public agencies, large corporations and small business services providers to really help minority, women and very small businesses [obtain financing].”

PF #6, representing a women-owned electrical contracting firm, indicated that financing is major issue for his firm: “Money. That would be my problem. I have done my business plan, I got my CCP, I have done it all. I can’t find funding but I have the experience.”

Some interviewees reported that race, ethnicity, or gender may contribute to obtaining financing as a barrier to pursuing businesses opportunities. [Interviewees #: 4, 7, 11, 15, 19, 21, 23, 24, 25, 29, 44, TA #1, TA #2, TA #5, TA #6, TA #7, TA #9, TA #11]. Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, stated, “If you look at all the data that’s out there, the [financing] system is set up for [racial and ethnic minorities and women] to basically not be able to succeed.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that financing is a barrier to pursuing business opportunities. He said that lenders still make financial decisions based on an applicant’s credit score, and that credit scores have historically been lower for minorities.

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that he has “been discouraged from applying for some money ... [because the lenders have said] ‘We don’t really have the funds right now,’ or ‘we don’t know when they’ll be available,’ and then someone else [applies and the lenders say], ‘oh yeah, we’ll have money next week,’ or ‘fill out the application out now and give it to us, so your application will already be in when the money comes.’” He stated that lenders refused to offer him access to the capital they made available to Caucasians.

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes financing is a barrier and that race, ethnicity or gender-discrimination contributes to this barrier. He said, “I tried several times, but I had so many difficulties. They want so many documents and financial statements and they don’t show up well because you need money — the whole reason you are there — they are demanding and it’s never enough and the answer is always no.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, said that obtaining financing has not been a barrier for her firm, but “there [are] always rumblings in the market” that other firms have difficulty in acquiring financing because lenders discriminate against them because of the business owners’ race, ethnicity, or gender.

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that obtaining financing is “absolutely” a barrier for women-owned businesses. She said, “Banks especially — it doesn’t really matter what you show them. And construction is hard to get lines of credit, anyway. And [bank staff will say] ‘Hmm, a woman. Does she really know what she’s doing?’ I can’t tell you how many times I’ve had to write letters, documenting things, things no one would ever have to do with a bank. An example was about a year ago, [when] I wanted to get a new line of credit. I had to go back [to the bank] and explain ... why sales were this amount. What jobs are you bidding?”

Do you have anything that you're doing? So I've had to ... do a spreadsheet showing, 'This is what we've bid in the last 30 days,' you know. No one else does this. So I've jumped through all these hoops. I got it, but it took me a year and a half." Interviewee #21 reported that she had just hired 12 new employees, "and I'm showing [the bank staff] all this growth, where everybody else is backing off, but man, it was like beating my head against the wall ... Of course, if I confront them on it, it's, 'Oh no, no, no.'"

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that obtaining financing "was a big barrier." He stated that although access to financing was a challenge for all small companies, minority-owned firms faced special challenges. He said, "This is why it becomes a hardship for minorities. They don't give you enough work, so therefore you can't get enough financing ... when you're talking race to me, it's minorities, period. The reason the barrier's there is because we don't get enough — and we're going back to the [issue of lack of opportunities to] markup and stuff — if we don't do that, we'll go out of business faster than anybody else. You can have a big firm put a little company out of business fast."

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated, "For me, it has been really hard" to get financing. She said, "The way I have done it is borrow from my credit cards left and right. Growing my business has been very expensive because it has been [done] at high interest. I borrow from a credit card, borrow from the other one, then pay the other one, then borrow again." Interviewee #24 stated that potential lenders tell her, "'Have your husband sign,' which proves the point that, even though it's still minority, it's still the male [attitude of,] 'Well, have your husband sign.'"

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, stated that "access to capital" is a barrier to the success of firms like hers. She reported, "Us small contractors do have barriers — there's no way to access capital out there — especially in this market." Interviewee #25 stated that discrimination against her as a woman and ethnic minority contributed to that barrier.

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, "Myself and other minority firms are unable to take advantage of loan opportunities because we are considered at risk for faltering government programs and the realization that we might not get steady work for repayment."

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he believes that discrimination based on race, ethnicity or gender contributes to a potential barrier in financing.

Interviewee TA #1, the vice president and credit administrator of a commercial bank, stated that he believes discrimination based on race, gender, or ethnicity contributes to barriers to obtaining financing for small businesses. He reported, "At [this bank], there's definitely not discrimination." He stated, "I haven't specifically seen it, but does that exist? Yeah, I think in some fashion."

Interviewee TA #2, the director of an apprentice preparation program, reported that firms with whom she has worked have faced barriers to accessing financing based on race, ethnicity, and gender. She said, "[T]hey pull your credit report [from 20 years ago]. You ask for your paperwork not once ... but three times. You have to — if you're late [with a loan payment], not that you didn't pay it ...

that's used against you." Interviewee TA #2 reported, "You filed bankruptcy, you know, that was five years ago, seven years ago.... When I know two years, everybody wants you. Oh, collateral! Especially when it comes to businesses. You have to have so much money already. Your business plan, that's another thing. Some say five years of revenue, how [are] you going [to] do that? Whoever reads your business plan — you might write it one way, because that's the way you think and it gets to the same point. No. It has to be designed just like they designed it."

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, stated that obtaining financing can be a barrier based on past credit history, language barriers, or lack of references. He said that he has heard that small businesses and minority businesses sometimes "have to pay different rates ... because [they] are seen as a risk ... [and] in my book [that] is discriminatory."

Interviewee TA #5, the president of the National Association of Minority Contractors, said that obtaining financing is a barrier for small businesses because banks are being very conservative. He said that many minority firms applied for government ARC loans and they were declined for a variety of reasons. He said that small businesses and women-owned businesses were able to obtain these loans, but "minority firms were not." He said that he contacted the SBA about minority firms' inability to obtain these loans. He said that banks were "pre-sorting" applications and not sending all of the applications to the SBA for review. He said that many of his members said that they had to pay administrative costs associated with these loans, but the SBA said that the applicants were not responsible for any administrative costs. He said that this appears to be discriminatory.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that obtaining financing is "absolutely" a barrier for small businesses. He said, "Race plays a major factor in who gets access to capital."

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that obtaining financing is a barrier for construction firms. He said that historically the Native Americans have experienced a barrier in obtaining financing because of a lack of understanding of the credit ratings required for private loans. He said that he does not know of any specific instances of discrimination. He said that some banks may make an assumption about a Native American's credit rating when they walk in the door.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that obtaining financing is a barrier because lenders require the borrower to have an established credit history. He said that this barrier may also be based on discrimination.

Interviewee TA #11, a representative from the Port of Portland, stated that obtaining financing is a "definite barrier" for businesses. She said, "I read in the news that it is more of a barrier for minority-owned businesses and I do believe that to a certain extent, but what I have also observed, firsthand, is that a lot of small businesses, they don't understand what good financial management of their company is, so they don't have the good financial management practices or the good financial management record" to obtain a line of credit. She said that "gender and ethnicity can be a barrier, but I really believe that the bigger barrier is poor financial management."

Other interviewees did not perceive obtaining financing as a barrier to pursuing or obtaining business opportunities. [Interviewees #: 2, 3, 10, 12, 13, 14, 18, 27, 30, 34, 37, 41, 42, 43, 48].

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, stated that she had not found her gender to be a barrier to access to financing, and did not think it would be so for other women business owners. She stated, “Its dependent on your credit, it’s dependent on you, personally. I don’t think they would discriminate. I mean, I think there are so many laws in place to make it not be able to discriminate. You can say they wouldn’t give it to you because you’re a girl, but if you have a credit [rating score] of 520 and you don’t pay your bills, that probably has more to do with it.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that he has not experienced any barriers related to obtaining financing. He said, “I have a working relationship with the banks ... so far I haven’t had very many problems [with] obtaining financing.... I have a line of credit but I try not to ever use it.”

B. Bonding.

Some interviewees identified obtaining bonding as a potential barrier to pursuing business opportunities. [Interviewees #: 4, 11, 14, 15, 17, 19, 20, 23, 24, 25, 28, 29, 31, 32, 36, 38, 44, 45, TA #2, TA #3, TA #4, TA #5, TA #6, TA #7, TA #8, TA #9, TA #10, TA #11, TA #12].

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that access to bonding “most definitely” is a barrier to the success of small businesses, “and it’s all based on your credit, and its actually based on the financial system[’s determination] of what your earning power is. So if you [a] have high school [diploma] or if it’s not documented through the credit system whether or not you have a bachelors degree, masters, because for every one of those, you’re worth 20 to 40 to 60 more thousand dollars, so your ability to repay or earn is not there.” She said, “Whereas someone would pay for a regular contractor’s bond, \$250 to \$350, I’m paying \$4,000.... I [have] all this cash going out even before I get a project.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that “bonding can be a difficult thing to obtain when you’re starting out.... There are a lot of small jobs you can do without getting bonded, small jobs you can do. You just have to put in your time doing those small jobs first, and then you can build up your capital. A lot of times, cash flow is what’s [going to] kill a business, so if they’re not good at cash flow, you’re not going to be able to build up that capital to obtain the bonding. The good businesses will be able to get it.”

Interviewee #17, the Native American male owner of a non-certified excavation firm, stated that weak market conditions have affected his ability to remain bonded. He said, “I had a little problem with the bonding [because] I didn’t have the money to pay for the bond, so they cancelled my bond and, in order for me to get re-bonded ... they wanted me to come up with \$5,000 [up front] to carry my bond, and I said, ‘Wait a minute — the same company’s been carrying my bond for 28 years and I miss a payment so they cancel me’.... I told my agent, I said, ‘Look, either you get me this bond back, or I’m taking all my business someplace else.’ And he was a friend.” Interviewee #17 said that he did not believe that this barrier was related to discrimination based on race.

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated that “there’s always rumblings,” about bonding company personnel discriminating against businesses owned by racial or ethnic minorities or women. Interviewee #19 stated, “It’s all about credit history, and we work really hard to keep our credit, and we have no issue with getting bonds.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that bonding is a potential barrier for businesses like hers. She reported, “I’m in the process of hopefully becoming [a firm offering] design-build [services], so I requested a bonding. There was only one firm in the world [that would provide the bond] — even though I had been in business for 10 years [and own a building], I would think I would have a better chance ... and I had a hard time, so I don’t know how the construction firms do it, getting bonding.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, said that obtaining bonds is a barrier. He stated, “We have financed [bonds] for people.” He said that the barrier is not related to discrimination, rather, “it is the nature of the cost and process” that creates the barrier.

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “The ability to bond is reflective of your credit and your credit is dependent on regular payments in a timely way, and it’s all connected.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that he has experienced different interest rates, more collateral required and a very lengthy and involved application process while trying to obtain bonding, and it has been a barrier to his business.

Interviewee #36, two representatives of an employee-owned general engineering firm, said that, “There are many issues that are dependent on the firm’s credit and sometimes it’s difficult. But some of the new bonding programs are useful and we seek solutions because our company now requires bonding.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, reported that he has been able to obtain bonding, though not at the level needed to bid on some projects. He noted that his reputation for delivering quality work has helped with bonding.

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said, “I use my own money to guarantee the bond, because I have no choice.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that bonding requirements and obtaining bonds are barriers for small businesses. She said that the barrier is not based on discrimination. She said that the barrier is related to the level of income and that this barrier is part of a “vicious circle” because if you do not have money, you cannot obtain a job and then you cannot obtain bonding and insurance.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that “Bonding has always been a problem.” He said that bonding has always been a “stumbling block” for businesses. He said that bonding is a problem for minority and majority firms. He said that joint ventures can help eliminate this barrier because the larger business can assist with the bond requirements for the smaller company.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that bonding requirements present a barrier. He said that a language barrier can contribute to this problem.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that bonding requirements may be a barrier to a small business because the business may not have the “track record” to obtain the bond.

Interviewee TA #11, a representative from the Port of Portland, stated that bonding requirements and obtaining bonds are barriers and that the barriers are related to poor financial management practices, not discrimination.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that “I have heard small contractors say that they have a hard time financing their bonds just because it is another added cost of doing business.”

Some interviewees reported that race, ethnicity, or gender may contribute to obtaining bonding as a barrier to pursuing business opportunities. [Interviewees #: 11, 15, 20, 23, 25, 32, 44, TA #2, TA #4, TA #5]. Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported, “I haven’t been able to get bonded, because your bond is based on a number of factors, and one of them is your net worth. To get the bonding I need would be [a] \$250,000-\$300,000 bond, but my net worth is not \$300,000.” He stated that he believes race was a factor in his limited access to bonding capacity. He said, “My gut feeling tells me that they didn’t really want to stretch out and help me because I was African American.”

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes bonding is a barrier and that discrimination based on race, ethnicity or gender contributes to this barrier. He said, “Bonding issues are the same as financing issues and applications.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, said, “The only thing about bonding that I’ve heard people complain about this year, is that some people — because of the economy — they either stopped paying some of their bills, and [their] credit scores went low. So one thing I’ve been hearing a lot of people ask me and tell me is that ... the amount they’re paying [for their bond] tripled. Which is kind of sad because, first of all, it’s not our fault that the economy happened. Number two, the insurance is totally taking advantage of it, too, because if they tripled the amount ... a lot of people are struggling to look for work, but ... they’re struggling to pay this now. I heard of a lot of [people] who’ve had to put a stop or a freeze on their business because they weren’t able to pay their bond right away.” She said, “Honestly, everybody that told me about it were all minorities.” She stated, “Obviously, something’s going on.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that access to bonding is a barrier for small firms. He said, “You can’t get bonding if your bonding agent says, ‘Okay, you need to do a certain amount of dollars before I give you a bond.’ Well, if you never can get up to that threshold of doing that many dollars, you [aren’t] going to be able to get bonded anyway. So it’s going to be hard for you to get bonded; [it does] not matter who you are, whether you’re [African American], [Caucasian], Jew[ish] — whatever color you

are. You're not going to get bonded if you can't get the dollars. You can't get the dollars if you don't have the opportunity." He said, "How do you think everybody else had the opportunity to get where they're at ... today? The only reason they were able to get that is because somebody gave them a break." He said that racial and ethnic minorities "don't get any breaks. We don't get any breaks. The only breaks you get, if you're lucky, is [when a small business] goes out to do a \$500 job, out of a \$6 billion job. That's not going to get you your bond."

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported, "I'm good with bonding, so I don't have any issues there. I've heard others that have had problems with bonding," and stated that gender, racial, or ethnic discrimination may have been at least part of the cause. She stated, "I have colleagues, other Hispanic contractors, [who] have a really hard time trying to get bonding. They're small contractors. I think the combination of [being Hispanic owners of small contracting firms] doesn't make a good combination."

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, said that "middle aged [Caucasian] males are being discriminated against" with respect to bonding.

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he is aware of bonding being a problem for his firm and others. He stated that he has had personal experience with bonding being a barrier, and that he believes that discrimination based on race, ethnicity or gender contributes to a barrier in bonding. He said, "We've definitely ... we've been asked for bonds on \$12,000 projects. I've talked to NECA members, which a majority of them are non-minority firms, and they have no concept of why the communications and the conversation around bonding is so important. I talk to the minority contractors and they're all saying the same thing, 'Oh, yeah, we [have to] get this bond, we [have to] to do this.' Bonding capacity plays a huge factor and the general contractors choose who pulls a bond. I think if you were to look into that deeply, you'd realize that the choice of who pulls a bond usually is dependent upon race because in our scenario there shouldn't be a difference. Bonded or joint check everything to imply like, although you can look at our Dun & Bradstreet rating and say 'they have a really great rating,' but yet they want to pull a joint check. To me, the only factor that plays is race because the company doesn't show any other, there's nothing in our company history that will imply that you need to have additional insurance, bonding or joint checks. There's nothing historically in there that tells us that we're a credit risk." He said that "we're religiously asked for a bond. Of course this brings our price up. And then we talk to our competitors and they never have to pull bonds. And so the general contractor is saying for minority contractors — this is my opinion — you pull a bond, but ABC Electric over here, you guys don't have to. We run into that all the time."

Interviewee TA #2, the director of an apprentice preparation program, reported that bond companies do not apply requirements equally to all business owners. She said, "I do know that a lot of companies, when it comes to minorities [seeking bonds], they will bring a requirement out from under the table that they [have] to dust off."

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, stated that obtaining bonds can be a barrier based on the applicant's personal history. He said that he believes this barrier could be based on discrimination.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that bonding requirements and obtaining bonds are a barrier for small businesses. He said that he believes this barrier is based on race discrimination because his minority subcontractor members have been asked to carry a bond when other majority subcontractors on the same project and in the same area of work were not required to carry a bond. He explained that one of his minority subcontractor members was speaking with a majority subcontractor; the majority subcontractor asked why the minority subcontractor member was so concerned with obtaining a bond as it was not required. In the course of the conversation, they learned that the general contractor required the minority subcontractor member to obtain a bond but did not impose the same requirement on the majority subcontractor. Interviewee TA#5 said that this occurred less than five years ago on a public project. He said that this practice still occurs in the marketplace and it is a way for general contractors to exclude minority-owned firms.

Other interviewees did not perceive barriers in connection with obtaining bonding.

[Interviewees #: 1, 2, 7, 8, 9, 10, 12, 13, 16, 18, 21, 22, 27, 30, 34, 35, 37, 42, 43, 46, 48, TA #1]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated, “I don’t know whether it’s easier for minorities to get bonding or not, but I imagine since it’s easier [for them] to get financing, it’s easier to get bonding as well.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that he has not experienced barriers related to bonding requirements. He said that bonding requirements are based mainly on your credit.

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “The engineering industry is not impacted by the bonding issue.”

C. Insurance.

Some interviewees identified insurance requirements as a barrier to pursuing business opportunities. [Interviewees #: 4, 9, 14, 15, 17, 20, 23, 24, 29, 35, 36, 37, 40, 44, TA #2, TA #3, TA #4, TA #5, TA #8, TA #10, TA #11]. Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, reported that obtaining insurance is a barrier for businesses because “insurance companies want a lot of money.” He stated that market conditions, not race, ethnicity, or gender, contribute to the barrier.

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, stated that insurance “can be difficult to get sometimes, especially with the new requirements coming out. [Insurance] can be quite costly.”

Interviewee #17, the Native American male owner of a non-certified excavation firm, said that “Insurance is a killer. Oh, you can obtain it, if you have the money... My insurance is about \$12,000 a year ... now [the Oregon Construction Contractors Board is] requiring a million and a half [dollar insurance policy] for an excavation company. [I’m a] one-man show, [and] I have to have a million and a half” in insurance coverage.

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, stated, “I haven’t had any problems,” obtaining insurance, “but I’ve heard of others who have.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported, “Insurance is always high. No matter which way you turn, you going to be paying a lot for insurance.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that getting insurance “is very hard.” She stated that insurance companies have only offered her insurance coverage at very high interest rates. She reported, “Yes, I’m obtaining it, but I’m paying a lot of money for it.”

Interviewee #36, two representatives of an employee-owned general engineering firm, reported that many smaller DBE firms select insurance companies that do not have the capability to service their type of business, and this causes their firm and the DBEs a lot of problems and unnecessary costs.

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “It is not unusual to request \$2 million in insurance for a \$20,000 job.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that insurance requirements and obtaining insurance can present a barrier. She said that the barrier is based on the firm’s capacity and experience.

Interviewee TA #11, a representative from the Port of Portland, stated that insurance requirements and obtaining insurance are a barrier, but the barrier is not related to any race, ethnicity, or gender discrimination.

Some interviewees reported that race, ethnicity, or gender may contribute to insurance requirements as a barrier to pursuing business opportunities. [Interviewees #: 4, 15, 29, 40, 42, TA #2, TA #4, TA #5]. Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that she pays “10 times” more in insurance premiums than the owner of a comparable firm, and that the cost of insurance can be a barrier to the success of a small business, particularly women- and minority-owned businesses. She stated, “Because they can charge you whatever they want.”

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes insurance is a barrier and that discrimination based on race, ethnicity or gender contributes to this barrier. He said, “Yes, there are barriers [to] obtaining needed insurance.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated that he has seen a barrier in insurance, that he has had personal experience with this, and that he believes that race, ethnicity or gender-based discrimination contributes to the barrier. He said, “Insurance requirements are across the board inconsistent for us. We start out with lower level companies that charge us for all additional information and additional insureds. I recently had a project that wanted a \$3 million umbrella liability above what I need for any other project; to purchase the insurance it cost \$7,000, and the value of my contract was \$8,000.”

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, stated that he believes insurance is a barrier and that discrimination based on race, ethnicity, and

gender contributes to this barrier. He said, “Yes, the cost that M/W/ESBs have to incur versus the requests by public agencies regarding levels of insurance vs. size of projects is difficult for others.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that obtaining insurance is a barrier and that he believes discrimination based on race, ethnicity or gender contributes to a barrier.

Interviewee TA #2, the director of an apprentice preparation program, reported that insurance companies discriminate against business owners who are members of racial minorities. She said that oftentimes insurance agents provide Caucasian business owners with information that they do not provide to minority business owners, such as steps the entrepreneur can take to reduce the cost of his or her insurance coverage. She reported that insurance companies do provide some minority business owners with treatment they normally reserve for Caucasian business owners, but they do so as a way of sabotaging programs directed at minority business owners.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that obtaining business insurance should not be a barrier, but he believes that the underwriters may discriminate based on the applicant’s race, ethnicity, or education.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that obtaining insurance and insurance requirements can be a barrier. He said that he does not think insurance companies discriminate by setting higher rates for minorities, but the general contractor may create a barrier by adding to the minority’s bid because of insurance requirements. He said that the certain language in a contract that requires the subcontractor to have a certain level of volume can affect underwriting requirements and create a barrier.

Other interviewees did not perceive insurance requirements as a barrier to pursuing or obtaining business opportunities. [Interviewees #: 1, 2, 5, 6, 7, 8, 10, 11, 12, 13, 16, 18, 19, 21, 22, 25, 27, 28, 30, 31, 32, 33, 34, 38, 41, 42, 43, 45, 46, 48, TA #1, TA #6, TA #7, TA #9].

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported that her firm “had no issue [with having access to insurance coverage]; as long as we write the checks, they’re willing to cover us.”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that he has not experienced discrimination based on race as a barrier to getting insurance.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that insurance “should not be a problem; it is sort of cut and dried.” He said that small businesses run into problems when they have not had insurance in the past.

D. Equipment.

Some interviewees identified access to equipment as a barrier to pursuing business opportunities. [Interviewees #: 4, 15, 22, 23, 24, 28, 29, 31, TA #2, TA #3, TA #6, TA #7, TA #8, TA #9, TA #11, TA #12]. Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and

refrigeration firm, reported that obtaining equipment is related to cash flow, and could be an impediment to a firm's growth.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that access to equipment "can be a big barrier, too. If you don't get enough capital to have a better bank account to show your banker that you can really make a good profit, he's not going to give you a loan [for] the equipment. See, that's the domino effect."

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that obtaining equipment could be a "big time" barrier to firms, "especially in the professional services. It's a big deal.... My services [are] the people, and their brains; that's what I sell, so to be able to do that, you have to be able to do it through software, and [that software] is extremely expensive, and not just that, you don't just buy it, you have to buy the maintenance cost every year."

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that "[equipment] was a barrier for all of [our clients] but we helped bridge that barrier for them" through financing assistance. He said that he does not believe that the barrier is related to discrimination.

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, "We get criticized for not having the newest and most up-to-date equipment, but to invest in equipment you need regular work to pay for that equipment."

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that obtaining equipment, repayment plans and the initial costs of equipment are barriers to smaller minority firms, when work is not steady and dependable.

Interviewee TA #2, the director of an apprentice preparation program, reported that equipment companies "know that we can't get the credit, can't get everything we need."

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that obtaining equipment can be a barrier because "if you don't have money [or] if you don't have financing, [then] you can't buy the equipment."

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, stated that access to equipment at an affordable cost can be a barrier. He said that the businesses that are doing well today are the businesses that managed to pay off their debt, including debt on equipment, during the upturn. He said that this barrier is not based on discrimination.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that access to equipment may be a barrier. He said that the barrier is related to credit.

Interviewee TA #11, a representative from the Port of Portland, stated that access to equipment is a barrier and that the barrier is related to poor business practices.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that obtaining equipment could be a barrier for small businesses.

Some interviewees reported that race, ethnicity, or gender may contribute to obtaining equipment as a barrier to pursuing business opportunities. [Interviewees #: 4, 15, TA #6, TA #7]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that access to equipment can be a barrier to the success of a small business. She stated, “It comes back to whether you’ve been trained properly, whether you have enough hours on the equipment ... so you understand the maneuvering and operation of that piece of equipment.” She said that women and minorities do not have the same opportunities as Caucasian males to perform work for which the equipment is required, so they lack the necessary level of experience to operate the equipment.

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes equipment is a barrier and that discrimination based on race, ethnicity or gender contributes to this barrier. He said, “Over the years I have acquired most of the equipment that I need for jobs, but when I have to rent equipment they can charge me more because my credit is poor.”

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that access to equipment is a barrier. He said that the barrier can be related to discrimination because some businesses will not rent equipment to minority businesses based on minimum credit requirements.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that access to equipment can be a barrier to the extent that there are barriers related to obtaining loans or leases for the equipment. He said that some people have networks to help them gain access to equipment and “those kind of networks aren’t necessarily available to Indians or Native Americans.” He said that the ‘Good Old Boy Network’ is still available for “non-Indians” and that the network helps them obtain equipment, but that Native Americans trying to get into business do not always have those relationships.

Other interviewees indicated that they did not perceive access to equipment as a barrier to pursuing or obtaining business opportunities. [Interviewees #: 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 25, 27, 30, 32, 33, 34, 35, 37, 38, 42, 43, 44, 45, 46, 48, TA #1, TA #4, TA #5, TA #10]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that she thought manufacturers were “giving [equipment] away right now.”

Interviewee #5, the Caucasian male owner of an excavation firm, said that he does not think access to equipment was an impediment to small businesses. He stated, “You can get your equipment if you’ve got money to buy it.” He stated, “As far as minorities go, in the future I think you’ll see a lot more excavation and people, but I think that has been one of the situations for them is getting the money to buy the equipment, but that’s just the deal. Why I don’t own a high-rise building — it is because I don’t have the money to buy one, and it’s the same way with them; eventually, if they work, and get enough money, they’ll be able to buy, like everybody else, crappy equipment. And then you’ll get to where you make a little money and you buy better stuff, like everybody else does. I don’t think that’s really a barrier, I think that’s just part of the program, with everybody.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that access to equipment has not been a barrier for his firm because he owns most of the equipment for his business and he rents other equipment. He said that access to equipment is based on credit lines.

Interviewee TA #10, three representatives of the Northwest College of Construction, stated that they “can’t imagine” that access to equipment is a barrier to small businesses because “if you [have] the money you can rent or buy it.”

E. Labor and Personnel.

Some interviewees perceived access to labor and personnel as a barrier to pursuing business opportunities. [Interviewees #: 1, 4, 10, 19, 21, 22, 23, 24, 29, 33, 37, 41, 44, TA #3, TA #5, TA #6, TA #7, TA #11]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that racial and ethnic minorities might face difficulty getting needed personnel or labor “in some locations, in some situations. If I spoke Spanish, I would have more Hispanic people working here who, quite honestly, would work for less money ... so I can’t hire those people.”

Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that access to experienced labor is a potential barrier to the success of a small business. She said that this is particularly true for minority- and women-owned businesses who often cannot afford the wages required to hire or retain experienced personnel. She stated, “When I get people coming through the door, it’s not going to be the journeyman who’s been working for 15 years, it’s going to be the person who has some work experience who wants to be a foreman, who wants to be a journeyman, but they don’t have a journeyman card.” She said that the lower wages the firms pays on private projects makes it difficult for her to retain labor (and subcontractors) her firm has used previously on higher-wage public sector projects. She stated that the wage differential “makes it difficult to hold onto the best workforce.” She said that often times she will train workers and then they go work for other firms. She stated, “We don’t get the work, but the workers we brought in go back on the list and now those large firms, we’ve done their recruiting and training for them, and they capture our workforce.” She stated, “We can’t keep them working.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that the firm has had difficulty finding adequate numbers of union electricians who were racial minorities, and that the electrician’s union was “only willing to go so far down the list” to find them for the firm.

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated that the obtaining personnel and labor “is always touchy. I say that because you have a particular group who thinks we owe them a job, and we have a particular group that works their butt off who’s just grateful to have a job, and then you have the rest of them, who are like, ‘I’m here because I need a job.’ I think that happens across the board.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported difficulties obtaining personnel and labor. She said that a former employee “did some pretty bad badmouthing, and to this day, he’s still badmouthing” the firm, which has made it difficult to obtain personnel and labor.

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, stated that finding workers who could do weatherization was difficult. He said, “Insulation is hard business, and it takes the right person. You don’t just take somebody off the street and change their career into this.... You’ve got to train your own people, ‘cause you just don’t find them on the street or coming out of these training programs.... They don’t have reality training.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that limited work opportunities lead to difficulties in retaining personnel. He stated, “If you don’t have enough work to keep the guys busy, your labor is going to fluctuate. You’re going to hire somebody and fire them tomorrow, hire somebody and fire them tomorrow. No matter who you are ... that’s what you’re going to end up with.” Interviewee #23 stated that this is a particular barrier to minority firms who are not getting enough work, “not enough work for [them] even to grow.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that getting and keeping personnel can be an impediment to the success of firms like hers. She stated, “It’s hard to get good employees when you’re small, you can’t pay the same rates that a large firm does.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “My recent experience is with my workers working slower on prevailing jobs so that they can make more money, and reluctantly moving to my private sector jobs that do not pay prevailing wage. This reflects on my business when they are not working fast and efficient and I will have to make some tough decisions about someone’s job.”

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “Larger firms hire away my employees when they are really good and hamper my firm’s growth.”

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, said that access to personnel and labor can be a barrier for firms. He said, “I’ve noticed that some individuals go through our firm and get picked up eventually by the client, the City or PDC. I’ve noticed that age discrimination is an issue because we see a lot of retirees that are in good condition and seeking work with our firm.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that access to personnel and labor could “potentially” be a barrier.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that some businesses do not know how to “deal with employee attitudes, and that tends to be a hindrance.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that personnel and labor may be a barrier to a business depending upon what type of business you have. He said that union contractors “probably [have] pretty good access to labor.” He said that there is a “pretty good size [labor] pool right now because so many people have been laid off.”

Interviewee TA #11, a representative from the Port of Portland, stated that access to personnel and labor is a barrier, but the barrier is not based on discrimination.

A couple of interviewees reported that race, ethnicity, or gender may contribute to access to labor and personnel as a barrier to pursuing business opportunities. [Interviewees #: 33, 44].

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she does believe there are barriers in the labor area related to gender bias. She relayed an experience where a “guy came up and kicked a tube of caulking and said, ‘I bet you don’t know what that is.’ But that was years ago. I’d say in the last 10 years, nothing. You know, but at the beginning it was tough.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that they have personally seen a barrier in personnel and labor and that they believe discrimination based on race, ethnicity or gender contributes to a barrier in the perception of minority firms’ personnel/labor. He said, “I’d say that a lot of times, again — we’re a union shop. We’re obtaining the same work force as all our competitors. I think that 80 percent of our competitors in Portland — I think you can go higher than that — are union contractors. So, we obtain the same labor force that everyone else obtains. But it has a tendency to be implied that somehow we’re going to supply less qualified labor. We’ve had those conversations with general contractors and we couldn’t get around the fact that we have the same work force.”

Other interviewees perceived no barriers in connection with access to labor and personnel.

[Interviewees #: 2, 5, 6, 7, 8, 9, 11, 13, 14, 16, 17, 18, 20, 25, 27, 28, 30, 31, 32, 34, 38, 42, 43, 48, TA #1, TA #2, TA #4, TA #8, TA #10, TA #12]. Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that there is an oversupply of labor in the marketplace currently and, therefore, access to personnel and labor is not a barrier. He said that there will be a shortage of personnel and labor in the next 8 to 10 years because roughly half of the construction workforce will retire.

F. Working with Unions.

Some interviewees perceived working with unions as a barrier to pursuing business

opportunities. [Interviewees #: 1, 2, 4, 6, 10, 11, 15, 19, 20, 23, 24, 25, 26, 29, 36, 38, 44, TA #5, TA #8, TA #10, TA #11]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated, “I do see a little bit of a problem [working with unions]. I know that the outside erectors’ union will give erectors money to help them buy a job. That doesn’t help me ... I think that does give them an unfair advantage. Also, the BOLI wages, I don’t believe in them. They’re inflated wages, for one thing. If they can’t compete, maybe they shouldn’t be around. If you’ve got non-union erectors — and basically, all their costs are the same, other than labor — I don’t think anybody needs to be making \$35 an hour.”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, stated, “We are non-union at the present time. We did have unions in our Portland and Salem offices, but the contracts were not renewed. I have some personal experience dealing with unions, and my personal experience really has everything to do with the rep[resentative] assigned to you. If they’re reasonable people, [they are fine]; if they’re not, you know, they’re not fine. And whether that has to do with me being a woman or not, I couldn’t say for sure, but I’m sure that didn’t help me.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that the shortage of racial minorities in the union meant some minority electricians sent by the union “had already worked for me, and we’ve already sent them back.” They stated that it can be difficult to find minority union workers because often times the unions do not have any available.

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, said that working with a union can be a barrier. He reported that he actively seeks people of color as employees. He stated that when he requests that the union send him personnel who are people of color, the union always sends him Caucasian females “because they say [Caucasian females] are minorities.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported, “I think it’s very hard to be in the union as a small company; it’s very spendy.” She stated that she started her company as a union shop because the owner or general contractor on one of her first jobs would only work with a flagging firm that employed only union personnel. She said, “We went union and we stay union and it’s really hard to get out of the union, but I think, financially, it just kills us.” She stated that half her company operates as a union contractor “and it kills us. Their benefits package — I know I can get it for half the price. And it keeps us (non) competitive. There’s only two union [flagging] shops. One is African American, and one is [me].” She stated, “It’s really hard to stay competitive on non-union jobs.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, stated that unions “were the ones taking all the work in Portland right now, and I think ... that it’s really unfair that there are small businesses that are really struggling — they could at least do half-and-half, maybe, on a job? If they’re going to put union on every job in Portland, then just call it ‘The Union Portland.’ But they’re not giving small businesses an opportunity to work! It’s all union—everything from January to March or April was all union-based in downtown Portland ... I understand they need to work, too, but you know what, how about the small businesses — do we need to work?”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, stated, “It is devastating to a small business if they go union. The requirements that you are required to pay to go union are so great, and you have to sign on and you have to put [the money] out there. If you have to continue paying it out, but you don’t have the work to sustain it, you’re out of the water, anyway.” He stated, “for someone who is doing [under] eight million [dollars annually in revenue], that’s not enough to keep sustained to be able to pay union.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated that working with unions is a challenge to the success of small professional services businesses in the construction industry. She stated, “My first experience with the union was [with a] survey job I had, and I did it because I thought, ‘Well, it’s a good opportunity; people get paid better, and as long as the owner is willing to pay [the higher union wages] well, who cares ... as long as I get my profit?’ But, the union is nothing but troubles because they came and audit[ed] me when they knew that the paperwork was really hard to build. It’s a lot of paperwork, there’s a lot of percentage that never really goes to the employee or me. I have no control over my employees because they always hold that card, or else, and you have no say in how they deliver your jobs, because they are not your employees.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that working with unions is a potential barrier to the success of her firm. She stated, “Oh my goodness! Yes! Oh my goodness, they are just — I don’t like them — problematic. They harass employers. For a time, they were harassing us on our job sites — taking pictures, harassing my employees. That’s just, it’s chaotic because when you have an employee that is saying, ‘back off, because if you don’t I’m going to slap you in the face,’ then I see it as a problem for me as an employer. But what can I do if they’re doing their lunch break and they say, ‘hey, I’m on my free time and I can kick your butt,’ you know. So that is an issue.”

Interviewee #36, two representatives of an employee-owned general engineering firm, stated that unions are very aggressive in collecting payments for the benefits fund on the work site and that frequently DBE’s fall behind in those payments.

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, stated that he is a union contractor. He said, “I had a fight on my hands to get the diversity that I wanted for my team. I took it on by writing letters and I continuously had to meet and challenge union officials.” He noted the importance of help from his mentor, who is also a minority International Brotherhood of Electrical Workers union member.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that working with unions can be a barrier and that the “companies who choose to be union do so because they find the quality of worker to be higher.” He said that “open shop (non-union) companies tend to be open for cost reasons and bureaucratic reasons ... their perception is that their costs are lower [being non-union].” He said that “when you look at total compensation the two are actually comparable, it is just that the cost structures are different.” He said that there is a negative perception about unions because people associate unions with the “old and ugly” organized labor and labor strikes. He said that he does not believe that this barrier is related to discrimination and that choosing to work with unions or to be an open shop is “purely a business decision.”

Interviewee TA #10, three representatives of the Northwest College of Construction, said that paying union dues can present a barrier.

Interviewee TA #11, a representative from the Port of Portland, stated that working with unions is a barrier, but the barrier is not related to discrimination. She said that she has observed the unions in Portland “trying to increase the membership of minorit[ies] and women.”

Some interviewees reported that race, ethnicity, or gender may contribute to working with unions as a barrier to pursuing business opportunities. [Interviewees #: 4, 15, 26, 29, 44, TA #5, WT #3]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that working with unions is a barrier to the success of small businesses, particularly those owned by women and members of racial and ethnic minorities. She stated that unions “are still in the 19th century, and control and power. You still do not see people of color journeying out at a rate that would be equal to [that of Caucasian males] and in superintendent roles, so [union members who are racial and ethnic minorities] have [few] role models.”

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes working with unions is a barrier and that discrimination based on race, ethnicity or gender contributes to this barrier. He said, “Yes, I get a lot of pressure to join the union, and many jobs in my field are union-required.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that there is a long history of discrimination with the unions and most minority contractors are not union members. He noted that most minority contractors are not union members because if a firm is required to increase their wages, they may not be able to make their payroll.

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated that he has seen a barrier working with unions and he believes race, ethnicity or gender-based discrimination contributes to a barrier in working with unions in this line of work. He said, “Huge barrier, definitely the unions add additional pressure to an already stressful environment.” He said, “The unions have undue influence on who gets work and they actively try to diminish opportunities for non-union members, and the City and PDC at the highest levels go along with it.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he has seen a barrier working with unions and he believes discrimination based on race, ethnicity or gender contributes to the barrier. He said, “Yes, I think that there’s discrimination amongst — like I said, 80 percent of the contractors on the electrical side are union, I believe, if not [more]— and I think that the unions historically discriminate against race, or at least the electrical unions. Some of the unions I think are a little better. Because I tried to have African Americans that I felt were good candidates — I wanted to scholarship them in and they basically said, ‘No, they don’t meet this requirement.’ There’s always a series of requirements to exclude them from the workforce. If they’re college educated, well, they don’t have enough hands-on experience. If they have a lot of hands-on experience, well, they really need to have a degree in this. So, it was always one excuse after the next. Although I was willing to scholarship them — I was willing to pay to get them in and to keep them going throughout their apprentice — and I was basically shot down. So, yes, I believe that discrimination definitely occurs.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said, “The challenge that our members have with unions is ... the unions are not used to minority contractors as general contractors.” He said that the unions do not have a very diverse labor pool. He said that the one of the organization’s members is a signatory to both the electrical and labor unions. He said that this member was having union workers perform labor work, but the electrical union wanted to reclassify the work as electrical because it would cost the minority firm more. He said that the same type of work was being performed by a non-minority firm and that firm did not have these issues. He said that this occurred about a year ago.

WT #3, representing the International Brotherhood of Electrical Workers, remarked that her organization is working to address race/ethnic- and gender-based discrimination in electrical contracting: “As a female union electrician, I am astounded by some of the perceptions regarding bigotry and chauvinism within the union construction workforce. The International Brotherhood of Electrical Workers has taken strides to repair the undeniable history of racism and sexism that has impacted every segment of society. The NECA-IBEW Electrical Training Center, which trains and journeys out the highest skilled electrical workers in the area, has created my position, Workforce Development Coordinator, in an effort to recruit as well as retain minority and women apprentices. This position was created not because it was mandated by some governing agency, but because the IBEW truly finds a need and desire to diversify our workforce in order to better serve the communities in which we live and work.”

Other interviewees reported that working with unions does not pose a barrier to pursuing or obtaining business opportunities. [Interviewees #: 5, 7, 8, 13, 14, 17, 18, 22, 30, 32, 34, 35, 37, 41, 42, 43, 45, 46, 48, TA #1, TA #4, TA #12, PF #4, WT#1]. Interviewee #5, the Caucasian male owner of an excavation firm, reported that he was a union employee, and does not think working with unions would be an impediment to the success of small businesses. He stated, “If you’re a small business person, unions don’t bother you. You go out to start any kind of business, you’re not going to have a problem with the union. Unions are for big commercial businesses. You’re not going to go bid a high-rise when you’re just starting out.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that working with unions is not a barrier to small businesses as, “in the private sector, they’re priced out; there’s no way you are going to compete in the private sector, being union. We have a lot of discussions right now, because we’ve been taking part of the shop, maybe the weatherization section, union. So we’ve been looking at that real close.”

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said, “I have no problems or barriers working with unions. I don’t like the unions — they ignore me and I ignore them.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that his organization tries to remove all barriers related to working with unions.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that he does not believe that working with unions creates a barrier for businesses. He said that one of the main benefits of working with unions is that the businesses only pay contributions for benefits when a union worker is on the payroll.

PF #4, representing the International Brotherhood of Electrical Workers, indicated that the organization is trying to address some past problems that have existing with working with unions: “[Regarding the comments made [in the disparity study] about how unions are lending themselves to informal recruitment practices, nepotism, and things like that — I am not going to argue that we do [not] have a history of that, it is rampant in all society and I am not saying that I believe that, realistically, nepotism will go away. But I do want to say that there is one aspect of hiring that does work to help curtail that problem directly and that is our pilot dispatch system. If you are out of work, you sign our out of work list. Is there a place to indicate whether you are a woman or a minority? No, there isn’t, because it doesn’t matter. If a job opens up and [someone is] the next person on the list, they get dispatched to that job.”

WT #1, a worker in the building trades, commented that: “Unions offer better training and better opportunities over non-union. ... [The] treatment of women and minorities is better in union versus nonunion. In my opinion if you were looking to provide better opportunities for women and minorities, union trades do provide those opportunities. During my apprenticeship on the non-union side, there were five female apprentices throughout my whole five years. There were approximately 400+ students.”

Other interviewees reported that they did not have experience working with unions and therefore do not know whether working with unions poses a barrier to pursuing business opportunities. [Interviewees #: 3, 9, 12, 16, 28]. Interviewee #16, the Caucasian male owner of a heating and air conditioning company, reported that he “has not worked with unions; I don’t want [anything] to do with unions.”

G. Being a Union or a Non-Union Employer.

Some interviewees reported that being a union or non-union employer could be a barrier to pursuing or obtaining work in the local marketplace. [Interviewees #: 4, 6, 10, 15, 21, 23, 24, 25, 29, 32, 38, 44, 47, TA #3]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that being a union or non-union employer was, “right now, [only] a little bit” of a barrier to a small firm’s success.

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported, “I think there might be one or two union moving companies left in the State of Oregon and, you know, the issues is [that] the margins are” slim. She said that being a union employer “is not a formula for success.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that being a non-union company is a barrier to success in her industry. She said, “It’s more bidding with generals that are union-based ... you’re just not going to break down that wall. So it’s easier sometimes to say, ‘I’m not going to bid the job.’” She stated that there are a lot of general contractors who are “staunch union” supporters.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that being a non-union employer is a barrier to obtaining work with primes who run union work sites. He said, “Companies that are union will not take your bid. Why are they going to take your bid if you can’t work on the job?”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported, “I’ll stay non-union.” She reported that remaining a non-union employer could be a potential barrier to the success of her firm “if I want to work [with certain large companies], maybe, but I don’t want to work with [those companies], so I’m okay” not working with that type of client or in that portion of the market. Interviewee #25 stated, “There are some agencies that do require that you are a union [employer].”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “I have tried being a union employer with job agreements and it’s difficult to maintain.”

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, said, “There are barriers created by being either a union or non-union employer, as some jobs can’t bid one way or the other.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said that, with respect to challenges associated with being a union employer, “The union wanted me to release an employee apprentice to go to a political show function out of town and I needed the employee at work. I refused to let him go. For a very long time, I had subtle problems with the union and my business agent as a result, and it continues today.”

Interviewee #47, the Caucasian female owner of a WBE/DBE/ESB-certified trucking firm, said, “I tried the union but I just couldn’t afford it and still make money.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that being a union or non-union employer can present a barrier because “a lot of the big jobs, public funded jobs prefer union contractors and in some cases it is a requirement.”

Some interviewees reported that race, ethnicity, or gender may contribute to being a union of non-union employer as a barrier to pursuing business opportunities. [Interviewees #: 10, 15, 44]. Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, reported that, prior to 1984, when the firm was a non-union employer, “we were very discriminated against” by the union.

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes being a union or non-union employer is a barrier and that discrimination based on race, ethnicity or gender contributes to this barrier. He said, “I was a union employer for one year and I had to quit. They sent me [inferior] employees and they didn’t care how they communicated with my customers or how they did their jobs. They were sloppy. I got out of the union and I was fined for leaving early because I signed a three-year contract and I paid it, because I was lucky to salvage my jobs without lawsuits based on their work performance.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he believes that being a union or non-union employer is a barrier and that he believes discrimination based on race, ethnicity or gender contributes to the barrier. He said, “As far as an employer, yes, it’s mostly just workforce. I guess in a sense that there are people that will work for you and that won’t work for you. There are certain people that just won’t work for us (at the union hall) because we’re a minority contractor.”

Other interviewees reported that being a union or a non-union employer does not create a barrier to pursuing or obtaining work in the local marketplace. [Interviewees #: 2, 7, 8, 11, 12, 13, 14, 16, 17, 18, 22, 33, 34, 35, 36, 37, 42, 43, 48, TA #1, TA #4, TA #11]. Interviewee #36, two representatives of an employee-owned general engineering firm, reported that they are aware of no issues associated with being a union employer. They noted that while their firm is a union signatory employer, they do use non-union subs in the manner allowed by their union agreements.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that some union employers may view being a union employer as a barrier because they pay higher wages than their non-union competitors. He said that to the extent that being a union employer is a barrier, the barrier is offset by the productivity of the union employees.

Other interviewees reported that they do not have experience with unions and therefore do not know whether being a union or a non-union employer poses a barrier to pursuing business opportunities. [Interviewees #: 3, 9, 31, 46].

H. Obtaining Inventory or Other Materials and Supplies.

Some interviewees identified obtaining inventory and other materials and supplies as a barrier to pursuing business opportunities. [Interviewees #: 3, 4, 15, 19, 24, 26, 28, 31, 36, 38, 44, 45, TA #3, TA #4, TA #5, TA #6, TA #7, TA #9, TA #11, TA #12]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that creditworthiness, not gender, was a burden to obtaining inventory or supplies.

Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that obtaining inventory or supplies could be a barrier to the success of a small business. She said that the business owner's credit rating is a primary factor in whether he or she can obtain access to inventory or supplies.

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated that obtaining inventory or supplies is not an issue for her company, but may be for other firms like hers. She said, "It probably is. It's a cash flow issue. We have cash flow issues ... but we've been able to draw lines of credit when we need it."

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that maintaining inventory and supplies "was very hard, because if you don't have the cash flow, to start with, and you're getting paid only 90 days or [when your bill for services rendered is] past due, it is very hard ... [you rely on] credit cards again, and no funding from loans."

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that obtaining inventory or other materials and supplies is absolutely a barrier and it is all about the capital. He said that a small business should not hold inventory unless they are required to do so.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that obtaining inventory or other materials and supplies is "definitely" a barrier, but the barrier is not related to discrimination.

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, stated that as a subcontractor, “I have run into situations where the supplier would not authorize me to work on their equipment or sell me a specific material or provide me with a quote for a bid. Thereby, they control who was qualified to bid the work. Owners were also listing particular specialty equipment that had no minorities authorized to perform that work, even if you have employees certified through a previous [non-minority] employer or one or more of your non-minority employees are certified. The Port of Portland recent HQP2 Project was one such project, and Krone was the type of certification. The owner made this an RFP requirement and the Krone certification dictates who can provide and service their product.”

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said, “Sometimes they want to frustrate you, and I think they might even throw your orders away, and you have to spend your time ordering the same items again.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that obtaining inventory or other materials can be a barrier because “it all has to do with financing. If you have money you can do anything.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that obtaining inventory or other materials and supplies may be a barrier.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that obtaining inventory or other materials and supplies is a barrier when financial institutions are not loaning money at reasonable interest rates.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that the ability to obtain inventory or other materials and supplies depends upon a business’s ability to establish a relationship with the vendor and a line of credit.

Interviewee TA #11, a representative from the Port of Portland, stated that obtaining inventory is a barrier and that the barrier is related to the size of the business, not discrimination.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, says that obtaining inventory or other materials and supplies can be a barrier, but that the barrier is related to “cash flow problems” and not discrimination.

Some interviewees reported that race, ethnicity, or gender may contribute to obtaining inventory or other materials and supplies as a barrier to pursuing business opportunities.

[Interviewees #: 15, 31, 36, 44, TA #5]. Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes there are barriers to obtaining inventory and supplies and that discrimination based on race, ethnicity or gender contributes to this barrier. He said, “Sometimes, because you are so small, companies don’t want to deal with you and provide you with quotes, and you know they throw away your requests when you make them, so you have to go elsewhere and pay more or you cannot bid.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that pricing for inventory or supplies is very different for smaller minority owned firms.

Interviewee #36, two representatives of an employee-owned general engineering firm, reported some familiarity with issues associated with obtaining inventory on their projects. They reported that some DBE electrical firms submitting bids to their firm for work on a City of Portland project said that a sole source supplier refused to give the DBE firms a quote on required materials.

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that obtaining inventory and supplies is a barrier and that he believes discrimination based on race, ethnicity or gender contributes to the barrier. He said, “Obtaining the inventory and supplies, basically, again, what we talked a little bit about before. They’re not going to give me supplies. I’ve had that multiple times.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that refusing to give contractors a price on inventory or other materials can present a barrier for small businesses. He said that this barrier is based on discrimination. He said that he has been told by a person on a Port of Portland project that basically “we don’t have to hire you” and “they were not hiring me; they were just giving me a price.” He said that he told the person on the Port of Portland project that “I noticed on your listing [that] you have no minority or women listed; I think this would be a great opportunity for the both of us and he said ‘we don’t have to hire you, you minority.’” He said this experience with the Port of Portland occurred about three to four years ago.

Other interviewees reported that they did not perceive obtaining inventory and other materials and supplies as a barrier to pursuing or obtaining business opportunities. [Interviewees #: 1, 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 20, 21, 22, 23, 25, 27, 30, 32, 33, 34, 35, 37, 42, 43, 46, 47, 48, TA #1, TA #8, TA #10]. Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that obtaining inventory or supplies is not a barrier to the success of firms “who have the work.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “I think the longer that you have been in business and pay regularly on your accounts they begin to understand that you are trustworthy. I have been in business a long time and I am fortunate to now have that situation.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that for the most part obtaining inventory or other materials and supplies “is not a problem.”

I. Prequalification Requirements.

Some interviewees identified prequalification requirements as a barrier to pursuing business opportunities. [Interviewees #: 1, 4, 15, 16, 23, 24, 25, 26, 28, 31, 38, 44, TA #2, TA #3, TA #5, TA #6, TA #9, TA #11, PF #10, WT #2]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that prequalification requirements are a barrier to the success of his firm. He said, “Obviously, if I’m not a minority and they’ve got to have a percentage of minority participation, yeah, I have a problem with that.” He stated, “A lot of times [MBE-certified firms]

pace up standard wages, so they get to charge more for it. It makes them far more profitable than we are, especially in this market. So it does give them an unfair advantage, in some respects.”

Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, stated that prequalification “in itself is a barrier, especially for a small business, especially for an underutilized business where you already lack the access, lack the opportunities to perform.”

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, reported that prequalification requirements have presented a barrier for his firm. He stated, “There [are] too many regulations that big companies are enforcing, [and some companies] don’t have to obey because they are [grandfathered] in.” Interviewee #16 reported, “That’s why some jobs I couldn’t get because I needed to qualify for certain things and I couldn’t get these things, because the last company I worked for wouldn’t provide it. And even if they provide[d] it, it’s very — at the time, very time-consuming for me, so I couldn’t get it.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, said prequalification requirements “are a big barrier. I think it’s a joke, personally.” He stated, “Did [prime contractors] become prequalified to do work for anything? No. What does that tell you? Prequalification doesn’t mean anything if you can’t perform the work anyway.... How do they judge you to be prequalified? They want to see your financials. Big deal. That doesn’t make you qualified to do the work. To do the work, [agencies] should use past experience, and that should be good enough.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported, ““Right now, the professional services are all qualifi[cation]-based ... It is a big challenge.... For instance, I have this contract [for which] we already got qualified ... we got selected. Well, we still have to be qualified in every task order we get, so, even though you’ve been qualified, you still have to ... submit proposals, so you may get nothing after ... all the time spent writ[ing] proposals ... It’s very expensive ... to prove that you’re qualified.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that prequalification requirements are good if they are legitimate, but noted that sometimes prequalification requirements are put in place to screen out certain businesses.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that prequalification requirements could be a barrier but his clients have not experienced this barrier.

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said that “I appreciate knowing about the prequalification processes in advance because, in my field, they take some time to complete. For example, a TriMet Solar Project required a PGE prequalification. I had the experience, but I reached a hurdle and delays to qualify and receive approval for the internal process of receiving a PGE certification to work in a specific geographic area. It was a long arduous process and the contractor and owner both had to support me to receive it.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that prequalification requirements are a “pain.”

Interviewee TA #11, a representative from the Port of Portland, stated that prequalification requirements may be a barrier for some businesses.

PF #10, representing a minority-owned contracting firm, said that the City of Portland's prequalification process does not appropriately measure his firm's capacity: "From the City of Portland I just received a paper yesterday [explaining my prequalification status]. My prequalification is that as a business owner here in Portland, as a general contractor here in Portland, I can only build facilities for the City of Portland for under \$130,000. I can do renovations for \$500,000, but yet in the past, I have done \$1.2 million individual projects. ... you have a minority contractor right here who could do \$1.5 million in the City of Portland for a private entity but \$130,000 is the maximum I can get [from the City]."

WT #2, representing a local construction firm, indicated that the prequalification process does not accurately assess a firm's qualifications: The prequalification application from the City of Portland seems good in theory, but it creates some problems when a contractor can clearly prove they are capable of performing work but the city is unable to qualify them due to the City's "standards". One case in point is that we are currently performing saw cutting for [a City project], [but] the City of Portland will not qualify us for performing such work. It doesn't make any sense. The prequal[ification] form is not working to help lift small firms to a higher level. If we can't bid the work, we can't do the work — that is one place where the disparity starts!"

Some interviewees reported that race, ethnicity, or gender may contribute to prequalification requirements as a barrier to pursuing business opportunities. [Interviewees #: 15, 25, 31, 44, TA #2, TA #5, TA #6]. Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes prequalification is a barrier and that discrimination based on race, ethnicity or gender contributes to this barrier. He said, "Prequalification is a problem for minority companies, because in order to increase your prequalification to a specific number, like from \$400,000 to \$800,000, they want to see you perform at that upper level, and you can't perform at that level until you get your qualifications increased; it's a real Catch-22."

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that prequalification requirements "could be a potential barrier if you're trying to recruit qualified [firms] for a specific project, and the people that are sitting on the table, they have no sense that, you know, that they're racist, yeah, they could be a potential [barrier]. Their points, they'll easily disqualify you and [your] proposal. It's out there, yeah, it's out there with specific people from specific organizations that sit on these interview panels. They disqualify, so yeah, it's not good."

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated, "There is an assumption in my field that I am not qualified because I am M/W/ESB certified."

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that prequalification requirements are a barrier and that he believes discrimination based on race, ethnicity or gender contributes to a barrier. He said, "I'd say yes on that, too. One of the things that the [prequalification] has a tendency of doing, they will not take in — this is early on in my business — they wouldn't take on my previous experience.... The only thing they wanted to take

into consideration is my company — my company was six months old so the company doesn't have any experience, it has to be me at that point. So it's intentionally structured in a way of excluding me. They know I can do the project. I have a history that shows I can do it, but it's their way of being able to exclude me, and I think it's purely race playing a factor in it to say, 'Okay, your company doesn't have any history.' If I talk to minority contractors in NAMC [National Association of Minority Contractors], they will talk about the same problems. I talk to the contractors in NECA and they have no idea what I'm talking about and don't understand why.”

Interviewee TA #2, the director of an apprentice preparation program, reported that prequalification requirements are “definitely a barrier” for minority business owners. She said, “All of this is, ‘a policy is a policy,’ but the issue is that we are being [treated] differently in [the] requirements [minority business owners must meet].”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that prequalification requirements can be a barrier for small businesses. He said that “it seems” that some contractors require minority firms to prequalify, but other non-minority firms are not required to prequalify.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that prequalification can be a barrier when those people writing the pre-qualification requirements include qualifications that they know only one or two businesses possess. He said that prequalification requirements are discriminatory.

Other interviewees identified no barriers in connection with prequalification requirements.

[Interviewees #: 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 27, 30, 32, 33, 34, 35, 36, 37, 42, 43, 46, 48, TA #1, TA #4, TA #7, TA #8, TA #10, TA #12]. Interviewee #17, the Native American male owner of a non-certified excavation firm, reported that he has never been required to provide his qualifications before bidding on a project.

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that she has not experienced discrimination based on race, ethnicity, or gender related to prequalification requirements. She stated, “All GCs have their prequalification forms. They're [voluminous]; there's a lot of backup [material] that goes with [them]. And I can see how people [look at the forms and say] 'I'm done.' But if you take one, and work your way through it, and the majority of the others are pretty close, and you can use the same information.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that he does not view prequalification requirements as a barrier and that most general contractors have “certain insurance requirements.”

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, stated that he encountered no problems adhering to reasonable prequalification requirements.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that prequalification requirements are “good.” He said that “a minority business could use assistance getting their qualifications put together so that they would get consideration” for projects.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that prequalification requirements are not a big problem, but some people have questions about how the prequalification requirements are established.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that prequalification requirements are not a barrier for businesses; they are “just a basic tenant of doing business.” He said, “If you want to be successful [then] you have to prove to the generals that you are working for that you can be successful.”

J. Experience and Expertise.

Some interviewees identified experience and expertise as a barrier to pursuing business opportunities. [Interviewees #: 4, 10, 14, 15, 18, 19, 24, 26, 28, 30, 31, 37, 38, 41, 43, 44, TA #2, TA #3, TA #6, TA #8, TA #9, TA #10, TA #11, TA #12]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, said that obtaining experience and expertise is a barrier for small businesses. She stated that the lack of work opportunities available to underutilized firms makes it difficult for them to develop, purchase, or retain the experience and expertise necessary for winning a bid.

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, stated that it is imperative for a new business to gain experience and expertise, but that the barrier is not related to any race, gender, or ethnic discrimination.

Interviewee #18, the Caucasian male owner of an excavation firm, reported that some potential customers question his expertise and competence with performing jobs related to water drainage, and that this could be a barrier to obtaining work.

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, said that obtaining and providing proof of experience and expertise may be a barrier to small businesses. She stated, “And it has to do with the NAICS code, also. As a civil engineer, you can do a lot of things. You can be a structural [engineer], you can be geotechnical, you can be a foundations engineer ... but there’s no way that in one’s lifetime you can do all of them.... When you go and put a bid, and they tell you, ‘Well, you’re not a structural engineer, well, you’re not a hydrogeologist, well, you’re not this, well, you’re not that ... it’s just barriers. A[n engineering] company can do anything, it’s just an engineering firm.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that small firms do not have as much experience and expertise as other firms.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that obtaining experience and expertise is a barrier, but the barrier is not related to discrimination.

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said that “We need to prove our expertise over and over and over again.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, stated that he “believes that experience and expertise is often held against me, but they won’t come out and tell me that.”

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, said, “Sometimes our clients want inspectors to come in with expertise when, if they have the basics they can pick up the specifics. For example, if they know how to do inspections, but have not done so in a park, they just need on the job training about parks.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that obtaining experience and expertise can be a barrier because “if you don’t get the job, you’re not going to get experience; therefore, you’re not going to get the bigger jobs.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that “gaining good experience and maintaining quality is going to be a little tougher in this downturn.”

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that its members have not received the assistance that they need to own their own businesses. He said that the organization partnered with an agency to assist members with owning their own businesses, and he said that the agency did not provide proper follow-up or assistance to the members. He said that he does not believe that this lack of assistance was based on discrimination.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that obtaining experience and expertise is a “huge” barrier.

Interviewee TA #11, a representative from the Port of Portland, stated that experience and expertise can be a barrier for small businesses, but the barrier is not related to any race, ethnicity, or gender discrimination.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that obtaining experience and expertise is a barrier in the marketplace “because there are so many apprentices that are out of work,” but that the barrier is not based on discrimination. He said that apprenticeship programs are all based on thousand hour terms so “right now a three-year apprenticeship program might take someone five years to complete because the work is so bad ... obviously if you are not out working on the job, you are not advancing in your trade.”

Some interviewees reported that race, ethnicity, or gender may contribute to experience and expertise as a barrier to pursuing business opportunities. [Interviewees #: 10, 15, 30, TA #2].

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated, “I imagine [experience and expertise are] an obstacle for any new DBE contractor coming in to play.” They reported that primes and clients questioned the firm’s ability to deliver quality work during the firm’s early years. Interviewee #10 stated, “In the beginning, I think there were some questions on that. Probably [primes or general contractors thought,] ‘they’re a DBE; are they qualified? Are they just — how closely do we have to watch them? How much do we have to hold back paying them?’ In the beginning that was an issue, but we’ve pretty much proven ourselves to most contractors.”

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes that experience and expertise is a barrier and that discrimination based on race, ethnicity or gender contributes to this barrier. He said, “We have the experience and expertise; they just don’t want to acknowledge it.”

Interviewee #30, the Caucasian female owner of a WBE-certified construction firm, said that obtaining experience and expertise can be a barrier for small businesses. She said, “Yes, my expertise is often doubted because of the WBE label and my gender.”

Interviewee TA #2, the director of an apprentice preparation program, reported that experience and expertise could be a barrier for minority businesses “because there’s always someone there to give the non-minority the training, taking up their patience, their time, in so many different arenas, that networking and that connection is always there. [And] when you make a mistake, it’s forgiven, it’s [considered] okay, because you’re human. But when you’re a minority, it’s not like that. It’s where [when you are a minority and] you’ve made a mistake, it’s used against you.”

Other interviewees indicated that experience or expertise is not a barrier to pursuing or engaging in business opportunities. [Interviewees #: 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 13, 16, 17, 20, 23, 32, 33, 34, 35, 36, 42, 48, TA #1, TA #5, TA #7]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that she did not think experience and expertise were barriers to small businesses in her industry. She stated, “I think you have to have experience to do anything in this life, and I don’t think it’s a barrier other than you have to know what you’re doing before you can do it, you know, or at least have an idea.”

K. Licenses and Permits.

Some interviewees identified obtaining licensing and permits as a barrier to pursuing business opportunities. [Interviewees #: 14, 15, 20, 22, 24, 25, 26, 28, 29, 37, 41, TA #2, TA #3, TA #6, TA #7, TA #8, TA #10]. Interviewee #14, the Caucasian female co-owner of a non-certified construction company, stated that licenses and permits “are always a pain” for businesses.

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported, “There are a lot of licenses, as far as being able to do things ... even shops, shops that have done it for years, and now, all of a sudden, can’t do it, because it’s locked up in some sort of apprenticeship program ... and I think that’s totally wrong, especially when you can show you’ve done that kind of work.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that she has not experienced difficulty obtaining the required licenses or permits, “but I’ve heard of others having a lot of issues with the new CCB, the new requirements.” Interviewee #25 reported, “All the new requirements are discouraging to try to get your contractor license, especially with someone who is starting fresh and new, because they have a lot of requirements and if you’re a beginner, you might not have them all. Yeah, it could be discouraging for others.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that businesses need to follow the rules. He said that access to licenses and permits may present a barrier, but it is not an illegitimate barrier.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that obtaining licenses and permits is “definitely” a barrier, but the barrier is not based on discrimination.

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said that one of the challenges he experiences as a small business operating in the public environment is that permit applications are delayed for smaller firms. He said, “Big firms have client managers that play golf and have lunch spending time with clients in the public and the private sectors and they don’t experience the same delays.” He said that he has not experienced any discrimination related to obtaining permits or licenses.

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm said, “A big issue in our field is individual inspectors are required to be licensed.” She stated that she does not believe this barrier is based on race, ethnicity or gender discrimination.

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that recently the State of Oregon changed certain requirements for residential and commercial contractors. She said that licenses and permits are a “big barrier.”

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that obtaining licenses and permits can be a barrier because of a lack of knowledge. He said that this barrier is not related to discrimination.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that any barriers related to obtaining licenses and permits would be related to the education system because the individual must pass a test to obtain a license. He said that the individual must have the “appropriate education so that you can get qualified to take the test for the license.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said the organization believes that the new statutory licensing, bonding and insurance requirements “will build a better-quality contractor.” He said that the organization believes that the industry and the public will be better off with the new statutory licensing, bonding, and insurance requirements. He said that he has heard from contractors that licenses and permits are a barrier.

A couple interviewees reported that race, ethnicity, or gender may contribute to licenses and permits as a barrier to pursuing business opportunities. [Interviewees #: 15, TA #2]. Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes licenses and permits are a barrier and that discrimination based on race, ethnicity or gender contributes to this barrier. He said, “I know the additional licensing requirements impact everyone, but it is a huge demand on the smaller business that they continue to want additional qualifications.”

Interviewee TA #2, the director of an apprentice preparation program, said that contractors will hire majority subcontractors who do not have all the requisite licenses, bonding and permits, but a minority contractor is “done” if he does not have the proper licenses, permits and bonding.

Other interviewees indicated that they did not perceive obtaining licensing and permits as a barrier to pursuing or engaging in business opportunities. [Interviewees #: 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 18, 19, 21, 23, 30, 31, 32, 33, 34, 35, 36, 38, 42, 43, 44, 48, TA #1, TA #4, TA #5, TA #9, TA #11, TA #12]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that obtaining licenses and permits was “very easy for my industry.”

L. Notification of Work Opportunities / Marketing.

Some interviewees identified notification of work opportunities and marketing as a barrier to pursuing business opportunities. [Interviewees #: 1, 4, 6, 8, 10, 19, 20, 21, 24, 25, 28, TA #2, TA #3, TA #6, TA #7, TA #8, TA #9, TA #10]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that learning about work or marketing could “possibly” be an impediment to the success of his firm because of the fact that so many general contractors are trying to pursue that percentage of MBEs that can assist them in meeting project owners’ minority participation goals.

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported that learning about work or marketing “may be” a barrier to the success of small firms in her industry. She stated, “I think it’s just a function of networking and I guess I sort of believe that there are the ‘Good Old Boy Networks’ out there, and I don’t fit in the mold, and I don’t really want to be in the mold.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that learning about work and marketing was a potential barrier to small businesses in her markets. She reported that doing so “was tough; it’s very tough. And you have to be diligent to get it done and you’re learning it as you’re going, and sometimes you fall.” She said that she does not think the barrier is related to any discrimination by GCs based on race, ethnicity, or gender. She said, “I think if you’re doing a good job, I don’t think GCs out there really care who you are. Getting in the door, sometimes you have to really prove yourself, but once you’re in, I think you’ve done a really good job.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated, “It’s very hard trying to run your business and, at the same time, trying to find opportunities. It’s very challenging.” She said that learning about work is a potential barrier to the success of her firm and other small businesses. She stated, “Absolutely. You know, people talk about business plans, and marketing plans, and what a joke, you know?”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, said that learning about work opportunities and marketing is a barrier, but that the barrier is not related to discrimination.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that learning about work and marketing is a barrier. He said that ODOT does not schedule meetings at convenient times and places for small businesses (e.g., a meeting scheduled in Salem, Oregon during the middle of the day).

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that in the private sector learning about work and marketing can be a barrier because there are established

relationships and businesses typically use the same contractors on a regular basis. He said that there is generally not a barrier related to learning about work and marketing in the public sector, primarily because the City of Portland has staff that will go to meetings and alert businesses of upcoming projects. He said that the PDC could do a better job of alerting businesses of upcoming projects or that they could “encourage the private developers to do outreach early on” in a project.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that he believes that learning about work and marketing is a barrier because “as an industry, we do a pretty poor job of talking about ourselves and our successes.” He said that the contractors are “type-A personalities but they are somewhat introverted. They don’t typically talk about themselves, they kind of have these old-fashioned values and so self marketing is not always something they do very well” which is why the organization offers networking opportunities.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that “part of owning your own business is [having] the right information,” but “I think there has to be a better way ... [to] promot[e] opportunities.” He suggested running an advertisement on the radio in Spanish to alert the organization’s members about opportunities.

Some interviewees reported that race, ethnicity, or gender may contribute to notification of work opportunities and marketing as a barrier to pursuing business opportunities.

[Interviewees #: 10, 20, TA #2, TA #3]. Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, said that learning about work was difficult for new DBE firms. They stated, “That’s a big one. Finding out how to find the job is difficult. If you’re ‘in,’ you can get to the website, you can get the solicitations, and people will call you about work. But if you’re not, you have to really go out and search for it. There are a lot of meetings for prime contractors and those types of people to ‘shoot the hoop,’ but there’s not a lot of subcontractor meetings.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, reported that learning about work and marketing is a barrier to Hispanic-owned small businesses, particularly during periods of economic difficulty. She said, “In the Hispanic community, I notice that a lot of people struggle ... because they own their own business, but they don’t know how to market themselves. They think ... that working with one contractor is going to keep [the work] flowing all year, and what happen[ed this year] ... is a lot of the jobs went under, and a lot of these people were only working for one company, so they totally lost out or had to [shut down]. By then ... the other contractors were already set; they weren’t going to hire new people, and there was no backup [labor] needed at that point. So I feel like the Hispanic community — they’re not aware of how to market, how to look for work. They don’t go to job fairs or anything at all to meet people. So, they struggle more.”

Interviewee TA #2, the director of an apprentice preparation program, reported that minority and other small business owners who are not part of the ‘Good Old Boy Network’ are not informed about upcoming work opportunities. She said, “Most of the time the deals are done up on the golf course ... or at the bar, so that by the time minorities find out about it, it’s one or the other: it’s either two days before [a bid deadline], so the really have to struggle to get all the paperwork together, or when they find out ... the same time as everybody else, it’s already a done deal.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that learning about work and marketing can be a barrier. She said that the primes bid the jobs and the primes have to reach out to the community to make them aware of the work. She said that this barrier is related to discrimination because the primes are not communicating the opportunities.

Other interviewees indicated that they did not perceive notification of work opportunities and marketing as a barrier to pursuing or engaging in business opportunities. [Interviewees #: 2, 3, 5, 7, 9, 11, 13, 14, 17, 18, 22, 23, 27, 30, 31, 32, 33, 34, 36, 37, 38, 42, 43, 44, 48, TA #1, TA #4, TA #5, TA #11, TA #12]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that her gender was not a barrier to learning about work or marketing in her industry. She stated, “It’s just how willing you are to throw yourself into it.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported, “The barriers that exist are just all in people’s heads. I mean, if you want something bad enough, you’ll figure out how to get it and learn about it. It’s the drive. If somebody wants their hand held — sorry, I just stopped holding their hand.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that he does not view learning about work and marketing as a barrier. He said that “if you are out seeking work,” you can find out about work.

Interviewee TA #11, a representative from the Port of Portland, stated that she does not view learning about work as a barrier in Portland.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, stated that learning about work/marketing is not a barrier for its members.

M. Contract Specifications and Bidding Procedures.

Some interviewees identified unnecessarily restrictive contract specifications and bidding procedures as a barrier to pursuing business opportunities. [Interviewees #: 4, 7, 14, 19, 20, 23, 24, 25, 26, 31, 37, 38, 44, 45, TA #5, TA #6, TA #8, TA #11]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that unnecessarily restrictive contract specifications and bidding procedures are a serious barrier to a contracting firm’s success. She stated, “Oh my goodness. If I put in there that you need to have performed three projects, the same dollar amount, the same type of work, and you’ve only done maybe one? You’re out right there.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, said that contract specifications and bidding procedures are a barrier to pursuing business opportunities. He said that he did not know if this barrier was related to discrimination based on race.

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, reported that unnecessarily restrictive contract specifications and bidding procedures could be impediments to the success of owners of small businesses if the specifications and procedures “weren’t understood” by the business owners.

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that the imposition of unnecessarily restrictive contract specifications still exists and people within the agencies may include rules in a contract in order to screen out people that they do not want to work with.

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said that “an obvious bias exists” in unnecessarily restrictive contract specifications and bidding procedures.

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said that “Yes, sometimes contract specifications include some unnecessary tricky stuff that makes it hard to qualify.”

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said, with respect to unnecessarily restrictive contract specifications and bidding procedures, “When I feel that they are asking for too much on a contract I turn them down.”

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that restrictive contract specifications are only included for two purposes: either the complexity of the project or to exclude people. He said that he has seen unnecessarily restrictive contract specifications that exclude small businesses, regardless of color.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that his members have an issue with the goals on some projects. He said that his members “prefer aspirational versus hard goals because sometimes the population simply doesn’t exist to draw from. If you are doing a project in Portland that is usually not a problem, but if you are doing a project in ... some other part of the State, typically the available population of people to draw from is pretty limited.”

Interviewee TA #11, a representative from the Port of Portland, stated that unnecessarily restrictive contract specifications and bidding procedures can be a barrier for small businesses. She said that the agency looks at the insurance requirements on all of their jobs to determine if it is asking for more insurance than the risk warrants, and in some cases they have found that they were asking for too much insurance.

Some interviewees reported that race, ethnicity, or gender may contribute to notification of contract specifications and bidding procedures as a barrier to pursuing business opportunities. [Interviewees #: 14, 19, 23, 24, 31, 44, TA #5]. Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that restrictive contract specifications and bidding procedures are barriers for businesses owned by Caucasian men. She stated, “There’s a lot of people who won’t bid public jobs because of the extra requirements and [unnecessary] paperwork that’s involved. People who [have] certified firms kind of have the upper hand in that department, because a lot of times they’re not required to do all of the solicitation that a [Caucasian] male firm is required to do, so therefore it saves them overhead in the beginning of bidding a project, and they just don’t have to do the [unnecessary] paperwork.” Interviewee #14 stated, “If you’re not a certified firm, as being a minority- or a woman-owned business, or an ESB, then it creates a problem.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that unnecessarily restrictive contract specification and bidding procedures could discriminate against companies owned by racial or ethnic minorities and/or women.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that certain restrictive contract specifications and bidding procedures are impediments to the success of minority-owned firms. He said that these restrictions are “a joke. That’s not needed, because all you’re doing is weeding out people who can actually do ... the work. You’re just screening out and making [it] more difficult” for them to get work. He said, “And what you’re doing is telling [the] minority guy, ‘You’re not big enough to do this job, so we’re going to screen you out and not let you do it.’”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated that certain contract specifications could serve as impediments to success for small businesses. She said, “They do that all the time in professional services. They write the contract so that they know who they want.” She said, “One time ... [a government agency] first asked [minority firms to bid as] a subconsultant, and then one week before the [bid] submittal [deadline], they asked for you to be a prime.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, said, “they doubt your ability when you are bidding and asking questions and express little confidence in your ability to perform work. They thoroughly check your references in ways that they do not check others.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that unnecessarily restrictive contract specifications are a barrier and that he believes discrimination based on race, ethnicity or gender contributes to a barrier. He said, “Ah, yes. I did some work with a company ... and we worked together on a project. In the contract, I was able to see how they marked up a contract. Basically there were certain things that, out of our original proposal and language, in the contract that they cross off. They crossed off a lot of stuff in this contract saying basically, ‘No, this isn’t part of our original contract,’ and sent it back to the general contractor. I thought, okay, well, I talked to them about this and they said this is standard how you do contracts, this is what you normally do. I figured I learned something. Utilizing the same contractor, I did that, and they pulled the contract said you’re not doing the project. I think I crossed off one or two things that were clearly stated in my original proposal but they decided, apparently it was okay for them to do it but it wasn’t okay for me to do it.”

Interviewee TA #5, the president of the National Association of Minority Contractors, reported that unnecessarily restrictive contract specifications can present a barrier for small businesses because general contractors will present contracts to subcontractors with very restrictive contract language and the subs are hesitant to “sign [it] the way that it is written.” He said that in one situation a subcontractor wanted to clear up certain ambiguities in the contract and the contractor was “basically told by a City employee that he just needed to sign the contract.” He said that this occurred several years ago. He said that some contractors draft contracts that are “outside the norm” for minority contractors.

Other interviewees reported that unnecessarily restrictive contract specifications and bidding procedures do not pose a barrier to pursuing or obtaining business opportunities.

[Interviewees #: 1, 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 17, 18, 21, 22, 27, 30, 32, 33, 34, 35, 36, 42, 43, 48, TA #1, TA #4, TA #7]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that he has “heard of a couple” of unnecessarily restrictive specifications or bidding procedures, but said that “I don’t think, in general, that [they are] a big issue” for businesses like his.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that the City of Portland is “pretty good” about only putting necessary specifications on projects. He said that the City of Portland could “expand their Sheltered Market Program ... beyond construction [and] that would be a benefit. That would open up some doors in the professional services area.”

N. Bidding Process.

Some interviewees reported that bidding processes and procedures pose barriers to pursuing or obtaining business opportunities. [Interviewees #: 4, 10, 14, 20, 22, 23, 24, 25, 29, 31, 37, 44, TA #2, TA #3, TA #5, TA #6, TA #7, TA #8]. Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, reported that a lack of understanding of the bidding process could have serious and negative consequences for small business owners. She said, “That’s a big one. If it’s not understood, it could ... hurt your company, shut you down, or make you go under. ... You’ve got to be really, really careful with that, and know what you’re doing.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported, “Low bid doesn’t work. They don’t place anything on quality, paperwork — you know, paperwork’s a big factor in county work, City work, and the [poor] quality of that paperwork going in I’m sure costs the county tons of money, but yet the sub that gets it doesn’t know how to do the paperwork.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, stated that small companies need public agencies to give them more time to bid on projects “when they come out on the circuit, because if you don’t give a small company — you have to remember, we come to work, we do our paperwork, we go out, we do the work, we come home, bid on the job to do the work to keep the people working, and then go out and help them do the work. That’s an endless battle. So if you don’t give us enough time to bid on the job, it’s useless to send me the piece of paper asking me if I want to bid on it.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported one barrier related to the bidding process is that trade organizations advocate with primes and public agencies to have their members on particular projects and preclude others’ access to those opportunities. Interviewee #25 stated that representatives of those organizations contact the prime and tell her or him that the organizations’ members should be put on projects, “or ‘you’re not a good GC.’ I mean, not with those words, but that’s the intention ... If you’re a small contractor, you don’t have the time to go with all these non-profit organizations. You don’t build that relationship [with primes], because you’re working, growing your business. When you don’t have a close relationship with an organization like that, that has the power to impact the GC on the bidding process? Yeah, that’s not good. That’s a huge barrier.” She stated, “Portland is a large city but it’s a really small community. We know everybody in the community; everybody knows everybody, so — when you’re bidding a contractor, there might

already be a general contractor that already has a relationship, [an] ongoing relationship with A, B, and C. And when you're trying to bid, you know? Basically, you're wasting your time because they have already that relationship. Or so-and-so is calling the GC saying, 'oh, don't hire so-and-so, you know, hire my members,' or 'do this and that.' So, sometimes there are things that happen behind the scenes. I've found projects where GCs have selected already their list of subcontractors, so when you're wanting to approach that contract, oh, you're out of the game."

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said that the bidding process is "secretive, and we are unable to get real constructive feedback. It would be great to see the shortlist."

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, said that, "The bidding process is a barrier, and often times the low bidder winds up with the work, and you know they will get a change order."

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he has seen and experienced barriers in the bidding process and believes discrimination based on race, ethnicity or gender contributes to the barrier. He said, "I'll give an example of this — this was a BES [Bureau of Environmental Services] project. We bid a project out and we didn't hear back, and we didn't hear back, and so we figured we didn't get the project. And I was talking to this other company, they called me and said, 'When are you guys doing that project? You guys got it.' And I said, 'No, we didn't, because such-and-such got it.' He said, 'No, you were the low bid.' I said, 'Well, no, he says that such-and-such was.' 'That's because they fished your number.' That was the general contractor letting us be aware and again, this is one that had aspirational goals; they intentionally went through — the general contractor has all the subcontractors giving him the numbers and then he was able to turn around and tell us that, 'You should have gotten that project but they apparently fished the bid and wanted someone else to do it.' The general contractor that didn't get awarded the project, that was number two, we had talked later on and they were like, 'No, you guys were the low number. They all had the same bids. One of the numbers that he had got, got lowered.' We just did one, an ODOT project just recently that out of the three low bids ... only one of the general contractors utilized us. We clearly state minority contractor, and only one utilized us out of the three and we were \$40,000 lower than our competitor. They were willing to pay \$40,000 more to not utilize us. Because they're general contractors, they can use whoever they want. It's the same with the City. These five contractors can say, hey look, we're not going to utilize anyone, or we're going to utilize flagging and trucking, which they have a tendency of doing, we're not going to utilize electrical because we're afraid that they're [going to] have a footprint on this project. They intentionally say, 'okay, don't use his number, although it's [going to] save the City money if we do.' The general contractor makes that decision, the City does not."

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that the bidding process is a "learning curve." She said that the organization encourages its members to go back and look at bids that they lose to see what the weaknesses were.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that the bidding process can present a barrier if small businesses do not have the proper training on submitting a bid. He said that pre-bid conferences walk small

businesses through the bidding process, but the small businesses are sometimes afraid to speak up in the conferences so they leave the conference without the information that they need to submit a bid.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that there are no barriers related to bidding procedures in the public sector. He said that bidding procedures can be a barrier in the private sector because sometimes the contractor does not know to whom to submit a bid. He said that in the private sector businesses can select whomever they choose, but there is a grey area with the PDC because it is unclear to what extent the PDC can encourage private developers to utilize minority- and women-owned businesses

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the bidding process can create a barrier because there can be a “lack of knowledge about how to construct a competitive bid.”

Some interviewees reported that race, ethnicity, or gender may contribute to the bidding process as a barrier to pursuing business opportunities. [Interviewees #: 4, 10, 14, 37, TA #5].

Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, said that a project owner’s bidding process could be an impediment to the growth of a small business. She stated, “It could be the fact that you make it due the next day and I just received it.” She said that it is a barrier for minority- and women-owned businesses to have to bid against ESB-certified firms.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, said that ODOT’s focus on African American and Asian DBEs in the bidding process is discriminatory against DBEs who are Native American and Hispanic. He stated, “Right now I feel discriminated against, because if you’re a DBE, you’re a DBE. You’re either all DBE or you’re not. It kind of makes the DBE certification a joke, at this point. If the federal government doesn’t want to recognize DBEs anymore, then it’s better to not have this system in place than, ‘I’ve got this void and I have to fill it.’” Interviewee #10 stated, “Right now we are discriminated against, as all Native American [DBE] companies would be at this point.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, said that the bidding process for public jobs is a barrier based on discriminated against [Caucasian] men. She stated, “That just goes along with [agencies’] extra requirements [for ensuring that primes on public projects hire MBE/WBE/ESB-certified subcontractors] that are involved, so the same kind of thing.”

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said that “Definitely, bias exists” in the bidding process.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that the bidding process is a barrier for small businesses because of adding to the scope of work to manipulate the bid. He said that general contractors will “tack [additional scope of work] on, tack it on until it gets to the point where you are now high; where before you were low.” He said that this barrier is based on race discrimination because after speaking with non-minority firms it is his opinion that they are not experiencing this same practice.

Other interviewees indicated that they did not perceive the bidding processes and procedures as barriers to pursuing or obtaining business opportunities. [Interviewees #: 1, 2, 3, 5, 6, 7, 8,

9, 11, 12, 13, 17, 18, 19, 21, 27, 30, 32, 33, 34, 35, 36, 42, 43, 48, TA #1, TA #4, TA #10, TA #11].

O. Factors Public Agencies or Others Use to Make Contract Awards.

Some interviewees identified various factors public agencies or others use to make contract awards as a barrier to pursuing business opportunities. [Interviewees #: 1, 3, 4, 6, 7, 19, 20, 22, 23, 24, 25, 28, 31, 37, 38, 40, 41, 44, TA #2, TA #7, TA #8, TA #11]. Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported, “I have a degree of frustration that state, local, county [governments] provide no preference to Oregon-based companies ... that doesn’t seem to be right to me, given, particularly, the current state of our economy.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated, “I don’t know. Are there back-door deals? I assume there are.” Interviewee #19 stated that “back-door deals” could serve as an impediment to the success of small businesses in her market.

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that public agencies’ focus on selecting the lowest-cost bid is a barrier. He said that agencies “go through quite a screening process to get contractors on their qualified contractor bid list. So you go through all the paperwork, turn it all in, and make sure you can get in on it, and then they take the lowest bid. I don’t know how to make that [a] fairer [process], but I don’t think they get the quality of work by doing that. It might be, since you got a pool, and you know the numbers that are budgeted, and you’re going to do the project within that budget, then you pull from the pool.” He said, “We’re bidding jobs, and the winning bid is under our cost.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that public agencies need “to use a little bit more of the factors, like, they need to say [to primes], ‘How much participation of minorities do you have?’ and ‘How many dollars do you have?’ and up the dollar value [for minority contractors] on each project.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, stated that public agencies’ use of the lowest bid price to choose subcontractors for a project is a primary impediment to the success of subcontractors in businesses like hers. She stated, “Maybe if they would change that, I think they would benefit the most, because then they would get a better service” rather than using the lowest bid price as the only or primary criterion for selecting contractors.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that factors public agencies or others use to make contract awards are a barrier because there are “preexisting conduits for certain providers, so it narrows that funnel [of] opportunities for other people.” He said that this barrier is not based on discrimination. He said there are “preexisting relationships and [a] power basis in this City that are longer-standing within the minority community itself ... certain minority contractors get the work and others don’t.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated, “How public agencies make awards is a barrier [because] they are subjective and usually the same people win over and over again.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said, “If you can remove the cronyism, the bias, the family connections, then that would be good,” when discussing the factors public agencies or others use to make contract awards.

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, said, “Some projects you feel that they already made decisions on the person of their choice.”

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, said, “Sometimes some of these factors are used to shut people out and show preference to others.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that factors Portland or others use to make contract awards could be a barrier, but “I don’t know that a project manager uses that to discriminate ... I don’t know of any example of that.” He said that he has seen bid documents that require a contractor to have worked on a project of a certain size before you can bid and that “would eliminate a lot of smaller businesses.” He said that the factor was “justified” based on the complexity of the project and “that doesn’t sound like discrimination.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that for the most part the organization’s members know how to navigate through the factors public agencies or others use to make contract awards, but this can be a barrier for businesses who do not understand the process.

Interviewee TA #11, a representative from the Port of Portland, stated that factors public agencies or others use to make contract awards are a barrier, but that the barrier is not related to any race, ethnicity, or gender discrimination.

Some interviewees reported that race, ethnicity, or gender may contribute to factors that public agencies or others use to make contract awards as a barrier to pursuing business opportunities. [Interviewees #: 1, 3, 7, 44, TA #2, PF #10]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that public agencies’ MBE/WBE/ESB participation goals are a barrier to his company’s success because “minorities ... don’t have to be [the] low [bidder] to get the work,” and majority firms have to be the low bidder to get the work.

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that factors public agencies use to make contract awards “sometimes” are barriers to her firm getting work. She stated, “I wasn’t able to get any ODOT work this year because they didn’t want women. ‘Oh, there’s way too many women! They’re getting too much of this pie.’” She said that awarding contracts to the lowest bidder is also a barrier for her firm and others in her industry. She stated, “This winter, when everybody was literally starving was when [a prime contractor bid a public project] and they called and said, ‘you’re bidding this at 85-95 [dollars an hour].’ I was high, I was, but I’d worked on other projects with them. I said, ‘I can’t do that [job] for \$80 an hour and pay a driver \$26.65 [an hour] plus \$11.91. I can’t do that.’ I said, ‘I don’t know how anybody else is going to do that, I don’t.’ [He said] ‘Well, they’re bidding at \$75.’ I said, ‘good luck with that. I

don't know how they're going to do it.' I know for certain that [those firms bidding at \$75 an hour for that job] don't pay prevailing wage, and I do."

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that he was concerned that the process used to award diversity points as part of the City of Portland's bid selection process might be unfair. He recalled bidding as a prime for a contract, and receiving fewer diversity points than those awarded to the winning bidder. He stated, "Why wouldn't [a prime ESB minority] get the same number of points? Something in the scoring process [contributes] to that unfairness." He stated that he did not protest that or other City of Portland bid awards "because there's always that fear that if you protest it, you'll never get another job from that bureau again."

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he has seen and experienced barriers in the factors public agencies use to make contract awards and believes discrimination based on race, ethnicity or gender contributes to the barrier. He said, "By putting the project out at such a large size, it allows those contractors that create the barriers to continue to have the barriers. In other words, if they say we're going to break this into three phases, thus allowing us potentially to bid as a prime or another minority contractor to bid as a prime, then we're actually going to get in on a project. But if they make it so large that we know these four are the only ones who can do it and those four historically don't utilize us, then it becomes a barrier."

Interviewee TA #2, the director of an apprentice preparation program, said that minority firms face discrimination based on race in the factors used to make contract awards because persons at public agencies and prime contractors who make bid award decisions are "interlocked, like a chain." She said, "Another one that I've been experiencing is that the people that review the proposals, they are all interlocked together and have been there forever. So they review these contracts, they already know [the participants, and say], 'Oh, great,' no one asks [any] questions, because they say, 'It's great, and we've been interlocked together, you know what you're talking about, okay.' That [company] gets it." She stated that sometimes those reviewing contracts select minority- or women-owned businesses so that the selection process does not appear biased against racial and ethnic minorities and women.

PF #10, representing a minority-owned contracting firm, said that it is difficult for minority-owned firms to find work in Portland: "I know for a fact, as a business owner and as a minority business owner, it has been rough here in the City of Portland. I am glad you did the study because I'm a MBE, DBE, ESB and all those acronyms, but I still have a hard time getting work. I had a hard time making it."

Other interviewees identified no barriers posed by the factors that public agencies or others use to make contract awards. [Interviewees #: 2, 5, 8, 9, 11, 12, 13, 14, 17, 18, 21, 26, 30, 32, 33, 34, 35, 36, 42, 43, 48, TA #4, TA #5]. Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, noted that agencies are now awarding points to firms based on diversity.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that he does not view factors public agencies or others use to make contract awards as a barrier for small businesses because the factors are applied "unilaterally."

P. Bid Shopping.

Some interviewees identified bid shopping as a barrier to pursuing business opportunities or noted that bid shopping happens frequently in the marketplace. [Interviewees #: 1, 2, 4, 8, 10, 11, 12, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 31, 37, 38, 40, 44, 47, 48, TA #3, TA #4, TA #5, TA #9, TA #10]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that bid shopping “is happening quite a bit right now. I don’t think it makes a darn bit of difference whether it’s minority or not. [It’s done by] general contractors that are less than honest.”

Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, said that he has experienced bid shopping but he cannot say that it is based on race, ethnicity, or gender discrimination.

Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, stated that bid shopping “happens all the time, as far as I’m concerned. It’s just a matter of how you can hold the feet to the grind on proving it.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, said that bid shopping is a barrier to pursuing business opportunities. Interviewee #10 stated, “Bid shopping is just horrendous, especially with the way the economy is right now. It’s very bad. We lost a job by \$1,100, we lost a job by \$5,500 — I mean, you just don’t lose a job for \$5,500.”

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that bid shopping “happens occasionally.”

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, reported that bid shopping is “a barrier right now; it’s just terrible.”

Interviewee #17, the Native American male owner of a non-certified excavation firm, reported that bid shopping is now common in his industry. He said, “Oh yeah. People — instead of getting one or two bids, they’re going out and getting four or five, and saying, ‘well, this guy bid it for that.’ And the next guy says, ‘Well, I can beat that.’ The next thing you know, [the winning bid] is half of what your bid was.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, reported that bid shopping “probably does happen a lot ... you hear a lot [about] it” in the market.

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that bid shopping is increasing in the local marketplace. She said, “We do see, unfortunately, right now, a lot of that. We definitely don’t like it when people do that to us. We don’t think it’s ethical.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that he sees bid shopping in the market “all the time. Seems like all I was doing for PDC was getting courtesy bids. And you [have] to take a lot of time to figure out some of these [bids].”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that bid shopping is a problem for small businesses. He said, “I know they do it a lot. I’m sure they do it to me.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, said that she is aware of bid shopping in the local marketplace. She said that she attended a meeting with a larger firm to discuss working as a subcontractor for this larger firm. She stated, “I brought my engineer with me [to the meeting], and there was a big table with people, and I said, ‘I’m here for such-and-such job.’ They said, ‘Oh, okay, it’s in there.’ So we got in [to the room indicated], and it was the wrong meeting. It was the same job, but a different meeting ... with all the big shots. [I thought] ‘Oh, they really want me.’ And they all looked at me weird like, ‘What are you doing here?’ so that confused me, but I thought, ‘Well, I’m already in, what am I going to do?’ And I sit down ... They start sharing about who was going to talk to who, what money they were going to give to certain officials to support them ... and then, when they got to me they [said] ‘Well, what can you do?’ I was like, ‘Well, whatever you want me to do’ ... because I don’t know what I need to do. We laugh[ed], my engineer and me, we were just shocked; we realized we were in the wrong meeting, but we didn’t expect to see that. So there’s bid shopping, big time.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated people have historically engaged in bid shopping but it does not occur as much as it used to; he said that he has heard people reporting that their bid was “shopped.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that he is “sure it happens” but he does not hear much about bid shopping.

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated, “There are barriers [related to bid shopping] when owners can ask others for a lower number or adjust things in their scope to complete in-house, tipping the scales to really make it possible to use who they want to use.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said that he believes “behind-closed-doors bid shopping happens every day and all day.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he has seen and experienced a barrier in bid shopping and believes discrimination based on race, ethnicity or gender contributes to the barrier in this line of work. He said, “We lag a little behind. I think we have a few challenges we end up with, like general contractors who simply don’t use our bids. Especially starting up, we realized that they, you know, that they just ignore the bid. And we also end up with what’s called fishing out the bid, which is someone else gets a second look at the project. So we put a number in — say we’re low at \$100,000 — they’ll go back to that firm that was higher and say, ‘Can you go lower than \$100,000?’, and they’ll go a dollar lower per se and they become the low bidder. Because of those type[s] of things, it makes it so that we end up having to put more bids out in the hopes that someone will actually utilize our number, rather than just fishing it out or just ignoring it in general.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, stated that bid shopping is a problem and it usually occurs at the general contractor level. He said that bid shopping happens “all the time.”

Interviewee TA #10, three representatives of the Northwest College of Construction, said that “subs are always thinking that their bids are being shopped.” They said that bid shopping is “about the money” and is not based on discrimination.

Some interviewees reported that race, ethnicity, or gender may contribute to bid shopping as a barrier to pursuing business opportunities. [Interviewees #: 8, 11, 15, 25, 29, 40, TA #3, TA #5, TA #9]. Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that she has experienced barriers based on gender related to bid shopping in the local marketplace.

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that he had experienced bid shopping based on race.

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes bid shopping is a barrier and that discrimination based on race, ethnicity or gender contributes to this barrier. He said, “Bid shopping is happening and we know it. I have seen examples of losing a bid by a few dollars.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, said that she believes bid shopping is related to ethnic and racial discrimination. She stated, “Yeah, I think that there is some of that, too, involved, and I think it’s part of the shopping numbers around because they don’t know you, you’re a first-timer, and you’re a minority.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated that he has seen and experienced barriers in bid shopping and believes race, ethnicity or gender-based discrimination contributes to the barrier. He said, “It’s so obvious — happens all of the time.”

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, said that “Bid shopping is pretty common” and he believes that discrimination contributes to the barrier.

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that bid shopping is a barrier. She said that bid shopping is “probably” based on discrimination.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that bid shopping is a barrier for minority firms. He said that he is often asked by contractors when to submit a bid because they do not want to submit the bid with enough time to permit bid shopping. He said that in one situation, a general contractor listed two quotes on his bid submission for a convention center project — one from a minority subcontractor and one from a non-minority subcontractor — for the exact same dollar amount. He said that the City stepped in and corrected this because they knew that “this doesn’t happen” without bid shopping.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that he has heard about bid shopping and that it may be based on discrimination.

Other interviewees indicated that they did not perceive bid shopping as a barrier to pursuing or engaging in business. [Interviewees #: 3, 5, 6, 7, 9, 13, 18, 30, 32, 33, 34, 35, 36, 42, 43, 45, 46, TA #1, TA #11]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that she was familiar with bid shopping, but stated, “I don’t think that’s a problem. I just think it’s unrealistic to take the low bid. If it cost you this much to do it, and somebody says they can do it for half of that, there’s something wrong there. Common sense says that doesn’t work.”

Interviewee TA #11, a representative from the Port of Portland, stated that she does not have any experience with bid shopping, but she does hear contractors talking about it.

Q. Bid Manipulation.

Some interviewees identified bid manipulation as a barrier to pursuing or obtaining business opportunities. [Interviewees #: 2, 4, 6, 8, 10, 11, 12, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 29, 31, 32, 37, 38, 40, 44, 45, 47, 48, TA #2, TA #3, TA #4, TA #5, TA #6]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, said that bid manipulation is “borderline negotiation, because you never really know whether it’s just a story they told. And I’ve had that, I’ve experienced it everywhere, not all the time.”

Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that she “believes [bid manipulation] happens.”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported that bid manipulation “occurs, to some extent. We see a few competitors out there who are always turning in the low [bid] price, and it has to be a function of presentation: I know what it costs to do the work.”

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that she was aware of bid manipulation in the marketplace. She said, “I see that more and more now, because of the economy.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported, “Yeah, there’s a lot of [bid manipulation] going on. But as long as we get paid, we’re fine.” Interviewee #19 stated that bid manipulation is an issue for general contractors. She said, “That falls on the GC side, it doesn’t fall on us. I mean, we send our number, and what they do with it, we have no control.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, reported that she has heard people in her field talking about bid manipulation. She said, “You hear people talking about it afterwards.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported, “I don’t know how they survive when they get the bid, so I think that’s where the bid

manipulation comes. How do you get off the job and still pay the Davis-Bacon [wages]? That's what I want to find out about."

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that she believes that there are barriers to fair competition through bid manipulation.

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said that he believes "behind-closed-doors bid manipulation happens every day."

Interviewee TA #2, the director of an apprentice preparation program, stated, "One of the things I have a real big issue with is [project] owners allowing contractors to bid on jobs and put programs like mine in their [bid] packet. And throughout [the bid process] and at the end, they never, ever use any of our people, they never picked up the phone and even call."

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that he knows bid manipulation occurs because people have inside information on bids. He said that bid manipulation occurs when someone says, "If you can get your bid into that number, I know I can get you the job." He said that bid manipulation occurs about 10 to 20 percent of the time. He said that project managers and estimators have the inside information.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that bid manipulation occurs. He said that this barrier is based on established relationships.

Some interviewees reported that race, ethnicity, or gender may contribute to bid manipulation as a barrier to pursuing business opportunities. [Interviewees #: 8, 11, 15, 29, 31, 40, 44, TA #5]. Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that she has experienced barriers based on gender related to bid manipulation in the local marketplace.

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that he has experienced bid manipulation based on race.

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes bid manipulation is a barrier and that discrimination based on race, ethnicity or gender contributes to this barrier. He said, "We know the bids get manipulated to work with who they want to work with, but when we come in so low and no one else will do the job for that price, we get the job."

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated bid manipulation is a barrier and believes race, ethnicity or gender-based discrimination contributes to the barrier.

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated, "Bid manipulation is a barrier and M/W/ESBs spend a lot of time on their bids and estimates just to get played with."

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, stated that bid manipulation is pretty common and that he believes discrimination contributes to the barrier.

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he has seen and experienced a barrier in bid manipulation and believes discrimination based on race, ethnicity or gender contributes to a barrier in this line of work. He said, “Bid manipulation is a little different. We’ve had this where they call you up and say, ‘Hey, we want you to include excavation. Give us a price for excavation.’ So you give a price for excavation, okay? Now you’re high. And that’s how they manipulate their bid. They have you include stuff in your proposal to get your proposal so it’s too high — include concrete work, include concrete bases, include painting pole lights.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that bid manipulation occurs when scope of work is added to the bid. He said that he has heard from his members that there is “manipulation of the price during the bid process.” He said that his members have reported that they have quoted a price and then they are asked to include another scope of work to push the price higher. He said that this results in the “general contractor saying, ‘We are not going to utilize you because your price is too high.’” He said that the general contractors do this because then they can go back to the project owner and say that if you want a minority contractor you are going to pay a premium. He said that the other contractors are not being asked to include the additional scope of work in their bids. He said that this practice is happening currently. He said that he is not aware of this happening on City or PDC projects.

Other interviewees indicated that they did not perceive bid manipulation as a barrier to pursuing or engaging in business. [Interviewees #: 5, 7, 9, 13, 17, 18, 27, 30, 33, 34, 35, 36, 42, 43, 46, TA #1, TA #8, TA #11]. Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that his members do not participate in bid manipulation. He said that “as the economy has gotten worse, I am certain that ... people are figuring out all kinds of different ways to be competitive, but I wouldn’t call it manipulation.”

R. Treatment by Prime Contractor or Customer During Performance of Work.

Some interviewees identified treatment by prime contractors or customers during the work performance as a barrier to pursuing or obtaining business opportunities. [Interviewees #: 3, 4, 15, 24, 25, 26, 29, 31, 33, 37, 38, 43, 44, 47, TA #2, TA #3, TA #5, TA #7]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, said that primes’ treatment of subcontractors could be a potential barrier to her firm. She stated, “Sure, if they’re jerks. There’s a lot of screaming primes out there, you know who, again, may be [upset] because they underbid [a job]... We have a certain expectation of how people should treat each other. It’s not because I’m a girl, it’s a business decision about the way we will treat people in our market.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, stated, “I haven’t experienced it myself,” but stated that members of her field staff have experienced a barrier because of treatment by the prime or customer during the performance of work. She stated, “I know that my project field supervisors have [experienced this barrier] with their [Caucasian] male general contractors’ project managers. So when something like that happens, I get on the phone. That’s not acceptable.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that he is aware of treatment by the prime contractor or customer as a barrier to small businesses. He noted that sometimes the prime contractor or customer will impose unfair requirements as a way to weed out people that they do not want to work with.

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that “some primes are better than others [in] how they communicate, how they pay, [and] how they coordinate with you.” She said that treatment by a prime or customer during the performance of work can be a barrier.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that sometimes a prime contractor will use a subcontractor on a bid, win the project, and then not contact the subcontractor for an extended period of time. He said that sometimes when the subcontractor gets on the job, they learn that the prime has performed some of the work themselves. He said that early reporting of subcontractor utilization in accordance with the bid would help combat this problem. He said that he does not believe that this is based on any discrimination against minorities or women, and that he believes that the primes “just want to do the work themselves and make a profit off of that work.”

Some interviewees reported that race, ethnicity, or gender may contribute to treatment by a prime contractor or customer during performance of work as a barrier to pursuing business opportunities. [Interviewees #: 4, 15, 29, 31, 33, 37, 38, 43, 44, 47, TA #2, TA #5]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that treatment by a prime contractor or customer during performance of the work is “a nightmare. I show up for a safety orientation, and the safety manager puts a blast out on my team that’s negative, in front of other workers on the project, so that it makes us look like we are lacking or deficient, and that gets spoken about throughout the project.” She stated, “We get held to standards above and beyond what another contractor, who’s performing the same work.” She said, “We put some extensions on [and] they want us to weld them to the nth degree. The other contractor [doing the same scope], who is [Caucasian], put extensions on [but he] didn’t weld one, and did over 40 of them. I don’t know to this day whether they’ve been called back out there to spend the thousands of dollars to weld them all the way around.

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes treatment by a prime or customer during performance of the work is a barrier and that discrimination based on race, ethnicity or gender contributes to this barrier. He said, “The prime is your go between to the customer, and sometimes, if they don’t want to have to use you in the future, they say bad things about you that don’t really reflect your work, but their opinion of you as a minority.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “The field work is an entirely different story. You are working with people that don’t like you or want you on the project and feel that some government program is forcing them to work with you.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated treatment by the prime or customer during

performance of the work is a barrier. He said that “Some prime contractors find ways to make you pay for having to use your firm and tell you that.”

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she believes there are barriers created by the treatment of primes or customers during performance of the work and that she has personal experience with this form of gender bias.

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said that “Often the prime contractor requires you to work in their office in the dark back corner like the worst dunce idiot employee. You have no names, just DBE 1, DBE 2, DBE 3, and they use you for simple jobs like drafting that shouldn’t even be considered engineering work in the first place. They refuse to use you in areas of your expertise, and you need to do this work to survive. As a business owner they want you to sit in their office eight hours a day and not work to maintain your own business. They strip you of all dignities.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, stated that he is treated professionally by personnel when he’s in the prime contractor’s offices, and he reported that he is treated differently in the field. He said, “In the field [among primes], it’s a different story, and I have to continue to prove myself to others who have me labeled or stereotyped.” He reported that when working in the field he has been told that he only received the work because he is a DBE and that another company should have been performing the work.

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, said that treatment by the prime or customer can be a barrier. He said, “Sometimes you can, one thing I have noticed — I’ve traveled all over the U.S. In the South, they’re straight to your face with prejudice. In the Northwest, they’re your buddy and when you turn your back, then they say [things].”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that treatment by the prime or customer is a barrier and that discrimination contributes to the barrier. He said, “Yes, examples are where they’ve almost called me a [derogatory term] in regards to ethnicity. I’ve had it where they did and I’ve had it where they’ve come close.... The general contractor’s [project manager] basically called me an ‘F’ing N.’ And telling me I couldn’t store my electrical tools on the job site and they weren’t going to supply me with the wastebasket that was in my contract. I had another incident with a sheet rocker. He didn’t call me it but he came close.”

Interviewee #47, the Caucasian female owner of a WBE/DBE/ESB-certified trucking firm, said, “It’s been a while, but I used to hear them all, like, ‘Why don’t you go back to the kitchen.’”

Interviewee TA #2, the director of an apprentice preparation program, reported that minority subcontractors, “are not respected for their work, so they go out there and get the cheapest labor ... they work them like runaway slaves, cheap, cheap, cheap.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that he has heard that on a lot of projects the prime will not allow the subcontractor to communicate with the project owner to explain pricing and/or change orders. He said that the prime will try “to

manipulate the potential relationship between the owner and the subcontractor.” He said that he believes this is based on discrimination because other non-minority subcontracting firms are able to meet with the owners of projects. Interviewee TA #5 also reported that he is aware of a general contractor on a PDC project who “screamed and hollered” at the minority contractor for work that the minority contractor had subcontracted out. He said that he has also heard of situation on a City project where the minority contractor came to work and found that someone had cleaned up the area where the minority contractor was keeping his tools and “all his tools [were] in the dumpster.”

Other interviewees reported that they had no experience with or were not aware of barriers in connection with treatment by a prime contractor or customer during the work performance.

[Interviewees #: 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 30, 34, 35, 36, 40, 42, 48, TA #1, TA #4, TA #8, TA #9, TA #10, TA #11]. Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that for the most part the relationships between subcontractors and primes are very “businesslike.” He said that “most of the time the relationships are pretty solid and ... these guys are business people so they get past a lot of things.”

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that his members have not experienced any “major issues” with treatment by the prime or customer during performance of the work.

Interviewee TA #11, a representative from the Port of Portland, said that she has no experience with treatment by a prime contractor or customer during the performance of work being a barrier, but she has heard “rumors” about it.

S. Approval of the Work by the Prime Contractor or Customer.

Some interviewees reported that the approval of work by a prime contractor or customer is a barrier to pursuing or engaging in work. [Interviewees #: 4, 10, 15, 25, 26, 31, 33, 37, 44, TA #2, TA #3, TA #5, TA #7, TA #8]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that approval of the work by the prime or customer is a barrier because the firm is “being held to a higher standard.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that primes and/or customers questioned the abilities of his firm “in the beginning, but we have a shiny star now.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that he heard about businesses encountering issues with approval of the work by the prime contractor or the customer. He said that businesses need to be taught not to perform work without a written work order.

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said that approval by the prime or customer can present a barrier for small businesses “because sometimes their opinions are subjective and they may not understand the work performed.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that some contractors “bend over backwards” to make sure that the subcontractor’s work will be approved and some do not. She said, “I think they bend over backwards for some groups, and don’t put much effort in other groups.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that approval of the work may be a barrier if a customer or the prime does not approve the work because they say it is low quality. He said that he has never heard of approval of the work by a customer or prime being based on discrimination, but “I am sure that it would feel that way if you were told that ‘this is not good quality work’ [and] you’re the only person of color in the room when they do that.” He said that he does not have any specific examples.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that there can be issues with approval of the work by the prime or customer, “particularly with lesser experienced companies.” He said that his members “are pretty forgiving” and will debrief after jobs to explain any performance issues to the subcontractor.

Some interviewees reported that race, ethnicity, or gender may contribute to approval of the work by the prime contractor or customer as a barrier to pursuing business opportunities.

[Interviewees #: 15, 25, 33, TA #5]. Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes approval of the work by the prime or customer is a barrier and that discrimination based on race, ethnicity or gender contributes to this barrier. He said, “If you are fortunate enough to work with people who just want a good job and performance and leave all of the other judgments out, then you can be successful.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that her staff has had more difficulty than non-minority subcontractors’ staff getting their work approved by prime contractors or customers. Interviewee #25 stated, “It’s not easy getting work approved. They have to work twice as hard,” because primes and customers more closely and critically scrutinize their work.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she believes there are barriers created in the process of approving work by primes or customers and has personal experience due to gender bias.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that approval by the prime or customer is a barrier for small businesses. He said that the prime contractor will sometimes tell a member to perform the work, but the member’s proposal is never approved. He said that the prime threatens to sue the member for liquidated damages for holding up the contract so that the member will perform the work before the proposal is approved. He said that then the member has to negotiate the approval of the proposal after the work has been completed. He said that often times the prime will say that the price in the original proposal is too high. He said that recently a minority subcontractor was not paid for several months of work on a PDC project.

Other interviewees indicated that they did not perceive approval of work by a prime contractor or customer to be a barrier to pursuing or engaging in work. [Interviewees #: 1, 2, 5, 6, 7, 8, 9, 11, 12, 13, 14, 16, 17, 18, 19, 20, 22, 23, 27, 30, 32, 34, 35, 36, 38, 42, 43, 45, 46, 48, TA #1, TA #4, TA #6, TA #9, TA #10, TA #11, TA #12]. Interviewee #27, the African American male

president and owner of an MBE/ESB-certified painting firm, said that approval by the customer or prime is not a barrier because he is in contact with his job site supervisor daily to address any problems.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that approval of the work by the prime or customer is not a barrier. He said that it is up to the prime to ensure that the work is done to certain standards. He said that it is in the best interest of the prime to make sure that the sub is performing at the best possible level and to assist the sub if there are any areas of concern.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that his members have not experienced any barriers related to approval of the work by the prime or customer to date, but “I am sure they will.”

Interviewee TA #11, a representative from the Port of Portland, stated that the agency has “inspectors that inspect everything that is done and we are a pretty tough customer,” but she said that she does not view approval of the work by the prime or customer as a barrier because all contractors are subject to the same inspection.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, stated that there is always a foreman on the project and there are work standards that must be met, but he does not perceive approval of the work by the prime or customer as a barrier because “it is just part of the job.”

T. Payment by the Prime Contractor or Customer.

Some interviewees identified issues related to payment by a prime contractor or customer as a barrier to pursuing business opportunities. [Interviewees #: 1, 4, 9, 10, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 29, 31, 33, 37, 42, 44, 45, 46, 47, TA #1, TA #2, TA #3, TA #4, TA #5, TA #6, TA #7, TA #8, TA #9, TA #10, TA #11, TA #12]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported that less than timely payment occurs and the general contractor “doesn’t care whether you’re a minority or not; he just wants to hold your money as long as he can.”

Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that the lack of timely payment by the prime or customer is a barrier for small businesses. She stated, “We’re a lot of times promised timely payment, but usually ... it’s late.” She said that because of the slow payments “we look like we’re slow payers [and] we pay more in interest and penalties.”

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that prime contractor’s slow or no payment for services was a barrier in the market. He stated that this barrier is based on market conditions, not race, ethnicity, or gender discrimination.

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, said that timely payment by the customer is a barrier to pursuing business opportunities. He stated, “That’s a problem, especially with general contractors.... They call you [and say] ‘Do the job, finish it.’ You finish it, and then you have to wait ... You turn your paper in ... and they say, ‘No, I can’t give it to you,’ and a month passes by, and another month—because you turn it in again ... and then he pays

you [in] the third month.” Interviewee #16 reported that some general contractors give him promissory notes, but do not make good on them. He reported that he does not report pay disputes to the Construction Contractor’s Board of Oregon (CCB) because “I know what’s going to happen. They’re going to put a thing on your license, and say it’s a claim or a dispute ... my record is clean ... I don’t want to mess with my [CCB] record.”

Interviewee #17, the Native American male owner of a non-certified excavation firm, stated that his customers usually pay him the day he performs an excavation job. Interviewee #17 stated, “The general contractors are becoming slower now because ... they’re robbing Peter to pay Paul.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported, “We have slow pay. Most of it hinges on how they get paid by ... whoever they’re working for.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that timely payment is a barrier to small businesses. He said, “They usually just shove you off and tell you, ‘they get it when they get it.’ Working with government, you don’t always get the money the way they say you’re going to get it, or the draws, when they come down. Usually the people who tell you what you’re going to get and the people who sign the check are two different people.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, said that slow payment for his firm’s work is “a big barrier, right there.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that timely payment by the prime is a significant barrier to the success of her firm. She stated, “You never know when they get paid, and you call them when they get paid, and they say, ‘We haven’t got paid,’ but you never know when they get paid, if they get paid. The only thing that’s been really [helpful] is with this TriMet [software the agency uses to notify subcontractors when it pays the primes and] you know when they get paid, and [then the primes] pay you in time.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that primes’ or customers’ timely payment, including slow or non-payment “is always an issue” for her firm. She said, “The issue that I have is, when you’re submitting your paperwork, and especially if it’s a GC, and you’re expecting payment within 30 days, or at least 45 days, but if no one calls you and [tells] you something’s missing, then you’re assuming that they approved your payment. And a lot of times, its 45 days and you’re calling them, and they’re saying, ‘Oh, we need this; we have to reprocess it,’ and you have to wait another 30 days. That’s not okay; they should call you immediately” if the subcontractor has submitted incomplete paperwork. She stated, “If they are holding your application for payment, they should at least let you know.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that there are barriers associated with timely payments. He said, “the reluctance or problem is in getting the payment from the prime and not knowing exactly when the owner has been paid, and complaining to the owner creates problems.”

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “Yes, timely payments are an issue. To receive payments on time and when expected, you are often put in the position of asking and asking for your own money.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, said, “As far as timely payment we did have one company refuse to process any of our invoices for three months ... which we did end up having to get the City involved. That was the hopes of running us out of business because we were basically funding the entire project.”

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said issues with timely payment “really cause problems with everything — payroll, supplier and everyone — when they don’t pay or pay slow.”

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “Payments are good to slow.”

Interviewee TA #1, the vice president and credit administrator of a commercial bank, reported, “With contractors ... or just generally people that give credit to their customers, they’re seeing” much slower repayment, “whereas before, paying 30 days, and now it’s slower, which just hurts them.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that timely payment by the customer or prime is a barrier “that can drive you out of business.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that he has heard that timely payment by the customer or prime is a barrier for businesses. He said that he is aware of one contractor who had a general withhold payment for almost a year after the work was completed based on an alleged billing error by the subcontractor.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that timely payment by the customer or prime is a “continuous problem.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that timely payment by the customer or prime is an issue. He said that the subcontractors complain “that generals hold out too much money ... usually it is used as leverage to ensure completion [of the job] ... there are flaky subs out there that will not complete work.” He said that timely payment is “the biggest challenge I think throughout the entire industry ... if you have tight cash flow it is tough to do business in construction.” He said that this barrier is not based on discrimination and is “utterly colorblind.”

Interviewee TA #11, a representative from the Port of Portland, stated that timely payment by the customer or prime is a “big issue.” She said that the barrier is related to the size of the business, and that “getting paid is a real stumbling block, especially for small businesses, because they just don’t have the financial capacity to fund the work.”

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that timely payment by the customer or prime is a barrier, but that the barrier is not based on any race, ethnicity, or gender discrimination.

Some interviewees reported that race, ethnicity, or gender may contribute to payment by a prime contractor or customer as a barrier to pursuing business opportunities. [Interviewees #: 10, 15, 29, TA #5, TA #7, TA #9,]. Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, said that payment by the prime or customer is a barrier to pursuing business opportunities. Interviewee #10 stated, “[Payment is] horrendous with the economy the way it is right now.” Interviewee #10 stated that slow or non-payment “could be because we’re a DBE, but you don’t know why they don’t pay you, but when you’re disadvantaged and they don’t pay you, it doesn’t help.”

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes approval of the work by the prime or customer is a barrier and that discrimination based on race, ethnicity or gender contributes to this barrier. He said, “Late and slow payments are a big problem, because materials ordered start to accrue 30 days from the moment that you order and discuss them, and then late charges come in before you can get paid.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated that he has experienced timely payment issues by the customer or prime and he believes race, ethnicity or gender-based discrimination contributes to the barrier. He said, “If payments were timely that would solve a lot of problems and you would not have to spend so much time collecting and chasing and begging for your own money.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that he is aware of situations where the prime gets paid and then does not pay the minority contractor. He said that there was a project that was 80 percent complete and the prime had yet to pay the minority contractor “in hopes that that minority contractor would go out of business and [the prime] would retain that income.” He said that the minority contractor was eventually paid because the City got involved and told the prime contractor that “if the minority contractor did not get paid that day, then the contractor would not do any more work with the City.” He said that there are situations where the City pays the prime and the prime does not pay the subcontractor. He said that there are also instances where the prime does not process the minority firm’s invoices on the payout and “then he can say that he didn’t get paid [by the project owner] so he is not going to pay you.” He said that he does not hear about non-minority firms having payment issues. He said that this occurs more on City projects than PDC projects.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that timely payments by the customer or prime are “always an issue.” He said that many times, delayed payments are related to the quality or completeness of work and this can usually be resolved. He said that if the subcontractor and prime cannot work out the payment, “that is when it could be related to discrimination.”

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that timely payment by the customer or prime is the “main complaint” from their members. He said that this barrier is related to racial discrimination.

Other interviewees identified no barriers in connection with payment by a prime contractor or customer. [Interviewees #: 2, 5, 6, 7, 8, 11, 12, 13, 14, 18, 27, 28, 30, 32, 34, 36, 38, 43].

U. Other.

Some interviewees identified additional barriers to pursuing or engaging in business.

[Interviewees #: 1, 4, 5, 6, 8, 9, 10, 11, 13, 14, 21, 24, 25, 44, TA #1, TA #3, TA #6, TA #7, TA #12]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, reported, “I wouldn’t have a problem with minorities — the percentage of minorities per job, or whatever — but when it’s a bid process and I’ve got to get my number down so down tight, especially in this economy [where] I can’t make money, I take a huge risk of losing money, at this point. But minorities get a leg up, because they don’t have to be [the] low [bidder] to get the work. So they can be 15 percent above me because [the project owner requires] X number percent minority participation. [Minorities] get the job, at that price. I wouldn’t have a problem if they said, ‘Look, we need 15 percent minorities, and if you’ll do it for the low bidder’s price,’ then we’re on a level playing field. When they can be 10-20 percent above me and still get work, it’s an unfair advantage.”

Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, said that where people live can be a potential barrier to the success of a small business “because one group sees themselves [as] better or above” another group.

Interviewee #5, the Caucasian male owner of an excavation firm, said that City personnel and regulations present significant impediments to the growth of small businesses. He stated, “Nobody wants to work in Portland, reason being the permit process and the inspection process.” He said, “Working in the City of Portland is not worth it. There’s no justification for that. Most of my builders that I used to have, they avoided Portland at all costs ... one of reasons was the permit process. You’d have to spend a whole day ... to get your permits.”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported, “One of the issues we’ve frequently encountered is the [Bureau of Labor and Industries] and prevailing wage requirements. I mean, they’re just horrendous. When we, as movers, are tied to construction projects, we fit into the general labor category which is about a loaded rate of \$35 an hour. Market rate for movers and drivers is in the \$10 to \$17 an hour rate, and if you load it up, it’s usually \$20 to \$22 [an hour]. So we’re paying our employees at least 30 percent more when they’re working on prevailing wage projects and it causes problems in scheduling — who’s going to get [the jobs paying prevailing wages] — and it is an administrative nightmare. Not to mention the fact that we have to charge more money and so, as a taxpayer, I think the whole thing’s outrageous. The federal guidelines are much more reasonable. They come into play when we do moving for the military, and we do a lot of that. Number one, the classification is mover/driver/packer versus construction, which is higher presumably, because of union influence, I guess — whatever; that’s not a battle I want to fight. The wage differential is huge.”

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that it is “not an uncommon practice” for construction firms in Oregon not to pay workers the prevailing wage. She said that businesses that pay the prevailing wage are at a disadvantage. She stated, “You ask people to pay prevailing wage, and I’ve seen people

be taken advantage of. [The Oregon Bureau of Labor and Industries] doesn't enforce it, there's no audits. You send in a certified payroll, but there's nobody standing out there on the job site."

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that fuel prices are a barrier to work in the market.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, said that "On the ODOT side of it, I think they don't necessarily do enough education, or have enough help. They say they have help, but I don't know where you would go to find it. It's not an easy website to find anything on." Interviewee #10 stated, "I think when times were good, the discrimination is bigger. If you're bidding, there's a lot of money out there, everybody's getting [a] 25 percent markup, the discrimination is much bigger ... [Now] it's so low-bid that it doesn't matter. 'I don't care who or what you are, give me the lowest bid you can.' And since 2001, it changed to that mentality."

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, stated that racial discrimination is a barrier to pursuing business opportunities. He said that people of color frequently experience racial discrimination. He stated, "I try to see the good in everybody; that everybody is going to deal with me based on who I am. The bad thing about Portland, Oregon for people of color, there's a lot of subtle racism, but it's there." He reported being on a phone call with a Caucasian foreman, who "called one of my employees a 'stupid Mexican.' That made me mad.... I said, if he called him a 'stupid Mexican,' I must be a stupid [African American], 'cause if he used that vernacular towards him, he would use that same vernacular towards me." Interviewee #11 reported that this experience is an example of the subtle racism that exists in Portland. He reported that the foreman "act[ed] like he's the perfect, honest, fair guy, that he likes everybody, but that's [not accurate], because you make a comment like that ... he's a racist. That's the kind of comment that racists make. He's dealing with [people of color] because he has to ... I'm mindful that that stuff exists.... Every now and then, that little demon flares its head, and lets you know what you're really dealing with."

Interviewee #13, the Caucasian male owner of a residential construction company, stated that he is aware of discrimination against "some of the Russian community in my line of work. There are a lot of them in the trades, and a lot of them have transitioned into being builders and remodelers and struggle, because of their own issues," such as underestimating the expertise and skill necessary to manage a construction project. He said, "They [see] the people running the job, they think that's an easy part and that they can do it, and they move into that line of work. They underestimate the job, they're trying to do a lot of work themselves; they're only using their own group of people, so they're limiting what they do, and there's problems out there because of that." He said that he is aware that prejudice and discrimination based on race, ethnicity, and gender exists in his industry. He stated, "I know it's there, and I know there are people that have had to deal with it, but I haven't had to."

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that "being a [Caucasian] male-owned operation, we've been discriminated against, where there are jobs we cannot bid in the City [of Portland]." Interviewee #14 stated, "Actually, we're a [Caucasian] female and male family-owned business, but the government doesn't see that and they don't care about that. They only care that we're certified ... as something. So of course there's barriers out there as far as gender goes and such ... One, we just don't get the same opportunities that other people are

getting, special opportunities. Their hands are getting held. I want to say that in the Sheltered Market Program, too, the insurance requirements and certain bonding requirements and such don't exist, which of course are helpful to them, not so helpful to me. I mean, I bid any of this other work, I'm [not] going to have [access to] these special requirements. There's also something about a Public Works Bond ... certain firms don't have to carry that. Well, that's an expense every year, too, that people have to cover. So why should the rules apply to some people and not others?"

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that when she first took over the company in 1997, she faced a "humongous barrier, because there [weren't] a lot of women involved in construction. I feel it's taken me 10 years to prove myself, and I feel I am respected out there now, with my competitors. But no, I had problems getting contractors to take me seriously. I had problems with getting employees to take me seriously. I knew that going in, but I like challenges. That part is very tough. Within the last eight to 10 years — yes, more women are involved, and it's a different world now ... but I still have that problem to this day. Contractors go, 'Oh, [Plumbing Company]. Woman-owned. Hmm.'"

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported, "the biggest challenge is being a minority and [a woman] at the same time ... the statistics [prove] that ... But when I consider myself a woman, I'm really not a woman, because they really don't put me in that classification. It's only ... Caucasian women. So it's a [true] disadvantage. When I go in the field — if they saw [a] Caucasian woman in the field, they know that it's someone who has been given an opportunity and that's its [someone who's] going to do a good job. If I go in the field, [they think] I'm just serving someone else. I'm not there as a woman that is creating opportunities, it's just maybe someone else behind me." She said that public agencies and primes think of "being a woman as being a Caucasian woman" and project owners and primes think "being a minority usually means [being] African American. It doesn't mean being Hispanic." She said, "I have an engineering degree, and [primes and public agencies] would rather give those opportunities [to perform work] to a drafter, rather than an engineer. I have experienced that over and over, just because they are African Americans." Interviewee #24 reported that this happens "mainly [on] City [of Portland] projects," She said that she has had difficulty being admitted to the Port of Portland's mentor/protégé program, but African American woman-owned firms and Caucasian woman-owned firms have been admitted to the program.

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that public agencies state that they are looking for and have goals for participation of minorities on projects, but are really only looking at African Americans, and not other racial or ethnic minorities. She stated, "I see a constant discrimination against Hispanics. I feel that there's this whole thing about minority contractors, and when I see a minority contractor set goals ... I always think of minorities as African Americans, it seems like there is a lot of movement around African Americans' goals, and I feel that's very not okay. I think that minorities are everybody, and not just African Americans, and it's not a good feeling." She stated, "I've been very active in the community. I try to participate as much as I can on these minority organizations, and I feel uncomfortable sometimes, because I'm the only Hispanic in there. If they're representing minorities, they're representing myself and my community, and when I don't see [Hispanics] in the room, they're not doing their job." She stated that Hispanics "don't want to be involved [in these organizations] because they don't feel welcome. I think it's a combination ... I think they don't feel welcome to come into the rooms ... sometimes [members of these organization]

scream it out loud — their support for African Americans — it's really uncomfortable. They leave us out — the rest. I feel that it's not only the Hispanics [who are being left out] but that they're not representing the other communities as well." Interviewee #25 stated, "There [are] some organizations that are very aggressive and they have this title of 'minority organizations,' when in reality, you walk in the room and you don't have a really good feeling."

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, said, "Most of our marketing is geared towards federal agencies. We realized that they're more receptive to utilizing us.... We feel like a lot of the barriers that are in place state-wide, that they don't recognize them on the federal side so much. Barriers, basically, if we're going to, let's say we were to look at BES — Bureau of Environmental Services. The BES will put out a large package of \$70 million. They will have a select group of contractors. Those general contractors, in turn, determine whether or not we are even able to participate in the project. It's the way they're structured. You're ability to get the work is dependent upon an almost middle man, which would be the general contractor, and depending upon the general contractors' view of utilization, that determines utilization of our firm, or any minority firm."

Interviewee TA #1, the vice president and credit administrator of a commercial bank, stated, "The discrimination [based on race, ethnicity, and/or gender] I don't see. I think the biggest barriers are simply, not having their financial strength or the business has not done well in the last year, two years, or they're just kind of in this realm where maybe things are starting to pick up, but they can't get financing because the business hasn't looked very good the last couple of years, so there's kind of this no man's land for some businesses that just continue to struggle. And that's what the ARC loan has really helped a lot of people out, that's what it's designed for. But again, that can only go so far."

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that biggest barrier in the marketplace is the "willingness to contract with Latino-owned businesses." She said that generally "people bend over backwards to try and contract with other communities, but there is not that sense of responsibility for the Latino community. The Latino community is the largest ethnic community in the State and in the City and yet we are ignored."

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that small businesses are not always included, particularly for the major opportunities. He said that subcontractors need to understand that primes generally only do business with minority- and women-owned businesses when it is required. He said, "The biggest cop-out is the good faith effort."

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that the large contractors' "attitude" about the small contractors' ability to perform work on time and at a high quality can be a barrier. He said that the "bigger company is always going to think that they can do it better." He said that he does not think that this barrier is based on discrimination. He said that the larger contractors should do a better job mentoring the smaller businesses.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, stated that the lack of work is the biggest barrier for his members.

Some interviewees reported that they were not aware of any other barriers in the marketplace. [Interviewees #: 2, 3, 7, 15, 17, 19, 20, 23, 27, 28, 32, 33, 34, 42, 43, 45, 46, 48, TA #2, TA #4, TA #5, TA #8, TA #10, TA #11].

VII. Anecdotes Regarding Whether Any Race, Ethnicity, or Gender Discrimination Affects Business Opportunities.

The interviewees were asked whether they were aware of or had experienced discrimination in the local marketplace based race, ethnicity, or gender.

Some interviewees reported that they were generally aware of discrimination within the marketplace. [Interviewees #: 2, 19, 24, 28, 29, 40, TA #7]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, reported that he wondered whether “reverse discrimination” affected the opportunities of businesses in the local marketplace. He stated, “Maybe [reverse discrimination] is the wrong term. There was a project [two years ago] we submitted a proposal on in which, when we became aware of the qualifications of the person who was chosen, and compared them with ours, we were hard-pressed to understand how — from an objective sense — that person was selected. We understand the bid amount was within 5 percent, [but] the qualifications, the experience ... on specific projects or like projects and, including some sample documentation, were ... clearly in a different league.” Interviewee #2 stated, “If I was giving grades ... [ours] was a B and [the winning bidder’s grade] was a C, and they got the job. And then we found out that she was [African American]. So I don’t know whether that’s reverse [discrimination].”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that she believes that “there is a little bit of racism between minorities, because, unless you’re the right color for a particular job, you can’t get looked at.” Interviewee #19 stated, for example, that her firm no longer bids on flagging work for ODOT. She said, “There’s really no point for us to bid there, because they want African American or Asian[-owned companies]” to bid for that agency’s traffic control work. She said, “That’s the reality.” Interviewee #19 reported that her firm does bid on ODOT projects. She said, “We’ll give them our numbers, but we know if [the primes] win, chances are [ODOT] won’t take us.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that she has experienced discrimination based on her ethnicity and gender in the construction industry. She said, “When I came from Mexico, my theme and my mantra was, ‘As long as you work hard, discrimination should not exist, because you have proven yourself.’ And I was really wrong... It started to click [for me]. It didn’t matter how many hours I put in without charging to my current employer — I worked for free, I worked extra hours, weekends — I did whatever I could. And then I was learning, in this specific company, that they were giving opportunities to only Caucasian women. And they’d include me in [bid] proposals and they never used me, and if they did use me, they used me at the lower levels, so I never acquired that experience. So I got really upset [but] thought it was just that company. But then I saw the trend over and over and over. And then, when I complained to [the Bureau of Labor and Industries], they told me that I had to have proof that it was happening over and over, not with me, but with others. My answer was, ‘how many engineer women do you know, to start with?’”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated, “I think there can be discrimination within ethnic

groups ... there is the potential that there are people [who] separate themselves ... they take advantage of the circumstance of being a minority contractor and then exclude others within their community.” He stated that it is less of a “relationship between a [Caucasian] population and a minority population as it is between those within the minority population that sort of control their ground.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “We have so many blatant forms of discrimination that it’s become an additional part of our everyday work, like climbing up a mountain and you never get there.” He said that his firm has not grown at the rate of other firms “due in part to the economy and the fact that markets are continuously closed more and more everyday to African Americans; I am not growing at the rate of other like firms.”

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, said that there are “definitely” forms of discrimination against minorities or women in the marketplace.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that in this day and age you will not see blatant discrimination, but there may be subtle discrimination. He said there will always be the perception by large businesses that small businesses cannot do as good of a job as the larger business.

Some interviewees reported that they were generally not aware of discrimination within the marketplace. [Interviewees #: 27, TA #8]. Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that he has been to meetings where contractors complain about racial barriers, but he has not experienced these barriers. He said that the minority contractors need to understand the work they are bidding on and all of the project requirements.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that he has heard concerns about discrimination but “I have not seen evidence to substantiate it (discrimination) directly.” He said that there have been minority contractors who have said that they feel like they have been discriminated against. He said that “sometimes new contractors don’t know how to be as competitive for contracts as they might otherwise be because they don’t have the experience ... and some of them interpret that as discrimination when in fact it appears to be just standard competition.” He said that he hears about discrimination that occurred 20 or 30 years ago “and [discrimination] doesn’t necessarily occur now but it left such a mark that they feel that it is difficult ... so as much as anything it is a perception.”

A. Price Discrimination in Obtaining Financing, Bonding, Materials and Supplies or Other Products or Services.

Some interviewees reported being aware of or having experienced price discrimination in obtaining financing, bonding, materials and supplies or other products or services.

[Interviewees #: 4, 15, 16, 23, 25, 29, 31, 36, 44, TA #2, TA #5, TA #6, TA #9]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that she has experienced price discrimination in obtaining materials. She stated, “My first year in business, I called seven fence suppliers. When they answered

the phone, heard my voice they said, ‘Who are you? What do you want? We don’t do that.’ [She would reply] ‘But you’re listed in the phone book.’ Or, you call in for a quote, and they ask you, ‘When does it bid?’ And then they tell you, ‘well, we don’t release our [quotes] until the day of,’ but they’ve given it to all of your competition five days ahead of time, so you have the least amount of time to understand if what they’ve given you is a real number, or if its inflated, or whether that makes your number non-competitive.” She said that “being charged 10 times more for my bonding” is a predatory business practice her firm faces.

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, said, “Yes, there is discrimination in accessing financing [and] bonding; it’s impossible during the current market.”

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, reported that he has witnessed discrimination in obtaining financing based on race, ethnicity, or gender.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, said he has seen primes or project owners discriminate against racial or ethnic minority firms seeking financing.

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated that he has experienced price discrimination in obtaining financing, bonding, materials and supplies or other products or services. He said, “It’s all but impossible for us to get loans and financing; we have to be prepared to pay cash for a lot of things.”

Interviewee #36, two representatives of an employee-owned general engineering firm, noted that other than the instances that a sole source supplier refused to provide DBEs with a quote for materials, they did not have any other knowledge of discrimination related to materials and supplies.

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated he that has experienced price discrimination in obtaining financing, bonding, materials and supplies or other products or services. He said, “Obtaining products, that’s some of the stuff we talked about in the previous one. And bonding, with reference to just requests for us to continue to pull bonds. Both of them were Portland; I’m not sure if it was PDC.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that he is aware of price discrimination on both City and PDC projects, but “mostly [on] City” projects.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that he is aware of price discrimination based on gender discrimination.

Other interviewees reported having no awareness of or experience with price discrimination in obtaining financing, bonding, materials and supplies or other products or services.

[Interviewees #: 1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 26, 27, 28, 30, 32, 33, 34, 35, 37, 38, 42, 43, 46, 48, TA #1, TA #3, TA #4, TA #7, TA #11, TA #12]. Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that price discrimination in obtaining financing, bonding, materials and supplies or other products is not something that you could prove, and noted that much of this may be based on a business’ financial statements.

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that she is not aware of price discrimination based on discrimination, but she said that if contractors do not reach out to the Latino community, they will never have the financing, bonding capacity, or experience to perform the job.

B. Denial of the Opportunity to Bid.

Some interviewees reported that they have been denied the opportunity to bid or that they are aware of others having been denied the opportunity to bid. [Interviewees #: 4, 7, 15, 16, 19, 23, 25, 26, 31, 37, 44, 48, TA #9]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that she was familiar with primes and customers denying women and minorities the opportunity to bid. She stated, “They just don’t contact you.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that often, when he contacts a prime about providing subcontracting services the prime has already selected his team, “so in a way that’s being denied [an opportunity to submit a bid or price quote], I guess.”

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he believes denial of the opportunity to bid exists and that discrimination based on race, ethnicity or gender affects business opportunities. He said, “While you know this happens, they won’t come out and say they don’t want to work with you.”

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, reported that he knew of instances of customers not wanting to work with women or racial or ethnic minorities.

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated, “Within the community, you can bid to particular projects and they are owned by particular owners — they’ll have different stipulations. That being said, if you’re not the right color to bid that project, they’ll just throw [your bid] out.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that he “hear[s] about [primes or project owners denying women and minorities the opportunity to bid a project] all the time, but I haven’t seen it.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported, “I haven’t really experienced the denial [of the opportunity to bid] upfront. Things happen behind the scenes that are very obvious. I know it’s there.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that he was aware of firms being denied the opportunity to bid based on the imposition of rules that may exclude a business; he noted that people complained about this in connection with work performed on the waterfront. He said that TriMet, PDC, and the City have tried to mitigate problems for women- and minority-owned businesses.

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, with respect to denial of the opportunity to bid, “Not that they would tell you outwardly, but you see and feel the bias.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he has had personal experiences with the denial of the opportunity to bid and believes discrimination based on race, ethnicity or gender contributes to this problem. He said, “Denial of the opportunity to bid happens because if I can’t purchase the equipment, I can’t bid the project.”

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported that he has not seen customers deny firms the opportunity to bid because minorities or women owned them, but that he had heard that smaller MBEs have experienced this form of discrimination.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that he is aware of denials of the opportunity to bid based on gender discrimination.

Other interviewees reported no awareness of or experience with having been denied the opportunity to submit a bid. [Interviewees #: 1, 2, 3, 5, 6, 9, 10, 11, 12, 13, 14, 17, 18, 20, 21, 22, 24, 27, 28, 29, 30, 32, 33, 34, 35, 38, 42, 43, 46, TA #1, TA #2, TA #3, TA #4, TA #5, TA #6, TA #7, TA #10, TA #11]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, said that he was not familiar with specific examples of a minority- or woman-owned firm being denied the opportunity to submit a bid, and he has not encountered customers who do not want to work with minorities or women. But, he said that he “was sure some of that goes on, but we’re not involved or familiar with it.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, stated, “I’ve not met any customers that don’t want to work with minorities or women. I would say that this is not a barrier.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated, “I have never been denied” the opportunity to bid. She said, “They encourage me to bid, but they only encourage me to bid so that they can give it to someone else, and [so] that I can serve as a quota. No, they ask me to bid.”

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, stated that he is not aware of any firm being denied the opportunity to bid. He said, “The one thing you don’t know, they take your bid, but do they pitch it in the garbage when you walk out the door? That’s the thing you never know. I mean, everybody will take your bid because they don’t want to be involved in a lawsuit saying, you know, ‘you’re discriminating against me.’”

Interviewee TA #2, the director of an apprentice preparation program, reported that she does not know of any specific examples of the owner of a woman- or minority-owned firm being denied the opportunity to bid or customers not wanting to work with minorities or women, “but I can bet it happens.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that he is not aware of the denial of the opportunity to bid based on discrimination, but “some of them have enough stuff in place to really ... make those opportunities rare and far between.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said he is not aware of any examples of the denial of the opportunity to bid based on any race, ethnicity, or gender discrimination. He said that there will always be contractors who will use their favorite subcontractors and those contractors “will have a leg up on that work before a minority- or women-[owned] business might be aware of it.” He said that some of their members have been successful at establishing these kinds of relationships with larger businesses so that they sometimes “get first dibs on [the work].”

C. Stereotypical Attitudes on the Part of Customers and Buyers.

Some interviewees reported having experienced or been aware of stereotypical attitudes on the part of customers and buyers. [Interviewees #: 4, 6, 7, 8, 10, 11, 12, 13, 15, 16, 24, 26, 28, 29, 31, 37, 38, 44, 46, TA #2, TA #3, TA #5, TA #6, TA #9, TA #11]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that she has experienced a variety of stereotypical attitudes on the part of her firm’s customers. She stated, “Many times I’ve been called or my name was given to a customer to call me for a quote, but it was a requirement of the agency providing the [project’s] funds. They only did it because they had to, but they really didn’t want to use me.” She said that some people treat her differently on phone conversations than they do when they meet her in person and realize that she is African American.

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported, “It wouldn’t surprise me” if women and racial and ethnic minorities in the Portland area faced stereotypical attitudes on the part of customers or buyers. She stated, “Honestly, candidly, if you’re talking women-owned versus minority-owned, I think there’s probably a difference. I think there’s probably more stereotype casting [on the part of customers and buyers] for the minority business than the woman-owned [businesses]. I think it’s entirely possible that there are companies that might consider women-owned [firms] the lesser evil of two evils.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that he has experienced stereotypical attitudes on the part of customers and buyers based on race and ethnicity. He said that he can directly relate the stereotypical attitudes to projects for the City of Portland, or in the Portland metropolitan region, because primes pigeonhole his firm as being able to perform only civil engineering work. He said, “And you say, ‘I do structural, too.’ And they say, ‘Oh, I didn’t know that.’”

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, said that general contractors have stereotyped her firm. She stated that some contractors underestimate the firm’s capacity and service offerings because of the contractors’ preconceptions of what type and size of work a woman-owned firm can perform. She said, “They look at us as a WBE, they think of us as not being able to perform a larger-scale contract, so they want to hand us the small stuff, or [they] say ‘come look at this [portion of a project],’ when we can do the whole scope.”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that he has experienced stereotypical racial attitudes on the part of customers on several projects with the City of Portland and ODOT. He stated, “I had an issue with an employee and a check. It came back to the contractor, and the contractor said to me, ‘I hope we’re not having another [situation like we had with another African American firm] here.’ (The other African American-owned company that they were referring to went out of business because it did not pay its employees). And I’m like, ‘what are you talking about, this is an entirely different situation.’” He reported, “Because I had issues with an employee, I took it that he was saying, ‘Oh, are you going to be like them?’ And to me that was a stereotypical attitude because, because of your experience with them, you’re going to assume” that other African American-owned businesses will do the same thing.

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that “The guy we hired for our service work is [African American], and we interviewed 12 other people when we hired him [four months ago], and he was the most qualified out of the bunch.” She stated that this employee called a customer to inform the customer that he, the employee, was on his way to the customer’s location. Interviewee #12 stated that the customer then “called up to complain that he didn’t like [the employee’s] ‘accent.’ So we put two and two together and figured it out and said, ‘Okay, we’ll send [a different plumber], our regular (Caucasian) plumber.”

Interviewee #13, the Caucasian male owner of a residential construction company, stated that he is aware of stereotypical attitudes on the part of customers and buyers, but that he does not see such stereotypical attitudes often.

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, said, “Of course there are stereotypes, but I figure those are their problems to deal with.”

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, reported that customers have expressed stereotypical attitudes towards certain ethnicities. He said, “Things are changing.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that he was aware of stereotypical attitudes on the part of customers and buyers, including individuals who referred to members of a minority trade association as “you people.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, said that stereotypical attitudes on the part of customers and buyers based on ethnicity “certainly exists.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated that he is aware of stereotypical attitudes on the part of customers and buyers towards MBE/WBE firms in the local marketplace, including projects sponsored by the City of Portland and PDC. He said, “We see stereotypical attitudes all the time and hear them and feel them daily.”

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said that he has experienced stereotypical attitudes on the part of customers and

buyers. He said, “I mentioned earlier about being called DBE number one and DBE number two, sitting in the corner and back of the room, and there is an automatic assumption that I am a bad engineer in need of remedial assistance.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said, “Field superintendents and foremen have many, many, comments. They always show doubt when they are running a job, expecting me to fail and letting me know their expectation of me is very low. They think I will run out of money, shut down and be gone from the job.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he is aware of stereotypical attitudes on the part of general contractors towards MBE/WBE firms in the local marketplace, including projects sponsored by the City of Portland and PDC.

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, stated that he is aware of stereotypical attitudes on the part of customers and buyers. He said, “I have not experienced any stereotypical attitudes because of my appearance, but it is very upsetting that the rest of my family has had many negative experiences.” He said, “Though I am part many, many, things — Irish, Indian, German, Catholic — I am also 25 percent Pilipino. I am the fairest among my family, and I probably have fit in more and struggled less, but my brothers and others in my family have suffered greatly, and I can hardly talk about it without tears and very strong emotion.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that he is aware of stereotypical attitudes on the part of customers and buyers. He said that the minority contractors “are treated as if they can’t perform the work” on the job site. He said that recently a minority electrical contractor was told by a prime contractor on a PDC project — before the minority electrical contractor had even started work on the project — that if he could not perform the job the prime would hire someone else. The minority electrical contractor was able to complete the project early with no issues.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that some people have stereotypical attitudes. He said that PDC needs to send their “basically all [Caucasian] employee staff ... through regular cultural sensitivity training as part of their employment requirement.” He said that diversity and community outreach efforts can give a firm a competitive advantage. He said that ODOT “talks a good game but then you turn around and take a look at the number of people of color that work with ODOT [and] it is minimal.”

Interviewee TA #11, a representative from the Port of Portland, stated that she has experienced stereotypical attitudes on the part of customers and buyers. She stated that when she started with the agency about nine years ago, some of her co-workers “seemed to think businesses that were owned by women or minorities ... probably weren’t quite as good as” more established businesses.

Other interviewees reported no experience with or awareness of stereotypical attitudes on the part of customers and buyers. [Interviewees #: 2, 3, 5, 9, 14, 17, 18, 19, 20, 21, 22, 23, 25, 27, 30, 32, 33, 34, 35, 36, 42, 43, 48, TA #1, TA #4, TA #7, TA #10].

D. Unfair Denial of Contract Award.

Some interviewees reported awareness of or experience with having been unfairly denied a contract award. [Interviewees #: 4, 7, 15, 19, 22, 24, 26, 29, 30, 31, 37, 38, 44, 45, TA #2, TA #3, TA #6]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that her firm has been unfairly denied contract awards. She stated, “Oh yes, that’s happened to me.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that he believes his firm was unfairly denied a contract award because his firm was not awarded the proper number of diversity points on a City of Portland project, and therefore was denied the contract.

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that he has experienced discrimination based on race, ethnicity or gender being a problem for MBE/WBE firms in the local marketplace with respect to unfair denials of contract awards. He said, “I am sure that my bids have been played with and this has happened.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated that there are unfair denials of contract awards in the flagging market because of discrimination based on race, ethnicity, or gender.

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that he believes some of the bid award point requirements “are unfair. I think there should be some points for quality, but there isn’t [anything like that] on that questionnaire, or work that is satisfactory. The work should be graded on completion, and then that grade should go against the next bid.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that the City of Portland unfairly denied her a contract award because of gender- or ethnicity-based discrimination. She stated, “One time I submitted a proposal to the City of Portland [Bureau of] Transportation. This is when the economy wasn’t too bad. I’d had the experience and I had a big firm saying, ‘We’ll support you, and we’ll go as a sub to you.’ So it went really well, but I think we came in second. But the reason, I learned, that we didn’t [win the bid] was because one of the reviewers ... and I didn’t find out until later, because the [State of Oregon’s Board of Examiners for Engineering and Land Surveying, or OSBEELS] contacted me [and told me] that one of the people in the City of Portland had turned me in. And I couldn’t understand — ‘turned me in for what?’ and [the OSBEELS staffer] said [that the person from the City of Portland accused me of] misrepresenting myself as a licensed engineer. So I call [the City of Portland person who had complained to OSBEELS] and said, ‘Where did you [get] this? Why did you turn me in to the Board? Why didn’t you question me first, before you turned me in, if you had questions?’ And [the City of Portland person said], ‘In your proposal.’ And I said, ‘where in my proposal [did] I [say] that I was a licensed engineer? I turn in resumes for the people who will do the work, I show you my resume, my background, my qualifications, and I said I was the project manager, and that’s what I am and that’s what I do.’ And I said, ‘Do you [go and] look up [information] for everybody else [bidding]?’ And she said, ‘No.’ And I said, “Well, why would you do it with me?’ And she said, ‘Because, you know, why would I do it with [a consulting engineering firm in Portland]? I know them.’ And I said ‘You could have asked me, instead of turning me into the [OSBEELS], creating all

these problems' ... and so she dinged my proposal 'disqualified,' because I didn't have my [engineering] license, which had nothing to do with the qualifications [for the proposal].... This woman went out of her way to turn me in."

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that unfair denials of contract awards happen all the time.

Interviewee #30, the Caucasian female owner of a WBE-certified construction firm, said, "I sometimes feel that something is going on that could be an unfair denial when I am not successful."

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said that "Unfair denials [of contract awards] happen all of the time."

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, stated that he believes he has experienced some unfair denials of contract awards.

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that they are aware of unfair denials of contract awards based on minority- or women-owned business status on a City project.

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said, "Some [denials of contract awards] you feel are unfair, but if they don't like you they don't give it to you. If they don't like you, you probably shouldn't work for them anyway."

Other interviewees reported no awareness of or experience with the unfair denial of a contract award. [Interviewees #: 1, 2, 3, 5, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 20, 21, 23, 25, 27, 28, 32, 33, 34, 35, 36, 42, 43, 46, 48, TA #1, TA #4, TA #7, TA #8, TA #11]. Interviewee TA #7, the president of the Native American Chamber of Oregon, said that he is not aware of any unfair denials of contract awards. He said that the City of Portland and the PDC have "a well-established and regimented bid protest process."

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, stated that he was unaware of unfair denials of contract awards, but noted that a business may interpret the denial of a contract award as discriminatory when it is actually based upon competition and experience.

E. Unfair Termination of Contract.

Some interviewees reported being aware of or having experienced the unfair termination of a contract. [Interviewees #: 4, 23, 24, 29, TA #2, TA #7, TA #9]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, said primes or customers have unfairly terminated contracts with her firm. She stated, "I've dealt with probably three or four of those."

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, said that he knows there are unfair terminations of contracts when primes or project owners discriminate against racial or ethnic minority firms, "but it hasn't happened to me."

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, said that she has experienced the unfair termination of a contract. She said that she worked with another prime that had a lot of experience working through the City of Portland's bid process, but "instead of helping me after the [bid] process, they went against me and started writing e-mails [to City of Portland staff] on every aspect of the [project they] just set me up ... we had all of the design done, we had everything done, and it was just a matter that the City reviewer wanted to see [it] in different colors. It had nothing to do with the design; it had to do with the font on the drawing. That [contract] got terminated because of that." Interviewee #24 stated, "If I would have been a [Caucasian] woman, or Caucasian, I would have had a better chance" of succeeding. She said, "There was another woman[-owned business] and she was getting all the support that she needed. I don't know if it was chemistry or whatever, but there was not support for me from the prime."

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, "Not specifically a contract, but an informal agreement was terminated based on some circumstances that were not in the agreement and a change in [the project manager] by the GC Company, and I was told my employees were not hustling enough when they had been on the job for months with no negative feedback or additional training."

Interviewee TA #2, the director of an apprentice preparation program, reported that she has no firsthand knowledge of owners of women- and minority-owned businesses experiencing unfair termination of their contracts by primes or project owners, but she said that "I know it happens."

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that there have been instances where the subcontractor's scope of work was reduced because the prime said that the sub did not have the capacity to complete the project.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that one of his members was terminated from a project "for little reasons that honestly don't make any sense to me." He said that one member was terminated from a contract because the member was too knowledgeable about the project.

Other interviewees reported no awareness of or experience with the unfair termination of a contract. [Interviewees #: 1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 42, 43, 44, 46, 48, TA #1, TA #3, TA #4, TA #5, TA #6, TA #8, TA #11]. Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, noted that any firm that is terminated from a contract thinks that it is unfair.

F. Double Standards in Performance.

Some interviewees reported being aware of or having experienced double standards in performance. [Interviewees #: 1, 4, 8, 10, 19, 22, 23, 24, 26, 29, 31, 32, 33, 37, 39, TA #2, TA #3, TA #5, TA #6]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, said that he is aware of double standards in performance. He said, "The quality of work that we put out — I go to job sites every day and I see [poor quality work] and I think, they wouldn't let me get away with it."

Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported, "We get held to standards above

and beyond what another contractor, who's performing the same work" is held to. She said that primes and owners regularly hold her firm to a higher standard than the ones they use for the work done by Caucasian male-owned companies.

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, said that she has experienced double standards in work performance based on gender on projects for the City of Portland, and in the Portland metropolitan region.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, said that there are double standards in work performance because sometimes minorities are not held to as high of standards as other contractors. Interviewee #10 recalled a minority subcontractor's work on a project for the City of Portland. Interviewee #10 stated, "They brought him in because of his minority status, but they were not qualified to do what they were doing — they didn't have the right equipment; they didn't have the right knowledge; they didn't have the right skills; they didn't have the right experience. The general [contractor] basically just used them to write it off. And [the general contractor] gave them everything — they gave them generators, they gave them extra people, trucks — [the minority contractor's employees] were just standing there."

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that owners of firms who are racial or ethnic minorities and women do face double standards in performance. She stated, "I think that goes without saying."

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that women in construction "know when they're in the construction field, and that they have to be better [than men], and they see it."

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, said that he is aware of double standards for work performance. He stated, "Absolutely ... I've seen some work of non-minority contractors — if I would have produced that same ... work, they would have made me come rip it out and do it again, because I'm [a] minority." Interviewee #23 reported, "Our level of standards [has to] be higher than the average person. It's got to be like a BMW project that looks like a Porsche, when it comes to minorities."

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that primes and project owners scrutinize the work of minorities and women more carefully than that done by Caucasian men. She stated, "Oh, yes. Totally. Absolutely." She stated, "I have to work twice [as hard] to convince them that I'm not just a drafter, and they are very pleased with my drafting work because they get double, you know, benefits. They pay me very low; they pay me as a drafter, but they get the service of an engineer, so that's why they're happy." She said that she experienced a situation where her firm was not awarded the project manager position on a TriMet project because she does not have an engineering license, but a Caucasian woman-owned firm was awarded the project manager position without an engineering license. She said, "So, how come with me it makes a difference not having [an engineering] license, and they give me drafting, but with this woman who is Caucasian who used to work for them, they put [her firm] as the overall project manager? So that's how you get treated."

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said that “There are favorites out there for some [general contractors] and because I speak up I am usually not one of them” which may create double standards in work performance.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she has personally experienced double standards in performance in the private sector with project managers, and she noted that she believes this a problem for MBE/WBE firms in the local marketplace. Interviewee #33 noted that she has not experienced double standards in performance from either the City of Portland or PDC office staff. She said, “The only time I’ve had trouble is out in the field with the field guys. I mean not with anybody in the office, not with the architect, not with the City, but with the guy that they’ve hired ... the field project manager.”

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said that “Yes, double standards in performance are expected; it happens all of the time.”

Interviewee #39, two representatives of a Caucasian male-owned general contracting firm, stated that they are aware of double standards in performance based on race, ethnicity, or gender discrimination during inspections. They said, “I have seen inspectors be a little more critical on M/W/ESB firms than others.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that there are “absolutely” double standards in work performance.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that there are “definitely” double standards in performance based on discrimination. He said that minority contractors will be asked to do additional work. He said that he hears about situations where the general contractor takes a “more focused look at the minority contractor’s work.” He said that this occurred about a month ago on a PDC project.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, stated that he has heard about double standards in performance, and that there will always be double standards imposed upon minority versus non-minority contractors. He said that minority contractors must put in 300 percent effort and must bring their “‘A-game,’ plus two.”

Other interviewees reported no awareness of or experience with double standards in performance. [Interviewees #: 2, 5, 6, 7, 9, 11, 12, 13, 14, 16, 17, 18, 20, 21, 25, 27, 28, 30, 34, 35, 36, 38, 42, 43, 44, 46, 48, TA #1, TA #4, TA #7, TA #8, TA #10, TA #11]. Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that he has not seen double standards in performance based on discrimination, and that one of the challenges the organization faces is “trying to help people understand that the intensity and the toughness of the business environment is not discriminating against them; it is intended to discriminate against people who are not competitive, and that is sometimes interpreted [as being] discrimination against” minorities and women.

G. Discrimination in Payments.

Some interviewees reported being aware of or having experienced discriminatory practices with respect to payment including slow and non-payment. [Interviewees #: 4, 15, 19, 20, 26, 29, 31, 37, 44, 46, TA #2, TA #4, TA #5, TA #9]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that she had experienced discrimination in payments. She stated, “Oh yeah. ODOT — slow with pay, very slow. I’m in this [project] a year now. We finished the project [and] they’re coming back for documentation: ‘we need this, we need this.’ I’ve sent certified letters out several times, that’s still not enough ... what do you want me to do? I’ve provided you with documentation, and you’re still holding up my 25 percent, plus you didn’t give me my change orders, so I’ve spent \$20,000 of my own money. Now you don’t want to pay me the little bit of money you owe me? And it’s a year later?”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated she has not experienced slow or no payment for her firm’s services due to discrimination against her based on race, ethnicity, or gender, but that, “I have heard rumblings” of other owners of businesses in her market experiencing such discrimination.

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, reported, “I have heard of other people that have” received slow or non-payments because of discrimination against them based on race, ethnicity, or gender.

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated that he has seen and experienced discrimination in payments and believes race, ethnicity or gender discrimination contributes to the barrier.

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he is aware of slow and non-payments for MBE/WBE firms in the local marketplace. He said, “That was with the City.”

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said that he is aware of discrimination on payments. He said, “Sometimes it feels like you are the last to get paid.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that sometimes general contractors are slow with payments to help their cash flow which in turn hurts the subcontractor. He said that slow

and non-payments by the general contractor are more frequent with minority subcontractors. He said that he is aware of one instance where a general contractor withheld payment from a minority- and woman-owned subcontractor for almost one year. He said that he has heard other subcontractors complain about discrimination in payments. He said that he is not aware of discrimination in payments by the PDC.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that he believes that the primes do not pay the minority contractors on time because they hope that the minority contractor will not be able to afford to stay in business and then the prime can negotiate a lower payout to the minority contractor and gets another contractor to perform the work. He said that this occurs “frequently” and on “mostly City” projects.

Other interviewees reported no awareness of or experience with discrimination in payment.

[Interviewees #: 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 21, 22, 23, 27, 28, 30, 32, 33, 34, 35, 36, 38, 42, 43, 48, TA #1, TA #7, TA #8, TA #10, TA #11]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that she has not experienced discrimination in payment. She said, “If you don’t bill in a timely fashion, you won’t get paid in a timely fashion. Once again, it’s personal responsibility.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that he has experienced slow payments from general contractors, but he does not believe it is related to discrimination against him based on race.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that slow and non-payments are a problem but it is not based on discrimination. He said that slow payments can be interpreted as being discriminatory but he does not believe that to be the case.

H. Other Predatory Business Practices.

Some interviewees reported being aware of or having experienced predatory business practices. [Interviewees #: 10, 23, 24, 26, 28, 29, 30, 31, 43, 44, 45, TA #2, TA #4, TA #5, TA #7, TA #9]. Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, said that the bid shopping and bid manipulation are predatory business practices.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, said that some firms “target minorities to do the \$5 job. And then they say, ‘Oh, he didn’t bid to us.’ Well, of course I didn’t bid to you, because you only wanted me to do the \$5 job. Why don’t you give me the \$25,000 job instead of the \$5 job, and I’ll probably come and do more work for you.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that the biggest issue regarding other predatory business practices is allowing firms to perform work that due diligence on the front end would indicate they are not able to perform because they are essentially setting the firms up for failure.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that payday lending is a predatory business practice, but that it is not based on discrimination.

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “Trucking is the area where you have the least amount of value, schedules and resources, and that the industry for the last few years has decided to demand a different type of truck that it is known that African Americans and other minorities do not own - the super solos - these issues are compounded by the same companies who want to freeze us out of the work all together, gang up on us and make side deals with dump sites and landowners to manipulate cheaper fees that we cannot compete with.”

Interviewee #30, the Caucasian female owner of a WBE-certified construction firm, said that she has experienced predatory business practices and she stated that she is concerned that, “women are not treated like minorities with regard to opportunities and it feels like discrimination.”

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, said, “There’s always back-door deals. There’s no way of knowing that stuff. I mean, I’ve gotten jobs in the private sector just because I knew their brother or sister or whatever, you know, they didn’t even take other bids, so you just can’t know.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, said that when the firm was younger general contractors “would ask us to bid projects that were well beyond our capacity or bonding and then, of course, as we got larger, they stopped inviting us to bid the larger ones. Now what they have a tendency of doing is inviting us to bid stuff in Seattle that’s massive or large sized or stuff in Salem that’s large size. In the union you have a per diem that you have to pay. So, the further out you go the larger your price becomes and they know by putting you in Seattle or putting you into another area you’re going to have a larger per diem, so therefore they can go back to the owner and say, ‘In order to utilize these guys you’re going to have to pay a premium.’ But they won’t invite us to the work that’s right in town.”

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said that having to wait long periods of time for services or materials is a predatory business practice. He said, “Some services or materials you need to fulfill your commitments have a way to delay your projects. You wait in line to get your products galvanized because you are not a big customer, [and] you cannot get a rush. They put you last and complete your work the next day and that makes you unable to do rush jobs for your good customers who need and want it.”

Interviewee TA #2, the director of an apprentice preparation program, reported her experience with a predatory business practice related to the time a minority contractor is given to complete a project. She said, “A contract that should have been started six months ago, and they finally give you the contract, and you have to turn it around in 24 days. And then, in that contract, you’re out there saying one thing based on what your scope of work is, and that was based on the requirements of the person that hired you ... Of course, you can’t accomplish that, because, once that contract end[s] in 24 days, the owners tell you, ‘We not in the contract [any] more, so we can’t do this.’ And you [have] promised these things [to the prime], which you really — because of the scope of work. So you [have] your customers calling saying, ‘What happened to those jobs?’ And then you get feedback, of course, that you — the contractor — didn’t deliver.” She reported that primes sometimes set minority

subcontractors up for failure. She said the primes will say “let’s give [the contract] to this one [minority] because we know they [are] going to mess up.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that it is predatory for a general contractor to knowingly go after a contract with bid numbers from a subcontractor that the general knows to be wrong. He said that the general contractor knows when a subcontractor’s bid is wrong because everyone pays the same for materials.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that he is aware of predatory business practices based on discrimination. He said that primes will offer to pay subcontractors early for a 3 to 4 percent reduction because they say that they have not been paid by the project owner yet. He said that when a general contractor feels like he has to use the contractor because he is a minority then the “way the contract is ran throughout costs the contractor more time, more money, [and] more effort.” He said that these projects cost the minority firm more because the general is not clear in the scope of the project or scheduling issues, and that increases the subcontractor’s costs. He said that the general contractor runs the project this way because the individual is a minority.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that he has experienced a situation where a large contractor had scheduling issues and they blamed the architect or engineer. He said that he would not necessarily say that this practice is discriminatory but it is unfair.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, stated that there are predatory lending practices.

Other interviewees reported no awareness of or experience with predatory business practices. [Interviewees #: 1, 2, 5, 7, 11, 12, 13, 14, 16, 17, 18, 19, 21, 22, 25, 27, 32, 33, 34, 35, 36, 38, 42, 48, TA #1, TA #3, TA #8, TA #10, TA #11]. Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that he has been to meetings where contractors complain about racial barriers, but he has not experienced these barriers. He said that the minority contractors need to understand the work that they are bidding on and all of the project requirements.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that he is not aware of other predatory business practices. He said that the AGC was active in negotiating legislation in 2007 to increase licensing requirements and “that has been interpreted by some minority contractors as being a way to exclude them from the marketplace” but that was not the intention.

I. Unfavorable Work Environment for Minorities or Women.

Some interviewees reported being aware of or having experienced an unfavorable work environment for minorities or women. [Interviewees #: 3, 4, 6, 8, 10, 11, 13, 14, 19, 23, 24, 26, 28, 29, 31, 33, 37, 38, 41, 43, 44, TA #2, TA #5, TA #9, TA #10, TA #12]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that she has experienced unfavorable work environments for minorities or women. She stated, “Who hasn’t?

Get over it. Who cares? I mean, really. I'm in a boy industry; I've heard it all. You [are] not going to make me cry.... I'm not going to go away; I'm tough."

Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that she has experienced offensive racial epithets. She stated, "In the private sector, there is an attitude out there ... based on perceptions overall about people, so it's about who you know. And then on the public side, because they do have [MBE/WBE/ESB utilization] requirements, it's more that they have to do it and they have to use you." She reported that her employees are subjected to more harassment and intimidation on public projects. She said that she has been questioned by police officers on one job site. She stated, "We were out [installing] a fence, and the police show up. I have my employees [on the job site and] the trucks are marked, ... and the police come up and say, 'we've been called because there was a report there's people stealing the fence.' Or, we're at a job site, and the police show up and they sit there for two hours and monitor and jaw jack with the project people from the entity basically, I feel like, trying to intimidate my workers." Interviewee #4 stated that she experiences this treatment on public sector projects "more so" than on private sector projects.

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported, "This sexual harassment thing — I mean, it's there. And we have to constantly retrain our people so that they understand the rules — the rules of engagement, so to speak, and the rules of professionalism."

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated, "We've seen the guys definitely pick on the [woman], and you have to deal with that as quickly as possible. It still comes up."

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, stated that on one occasion he experienced an unfavorable work environment for minorities. He also reported that he fired a male employee who refused to take direction or orders from a woman.

Interviewee #13, the Caucasian male owner of a residential construction company, stated that he is aware of unfavorable work environments for minorities and women but he could not recall any particular examples.

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, stated, "[I]t's construction, of course there's going to be comments! I mean, hello, people are human, so they're going to pick up on any [ignorant] little thing that anybody does, I don't care what gender, race, ethnicity, it does not matter, it's construction, and the type of people that come into — of course there's going to be comments made, but typically they really don't mean anything, and you can choose to get offended or you can choose not to — it's a personal choice."

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that she has experienced unfavorable work environments for minorities and women. She said, "Yeah, there's always that. It's not as bad as [it was in] the 1980s, the '90s got a little better, and [in] 2000, it's not even close to the '90s." Interviewee #19 stated, "It's still alive, but not as big as it used to be." She reported that her perception of improvement in the work environments for women and minorities might be due to her growing

ability to ignore, or be less offended, by offensive comments and behaviors. She said, “I think you get used to it, or you start messing with them back. I have three older brothers, so I know how to handle the guys.” She reported, “I think as a woman, going into the man’s world, because that’s what we’re doing, you have to kind of play the game with them. You can dress a certain way, and you just know you are going to get targeted. Or you can dress to do the job, and you just become one of the guys to do the job. On the one hand it kind of [stinks], because you can’t be yourself; on the other hand, you’re kind of asking for what you’re getting if you’re wearing a shirt that’s cut to your belly button, and then tying it so tight that you’re showing everything you have. So it really [stinks] because it’s a really fine line.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, stated, “I hear about [unfavorable work environments] all the time.” He reported that contractors hire his firm expecting it only to do a small portion of the scope of work. He said that because the contractor did not want to hire the firm to begin with, the firm is given less desirable projects.

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that she has experienced offensive comments. She stated, “One time, I was working in this large firm ... and one time they were talking about Hispanics and wearing the flag and how stupid they were ... just slurs and words, even though they knew I was there.... They just openly, in front of everybody, made comments like that.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that he has no direct experience with unfavorable work environments for minorities and women, but “I know it exists.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said that he is aware of unfavorable work environments for minorities and women. He said, “The comments and feelings are in the air; when they are blatant it never surprises me.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated, “Yes, in the field, offensive comments and behaviors are very much a problem for small minority firms.”

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “We experience offensive comments all of the time, but you kind of get used to it as the norm and you don’t make any comments, you just keep on working; what are you going to say and who cares? The only thing you can do is lose future work [by] not accepting the norm; you aren’t going to change what they think of you.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said, “It’s pretty much all of the time — berating African Americans in the field — and talking to me about other African Americans in general — on a project where I employed a mostly African American crew.” He stated that “Once I get the work, I have to perform exceptionally well. With all companies, the administration is great, but the field mentality is different. They constantly tell me and my employees that I am only here because I am a DBE and that the XYZ Company should be in here doing this work because this is their field. I just keep my head down and

keep working like I don't hear them, because I'm used to it. I let it roll off of me. It makes the day longer and harder, but I'm not going to give up my work because that's what they want me to do."

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, said that she is aware of unfavorable work environments for women. She said, "Yes, one of our field inspectors heard someone making comments to a female that were inappropriate, but it was dealt with immediately."

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, said, "I mean you hear stuff, you know, well not just [African American] but [African American] and Hispanic. ... You hear slurs towards minorities, and then, you know, when you call people out on it, they say, 'I'm kidding, so, whatever.'"

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, said that he founded his company because of his experiences with unfavorable work environments in the field.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that he is aware of unfavorable work environments for minorities based on discrimination. He said that he is aware of contractors and project owners making "derogatory comments" on the job site. He said that in one instance the power was off on the worksite and "the minority was told to smile so they could see him." He said that "everyone roared in laughter." He said that this occurred a couple of years ago on a private sector project.

Interviewee TA #9, the micro-enterprise manager of the Hacienda Community Development Corporation, said that his members have experienced unfavorable work environments for women in the restaurant industry.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that "there is less of that than there used to be in the past," when asked about his experience with unfavorable work environments for minorities or women. He said, "Having said that, I don't think you can say that a construction site is going to be 100 percent perfect or 100 percent non-prejudicial ... it's just not a perfect world, but I know that it has changed dramatically over the last 5 to 10 years for the better." He said there is more diversity training in the apprenticeship programs and the local unions.

Other interviewees reported no awareness of or experience with an unfavorable work environment for minorities or women. [Interviewees #: 1, 2, 5, 7, 9, 12, 16, 17, 18, 20, 21, 25, 27, 30, 32, 34, 35, 36, 42, 46, 48, TA #1, TA #4, TA #7, TA #8, TA #11]. Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, stated that he is not aware of unfavorable work environments for minorities or women, and that he has high standards for his employees on the job site.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that the industry has really improved work environments for minorities and women in the past 20 years.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that no one has ever brought unfavorable work environments for minorities or women to his attention, but he “can’t imagine that it doesn’t occur.” He said that all of his members have codes of conduct for their employees and that unfavorable work environments for minorities or women are not sanctioned by his members.

J. The “Good Old Boy Network” or Other Closed Networks.

Some interviewees reported knowledge of or experience with a “Good Old Boy Network” or other type of closed network. [Interviewees #: 1, 2, 3, 4, 6, 7, 8, 10, 11, 12, 13, 15, 19, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 37, 38, 40, 41, 42, 43, 44, 46, 47, 48, TA #2, TA #3, TA #4, TA #5, TA #6, TA #7, TA #8, TA #11, TA #12]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated, “I would think when the economy was good, there was more [strength in the ‘Good Old Boy Network’], but now, when people are struggling, they’ll take a number.”

Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, reported that the “Good Old Boy Network” is “a perception from the outside. I mean, no one’s going to acknowledge that, whether it be the interesting coincidence that X percentage of the employees of a particular government agency happen to be related to those who have already been there.”

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that closed networks are “everywhere, aren’t they? They are. I mean, they’re really big guys. They’re guys! That’s okay, as long as they let everybody come in and play a little bit ... because the City’s not going to award contracts to a podunk little woman to do a \$20 million job, they’re just probably not, because we don’t have the capability of doing that. It’s nothing personal; it’s just that, you know, we just can’t do that. That’s why I appreciate that the City targets portions of these big, giant jobs for the little guys. And that’s why ESB [is] so important, because it’s the little guys who don’t have the opportunity to participate, because we’re not huge. And of course there are big boy networks.... I don’t know if they’re even guys; they’re just corporate entities that know how to do all this stuff, and they do it all. And it’s like 12 of them, and they do everything in the whole wide world.... I just want to be part of that. I just want a little bit.”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, stated, “I believe that in my industry [the ‘Good Old Boy Network’] exists, and I believe that although I could not provide you with a specific incident. I can tell you that our relationship with the van lines that we represent ... and also the high-value product network that we are an agent-owner of, the men deal with men. What does that mean for me? It means less business, less direct business opportunity.” She said that her firm handles being shut out of “Good Old Boy Networks” primarily by “offering the best possible service. I think in our case, those factors that differentiate you will come into play eventually, and do come into play, eventually. I know, for example, that with the high-value van line that we deal with, we have one direct competitor here in the northwest, [and] they don’t do as good a job as we do. So if it goes off contract we get it, right? You could sit around and go, ‘this is unfair,’ or you can create [a] scene or cause a stir or just keep focusing on doing what you do.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that he has experienced barriers based on race or ethnicity on

projects for the City of Portland, or in the Portland metropolitan region, related to the “Good Old Boy Network.” He stated, “It’s ongoing with the larger businesses. On one of these projects, we were a sub, there were only two proposals from large businesses, so people obviously were talking and saying, ‘We already know who’s going to get this work; these guys are on the favored status.’ So even the large businesses don’t submit because they know they’re wasting their money, let alone small businesses.”

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that she has “absolutely” experienced barriers based on gender on projects for the City of Portland, or in the Portland metropolitan region related to the ‘Good Old Boy Network.’

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, said he believes that his firm lost a project for the City of Portland “because of the ‘Good Old Boy [Network]’ — this is who we work with, this is who we like, and your [price] might be right there, but we’re going to take them.”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that the “construction industry in Oregon has always been the ‘Good Old Boys.’” He reported that a Caucasian male prime contractor told him, “I’ve been in this business for 35 years ... and I’ve seen them come and I’ve seen them go. I’m going to tell you, a majority of these [Caucasian contractors are] only doing business with you because they need you. Don’t think they’re doing business with you because they like you.”

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that her husband “likes working with our office manager, who’s a guy ... and yeah, we do get the ‘Good Old Boy’ atmosphere around here, but they’re a bunch of plumbers. I think they prefer to work with somebody where they can use a little foul language once in a while without offending anybody.”

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, said that “Good Old Boy Networks” are “so prevalent that you are not even allowed to work on projects in your own backyard — Martin Luther King Blvd. projects for example — it is shocking and disgusting to see no minorities on those projects in our own community. I fault PDC and the City for those oversights.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated, “I think you can always have a ‘Good Old Boy Network.’ We have a ‘Good Old Boy Network’ [among the subcontractors] in our shop, because we finally honed ourselves to do the paperwork and their invoices have to be this way. It takes time. You get them in the rhythm and it’s like, ‘Okay, great! They’re getting everything we need, on time; we don’t have to deal with it.’ [And then], ‘Okay, here’s somebody new, who wants to do business with us. Do we have time to do that? No.’ We understand [the issue of the ‘Good Old Boy Network’] from both sides. We know why it happens, we know it shouldn’t happen. Once a year, we’ll take [on] someone new, and say, ‘okay, we’ve got this little contractor, and now he’s making a lot of money, so it’s time to bring in a new little contractor so he can do the same thing. So we’re fair about it, but it’s hard — it takes a lot of time.’”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, stated, “There’s definitely a ‘Good Old Boy Network.’ There’s definitely no question.” Interviewee #21 stated that she has not been discriminated against based on her gender, race, or ethnicity by members of this or other closed networks.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported, “There’s a whole bunch of [‘Good Old Boy Networks’ or other closed networks] out there. [They say] ‘Well, you don’t do it quite like Johnny does it. I’m used to Johnny, the way he does.’ ... I get a lot of that.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated that she has experienced the “Good Old Boy Network,” “especially in engineering.” She stated, “Now...what’s happening is that all these people [large primes are laying off because of the current economic downturn are forming] their own business, and now [the primes] use them [to meet] ESB [goals].” She said that the minority firms that are getting projects have established relationships with project owners and primes. She said, “So the firms that are mostly ... successful minority-wise [are so] because they [are owned or run by persons who] have worked for them at one point or another. I don’t know how you break that, but I think that if there’s more meaningful participation and looking to the City [to identify] who really gets the work. It doesn’t mean that they have to keep giving [those same minority firms] work, but spread the wealth.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that she has experienced discrimination by members of the “Good Old Boy Network.” She stated, “You can’t miss that one! ... I think there’s a lot of things that happen behind closed doors ... if you’re a contractor who’s bidding work and you have no relationship with that general contractor, or that they have their friend that looks like them — of course they’re going to put their number before your number.” She said that she and other business owners are frequently shut out of projects because they are not represented by organizations with access to and influence over general contractors’ and public agencies’ subcontractor selection processes.

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, stated that information is shared through networks. He said that the networks used to exclude women and minorities but people are now becoming more inclusive.

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that “I am sure [the ‘Good Old Boy Network’] happens. I am positive that it happens out there.” He said that he has good relationships with certain primes and he understands that there is some private work that he does not have an opportunity to obtain because the prime may use its in-house painting company.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that he is aware of the “Good Old Boy Network” and that “there are minority leaders in the community that do consolidate the power for their benefit and [their] organizational benefit that does not extend into the diversity of their own community that they are here to support.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated “Yes, the ‘Good Old Boy Network’ is a problem for small minority firms because it is just there; it is large and it is obstinate.”

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that she has seen the “Good Old Boy Network” as a problem for MBE/WBE firms in the local marketplace, but that she sees less of it now than she did some years ago.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she is aware of the “Good Old Boy Network” being a problem for MBE/WBE firms in the local private sector marketplace.

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, stated that he has seen and experienced the “Good Old Boy Network,” and he stated that he believes discrimination based on race, ethnicity, and gender affects business opportunities.

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, said that she is aware of the “Good Old Boy Network.” She said, “Yes, it is sometimes interesting how clients go through processes just to do the same old thing. They don’t let others come on board even though they say out of one side of their mouth that they are committed to diversity.”

Interviewee #42, the vice president of an Asian-Pacific American woman-owned ESB-certified materials supply firm, stated that they are aware that the “Good Old Boy Network” exists, but it does not affect the firm’s particular trade products nor does this appear to be a problem for MBE/WBE firms in the same industry.

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, said that he is aware of the “Good Old Boy Network,” and that it appears to be a problem for MBE/WBE firms in his line of work. He said, “Yeah, like I said, like some of these people they’ve been using the same person and that’s their buddy, and that’s just who they want to socialize with. They would rather socialize with someone they know, that’s part of their church or part of their social group and they don’t want to care about the outside person. On public projects? Well, a little bit, like we’ve done some work, I’m trying to think of the name of the community down off the Columbia where those are all, you know, prevailing wage jobs, and they bring in a lot of stuff, I mean you can tell by some of the project managers and stuff, that they’re, they just got their little, it’s a personality, you can’t really say the City’s that way, but you can say that person the City hired is that way ... that was a City of Portland project, but ... that’s not the City but the person they hired, but you can’t screen for all prejudice, I mean that’s just the way the person is.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, said that he is aware of the “Good Old Boy Network” and that it is a problem for MBE/WBE firms. He said, “Yeah, as far as mostly City, that’s again general contractors; you get three or four general contractors [who] are the only ones to participate and they exclude you out. They basically tell you why waste your time because you’re not going to get it.”

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “The ‘Good Old Boy Network’ probably largely exists in the public sectors where people get into cliques, and don’t actually recognize the appearance that it gives to others.”

Interviewee #47, the Caucasian female owner of a WBE/DBE/ESB-certified trucking firm, said, “Yes, the ‘[Good] Old Boy Network’ is obvious, but I know not to let it bother me; I just laugh right along with them.”

Interviewee TA #2, the director of an apprentice preparation program, reported that there is a “Good Old Boy Network” in the construction industry and that “the ‘Good Old Boys’ moved into the ‘Good Old Girls Network.’ The ‘Good Old Boys’ [are] still part of the ‘Good Old Girls Network.’”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that the “Good Old Boy Network” is “everywhere.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that he is aware of the “Good Old Boy Network,” particularly with the general contractors, because “they are trying to not let anybody else into the market.” He said that a minority subcontractor would have a difficult time entering this market.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that he is aware of the ‘Good Old Boy Network.’ He said that he is aware of a situation where a general contractor asked a non-minority contractor “to send a list of questions related to the scope [of work] so that they can basically make the appearance that the minority contractor[s] ... bid was incomplete or non-compliant.” He explained, for example, that the minority mechanical subcontractor’s bid was low, so the general contractor then obtained a lengthy list of questions from the non-minority mechanical subcontractor to pose to the minority mechanical subcontractor, in an attempt to make the minority mechanical subcontractor’s bid appear deficient.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, stated that the “Good Old Boy Network” is “alive and well” in Portland.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that the “Good Old Boy Network” is “predominant in the private sector.” He said that the PDC can help break down the ‘Good Old Boy Network’ by requiring developers to reach out to minority- and women-owned businesses before the PDC awards a contract.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that he hears that “Good Old Boy Networks” exist, and the organization engages in business development meetings to “break down those barriers” and address the perception that those networks exist.

Interviewee TA #11, a representative from the Port of Portland, stated that there is a “Good Old Boy Network” because the general contractors prefer to use those subcontractors with whom they have established a relationship. She said that the “Good Old Boy Network” is based more on existing

relationships than discrimination, but women and minorities have a harder time establishing those relationships.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that the “Good Old’ Boy Network” is “much less prevalent than it used to be.” He said that when he was working with minority workers, “it was generally my experience that as long as they showed up every day and worked hard like everyone else ... they did not have any issues.... Most people judge you for the work that you do and the attitude that you bring to the job, not [based on] what color you are or if you are a man or a woman.”

Some interviewees indicated that they had no knowledge of or experience with the “Good Old Boy Network.” [Interviewees #: 5, 9, 14, 16, 17, 18, 20, 22, 34, 35, 36, TA #1, TA #9, TA #10].

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, said, “People just want to say, if you’ve built a relationship over time, that it’s the ‘Good Old Boy Network’, and that is just not the case. The case is, you [have] tried and true relationships. You want to call it the ‘Good Old Boy Network,’ fine. But, in this industry, where contractors come and go quickly ... it’s just about quality of work and relationships; that’s all it is. If you want to put in the time to build a relationship as a sub with a general, be willing to start out with a small job and be willing to prove your worth, then you’ll probably get to be part of the ‘Good Old Boy Network.’”

Interviewee #18, the Caucasian male owner of an excavation firm, reported, “I don’t know if you want to call it the ‘Good Old Boy [Network]’ ... they’re just not going to hire somebody they don’t know.”

Interviewee TA #10, three representatives of the Northwest College of Construction, said that they do not “even hear about [‘Good Old Boy Networks’] anymore.” They said there is “no secret organization of ... [Caucasian] guys.”

K. Governmental Resistance to Use of MBE/WBE/DBEs.

Some interviewees reported being aware of or having experienced governmental resistance to the use of MBE/WBE/DBEs. [Interviewees #: 4, 6, 10, 24, 31, 37, TA #2, TA #3, TA #5, TA #7, TA #11]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that the public agencies’ stated interest in and commitment to using DBE/MBE/WBE firms is “all a show. It’s all about just barely enough to say that we did something but [DBE/MBE/WBE firms] don’t have the experience, they don’t have financing, they don’t have capacity. They don’t understand — it’s always one thing after another.”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, stated, “I would say there’s resistance. I don’t believe there’s necessarily any preference, unless there’s a set-aside of some sort.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that there is “plenty” of government resistance to the use of minority- and woman-owned firms. She stated that “Not all of them [are resistant to the use of MBE/WBEs], but unfortunately what happens is that you get some really good people and they want to do it ... but then you have 1,000 people behind him that say no.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated, “Yes, [governmental resistance to use of MBE/WBEs] is a problem for small minority firms, when some bureaus in particular have a resistance to using MBE firms.”

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said that he is aware of governmental resistance to use of MBE/WBEs. He said, “Absolutely. In engineering, they think the bigger the firm the better the performance, when in actuality smaller firms make their projects priorities.”

Interviewee TA #2, the director of an apprentice preparation program, reported that she is aware of government agency resistance to the use of owners of women- and minority-owned businesses. She said, “It’s about the gatekeepers, and it’s an individual thing, and most of the time it’s at a level where the [government] execs ... get [information about such resistance or other discrimination], it’s been done, and they fall back on the fact that they didn’t know.” She reported that she is referring to contracting “in general, not at the City [of Portland] level.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that there is governmental resistance to the use of MBE/WBE/DBEs. He said that the government says that “it is discriminatory for us to not use ... ESBs.” He said that the resistance to the use of MBE/WBE/DBEs is based on their use of ESBs.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that politics are always involved and noted issues at the federal level that may trickle down to the city level. He said that his organization has tried to overcome any issues by asking for better access to government representatives; he noted that the City of Portland has a Native American liaison on the Mayor’s staff.

Interviewee TA #11, a representative from the Port of Portland, stated that she has not experienced resistance to the use of MBE/WBE/DBEs by the government entities themselves, but some individuals within the entities resist the use of MBE/WBE/DBEs. She said that the agency has had some concern about the use of DBE goals on its projects because of the potential for a lawsuit.

Other interviewees reported no awareness of or experience with governmental resistance to the use of MBE/WBE/DBEs. [Interviewees #: 1, 2, 3, 5, 7, 8, 9, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 28, 30, 32, 33, 34, 36, 38, 42, 43, 44, 46, 48, TA #1, TA #4, TA #8, TA #9].

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported, “I think government is the biggest advocate of using women and minorities.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, stated, “I’d like to see ‘governmental resistance to the use of MBEs’ ... I didn’t know there was governmental resistance, to be honest with you. Seems that’s all they want us to use.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that he has not witnessed governmental resist the use of DBE/MBE/WBE firms. He stated, “They say they want to have the minority working out there [but the small size of the agencies’ goals for minority participation on public works projects doesn’t result in] very much money” for minority contractors. Interviewee #23 stated, “If you look at how many [minority firms]

are out there, trying to keep their businesses afloat, to give them that little percentage [isn't anything]. You're not really helping them."

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, said that he has not experienced any resistance to the use of MBE/WBE/DBEs. He stated, "These [minority] groups will say 'yes' and then they will get the work, but they are going to exclude other people within their community. That is what I have seen. It is really unfair."

Interviewee #36, two representatives of an employee-owned general engineering firm, said that they are not aware of governmental resistance to the use of MBE/WBEs, "but ODOT is very interesting, and I am not sure why they don't get it." They stated that ODOT does not seem to understand MBE/WBE/DBE programs or why ODOT should be supporting MBE/WBE/DBE firms.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said he does not believe that there is governmental resistance to the use of MBE/WBEs, but sometimes the government's rules and regulations do not allow actual utilization of MBE/WBEs to be reported accurately. He said that the organization's studies show that they are achieving approximately 30 percent utilization of minority and women contractors, but because of onerous reporting requirements, that utilization is not accurately reported.

L. MBE/WBE and DBE Fronts or Fraud.

Some interviewees reported experience with or awareness of the existence of MBE/WBE/DBE fronts or other fraud. [Interviewees #: 1, 3, 4, 5, 6, 7, 8, 11, 21, 23, 24, 25, 26, 27, 28, 29, 31, 32, 36, 37, 38, 39, 40, 44, 48, TA #2, TA #4, TA #5, TA #6, TA #7, TA #10, TA #12]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated that he is aware of a firm certified by the State of Oregon as a WBE that is a front. He said, "Two guys own that company, okay. It's [certified by the State of Oregon as] a woman-owned business and [that firm's owner] works there. She does the books four days a week. I could have done the same with my wife, but I don't think it's right." He reported that the African American owner of another metal fabrication firm was unfairly reaping benefits from the firm's status as an MBE. He said that there is "one [African American] person in the company, the owner. All his employees are [Caucasian]. How does that benefit minorities? I don't think it does. It just gave the owner an advantage."

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that there are "probably" MBE/WBE/DBE fronts or frauds. She said, "They want to work, too."

Interviewee #5, the Caucasian male owner of an excavation firm, said that he is aware of WBE fronts. He stated, "A lot of these guys that are [Caucasian] are getting these bids because their wives — everybody knows how the game's played, so they go down and put their business in their wife's name. And that isn't right." He said that he is aware of one contractor who may be engaged in a WBE fraud. He stated, "He's a [Caucasian] guy ... who's got his trucks over there in Clackamas. Him and his wife are [cheating] the system forever, because she went out and got a CDL, and yet she doesn't drive a truck. She sits in the office and [the husband] does it. They run their company just like anybody — a man and a wife company — would: he tells her what to do and she does it. But the

company's in her name, so they can get 10 percent minority contract, and that's the deal. It isn't fair."

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, stated, "Yeah, I think that [M/W/DBE fronts or frauds] do occur to some degree. I'm not sure that necessarily provides any advantage ... in our industry."

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that he is aware of a WBE-certified engineering firm owned by a woman who is not a registered engineer, but is married to a registered engineer. He stated, "Is someone going back and looking at ... the volume of work that's engineering versus the volume of work she's qualified to do? What they should do is have you break your projects down by type, your revenues by type of projects. If you found that 90 percent of it is engineering work, then ask, 'Is she actually in management control here?'" He stated that the State of Oregon's MBE/WBE/DBE/ESB program should consider those questions during a firm's recertification.

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, said that she has been approached by at least one company interested in using her firm's WBE certification for a front or fraud. She stated, "I have been approached. You buy the equipment, and they just want a pass-through. I don't believe that's the purpose of the program, and I will not do that because it doesn't seem right."

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported, "There's a whole bunch of those [MBE/WBE/DBE fronts and frauds]. I see it all the time. I know of a couple of companies, the company is in the wife's [name], and the wife [does not] even know where [her company's] office is." He reported that he knows of one person "who 'owns' a company, but they don't [really] own the company; the company is owned by somebody else." He stated that more lenient certification rules have exacerbated this problem. He said, "It's like the Sheltered Market Program — anybody can get in, it doesn't matter. Anybody can say they're a DBE, anybody can say they're an MBE, a WBE." He reported that this situation creates unfair competition for his firm.

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, stated, "I don't know of any [MBE/WBE/DBE fronts or frauds] personally, myself, but I know that they're out there."

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, said that a large number of companies in the construction industry are MBE/WBE/DBE fronts or frauds. He stated, "I think there's two different women[-owned businesses certified by the State of Oregon as WBEs]. You have minority women, then you have a [Caucasian] 'woman woman.' My take on it is, every minority woman I've seen that owns a business [certified by the State of Oregon as a WBE]" is a minority-owned business that happens to be woman-owned. Interviewee #23 stated that WBE-certified businesses owned by Caucasian women are often fronts controlled by their husbands, who are usually Caucasian men in the trade. He stated that these fronts and frauds continue "because [people] are afraid [of reporting those engaging in fraudulent practices]. If I turn somebody in, I don't know how secret [the fraud investigation process] is. But if I turn somebody in, and they realize I turned them in ... everybody's going to start pointing fingers at everybody else." He said that "there's no incentive" for reporting fraudulent practices.

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that the local marketplace is rife with fronts, “especially the women-owned” businesses. She stated, “I just really have a problem with that, because ... I have to deal both with the minority and women, and the one that’s most frustrating for me is the woman”-owned firms that are fronts for Caucasian men.

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that MBE/WBE/DBE fronts or fraudulent practices are common. She stated, “Oh my goodness. There [are] a lot of” fronts and fraud. She stated that government agencies “are blind” to the existence of these businesses and practices.

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that he has experienced MBE/WBE fronts or frauds because there have been situations where a wife or daughter was trying to be certified and “nobody thought they ran the business.” He said, “You don’t have nearly as much of [MBE/WBE/DBE fronts or frauds] as you used to because there are more people now looking.” He said that now you are seeing more firms who are being disqualified from certifications than fronts or frauds.

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that he is sure that there are MBE/WBE/DBE fronts or frauds, but “I don’t let it bother me.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, reported that he has not experienced MBE/WBE/DBE fronts or frauds with the organization’s clients, but “I do know that it exists, I have heard of it. I think that it is sort of, unfortunately, inevitable, but we have not seen it.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “The biggest harm that is caused to MBEs is by fraudulent WBEs and because they want to achieve goals, government uses them when they know they are not intricately involved in their own firms.”

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that she is aware of some firms in the marketplace that are MBE/WBE fronts or frauds.

Interviewee #36, two representatives of an employee-owned general engineering firm, said that they have occasionally experienced MBE/WBE/DBE fronts or frauds in the marketplace. They said it’s “not often, but you see and hear many things out there, and some don’t look right, but we trust in the certification process. We try not to use those firms that have that appearance [MBE/WBE/DBE front or fraud] and have shown that type of behavior to us or others previously.”

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said that “WBEs front firms for their husbands; [they] are outrageous and [have] overrun the industry.” He said that “allowing fronts and more fronts” is a form of discrimination.

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, reported that he is aware of a few front and frauds and that these firms tend to be WBEs.

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he is aware of MBE/WBE fronts or frauds in the marketplace. He said, “There’s a few, there’s [one particular company] that was created as an electrical firm ... the supervisor was actually working for [another company] and they were doing a lot of work on the waterfront. You have a series of women-owned firms ... that managed to go in with record-low margins, just because they’re working as a pass-through.”

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, stated that he had heard of MBE/WBE/DBE fronts and frauds. He stated, “No specifics, you just periodically hear [about MBE/WBE/DBE fronts and frauds].”

Interviewee TA #2, the director of an apprentice preparation program, said that MBE/WBE/DBE frauds have “been going on forever and ever. And that’s the reason [Caucasian] women have benefit[ed] the most from anything to do with” MBE/WBE certification, “and everybody knows that.” She said, “Basically, I’m seeing that when you really have contracts worth bidding on, and being a part of it, you’re seeing [Caucasian] women benefiting from it, in construction, especially. The big companies, even the small ones, they work together and figure out how to get around the system,” and avoid hiring men and women who are not Caucasian, or from contracting with companies owned by racial and ethnic minorities.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that he is aware of MBE/WBE/DBE fronts or frauds. He said that a contractor will set up a business in his wife’s name or a cousin’s name and then use that WBE entity to procure work. He said that this is a very hard practice to uncover and these fronts or frauds are rarely reported because generally, if someone has knowledge of the front or fraud, they are likely involved in some way.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that he was aware of MBE/WBE/DBE fronts or fraud and stated that individuals have said “quite bluntly, ‘my wife owns the company.’” He said that he has heard about these good faith effort fronts on City and County projects more than PDC projects.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that he is aware of MBE/WBE/DBE fronts and frauds but it is difficult to track. He noted, for example, that it is questionable when you have a woman-owned firm in an area that requires licensing, but the husband is the one who owns the license — he said that the woman owner can’t have management control of the business if her husband is required to stamp everything. He said that it is the State’s job to monitor the MBE/WBE/DBE programs and to thoroughly evaluate participating businesses; he said that the State needs to look at some businesses more closely.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that they have heard about MBE/WBE/DBE fronts or frauds, but not recently.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that “years ago when the MBE/WBE [program] started ... a [Caucasian] male contractor would set up his wife in business and sub part of the work to her and that would fulfill a number. Well, it might have fulfilled a number, but it didn’t really truly promote a women-owned contractor.” He said that he experienced these MBE/WBE fronts or frauds over 20 years ago and he has not experienced fronts or frauds recently which he attributes to a “more intense certification process and just more scrutiny from owners and general [contractors].”

Other interviewees reported no knowledge of or experience with MBE/WBE/DBE fronts or fraud. [Interviewees #: 2, 9, 12, 13, 14, 16, 17, 18, 20, 22, 30, 33, 34, 35, 42, 43, 46, TA #1, TA #3, TA #8, TA #11]. Interviewee TA #11, a representative from the Port of Portland, stated that she has not experienced MBE/WBE/DBE fronts or frauds recently. She said that “every once in a while a business will get certified and you will kind of shake your head and wonder how that happened.”

M. False Reporting of MBE/WBE/DBE Participation or Falsifying Good Faith Efforts.

Some interviewees reported that they were aware of or have had personal experience with false reporting of MBE/WBE/ DBE participation or falsifying good faith efforts. [Interviewees #: 1, 4, 8, 10, 11, 23, 24, 25, 26, 29, 31, 32, 37, 38, 44, 48, TA #2, TA #3, TA #5, TA #6, TA #10]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated, “Oh, I’m sure” false reporting of MBE/WBE/DBE participation or falsification of good faith efforts occurs.

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, recalled an example of false reporting of WBE participation by a competitor. She stated, “I was at [an event], talking to the customer of a friendly competitor, and the customer says, ‘Oh! You did the fabrication for them on this job, didn’t you?’ So I said, ‘No, I didn’t.’” She stated that public agencies seldom verify whether a contractor has actually used the minority- or woman-owned business enterprise to perform the work the contractor tells the client the MBE/WBE has performed.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, said, “I think there’s more of that [false reporting] happening now ... at a meeting I was at, they said they would hire [a minority subcontractor] at a particular amount, and then, once [the prime] got the [ODOT] contract, they offered [the minority subcontractor] less work. But did they go back and change that? No. Does ODOT investigate whether [the minority subcontractor] did the right amount of work? No. So there’s no follow-up and no penalty, [so] they can get away with it.”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, reported that he has experienced false reporting of MBE/WBE/DBE participation or falsifying good faith efforts. He said that primes frequently contact his firm because good faith efforts require them to do so, even though the primes have no plans to use his firm’s services.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, said that false reporting of MBE/WBE/DBE participation, or the falsification of good faith efforts “happens a lot. I testified in front of the PDC on that one. That happens a lot.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that he is aware of false reporting of MBE/WBE/DBE participation or good faith efforts occurring “every once in a while.” He said that he does not support the use of the good faith effort because “you get credit for actually not performing.” He said that those who falsify good faith efforts “get caught pretty quick.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “GFE (good faith effort) is the biggest game in town. ‘Do nothing and use nobody’ is another name for it.”

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “Yes, false reporting exists. I have been listed on more projects than I actually perform on all the time. It’s a hard thing to track.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said, “I am often invited to projects that are just attempting to meet good faith efforts and the prime is not providing us with ample time to put bids together when they have had packages for months or longer. They do their outreach with just five days notice — when we have to contact suppliers and others to provide accurate quotes. They give us a couple days notice when some bids take weeks to prepare — which means they likely don’t really want our bids, and their outreach is a formality.” He said, “I am sure that [false reporting] does happen, but what can we do about it?”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, said that he has experienced false reporting of MBE/WBE/DBE participation. He said, “I had a situation where one of the general contractors said, ‘You guys did a great job’ [and he was referring to] a project that I was unaware ... we had worked on. So I had said, I tried to [ask] questions but then they shied away and stopped talking to me. I think that if you were to look into that deeply that you’ll find evidence that [our firm] has been listed and supposedly did work on A, B, and C projects and we never even set foot on the project or even had a contract.” He said, “One of the things we recognized, starting off, is that there was really no opportunities for us. We’d get a fax come in a day before the bid; that was their outreach to us. There’s obviously no way we could do a bid the day before. Or we would have it where — this is when we were a lot younger — they would ask us to bid projects that were well beyond our capacity or bonding and then, of course, as we got larger, they stopped inviting us to bid the larger ones.”

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported, “We’re a minority, so we’re getting those [bid] invitations just to [help other general contractors] qualify for good faith efforts, so we see that. And they know for a fact that we’re not going to be bidding [as a subcontractor on] that job because we’re a competitor.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that the “good faith effort is nothing.” She said, “We want actual contracts to be awarded; [the] good faith effort is garbage.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that the City has a good faith effort and he is aware of instances where a prime sends out bid requests to a minority contractor, knowing that the minority contractor does not perform that type of work, and

then the prime can say that he made his good faith effort. He said that the minority contractors are usually utilized for “significantly less” than the original dollar amount contemplated.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that the good faith efforts are not truly good faith efforts because the primes call with very short notice so that the minority contractor cannot feasibly answer the request. He said that he has heard about these good faith effort fronts on City and County projects more than PDC projects. He said that this has been the situation in the past and things may have improved as a result of the new resolution which requires at least one person of color to be a panelist on all review committees for RFPs and RFQs.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that they have heard rumors about false reporting of MBE/WBE/DBE participation or good faith efforts.

Other interviewees reported no awareness of or experience with false reporting of MBE/WBE/DBE participation or falsifying good faith efforts. [Interviewees #: 2, 6, 7, 9, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 28, 30, 33, 34, 35, 36, 42, 43, 46, TA #1, TA #4, TA #7, TA #8, TA #9, TA #11]. Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that “I’ve not heard of any [false reporting] going on; it wouldn’t surprise me because the requirements are such a pain.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated that she does not have experience with or any knowledge of specific examples of false reporting or falsification of DBE/MBE/WBE participation, but that “you do hear talk” in her market about such activities.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that he is not aware of false reporting of MBE/WBE/DBE participation, and that the PDC does a good job verifying participation and good faith efforts. He said that he is aware of contractors falsifying wage reports.

N. Any Other Related Forms of Discrimination Against Minorities or Women.

Some interviewees reported knowledge of or experience with other forms of discrimination in the local marketplace. [Interviewees #: 2, 4, 5, 16, 26, 31, 38, TA #2, TA #4]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, said, “There were some issues in regards to discrimination against Muslims and Sikhs” in the Portland metropolitan area.

Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, said that she has experienced other forms of discrimination against women and minorities. She stated, “On the private side, it’s more about people thinking that they’re smarter than you. I got a call yesterday from a woman” owner of an apartment complex and “she tells me, ‘shut up and listen to me’ and ‘you don’t talk until I tell you to talk.’ I’m like, ‘Did you just call me to talk to me about a project, and you [are] talking to me like I’m some servant?’”

Interviewee #5 stated that a recent change in license requirements is a form of discrimination by the State. He said, “If you’re doing residential and you want to play commercial, now you have to pay

twice and that squeezes out a lot of the people, and big companies are doing this. And now, and this is the [treatment] we're getting from the State — but next year, they sent out a paper saying, if you're going to be in the CCB, you have to take more classes, it's continued education. Basically it's [not fair] ... it's just another way the State's [harming] people... That [is] discrimination by the State; the State is discriminating against small businesses." He said, "The little guy, which is basically your minorities, they're getting [mistreated] on the deal ... they don't even have any hope of getting a commercial job without the right paperwork, so they can't bid on anything because they have to choose on the CCB what they're going to do, so you're all residential or you're all commercial." He stated, "This is just exactly what the big businesses wanted, to squeeze out everybody [out of the commercial portion of the private construction market], except for the handful of big businesses that [have] the paperwork to do it."

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, reported that he has experienced discrimination based on his ethnicity. He said that he thinks that discrimination based on race, ethnicity, and gender affects business opportunities for racial and ethnic minorities and women but such discrimination "shouldn't affect people. I think people should grow up and get out of it. I think we're in the twenty-first century, I think people are a little more educated than in the old days, I think we can get along with everybody." He reported, "I've seen people that only give jobs to — they don't give jobs to Hispanics ... I've seen people that, if you're Russian, only give jobs to the Russians, I've seen Romanians that do the same thing. I've seen the [Caucasian] Americans, that they do the same thing."

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that "institutionalized racism discrimination" is a barrier for minorities and women because people implement excessive rules that they know will limit minority and women participation.

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, said, "the City and PDC do us harm and should [never] sign off on a contract when it is substantially below the engineer's estimate. It is the beginning of the end and they should never allow a small business to fail."

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said that "Using WBEs that they know are not doing the work and never intended to do the work," is a related form of discrimination.

Interviewee TA #2, the director of an apprentice preparation program, reported that she has seen "blatant" discrimination against members of racial minorities and women. She stated that she has been told by union hall staff, "You know, last month we needed some African American females; we don't need them anymore." She stated that she has been told, "we're done [with a project], but we need someone for five days, we need someone for two days. They told me to call you."

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that the ability to obtain materials for a job can be "a little tougher" for the minority contractor.

Other interviewees reported no knowledge of or experience with other forms of discrimination in the local marketplace. [Interviewees #: 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 25, 27, 28, 30, 32, 33, 34, 35, 36, 42, 43, 44, 48, TA #1, TA #3, TA #5, TA #6, TA #7, TA #8, TA #10, TA #11, TA #12]. Interviewee #14, the Caucasian female co-owner of a non-certified construction company, stated that she does not know of other discrimination “against minorities or women. I think their hands are held pretty well.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that “there is a historical reticence sometimes of people who have probably sincerely been mistreated in the past from trusting or engaging with us.” He said that Oregon is “a very low-minority, homogenous state ... low minority population [and a] high [Caucasian] population and so there is almost an inherent perception of bias right from the beginning.”

VIII. Neutral Measures.

Interviewees were asked whether they had any experience with or were otherwise generally aware of any race-, ethnic- or gender-neutral programs or measures to assist small businesses, including minority- and woman-owned businesses. Interviewees were then asked to provide their impressions with respect to a number of specific race-, ethnic- or gender-neutral programs or measures listed in detail below.

Some interviewees reported a general awareness of certain race-, ethnic-, or gender-neutral programs or measures to assist small businesses, including minority- and woman-owned businesses. [Interviewees #: 2, 3, 4, 6, 10, 11, 13, 14, 19, 23, 24, 25, 28, 32, 33, 44, TA #1, TA #3, TA #4, TA #8, PF #10, PF #12, WT #2]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, stated that his firm has “participated in some [agency-sponsored efforts to assist small businesses] — job fairs and so on — and we have not been successful through our participation.” He reported that his firm participated in at least one annual small business fair co-sponsored by the City of Portland and the Federal Small Business Administration, and “similar things out in Hillsboro” and the Governor’s Marketplace held in Wilsonville.

Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that the ESB certification program is “a good program.” Interviewee #3 stated that the City of Portland’s Sheltered Market Program is “fabulous, fabulous. The meetings are good, [assistance with U.S. Internal Revenue Service issues] is good, [and] the informational stuff is good. [The Sheltered Market Program Coordinator is] doing a really good job putting together informative programs that we benefit from, [that] I benefit from.”

Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported that her firm’s work with Metropolitan Contractor Improvement Program (MCIP) has been beneficial. She stated, “My company has grown in the last two years” since working with MCIP. She said, “They know what they’re doing. [A MCIP staff member with whom she works] has the construction experience, he understands the dynamics of [the construction] world. He helps you to make sense of how you need to look at the work.... There’s the little things, the details that are what makes you or breaks you.” She stated, “The one [program] that ... has done the best job since I’ve been in business is Probity Builders.”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, stated that she is aware of some programs that assist small businesses. She said, “I’ve never dealt directly with the SBA. You hear, of course, that they do some work on behalf of small business, so I would presume that’s a good one. The WBENC has a pretty active program that they used to attempt to assist women-owned businesses in locating opportunities. The local group that is associated with WBENC is called ASTRA, and they’re good folk, and they’re genuinely interested in trying to promote opportunities for women-owned businesses.” Interviewee #6 reported that she belongs “to a group called the Women Presidents’ Organization. It’s not so much to find business opportunities as it is providing leadership training and support, etc. It’s a great group of people.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, reported that the State of Oregon’s apprenticeship program was beneficial to DBEs. Interviewee #10 stated, “The State pays us a percentage of that person’s wage to get them on-the-job training.” Interviewee #10 said, “The DBE goals are a good thing, as long as they are non-discriminatory.”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, stated that his firm greatly benefited from its participation in the City of Portland’s Sheltered Market Program. He reported that the City of Portland “had let the program get out of control,” by allowing too many firms to qualify and participate. He stated a concern that large companies allowed into the SMP would prevent smaller firms in the program from competing.

Similarly, PF #10, representing a minority-owned contracting firm, expressed misgivings about the Sheltered Market Program because it treats certified small business as the same as minority-owned firms. PF #10 said, “I was in the program, but I still didn’t get any work”

WT#2, representing a local construction firm, expressed similar issues with the Sheltered Market Program: “The Sheltered Market Program is another program that should help the underutilized firms, but I think it would be better to exclude ESBs on this list and only work with MBE and WBE firms. We were in the Sheltered Market Program and only received 2 projects the entire time we were involved.”

PF #12, representing a local contracting firm, said: “I have been in the Sheltered Market [Program] for a little over two years, I haven’t got a job. I am an ESB, haven’t got a job. I am a disabled Vietnam vet, haven’t got a job. In my field, I probably have as much experience as anyone I know. I have been truck driving for over 40 years . . . I have been contracting in the Portland area for over 20years.”

WT #6, representing the Oregon Native American Chamber of Commerce, indicated that the City of Portland Sheltered Market Program and the PDC Business Equity Program should be expanded to include professional services.

Interviewee #13, the Caucasian male owner of a residential construction company, stated that he was “vaguely aware” of agency programs that “help small businesses and minorities.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that she is aware of the City of Portland’s Sheltered Market Program. She stated that this program is not helpful to Caucasian male-owned firms. Interviewee #14 stated, “We’ve got this group of people

that you're sheltering in this market, and let's say if they ever graduate from this [program] — which, I don't know the women and minorities ever actually graduate from this — I guess there is a way for the [Caucasian] male to get in there, and that's [by participating as an Emerging Small [Business], but he's going to graduate when he becomes successful. So apparently, this [program] is for new people or people who need their hands held and don't know how to make the business go on their own or the unsuccessful ones.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated, “I think there's a lot of programs out there” that can be helpful to owners of small businesses. She said, “The DBE, ESB, kind of sets us up to get a foot in the door with all the GCs; whether they use us or not is another issue. The Sheltered Market [Program], I mean, they're always rolling something out or sending me something: ‘Hey, there's a program on the web for [doing] taxes,’ or ‘here's a list of classes you can take for free,’ and they help you with software. We've taken advantage of all of that. And the Port of Portland has their mentorship [program], and I'm currently in that, so yeah, there's a lot of stuff.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, said that the Minority Contractors Involvement Project, the Port of Portland's Mentor/Protégé Program, and offerings from the National Association of Minority Contractors are beneficial to him and other minority contractors. Interviewee #23 said the City of Portland's Sheltered Market Program is beneficial to his business, and a good program. He stated that the Oregon Association of Minority Entrepreneurs offered minority contractors opportunities to network with prime contractors.

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported, “There's a lot of resources — you don't want to be all negative. Like PCC (Portland Community College) has some really good classes that you can take. Even the Port of Portland Mentor/Protégé Program, the [City of Portland's] Sheltered Market Program — there are some really good resources that are not bad programs at all.” She stated, “The problem is, who [is] given the opportunity to attend? [The programs] are just being targeted to some groups, and some of us are not getting the same opportunity.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that there are some organizations in Oregon that provide useful services or other tools to assist small businesses. She stated, “There's a lot of training classes — my benefit is training classes, obviously to learn more about new stuff on the market, safety issues. There's AGC; I'm a member of AGC. They have ongoing training for contractors, for its members. Sometimes you pay a fee, sometimes you don't. That works very good for me, especially when they have those OSHA trainings [and] CPR for employees. That's a benefit.” She reported that her firm is a member of the City of Portland's Sheltered Market Program. She stated that “the only benefit I've received from them is ... free computer classes for [her] employees. That's my only good benefit from it throughout the three or four years I've been in the program, so I haven't changed anything other than free training.” She said that she has benefited from networking and social events sponsored by local organizations.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, said that the services his organization provides to small businesses are particularly helpful.

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that the following programs are helpful to small businesses: the City of Portland's Sheltered Market Program, the Port of Portland's Mentor/Protégé Program, Small Business Administration learning classes, and the Turner School of Construction. Interviewee #32 stated that these programs were helpful because they taught her more about business.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that the City of Portland's Sheltered Market Program is wonderful.

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, said, "I would say the Port of Portland Program is helpful. My understanding is the Sheltered Market Program is getting better. The Port of Portland Program was helpful to [better understand] the financial situation, the financials of your business.... I come from a construction background, [so] this helped [me] to understand and help[ed me] on the financial side of the business. The Sheltered Market Program, I think, is allowing more opportunities for those contractors to actually participate on those projects."

Interviewee TA #1, the vice president and credit administrator of a commercial bank, reported that Small Business Development Centers "are great" resources for small businesses. He said, "The SBA is very active in that. At [this bank], we've got some specific programs [for small businesses]: the microenterprise loan fund, which doesn't exclude non-women owned or non-minority owned [businesses], but there's a focus, it's targeted" to women- and minority-owned businesses. He said, "There's a lot of ways to help small businesses."

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that she is aware of many neutral measures, but "I hate to put hard and fast rules because ... I think people should have a toolbox of things that they can do." She said that she thinks many of these programs and measures would be helpful but she does not want to be required to do these things. She said that she is looking for measurable results.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that the City of Portland and the PDC sponsored a job fair a couple of years ago. He said that the fair offered resources about how to become a minority business entrepreneur and procure work with the City of Portland. He said that the program was "very helpful" and demonstrated "the willingness of the City of Portland and the PDC to work with minority business[es]."

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that his organization is spending about \$400,000.00 a year "on a variety of programs in which minorities, women, and emerging small businesses participate." He said that organization spends about 20 percent of its budget on these programs.

Some interviewees indicated that they had no knowledge of any race-, ethnic-, or gender-neutral programs or measures to assist small businesses, including minority- and woman-

owned businesses. [Interviewees #: 17, 18, 20, 21, 34, 42, 43]. Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, reported that she was not aware of any programs that were helpful to owners of small businesses. She said, “I want to start my own. Nobody told me [anything] about the Workforce Training Center.... A lot of the bids for the City of Portland and the PDC require that you have some type of certification or certificate (the Equal Opportunity certificate) from them, and I’ve been trying to get that certificate, but nobody really guides you, or tells you, or gives you the information on how to register and what it is that you need to do to register.”

A. Technical Assistance and Support Services.

Some interviewees reported awareness of technical assistance and support services.

[Interviewees #: 4, 10, 14, 26, 27, 28, 32, 33, 36, 47, 48, TA #1, TA #3, TA #4, TA #5, TA #6, TA #8, TA #10, TA #11, TA #12]. Interviewee #14, the Caucasian female co-owner of a non-certified construction company, stated that training courses are offered through the Sheltered Market Program.

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that he is aware of several organizations and associations that offer technical assistance and support services. He said that recently state-funded programs have been cut because “when good times become difficult, the things that people cut most often are the things that go along with minority[-owned] business, women[-owned] business, and in fact small business.” He said that “most of the assistance is coming from the federal level and being cut an awful lot on the local level.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that there are meetings to assist contractors with reading plans.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that his organization provides technical assistance to small businesses.

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that she is aware that Kinetics computer training is used by the City’s Sheltered Market Program.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she has had direct experience with technical assistance and support services being offered through the Sheltered Market Program and Port of Portland Program.

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, said his firm benefited from a technical assistance training program provided by the City of Portland, which trained employees in using software such as Microsoft Word and Excel. He said, “We sent three or four of our guys to that. That was helpful.”

Interviewee TA #1, the vice president and credit administrator of a commercial bank, stated, “I think there [are] some [technical assistance and support services] offered through the SPDCs.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that he is aware of technical assistance and support services being offered in the past, but that more programs like this need to be offered.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that his organization offers technical and support services.

Some interviewees reported that they were not aware of technical assistance and support services for small businesses. [Interviewees #: 34, 42, 43, 44, TA #7, TA #9].

Some interviewees thought that technical assistance and support services could be beneficial to small businesses. [Interviewees #: 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 25, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, TA #1, TA #2, TA #3, TA #4, TA #5, TA #6, TA #8, TA #9, TA #10, TA #11, TA #12, PF #1]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, stated that she has benefited from the technical assistance training and information she received from the SMP (Sheltered Market Program), and she said that other small businesses could benefit from technical assistance and support services programs.

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that many small businesses would benefit from programs offering business management, legal, and human resource technical assistance and support services.

Interviewee #17, the Native American male owner of an excavation firm, said that he thought owners of small businesses would likely benefit from assistance using the Contractor Pro website, which helps contractors build websites.

Interviewee #30, the Caucasian female owner of a WBE-certified construction firm, stated that her firm may not need any technical assistance or support services because she already has a good system in place. She stated that she would like to see other firms improve their systems, and she referenced specific minority-owned firms as examples.

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, said that technical assistance programs would be helpful to small businesses. He said, "It would be particularly helpful to small businesses, including MBE/WBE and ESB firms, to have estimating training from start to finish in order to better ensure bid accuracy and completeness and [to better ensure] profits were able to be made. Management courses to provide improved craft worker supervision, people skills, and general business knowledge of capitalism from a contractor perspective" would also be helpful.

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, said that technical assistance programs may be helpful to some small businesses. He said that these programs would "only [be helpful] for very young contractors, very small contractors; for us, it's not helpful."

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that the organization provides technical assistance to its members. She said that the organization has tracked

businesses over three years and the organization has been able to demonstrate that the businesses have increased their income “as a result of our involvement.”

PF#1, the president of the Hispanic Chamber of Commerce, suggested that the City and PDC should “expand ... partnerships for training and technical assistance” and should “conduct more online training and provide places for [firms] to access this training, such as the public libraries.”

One interviewee indicated that technical assistance would not be beneficial. [Interviewee #: 5].

Interviewee #5, the Caucasian male owner of an excavation firm, said that the City of Portland should not provide small businesses with technical assistance and support services programs. He stated, “Oh no, the City shouldn’t support anything like that. If these people can’t do the job when they show up — why should the taxpayers of the City of Portland subsidize people to bid or to do secretary work? If you can’t do the job, go home.”

B. On-the-Job Training Programs.

Some interviewees reported awareness of on-the-job training programs available to small businesses. [Interviewees #: 10, 26, 27, 30, 32, 36, TA #4, TA #5, TA #7, TA #8, TA #9, TA #10, TA #12]. Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that “the City of Portland, through its Sheltered Market Program, has a very good on-the-job training program.” He said that TriMet has an excellent on-the-job training program. He said that ODOT and the AGC have also offered on-the-job training programs. He said that on-the-job training has “always been a staple of trying to bring small businesses, women or minority businesses along.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that the workforce training program with the PDC provides on-the-job training. He said that out of all the workforce trainees that he has worked with, only one trainee has been a hard worker.

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that she has had direct experience with union and AGC on-the-job training programs.

Interviewee #36, two representatives of an employee-owned general engineering firm, stated that the union apprenticeship programs provide the best on-the-job training program.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that the organization offers on-the-job training for superintendents in their facility in Las Vegas, Nevada.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that “Women in the Trades” is an on-the-job training program offered by a non-profit. He said that Irvington Covenant also offers an on-the-job training program.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said he is aware of on-the-job training programs. He said the Johnson Omalley Program works with students to provide training. He said ODOT has offered on-the-job training in the past.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that most of the organization's contractors offer informal on-the-job training programs.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that their organization provides on-the-job training. They said that there are WATC tax credits for those businesses that hire and train new employees. They said that these tax credits are not helpful because in their experience, "good employers want good employees regardless of any kind of incentives."

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that the unions' apprenticeship programs are on-the-job training.

Other interviewees reported that they were not aware of any on-the-job training programs available to small businesses. [Interviewees #: 8, 28, 33, 34, 42, 43, 44, TA #6, TA #11].

Some interviewees thought that on-the-job training programs could be beneficial to small businesses. [Interviewees #: 1, 2, 4, 6, 7, 8, 9, 12, 13, 15, 16, 17, 20, 21, 22, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 45, 46, 48, TA #1, TA #2, TA #4, TA #6, TA #8, TA #9, TA #11, PF #5, PF #6, PF #8, PF #14]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, said that on-the-job training programs would not benefit his company, because it does its own employee training. He stated, "It's a possibility" that on-the-job training programs would benefit other small businesses

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that on-the-job training programs could be helpful to his firm if they applied to college students.

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, said that he does not think an on-the-job training program would benefit his firm because "I know how to do my job," but such a program could be useful to other small business owners.

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that on-the-job training programs would be particularly helpful to small businesses, but "only if there's going to be those opportunities and you're allowed to change your NAICS (North American Industry Classification System) code" after the training. Interviewee #24 stated that there should be on-the-job training for businesses in which the business owner would receive college credits, and "maybe move on to your new NAICS code."

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that the benefit of on-the-job training programs "depends on who's going to teach it. Yeah, it could be a benefit." She stated that the training has to be taught by someone "who has his fingers black [from working in the field], that is sturdy, that knows the industry, that has been in the industry for a very long time doing that work, not just [someone who has worked as] a supervisor supervising or a theory kind of thing."

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm said, "OJT (on-the-job training) will help the next generation of MBEs."

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, stated that she thinks on-the-job training programs may be helpful for small businesses, including MBE/WBE/ESBs. She said, “They’re useful, and the best way to create opportunities.”

PF #5, representing the International Brotherhood of Electrical Workers, indicated that apprenticeship programs are essential to the growth of minority- and women-owned businesses: “What I want to share is that the lifeblood of our [organization] is the apprenticeship program. If you don’t have a youth program then I think you are dead and dying. Our program is second to none in this country, our apprenticeship program. ... The apprenticeship program is ... a mentoring program of sorts. I think what should happen is that the mentoring program should be available to minority- and women-owned businesses, and that mentoring program would be run by those established businesses. ... I think [an apprenticeship program] is very critical and very important to the success of any businesses [as it related to the City and PDC work]. ... I think that apprenticeship is what is going to make a difference in the long run.”

PF #6, representing a women-owned electrical contracting firm, agreed that apprenticeship programs are important: “If we don’t level that playing field, I do not believe that women minorities are going to be able to go further... If I can’t learn my craft, I can’t learn how to run business. I am with [PF #5] when he talks about mentoring. I can’t speak for anything else, but right now the electrical contracting business is a big responsibility and without that mentoring I don’t believe that I will be able to make it.”

PF #8, representing a local university, expressed her support for unions, particularly for apprenticeship programs that unions operate: “I agree with the study itself — it points out that construction is a very difficult world for minorities, there is no question about that. But, I don’t agree with the conclusion of the disparity study, especially in Appendix E. That tries to place the blame in the construction market on unions. Union apprenticeship programs in particular can be part of the solution to those problems. My research and a number of studies ... have shown to the contrary that union apprenticeship programs do a much better job in graduating and training women and people of color into the construction world and I agree that that is in fact a pathway into ownership of construction firms. ... I just think that it is short sighted to blame the disparities on unions and there is a lot of good information out there to the contrary ...”

PF #14, who works in the construction industry, said that he had positive experiences in an apprenticeship program: “My apprenticeship was a four year program that I graduated from. ... The apprenticeship was the best for me ... making more money. ... So the apprenticeship worked and was one of the best things that happened for me. I made a better living for my family, staying out of the system. We get medical. So we don’t have to depend on programs. So apprenticeship was the best part.”

Other interviewees reported that they did not think that on-the-job training programs would be beneficial to small businesses. [Interviewees #: 3, 5, 11, 14, 23]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that an on-the-job training program “wouldn’t work in my industry.”

Interviewee #5, the Caucasian male owner of an excavation firm, said that he does not support the City of Portland providing on-the-job training programs for small businesses. He stated, “They don’t have the money for that.”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, stated that these programs would not be helpful because “when you get into business, you’re supposed to know your business.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, stated that she does not support on-the-job training programs for small business owners. She said, “[D]oes the government really think it’s their responsibility to do this stuff? I mean, seriously. If people want to work — I mean, this is what this whole country started with. There’s entrepreneurs, there’s people who want to work — they will figure it out. If they don’t figure it out, those people work for other people, who do take the risks and figure it out. It is not the government’s job to hold our hands.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, stated that on-the-job training programs wouldn’t benefit firms like his because, “as general contractors, we need to train our people in the way we work, so I don’t think that’s such a needed thing.”

C. Mentor/Protégé Relationships.

Some interviewees reported that they were aware of mentor/protégé programs available to small businesses. [Interviewees #: 4, 8, 19, 21, 23, 26, 28, 30, 31, 32, 33, 34, 35, 36, 38, 44, TA #3, TA #4, TA #5, TA #7, TA #8, TA #10, TA #11, TA #12]. Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that she knows of “quite a few general contractors that will mentor and help businesses.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, stated that she is aware of mentor/protégé programs. She said, “I know that they do have a program like that for the ESB, but the ones that we heard about were with the very large union generals, and that wasn’t quite what we were looking for there.” Interviewee #21 recommended that subs should also be mentored by non-union general contractors.

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that the Port of Portland’s mentorship program is “probably the most recognized mentorship program that’s been funded.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, said that the organization provides a number of mentor/protégé relationship programs and that those programs are “important.”

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that she has had direct experience with the Port of Portland’s mentor/protégé program.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she has had direct experience with the Port of Portland’s mentor/protégé program.

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he has had direct experience with mentor/protégé programs at the Port of Portland.

Interviewee TA #5, the president of the National Association of Minority Contractors, reported that the Port of Portland offers a mentor/protégé relationship program.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that there are several mentor/protégé programs offered and that the SBA “has a good program.”

Interviewee TA #10, three representatives of the Northwest College of Construction, said that they are aware of the Port of Portland and the City offering mentor/protégé programs.

Interviewee TA #11, a representative from the Port of Portland, stated that the Port of Portland has a formal mentor/protégé relationship program. She said that to qualify for the agency’s mentor/protégé program, the business must be certified as an MBE/WBE or ESB with Oregon. She explained that after a business is accepted to the program, the business is paired with two mentors in a similar or complementary industry to help the business achieve identified goals. She said that the program is a three-year relationship with the mentor and protégé meeting at least monthly.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, reported that the Port of Portland has a mentor/protégé program that has been successful.

Some interviewees reported that they were not aware of mentor/protégé programs available to small businesses. [Interviewees #: 3, 7, 27, 42, 43].

Some interviewees thought that mentor/protégé programs could be beneficial to small businesses. [Interviewees #: 1, 2, 4, 6, 7, 8, 9, 10, 13, 15, 16, 19, 20, 21, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 46, 48, TA #1, TA #2, TA #3, TA #4, TA #6, TA #7, TA #8, TA #10, TA #11, TA #12]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, said that the Port of Portland’s mentor/protégé program is beneficial to small businesses.

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, said that mentor programs would help a protégé who “had no business training or experience.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, reported that she participates in mentor/protégé relationships, and that they are beneficial to her, and would be helpful to other owners of small businesses. She said, “There’s always great information in there. My personal mentors are [great]. These guys make me think and figure out things I never thought about, and I do them.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, reported that she has not participated in a mentor/protégé relationship, but stated, “That would be awesome. There [aren’t] enough of those. And I think it would be good to have an older group, to mentor younger business owners, because you learn more from the older people.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported that mentor /protégé programs could benefit small businesses. He said that he benefited from his participation in the Port of Portland’s mentoring program. He stated, “I went through it for three years. It kind of helped me get my systems in place.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that mentor/protégé relationships are beneficial. He said that in order for these programs to be successful the mentor has to “actually go in with the intent of helping you to become successful as opposed to using you to get business.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said that mentor protégé relationships “can work when both parties are serious about having a significant outcome and it involves work.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said, “Mentor/protégée relationships are working well for me. Others should have them too. It is especially helpful if they know your field.”

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, stated that mentor/protégé relationships may be helpful for small businesses including MBE/WBE/ESBs. She said, “It works well if the principals are committed to participating.”

Interviewee TA #2, the director of an apprentice preparation program, reported that mentor/protégé programs could be useful to the owner of a small business, “with a commitment” from the mentors. She stated, “That means that [the mentoring company is] not doing it [only] because someone told them they were going to [receive] a tax break” for doing so.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that in the past the organization has offered mentor/protégé programs to its subcontractor members. He said that one member in particular had a successful experience as a protégé and he is now “fairly successful.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that the mentor/protégé relationships are helpful when “you have a good relationship with the mentor.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the organization’s mentor/protégé program began with the Port of Portland and they have had some success with this program. He said, “I wouldn’t say it is a resounding success, but it is one of those programs that just continues on and on because our guys believe in it and they continue to do it.”

Interviewee TA #11, a representative from the Port of Portland, said that the agency has had approximately 90 businesses go through their mentor/protégé program and it “has been an incredible success for many of [the businesses].”

Other interviewees did not think that mentor/protégé programs could be beneficial to small businesses. [Interviewees #: 5, 14, 17, 22]. Interviewee #14, the Caucasian female co-owner of a

non-certified construction company, stated that she is not in favor of government-sponsored mentor/protégé programs.

Interviewee #17, the Native American male owner of an excavation firm, stated, “I don’t see why a bigger company would [want to] take one of their competitors under their wing and help [them] get big or more competitive, when they basically — they’d be cutting their own throat.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, stated that he does not support mentor/protégé relationships between businesses. He reported, “Every business is so different. And when you get to that level, [business owners] are so headstrong, they won’t listen anyway.”

D. Joint Venture Relationships.

Some interviewees reported that they were aware of joint venture relationships available to small businesses. [Interviewees #: 3, 8, 10, 26, 27, 28, 36, 43, 44, TA #3, TA #4, TA #6, TA #7, TA #8, TA #10, TA #12]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported, “There’s a lot of [programs supporting joint venture relationships]. I think those are probably fine. I think it’s the bonding thing that makes those necessary.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated, “We have done joint ventures. The only thing we don’t like about joint ventures is when we’re the sub of a sub; it backs up the process. But the joint venture that we had in Portland seemed to go pretty well.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that he is aware of ODOT, the City, the Port of Portland and others offering joint venture relationships. He said that there could be more joint ventures offered.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that joint venture relationships are “very common” and the organization supports those relationships.

Other interviewees reported that they were not aware of joint venture relationships available to small businesses. [Interviewees #: 7, 33, 34, 42, TA #5, TA #11].

Some interviewees thought that joint venture programs could be beneficial to small businesses. [Interviewees #: 1, 2, 4, 6, 7, 9, 13, 15, 16, 17, 19, 20, 21, 22, 24, 25, 27, 30, 31, 32, 33, 34, 36, 37, 38, 40, 41, 42, 43, 46, 48, TA #1, TA #2, TA #3, TA #4, TA #6, TA #7, TA #8, TA #11, TA #12, PF #20]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, said that participation in a joint venture could be useful to owners of small businesses, and “I’d love to see that.” He said that his firm would benefit from participating in a joint venture with a large Portland metals fabricator, but he does not know how to begin a relationship with that firm. He said, “If the City had quarterly meetings or something,” that would facilitate an introduction of his firm to the other.

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that participation in a joint venture could be useful to owners of small businesses. He stated a concern about how the parties would “handle the books.”

Interviewee #17, the Native American male owner of an excavation firm, said that joint venture relationships could be beneficial. He stated, “They could probably work. I mean, if they’re two small excavation companies — like me, two one-man shows — that wanted to get together” to bid on projects bigger than either business could handle alone.

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated that participating in a “joint venture would be a lot of fun.... I would love to do a joint venture with a big GC, and know we have financial backing, because as a little person trying to do a joint venture with the big guys, there’s the dollar factor, the cash flow issue.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, stated that participation in a joint venture could be useful to owners of small businesses. He said, “It keeps you working, and it shows you different ideas.” He said, “I love to work alongside someone else, you kind of see your downfalls ... and you get to correct them.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated that participation in a joint venture could be useful to owners of small businesses, “as long as the larger firm puts money into the small firm. I think capital investment to the small firm would [provide] a meaningful joint venture.”

Interviewee #36, two representatives of an employee-owned general engineering firm, stated that they are not aware of MBE/WBE/DBE firms that utilize the joint venture model, but they reported that they have seen some loosely formed partnerships and informal, non-equity joint ventures that are successful.

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, stated that there is a need for joint venture relationships. He reported that he has heard of some that are successful, but noted that minorities do not necessarily have the equity to form joint ventures.

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, stated that he thinks joint venture relationships would be helpful for small businesses, including MBE/WBE/ESBs. He said, “JV relationships are good, because some projects are so big and you just can’t do them by yourself, and we have to look to those new ways of doing things to continue keeping our businesses viable.”

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, stated that joint venture relationships are “the way to go.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that joint venture relationships can be beneficial but “it all depends on how well the businesses work together and perform their part” of the venture.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that joint venture relationships are beneficial to small businesses because “that is how [businesses] get practical experience.”

Interviewee TA #11, a representative from the Port of Portland, stated that joint venture relationships could be beneficial if they were structured properly.

PF #20, representing a women-owned general contracting firm, indicated that she would welcome the opportunity to be a part of a joint venture but seemed to have some difficulty finding such opportunities: “Why aren’t any of these general contractors doing a partnership or a joint venture, taking my company up under their wing and show me some of the internal processes that will help grow a business and offer opportunities to the young people in the community to give them hope and a future? They need to be able to see how their education connects them to their futures.”

Other interviewees did not think joint venture programs could benefit small businesses.

[Interviewees #: 5, 8, 14, 23, 29, 35, 45, TA #5]. Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, reported that she has not participated in a joint venture, but expressed concerns about such participation. She said, “Partnerships never end well. With minority businesses, unless you get the right partner, I would hate to see [the minority business owner be] taken advantage of, and I’ve seen that happen. I know of one right now that’s going on, where there’s a minority business and the person in the joint venture, they’re taking advantage of him.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “You have to have some financial wherewithal to be able to participate in these, and most of us are not in a position to do that, some of the ones that I have seen are not beneficial to the MBE.”

Interviewee #35, the Caucasian male president of an employee-owned non-certified construction services firm, said, “Not so much for joint ventures. It requires often more of an investment that M/W/ESB firms do not often have.”

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said that he does support the use of joint venture relationships because “I prefer not to have unnecessary financial ties with anyone.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that joint ventures would “probably not” be beneficial. He said that joint ventures can present a situation where the larger contractor “can and potentially does kind of bully the smaller contractor. [They] give them the less-desirable work, the less-desirable times, and try to control the profit margin so that there isn’t any.”

E. Financing Assistance.

Some interviewees reported that they were aware of financing assistance being available to small businesses. [Interviewees #: 12, 19, 26, 28, 31, 32, 36, 43, 44, TA #3, TA #7, TA #11, TA #12]. Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that last year she attended a seminar sponsored by the Oregon

Department of Transportation, and that “it was pretty helpful. We learned all about SBA loans, fast-track and express loans.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated that she is aware of existing financial assistance programs for small businesses. She said, “I know that PDC just rolled one out for the weatherization program. We have not tapped into that, just because we’re overextended right now.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, reported that the organization provides financing assistance.

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that his business was able to take advantage of an ARRA loan.

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, reported that she is aware of an Albina Bank/City of Portland/PDC joint venture to provide this financing assistance.

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, stated that he has had direct experience with financing assistance programs through the Port of Portland Program.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that there are a number of programs available through the SBA and the Indian tribes that provide financing assistance.

Some interviewees reported that they were not aware of the availability of financing assistance. [Interviewees #: 3, 27, 29, 33, 34, 42, TA #5, TA #8].

Some interviewees thought that financing assistance could be beneficial to small businesses. [Interviewees #: 1, 2, 4, 6, 7, 9, 10, 11, 12, 13, 15, 16, 17, 19, 20, 21, 22, 23, 25, 26, 29, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 46, 48, TA #1, TA #2, TA #3, TA #4, TA #5, TA #7, TA #10, TA #11, TA #12]. Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that the City of Portland should create a guaranty program or a loan-backing program.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that agencies “should be doing that a lot more — upfront [financing] assistance. I know they don’t want to get burned, but there should be some way to do small, operational loans for companies.” He stated that agencies need to be “more friendly” to small businesses by providing more loans for materials-on-hand (MOH) payments.

Interviewee #13, the Caucasian male owner of a residential construction company, stated that financial assistance programs could “certainly” be useful to the owner of a small business.

Interviewee #17, the Native American male owner of an excavation firm, stated that financial assistance programs “could be great, but I don’t see it happening.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, stated that financial assistance programs “would be exceptionally helpful” to the owner of a small business.

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, said that “anything in financing” would help small businesses. He stated, “It’s not just securing the financing, it’s how you’re going to pay it back. ‘Am I overstretching it? What if there’s no work for three months? Is there any carryover?’ The carryover scares me to death.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that there needs to be more financing assistance, but that these programs need defined rules. He said that financing assistance could be very beneficial to small businesses and minority- and women-owned businesses.

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, stated that financing assistance would be helpful for payroll and inventory purchasing for small businesses including MBE/WBE/ESB firms because of the cash flow assistance this would provide.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that “without a doubt” financing assistance would be helpful.

Interviewee TA #11, a representative from the Port of Portland, said that financing assistance programs could be beneficial if they are managed well.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, stated that he believes that the PDC just started a financing assistance program.

Other interviewees did not think that financing assistance was necessary or beneficial.

[Interviewees #: 5, 14, 24]. Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that she does not support financial assistance program for small business. She stated, “I always had trouble with understanding getting loans because what’s the purpose of me getting a loan if I can’t repay it? If I don’t have the work to pay it back, why am I borrowing it?”

F. Bonding Assistance.

Some interviewees reported awareness of bonding assistance. [Interviewees #: 26, 31, TA #3, TA #6]. Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that he is aware of bonding assistance being offered but that there needs to be more. He said that the City has been working on bonding assistance. He said that some larger contractors and public agencies allow smaller businesses to be bonded under them.

Some interviewees reported that they were not aware of bonding assistance. [Interviewees #: 7, 10, 20, 27, 28, 29, 33, 34, 42, 43, 44, TA #4, TA #5, TA #7, TA #11]. Interviewee TA #11, a

representative from the Port of Portland, stated that she is not aware of programs that provide bonding assistance, other than informal assistance provided by some of the bonding companies.

Some interviewees thought that bonding assistance could be beneficial to small businesses.

[Interviewees #: 1, 2, 3, 4, 6, 7, 9, 11, 12, 13, 15, 16, 17, 19, 20, 21, 23, 25, 26, 27, 28, 29, 31, 32, 33, 34, 36, 37, 38, 40, 41, 43, 48, TA #1, TA #2, TA #4, TA #5, TA #7, TA #8, TA #11, TA #12]. Interviewee #17, the Native American male owner of an excavation firm, said that programs providing bonding assistance would be useful to him as the owner of a small business who is currently limited by bonding restrictions. He stated, “I can’t bid on projects that are in the street ... because I’m not bonded to go in the street — it’s too much money.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that bonding assistance “can help people get past those early stages of their business life.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that bonding assistance may be helpful but it could be detrimental if there was a problem on the job site.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that there needs to be programs that offer bonding assistance because “it is so difficult to get 100 percent bonding.” He said that some tribes will work with tribal businesses on bonding requirements and he has heard of larger contractors working with subcontractors on bonding requirements.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that “every one of our guys would support reducing bonds, but unfortunately the State of Oregon went the other direction and has increased bond requirements.” He said that all of his “members would welcome that kind of financial relief.”

Other interviewees did not think that bonding assistance was necessary or beneficial.

[Interviewees #: 5, 8, 14, 22, TA #10]. Interviewee #5, the Caucasian male owner of an excavation firm, stated that he does not support the City of Portland providing small businesses with bonding assistance. He stated, “No. Bonds are easy to get. Pay your money; they’ll give you one.”

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that she has not used bonding assistance programs, but is concerned about them. She said that if the “general contractor is going to buy your bond for you — self-bonded — it will be interesting [to see] what happens when you’ve got people that are so low in their price, and general contractors have bonded them, and the general contractors are going to have to come up with the money to finish the job because you know [the small firms] can’t perform [the work they contracted to do].”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, stated that she is not in favor of bonding assistance programs because “It’s not the government’s job” to assist with bonds.

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, stated, “I don’t see how bonding could be any simpler.”

Interviewee TA #10, three representatives of the Northwest College of Construction, said that bonding assistance is a “two-edged sword” because bonds provide consumer protection and to the extent that bonds are reduced, the consumers may suffer.

G. Assistance in Obtaining Business Insurance.

Some interviewees reported awareness of assistance in obtaining business insurance being available to businesses. [Interviewees #: 8, 27, TA #4]. Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that he believes that the Small Business Administration provides assistance in obtaining business insurance.

Other interviewees reported that they were not aware of assistance in obtaining business insurance. [Interviewees #: 10, 11, 20, 28, 29, 33, 34, 42, 43, 44, TA #3, TA #5, TA #7, TA #8, TA #11].

Some interviewees thought that assistance in obtaining business insurance could be beneficial to small businesses. [Interviewees #: 1, 2, 3, 4, 5, 6, 9, 11, 13, 15, 16, 17, 19, 20, 21, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 36, 37, 38, 40, 41, 43, 48, TA #1, TA #2, TA #3, TA #5, TA #6, TA #7, TA #8, TA #11]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated, “Maybe the City could get a pool ... or an umbrella policy” to assist small businesses in obtaining business insurance.

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, stated that small businesses could benefit from programs that would assist them in obtaining business insurance.

Interviewee #17, the Native American male owner of an excavation firm, stated that programs that assist small business owners in finding the appropriate level of insurance at the lowest cost would be beneficial. He stated, “I’ve been with the same insurance company for years. My insurance guy, he doesn’t really care— he’s [going to] continue giving me the same insurance that I [currently] have. It’s up to me to say, every year, ‘Hey, you need to shop insurance for me because I think [it costs] too much.’” He stated, “If the City would have a community insurance that you could buy into, that would be the thing to do. Insurance is just a killer.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, said that she would support programs that would provide small businesses with assistance in obtaining error and omission, professional liability, and other forms of business insurance. She also reported that lowering the dollar amount of insurance that businesses are required to carry before doing business with the City of Portland and the Portland Development Commission would be beneficial.

Interviewee #36, two representatives of an employee-owned general engineering firm, stated that obtaining insurance is critical to maintaining costs and assistance is needed, especially with Owner Controlled Insurance Program administration and certificates.

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, stated that assistance in obtaining business insurance may be helpful

for small businesses including MBE/WBE/ESBs and said, “It’s important, especially when getting businesses off the ground.”

Interviewee TA #2, the director of an apprentice preparation program, said that assistance in obtaining insurance would be helpful to small businesses. She stated, “There should be ... a credit union. There should be something that’s really built-in and set-aside where small businesses can go,” similar to, “but not like the [U.S. Small Business Association], because I’ve not known a minority to get anything from them. I may be wrong, but I’ve never known [of] it.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that assistance in obtaining business insurance would be beneficial. She said that it is difficult for members to obtain worker’s compensation insurance.

Interviewee TA #11, a representative from the Port of Portland, said that while programs that assist in obtaining business insurance may be beneficial, “we rarely hear that a business can’t get the insurance if we have correctly identified how much insurance we need.”

Other interviewees thought that assistance in obtaining business insurance would not be beneficial to small businesses. [Interviewees #: 8, 14, 23, TA #10]. Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, expressed concerns about businesses using certain assistance to obtain business insurance. She said that certain programs “can give a person a false sense of security” because of high deductibles and other factors.

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, stated that small businesses would benefit more from a reduction in the amount of insurance they are required to carry for each project than they would from programs that would assist them in obtaining business insurance.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that they do not necessarily support assistance in obtaining business insurance because insurance has to do with risk and someone will have to bear the risk. They said that if insurance requirements are reduced, then taxpayers may bear the risk. They said that that businesses need to assume their own risk.

H. Assistance in Using Emerging Technology.

Some interviewees reported awareness of assistance in using emerging technology. [Interviewees #: 27, 31, 33, TA #2, TA #5, TA #8]. Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she has had direct experience with assistance in using emerging technology through the City’s Sheltered Market Program.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that the Port of Portland and Sheltered Market Program offer assistance in using emerging technology.

Other interviewees reported that they were not aware of assistance in using emerging technology. [Interviewees #: 1, 7, 8, 18, 19, 20, 28, 29, 32, 34, 42, 43, 44, TA #4, TA #7, TA #10, TA #11, TA #12]. Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific

Building Trades Council, stated that he is not aware of assistance in using emerging technology beyond the training that is provided in the unions' apprenticeship programs.

Some interviewees thought that assistance in using emerging technology could be beneficial to small businesses. [Interviewees #: 1, 2, 4, 6, 9, 10, 13, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 44, 45, 46, 48, TA #1, TA #2, TA #3, TA #4, TA #5, TA #6, TA #7, TA #8, TA #10, TA #11, TA #12]. Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that they believe businesses would benefit from receiving assistance with emerging technologies, but stated concern about requiring small businesses to pay for software for bidding or related purposes.

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, reported that he thought assistance using emerging technology "would be helpful" to small businesses, because it would save money. He reported that some contractors require potential subcontractors pay \$100 to get copies of plans for jobs they want to bid. He said, "I don't know if I'm [going to] get the job, so why am I paying for this?"

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, stated that continuous training has been beneficial to his firm, and would be useful to other small businesses. He said, "That's why we lead in what we do, because of continued training [of our workforce], and we always use the latest equipment. Everybody's computerized, everything is downloaded."

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that assistance with emerging technology would be helpful because electronic bidding "saves time and money" for small businesses.

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said that "MBEs have a lot of trouble with the electronic systems and should train more with them."

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said, "Yes, assistance with electronic bidding documents is good. My clients prefer this method now, so I had to get up to speed. I rarely ask for hard documents now, unless something is difficult to read."

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, stated that he thinks assistance in using emerging technology would be helpful for small businesses, including MBE/WBE/ESBs. He said, "This is so important that we are able to keep up with technology. It's probably the most important thing."

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that the ability to use emerging technology "is an issue" because all the bids are online. She said that assistance in using emerging technology would be beneficial.

Other interviewees did not think that assistance in using emerging technology would be necessary or beneficial. [Interviewees #: 3, 43]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reporting that programs providing assistance in

using emerging technologies “would probably not be helpful for me. I’m kind of an electronic dingdong, I don’t know.”

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, stated that he thought assistance in using emerging technology and some other types of business assistance should be the responsibility of the business owner to pursue, not the public agency. He said, “Well some of the stuff you’re asking now, I don’t think the City should have to assist the businesses in doing. By being a business owner, you’re in business to do things for yourself. So, if you need assistance doing this [stuff], you shouldn’t be in business. Go take some night classes at PCC (Portland Community College) and figure it out so that you can bid it. That’s what makes it competitive. That’s why we’re in business. That’s part of the work, is to know how to do this stuff.”

I. Other Small Business Start-Up Assistance.

Some interviewees reported that they were aware of start-up assistance for small businesses. [Interviewees #: 8, 26, 28, TA #3, TA #7, TA #8, TA #10, TA #11, TA #12]. Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that she is aware of the Port of Portland’s contractor mentoring program, the SPDC Friends Program, and the Turner School of Construction Management sponsored by the Turner Construction Company.

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that small business start-up assistance is offered by non-profits. He said that many of these non-profits are struggling to stay in existence. He said that the public agencies and larger corporations should provide small business start-up assistance.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that there “is a lot of [small business start-up assistance] around at various levels of competence.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that he is aware of programs that provide start-up assistance to small businesses. He said that there are several small business centers in Portland that provide start-up assistance.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that he is aware of the State of Oregon offering some start-up assistance and that the organization supports those programs.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that the SBA offers small business start-up assistance.

Interviewee TA #11, a representative from the Port of Portland, stated that there are several organizations in Portland that provide small business start-up assistance. She said that the Minority Contractor Improvement Partnership (MCIP) assists start-ups. She said that the Portland Community College has a Small Business Development Center that provides “really good small business training.” She said that the SCORE Program with the Small Business Administration is “a good organization for a start-up business.”

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, reported that the City of Portland has a Sheltered Market Program that gives bidding advantages to emerging small businesses. He said that the Minority Contractor Improvement Program (MCIP) assists small businesses.

Other interviewees reported that they were not aware of start-up assistance for small businesses. [Interviewees #: 27, 32, 33, 34, 42, 43, TA #4, TA #5]. Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that he does not believe that there are many programs available now that provide small business start-up assistance because there is no money available to support the programs.

Some interviewees thought that other small business start-up assistance could be beneficial to small businesses. [Interviewees #: 2, 4, 8, 15, 16, 17, 19, 20, 21, 22, 23, 25, 29, 30, 31, 32, 33, 34, 35, 38, 39, 40, 45, 46, TA #1, TA #2, TA #3, TA #4, TA #5, TA #7, TA #12]. Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that “I think for some, [start-up assistance programs are] helpful. I mean, it depends on where you are in your business. I think if you’re [just] starting, it’s a great opportunity to start networking.”

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, said that start-up assistance programs would be helpful to small businesses. He recommended that public agencies hire consulting firms to assist small businesses, “to make sure they can get the right things to grow.” He reported that entrepreneurs in numerous communities “need somebody in their specific fields to help make them grow.”

Interviewee #17, the Native American male owner of an excavation firm, said that other small business start-up assistance would be beneficial to small businesses. He stated, “Just giving money would be a great thing. It’s like pulling teeth to get money out of anybody now days. It really is.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that small businesses would benefit greatly by being able to easily find out “what licenses, what certifications are needed, [and] how to obtain the permits [they] need to do the work [they] need to do. Because that’s all guesswork upfront.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated that he thinks other small business start-up assistance may be helpful for small businesses “but [they should] also have a plan for utilization of existing businesses.”

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, stated that he thinks other small business start-up assistance may be helpful for small businesses, including MBE/WBE/ESBs. He said, “Assistance with legal [issues] such as preparing and reviewing contracts and other services.”

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “Small business start-up assistance is needed. No one else is doing it, and we need them working and employing people.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that programs that offer small business start-up assistance are “sometimes” beneficial.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that programs that provide small business start-up assistance are helpful and that it would be particularly helpful to small business to provide information on where the programs are offered, enrollment procedures, and the cost of such programs.

Other interviewees thought that other business start-up assistance would not be beneficial to small businesses. [Interviewees #: 1, 6, 24, 43]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated, “I don’t know really what the City could do for emerging small business that they’re not already doing.”

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported that it might not be appropriate for government agencies to play a large role in business start-ups. She stated, “I’m not sure what role government could ... honestly play in that, because a lot of the business entity is quite dependent on having that entrepreneurship skill or capability.... If you don’t have it, I don’t know how much help that government could provide.”

J. Information on Public Agency Contract Procedures and Bidding Opportunities.

Some interviewees reported that they were aware of information on public agency contract procedures and bidding opportunities. [Interviewees #: 10, 20, 22, 26, 32, 33, 34, 42, TA #2, TA #3, TA #4, TA #5, TA #7, TA #10, TA #11, TA #12]. Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she has had direct experience with information on public agency contracting procedures and bidding opportunities. She stated that she is aware of programs that offer information on public agency contract procedures at the City of Portland and PDC.

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, stated that he has had direct experience with information on public agency contracting procedures and bidding opportunities, and he is aware of programs at the City of Portland and PDC.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that there is information on public agency contracting procedures and bidding opportunities available to businesses if they “know how to access it.” He said that programs like bidders exchange, dodge reports, and CODS (the organization’s program) provide this type of information to businesses.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that the Port of Portland and Sheltered Market Program offer information on public agency contracting procedures and bidding opportunities.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that the City provides some information on their contracting procedures and bidding opportunities. He said that the federal government does not provide much information on public agency contracting procedures and bidding except for the information provided through the SBA.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that they are aware of agencies providing information on contracting procedures and bidding opportunities, but “we are not sure how well they are doing it.” They said that they meet contractors almost weekly who are confused about the agency’s contract requirements.

Interviewee TA #11, a representative from the Port of Portland, stated that she is aware of information on public agency contracting procedures and bidding opportunities. She said that this information is readily available in the newspapers and on websites.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that he believes the major public agencies in Portland have “pretty extensive outreach programs in place” to provide information on public contracting procedures and bidding opportunities.

Some interviewees reported that they were not aware of any information on public agency contract procedures and bidding opportunities. [Interviewees #: 27, 28, 43].

Some interviewees thought that information on public agency contract procedures and bidding opportunities could be beneficial to small businesses. [Interviewees #: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 42, 43, 46, 48, TA #1, TA #2, TA #3, TA #5, TA #6, TA #8, TA #11]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, said that information on public agency contract procedures and bidding opportunities could be beneficial to small businesses. He stated, “I think [the City should] make it easier to access plans, maybe put plans on their website so small shops like us who really can’t afford to join plan centers can look at plans. You’d probably get more bids on projects.” He stated, “A lot of small businesses get hurt really badly in our type [of] business because they don’t know what the requirements are, they don’t know what the insurance requirements are, [and] they don’t know what the technical requirements are. They just think, ‘Well, we can just sketch it out on a napkin, and send it down there.’ Then they find out that they [have to] have liability insurance, [a] commercial auto policy, and it folds them immediately. Maybe if they knew this stuff upfront, it would help them get started.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that they have found most of the agencies’ websites to be helpful. They stated, “They’re carrying specs, and contacts, and that’s pretty valuable. I use a lot of the City of Portland’s website, I use ODOT’s website, and I’ve even gone to the cities’ and counties’ [websites] to find stuff.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated that he thinks information on public agency contracting procedures and bidding opportunities may be helpful for small businesses. He said, “Yes, you have the information and it has to be good and timely to prepare.”

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, said, “[Information on public agency contracting procedures and bidding opportunities] is helpful to small businesses because it provides a quick link to opportunities.”

Interviewee #36, two representatives of an employee-owned general engineering firm, said that information on public agency contracting procedures and bidding opportunities may be helpful because MBE/WBE/DBEs need additional information about the prevailing wage and how to use the 16 steps of the EEO process.

One interviewee reported that information on public agency contract procedures and bidding opportunities would not be beneficial to small businesses. [Interviewee #: 19]. Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated that additional information on public agency contracting procedures and bidding opportunities is not necessary because “we get a lot of that already, so we’re good.”

K. Online Registration with a Public Agency as a Potential Bidder.

Some interviewees reported that they were aware of opportunities to become registered to receive information as a potential bidder. [Interviewees #: 6, 12, 17, 19, 23, 26, 27, 28, 32, 33, 34, 37, 42, 43, TA #2, TA #3, TA #4, TA #6, TA #7, TA #11]. Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated, “We get e-mails all the time” about opportunities to bid on public agency projects.

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that “everyone pretty much” allows online registration as a potential bidder. He said that the first step is to get certified with the State, and then each individual public agency has its own individual list. He said that it is frustrating for small businesses to have to go to all of these different places to give information to get on the lists. He said that this process could be improved by having just one list that is maintained by the agency certifying the firms.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she is aware of online registration to become a potential bidder with the City of Portland and PDC.

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, stated that he has had direct experience with online registration with a public agency to become a potential bidder, including the City of Portland and PDC.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that the City has on-line registration available.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that online registration with a public agency as a potential bidder is “pretty common now.” He said that “it is pretty easy to figure out what you [have] to do [to register] once you get on their website.” He said that he would hope that the agency would provide assistance for those having difficulty with the online registration.

Some interviewees reported that they were not aware of opportunities to become registered with an agency as a potential bidder. [Interviewees #: 7, TA #5, TA #8].

Most interviewees thought that allowing a business to complete online registration with a public agency as a potential bidder could be beneficial to small businesses. [Interviewees #: 1,

2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 20, 21, 22, 25, 28, 29, 31, 32, 34, 35, 36, 37, 39, 40, 42, 43, 46, 48, TA #1, TA #2, TA #5, TA #8, TA #10, TA #11]. Interviewee #14, the Caucasian female co-owner of a non-certified construction company, said that small businesses would benefit from being able to register online with public agencies as a potential bidder. She stated, “That’s great.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, stated small businesses would benefit from being able to register online with public agencies as a potential bidder, if only because they could then “know their competition, who you’re going up against.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated that he thinks online registration with a public agency as a potential bidder may be helpful for small businesses, but “I still think you have to build the relationship with the owners and the [general contractor].”

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that she has had direct experience with online registration with a public agency to become a potential bidder. She said that, “It is time consuming, but in the long run it helps, and smaller companies may benefit a lot.”

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, stated that online registration is beneficial to small businesses, including M/W/ESB firms, because it reduces time spent seeking work.

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “Yes, there is a need to use electronic registration, but it should be streamlined [because] we have numerous places to sign up. One or two places that shared is a great option and would save us so much time and money.”

Interviewee #39, two representatives of a Caucasian male-owned general contracting firm, said, “I would like to see five or so centralized places instead of so many places to search for work and bid opportunities.”

One interviewee reported that allowing a business to complete online registration with a public agency as a potential bidder would not be beneficial to small businesses. [Interviewee #: 24].

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that being able to register online with public agencies as a potential bidder would not assist a small business “if they don’t want to use you. What’s the purpose of being registered if they’re not going to use you?”

L. Hard Copy or Electronic Directory of Potential Subcontractors.

Some interviewees reported that they were aware of hard copy or electronic directories of potential subcontractors. [Interviewees #: 2, 9, 12, 17, 19, 24, 26, 27, 32, 33, 34, TA #2, TA #3, TA #5, TA #7, TA #10, TA #11]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, said that he is aware of directories of potential subcontractors. He stated, “I’m familiar with that, and one of the things that was interesting was the amount of data that was available about those subcontractors, relative to sort of a first pass as to the ones I wanted to follow up with, and it was not as robust as I had hoped.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that he is aware of hard copy or electronic directories of potential subcontractors. He said that there are consulting companies that assist businesses with finding qualified subcontractors.

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that directories of potential subcontractors are available for MBE/DBEs.

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that she has had direct experience with the State of Oregon's MBE/WBE/ESB office and the subcontractor directories provided by that office.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she has had direct experience with the directories provided by the State of Oregon's MBE/WBE/ESB office for sourcing subcontractors. She noted that she is aware of similar directories offered by the City of Portland.

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, stated that he has had direct experience with hard copy or electronic directories of potential subcontractors, and that he is aware of directories developed by the City of Portland.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that he is aware of hard copy or electronic directories of potential subcontractors. He said that he prefers online resources because the printed directories are outdated as soon as they are printed.

Other interviewees reported that they were not aware of electronic and hard copies of directories of potential subcontractors. [Interviewees #: 23, 28, 42, 43, TA #4, TA #6, TA #8].

Some interviewees thought that hard copy or electronic directories of potential subcontractors would be beneficial to small businesses. [Interviewees #: 1, 3, 4, 8, 10, 11, 13, 14, 15, 16, 20, 21, 25, 28, 29, 31, 33, 34, 36, 37, 40, 42, 43, 48, TA #1, TA #2, TA #4, TA #5, TA #8, TA #10, TA #11, TA #12]. Interviewee #16, the Caucasian male owner of a heating and air conditioning company, stated that hard copy or electronic directories of potential subcontractors would be beneficial to small businesses. He said, "Anything that helps us get more jobs and more information is good." He said that the directories will only be helpful but only if they are free or very inexpensive.

A couple of interviewees did not think that a hard copy or electronic directory of potential subcontractors would be beneficial to small businesses. [Interviewees #: 7, 17, 24]. Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that "people need to rely on the State's directory" of potential subcontractors, not those produced by other public entities.

Interviewee #17, the Native American male owner of an excavation firm, stated that it was unlikely that a listing in directories like these would help his firm find projects on which it could successfully bid.

M. Pre-Bid Conferences Where Subcontractors Can Meet Prime Contractors.

Some interviewees reported that they were aware of pre-bid conferences that allow subcontractors to meet prime contractors. [Interviewees #: 7, 8, 10, 11, 12, 19, 22, 26, 27, 32, 33, 34, 36, 40, 42, 43, 47, TA #2, TA #3, TA #4, TA #5, TA #6, TA #7, TA #8, TA #10, TA #11, TA #12]. Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that pre-bid conferences are “happening all the time.” He said that all of the major contractors hold pre-bid conferences and sometimes the conferences are required.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she has had direct experience with pre-bid conferences, and that she is aware that the City of Portland and PDC offer pre-bid conferences.

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, stated that he has had direct experience with pre-bid conferences, and that he is aware of pre-bid conferences held by the City of Portland.

Interviewee TA #5, the president of the National Association of Minority Contractors, reported that the majority of City and PDC projects have pre-bid conferences.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that pre-bid conferences are a “pretty common practice.” He said that both the City and the PDC have pre-bid conferences.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the organization “regularly participates” in pre-bid conferences.

Interviewee TA #11, a representative from the Port of Portland, stated that she is aware of pre-bid conferences. She said, “What I have noticed, though, is that quite often the primes are at the pre-bids, but the subs aren’t, and I am constantly encouraging the subs to go to the pre-bids because they do learn from the owner about the project and they get the opportunity to meet the primes.”

One interviewee reported that they were not aware of any pre-bid conferences that allow subcontractors to meet prime contractors. [Interviewee #: 28].

Some interviewees thought that pre-bid conferences to allow subcontractors to meet prime contractors could be beneficial to small businesses. [Interviewees #: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16, 17, 20, 21, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 37, 38, 40, 42, 43, 47, 48, TA #1, TA #2, TA #3, TA #4, TA #7, TA #8, TA #10, TA #11]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, stated that pre-bid conferences between subs and primes are “always” beneficial to small businesses.

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, said he benefited from attending pre-bid conference meetings between subs and primes. He stated that the City of Portland should provide small businesses with notice of bidding opportunities prior to pre-bid conferences.

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, stated that thinks pre-bid conferences would be helpful for small businesses, including MBE/WBE/ESBs, but he noted that “Sometimes when general contractors see you and see that you are an African American male, they decide then that they don’t want to work with you. It’s all over their face and in their reactions. Sometimes it’s better to bid to them based on qualifications before they meet you.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated that pre-bid conferences between subs and primes would benefit small businesses “if they are going to use you.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that agencies should publicize and invite MBE/WBE/ESBs to pre-bid conferences.

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, stated that pre-bid conferences are helpful for small businesses, including MBE/WBE/ESB firms, because of the value of the information and relationship building opportunities pre-bid conferences provide.

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, stated that he thinks pre-bid conferences where subs meet primes may be helpful for small businesses, including MBE/WBE/ESBs. He said, “Yes, they are very helpful to attend. I attend whenever possible.”

Interviewee #47, the Caucasian female owner of a WBE/DBE/ESB-certified trucking firm, stated that pre-bid conferences where subs and primes meet are helpful to small businesses, but she noted that “they no longer give you time to interact with the primes [at the pre-bid conferences] and that’s why you are there.”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that pre-bid conferences are beneficial “if people are aware of them.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that the pre-bid conferences are “always good to have.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that pre-bid conferences are beneficial and “people generally believe that they are indispensable, actually.”

Some interviewees did not think that pre-bid conferences to allow subcontractors to meet prime contractors were particularly beneficial to small businesses. [Interviewees #: 14, 22, 28, TA #5]. Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, reported that pre-bid conferences are not beneficial to his firm or other small businesses, because small business owners “didn’t have the time” to attend them. He said, “You have to be out there trying to get an hour work for an hour pay, or you don’t cover your overhead.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, said that the benefit of pre-bid conferences would depend on the format and that “it might be a waste of time.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that the pre-bid conferences are “not really” helpful because “the information that they go through usually could go into more detail ... on the projects ... and what their expectations actually are.”

N. Distribution of Plan Holders’ Lists or Other Lists of Potential Prime Bidders to Subcontractors.

Some interviewees reported that they were aware of distribution to subcontractors of plan holders’ lists or lists of other potential prime bidders. [Interviewees #: 7, 8, 10, 11, 12, 16, 19, 26, 27, 32, 33, 34, 36, 42, 43, TA #2, TA #3, TA #5, TA #6, TA #7, TA #11]. Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that the firm receives these lists every month.

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that community organizations and public agencies try to provide distribution lists of plan holders or other lists of possible prime bidders to potential subcontractors.

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that she has had direct experience with the City of Portland’s distribution of plan holders’ lists. She stated that she is aware of e-mail notifications and website information provided by the City.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she is aware that the City of Portland distributes lists of plan holders.

Interviewee #36, two representatives of an employee-owned general engineering firm, stated that their firm always provides the pre-bid list of plan holders to potential bidders.

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, stated that he is aware of lists of plan holders and other lists of possible prime bidders to potential subcontractors, but that sometimes they are not easily accessible.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that the City and PDC distributes lists of plan holders.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that there are normally distribution lists or other lists of possible prime bidders made available to subcontractors in the public sector.

Interviewee TA #11, a representative from the Port of Portland, stated that the agency provides lists of plan holders to potential subcontractors electronically.

Some interviewees reported that they were not aware of any distribution to subcontractors of plan holders’ lists or lists of other potential prime bidders. [Interviewees #: 28, TA #4, TA #10].

Most interviewees thought that the distribution to subcontractors of plan holders' lists or lists of other potential prime bidders could be beneficial to small businesses. [Interviewees #: 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 17, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 34, 35, 37, 38, 40, 42, 43, 48, TA #1, TA #2, TA #3, TA #4, TA #5, TA #8, TA #10, TA #11]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, said that the distribution of plan holders' lists or lists of other potential prime bidders to subcontractors could be beneficial to small businesses. He said, "It would be nice [because] right now it's difficult to find out all the bidders who are bidding a job. I may have a low bid, but I didn't bid the low general."

Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, stated that distributing lists of plan holders or possible prime bidders to potential subcontractors is "very good."

Interviewee #17, the Native American male owner of an excavation firm, said that distribution lists of plan holders would be beneficial to subcontractors. He stated that it would be helpful if the City of Portland "could just throw every plan that came up for bid on the computer, and you didn't have to pay for [access to them]; it would be great."

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, stated that there is a need for distribution of plan holders' lists so that "you can market your firm to participants."

Interviewee TA #11, a representative from the Port of Portland, stated that the agency provides lists of plan holders to potential subcontractors electronically and that it is "very beneficial."

One interviewee reported that they did not think that the distribution to subcontractors of plan holders' lists or lists of other potential prime bidders would be beneficial. [Interviewee #: TA #6]. Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that the plan holders' lists are not helpful because oftentimes the subcontractors do not have time to access the plans during office hours.

O. Other Agency Outreach.

Some interviewees reported that they were aware of agency outreach to small businesses. [Interviewees #: 2, 10, 16, 19, 26, 27, 28, 32, 33, 34, 36, 43, TA #1, TA #3, TA #5, TA #6, TA #7, TA #8, TA #10, TA #11, TA #12]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, stated that his firm "participated in some [agency-sponsored efforts to assist small businesses] — job fairs and so on — and we have not been successful through our participation."

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that the Oregon Association of Minority Entrepreneurs has the largest conference and trade show in the Pacific Northwest. He said that attendance is very high at this event.

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that she has had direct experience with OAME's tradeshow and AGC networking.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she has had direct experience with agency outreach by the City of Portland and PDC.

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, stated that he has had direct experience with vendor fairs and events, but he is not aware of events at the City of Portland or PDC.

Interviewee #36, two representatives of an employee-owned general engineering firm, stated that they attend vendor fairs and events and other opportunities to meet subcontractors and that encourage their DBE subcontractors to attend.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that he is aware of both the City and the PDC participating in agency outreach. He said that the City has been the “most prominent” in its agency outreach efforts.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, stated that the Oregon Association of Minority Entrepreneurs provides outreach.

Some interviewees reported that they were not aware of agency outreach. [Interviewees #: 42, TA #4]. Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that he is not aware of much agency outreach and he said this is a result of the economic downturn. He said that there will be more agency outreach as the economy improves.

Some interviewees thought that other agency outreach, including, for example, vendor fairs and events, could be beneficial to small businesses. [Interviewees #: 1, 3, 4, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 20, 21, 22, 24, 25, 27, 29, 31, 33, 34, 37, 38, 40, 42, 43, 48, TA #1, TA #2, TA #3, TA #5, TA #6, TA #7, TA #10, TA #11, TA #12]. Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that additional public agency outreach “probably wouldn’t hurt.”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, reported, “I’ve gone to a few [agency outreach events]. I think they’re very good.”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, stated that vendor fairs and other opportunities to meet contractors have benefited his firm.

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, stated that agency outreach events would be beneficial to small businesses because “I think everything that creates jobs is good.”

Interviewee #17, the Native American male owner of an excavation firm, stated that additional public agency outreach, such as vendor fairs, “would be helpful, probably.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, reported that additional public agency outreach, such as vendor fairs, could be beneficial, but only if the appropriate persons, including decision

makers, attended. She stated, “When they have these public agencies’ fairs, they don’t have the right person — the contracting person or project managers” there. She said, “They send their office assistant, and you have questions, and you’re not going to build a relationship like that. Bring all the right people. It could work if they have the right people.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated that he thinks other agency outreach may be helpful for small businesses, but he said, “I think that in some cases there may be too much of this, and they need to be evaluated for effectiveness.”

Other interviewees reported that they did not think that other agency outreach would be helpful to small businesses. [Interviewees #: 14, 23, 30, TA #8]. Interviewee #14, the Caucasian female co-owner of a non-certified construction company, said that other agency outreach would not be helpful to small businesses. She stated that “It is nice to know who you’re going to be dealing with, [but] it’s not going to have any effect on whether anybody’s going to get a job or not.... Since it’s all about low bid, it’s not [going to] help [for] the City [to] do anything like that except spend more money pulling people in meetings to meet people.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, stated, “I’ve been to [agency outreach programs] every year, and I haven’t gotten any work out of it.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that he is aware of agency outreach, but that outreach is generally more effective when it is being done by the industry itself rather than the government.

P. Streamlining or Other Simplification of Bidding Procedures.

Some interviewees reported that they were aware of steps taken to streamline the bidding process. [Interviewees #: 24, 26, 33, TA #4, TA #11]. Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that the City of Portland has a program to expedite the permitting process.

Interviewee TA #11, a representative from the Port of Portland, stated that she is aware of efforts to streamline and simplify bidding procedures. She said the agency is trying to streamline its specifications for the smaller contracts.

Other interviewees reported that they were not aware of any steps taken to streamline the bidding process. [Interviewees #: 32, 34, 42, 43, TA #3, TA #6].

Some interviewees thought that the streamlining or other simplification of bidding procedures could be beneficial to small businesses. [Interviewees #: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 23, 25, 26, 28, 30, 31, 32, 34, 35, 36, 37, 40, 42, 43, 46, 48, TA #1, TA #2, TA #5, TA #8, TA #10, TA #11]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, stated his support for streamlining and simplification of bidding procedures. He stated, “That’s always attractive.... Simplification is in the eye of the beholder.... Understanding the reader is better ... their educational level.... To imagine that even the most competent proposer for a major government contract has an intellectual level, a word choice level,

that is significantly beyond the 7th grade is naïve at best. As a consequence, you run into ... a greater opportunity for mismatch and [mis]understanding, and an opportunity for failure in some aspect of the contract, perceived on one side or the other.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, stated that streamlining and simplifying bidding procedures would be beneficial, “particularly for deeper minority communities ... [because] there are a lot of potential subcontractors in the Russian community that do not speak English.”

Interviewee #36, two representatives of an employee-owned general engineering firm, stated that streamlining is always an advantage and that it saves subcontractors time.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that the bidding process “is pretty streamlined right now, but I guess they could do a little better job.” He said that streamlining would be helpful. He said that the PDC and the City could streamline the process by keeping certain information on file so that the contractor does not have to submit the same information on every bid.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the organization’s members are accustomed to “stringent bid requirements ... but anything that can be done to allow for a more streamlined process” would be helpful. He said that review times are a big issue for contractors. He said that there is a perception that some government agency staff can be discriminatory or punitive in how they respond to a contractor because they may have had a past conflict or disagreement over some issue. He said that the government needs to periodically review their own practices.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that streamlining bidding procedures “seems like a good idea” but “you just don’t want them to miss important stuff.”

Interviewee TA #11, a representative from the Port of Portland, said that streamlining and simplification of bidding procedures is “especially” beneficial “when you [have] an uncomplicated contract.”

Some interviewees did not think that it was necessary for the City of Portland or PDC to streamline or otherwise simplify their bidding procedures. [Interviewees #: 8, 19, 22, 27, TA #7]. Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that it was unclear how the City of Portland’s bidding process could be streamlined or simplified. Instead, she stated that it should include a review process.

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated, “I think the City has a really good streamline[d process].”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, stated that he does not support streamlining or simplification of bidding procedures because “I don’t know how you could streamline it and still get it right.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that most of the bidding procedures are already “pretty simple.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that “You don’t want to simplify it too much ... simplification is always good but there are some limits to it.” He said the appropriate level of simplification depends on the complexity of the project.

Q. Segmenting Larger Contracts into Smaller Pieces.

Some interviewees were aware of efforts to segment larger contracts into smaller pieces.

[Interviewees #: 21, 24, 26, 36, 43, TA #2, TA #3, TA #4, TA #6, TA #7, TA #8, TA #10, TA #11, TA #12]. Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, reported that her experience as one of five companies performing a service contract for the City of Portland was a positive example of small businesses benefiting from a public agency’s decision to offer several companies portions of a large contract. She said, “Sure, we’d like the whole job ... I’m not going to lie. But, at the same time, I think it’s great that [the City of Portland wants] to try to give the opportunity to other people at the same time. I just think they need to compare apples to apples.”

Interviewee #36, two representatives of an employee-owned general engineering firm, stated that their firm breaks up contracts into smaller pieces when necessary and that they also consider teaming as an option.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that the PDC has discussed breaking up large contracts into smaller pieces, but he is not sure whether it has actually happened.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that breaking up larger contracts into smaller pieces “is always a goal” and the project manager should consider breaking up the contract early on in the process. He said that he is aware of the City and the PDC breaking up large contracts in the past, but he does not believe that it is required.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the organization has engaged in discussions about breaking up a very large contract into smaller pieces so that smaller contractors can compete for the work.

Some interviewees were not aware of any efforts to segment larger contracts into smaller pieces. [Interviewees #: 28, 29, 32, 33, 34, 42, TA #5].

Some interviewees thought that segmenting larger contracts into smaller pieces could be beneficial to small businesses. [Interviewees #: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 19, 20, 21, 22, 23, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 40, 42, 43, 46, 47, 48, TA #1, TA #2, TA #3, TA #5, TA #6, TA #7, TA #10, TA #11, TA #12]. Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, stated that breaking up contracts into smaller pieces would provide small firms “with more opportunities.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, said that breaking up large contracts into smaller pieces would be beneficial. He stated, “The public sector tends to package these projects so they appear to be too big

for a small business prime, but I think the public sector doesn't want to have to manage projects, so they like to package them, and then that ends up becoming a project more suited for a large business prime." He stated that the City of Portland should size the contract packages based on each subcontractor's capacity.

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that it would be beneficial for the City of Portland to break up large contracts into smaller pieces. She stated, "That gives you an opportunity for scope gap, [so it should] be approached with caution."

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that breaking up contracts into smaller pieces was a good idea because "it would get more work out there."

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that breaking up contracts into smaller pieces "could sometimes be beneficial" to new businesses.

Interviewee #12, the Caucasian female owner of an ESB-certified plumbing, heating and air conditioning contracting firm, stated that breaking up contracts into smaller pieces "might be beneficial for us."

Interviewee #17, the Native American male owner of an excavation firm, said that it would be beneficial to small businesses if the City of Portland and PDC would break up contracts into smaller pieces for bid by small businesses like his. He stated, "That would be the thing to do, but I don't see it happening, just because they've been doing it this way for years, and because they don't [want to] have 15 different contracts with 15 different individuals. They [want to] just give one contract to the general, and it's [the general's] responsibility to get whoever. Portland doesn't want to deal with 30 different contractors."

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, stated that breaking up contracts into smaller pieces is a good idea because "I've gone to some of the fairs, and I've handed out my card [to prime and general contractors], and I've said, 'We do flooring,' and they say, 'Do you do tile flooring, walls, bathrooms?' They start naming all this stuff. I say, 'we'd like to, if we can ... do carpet,' so at least we can get that part of it. But they say, 'Well, we only [allow you to bid] if you do it all.'"

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, said that breaking up contracts into smaller pieces might be a good idea for assisting small businesses but that it can also be problematic. She said, "Sometimes that could work. In some cases, situations I have seen — let's use schools as an example. A new school goes in, they have one contractor do the groundwork [for the plumbing installation].... Then they said, 'okay, now we're going to bid out the rough-in.' Nothing's worse than going in behind another plumber. Now, if they didn't do [the prep job] right, you just ate it. So that's kind of frustrating, on some jobs."

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, stated that breaking up contracts into smaller pieces would benefit small businesses. He said, "I think the large contractors are unfair [to smaller businesses] on some of the jobs, because they can buy the

job... In Portland, the big contractors come in and buy the job. They're using them for floating overhead."

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that he is aware of breaking up large contracts into smaller pieces, but that it does not happen enough. He said, "Small businesses and the vast majority of minority, women, and disadvantaged businesses ... are small businesses and there is a limitation to what they can handle." He said that these large contracts are a form of "institutional discrimination" because the smaller businesses cannot participate. He said that the public agencies should ensure that large contracts are broken into smaller pieces.

Interviewee #30, the Caucasian female owner of a WBE-certified construction firm, stated that, in some cases, smaller contract sizes could be useful.

Interviewee #35, the Caucasian male president of an employee-owned non-certified construction services firm, said, "Yes, breaking up contracts would be helpful. However, it should be recognized that it gives [project managers] more to manage."

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, "Yes, absolutely. It is very helpful to break up the larger contracts in my field at \$1 million levels."

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, stated that while there are benefits to breaking up contracts, many firms no longer need the small pieces, so that should also be considered.

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, stated that he thinks breaking up large contracts into smaller pieces may, at times, be helpful for small businesses, including MBE/WBE/ESBs, but he said, "It's not always needed."

Interviewee #42, the vice president of an Asian-Pacific American woman-owned ESB-certified materials supply firm, stated that breaking up large contracts into smaller pieces would be helpful for small businesses. He said, "It would help small guys like no tomorrow."

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that breaking up large contracts into smaller pieces is "very important."

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that "I think [breaking up large contracts into smaller pieces] is helpful if it is administered right."

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that breaking up the contracts would "open up opportunities for small businesses."

Interviewee TA #10, three representatives of the Northwest College of Construction, said that they are "generally in favor" of breaking up large contracts into smaller pieces, but it may not be beneficial on extremely large projects.

Interviewee TA #11, a representative from the Port of Portland, stated that breaking up large contracts into smaller pieces can be beneficial for the small businesses, but it can also make managing the project more complicated for the owner and prime contractor.

Some interviewees expressed concerns regarding segmenting projects or stated that segmenting projects would not be beneficial. [Interviewees #: 14, 39, TA #4]. Interviewee #14, the Caucasian female co-owner of a non-certified construction company, said that breaking up public contracts into smaller pieces would not be beneficial. She stated, “If you’ve got a project that’s obviously one project, then bid it that way. Phase it, if you need to ... [if the reason for doing so is] based on funding ... I mean, [do] you [want to] manage five contractors on a job, instead of one?”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that “there is a downside” to breaking up contracts too much, because predatory business practices are more likely to happen.

R. Price or Evaluation Preferences for Small Businesses.

A couple of interviewees reported that they were aware of price or evaluation preferences for small businesses. [Interviewees #: 2, 8, 26, TA #5, TA #7, TA #8, TA #10, TA #11]. Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that he is aware of ODOT awarding “points” to minority businesses but that they are not used enough.

Interviewee TA #5, the president of the National Association of Minority Contractors, said that he is aware of price or evaluation preferences for small businesses being utilized “to a limited extent.” He said that this can be improved by looking at the major divisions of work and making sure that the price or evaluation preferences are spread across many divisions of work.

Interviewee TA #10, three representatives of the Northwest College of Construction, said that the City utilizes price and evaluation preferences.

Other interviewees reported that they were not aware of any price or evaluation preferences for small businesses. [Interviewees #: 28, 33, 34, 42, 43, TA #4].

Some interviewees thought that price or evaluation preferences could be beneficial to small businesses. [Interviewees #: 2, 4, 6, 7, 9, 10, 11, 12, 13, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 29, 30, 31, 33, 34, 37, 38, 42, 43, 46, 48, TA #1, TA #2, TA #3, TA #4]. Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, said that price or evaluation preferences for small businesses would be beneficial and that they “loved that” measure. Interviewee #10 stated, “The low bidder should be thrown out. The problem that we’re getting into is that the companies are just trying to get in the door to get work, so when they go in, they’re not making any money, they’re hoping when they get in they’ll find a way to make money, or cut corners. That’s not good for the customer, and that’s not good for the company. If the company does that too many times, they’re not going to stay in business. We’ve had several companies that have been a thorn in our side — underbidding, underbidding — and then they disappear, they implode.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, said that she supports the use of price or evaluation preferences for small businesses. She said, “I’m not saying, ‘do it all for

small businesses,' I'm saying, 'spread it ... give everybody an opportunity, but at least give a little bit of an opportunity'" to small businesses that employ non-union labor. "Don't just give it all to the union, and [not] give anyone else work, because it's a union thing, you know."

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated that he thinks price or evaluation preferences for small businesses may be helpful for small businesses, including MBE/WBE/ESBs. He said, "Minority price preference, absolutely."

Some interviewees did not think implementing price or evaluation preferences for small businesses would be beneficial. [Interviewees #: 1, 5, 8, 14, 32, TA #7, TA #8]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, said that he does not support the use of price or evaluation preferences for small businesses. He stated, "I don't think that anybody should be given an unfair advantage over anybody else." He stated, "How can I say. 'I should have those benefits, but I don't think somebody else should?' Let us all play on a level playing field, and I'll win."

Interviewee #5, the Caucasian male owner of an excavation firm, stated that he does not support the use of price or evaluation preferences for small businesses. He stated, "You can't do that. You can't because that just takes away from the even playing field. Anytime you give an edge to anything like that, you take away from the bidding process totally."

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that she had heard about price or evaluation preferences for small businesses, but cautioned, "I haven't really seen it work. [The bid has] still got to be low."

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, said that she does not support the use of price or evaluation preferences for small businesses. She stated, "I don't think that would be right. Why should they have any special advantage over me? If they can land a bid — which, chances are, the small mom and pop shops just starting up, they've got a good price point because they don't have all the overhead that an established contractor has, which is fine, that'll allow them to get their foot in the door, and get some experience. So that [kind of] happens naturally; the government doesn't need to hand them more preference points."

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that price or evaluation preferences for small businesses would disadvantage Caucasian males.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that "points systems are always good" but he believes that the points are not particularly effective because the evaluators will award points based on whether they want to work with the firm. He said, "I don't think it matters how you adjust points."

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that general contractors worry that there are project activities that could be done at a higher quality and with greater efficiency, but they are not done with such quality and efficiency because the general contractors are required to give the work to small businesses.

S. Small Business Set-Asides.

Some interviewees reported that they were generally aware of small business set-asides.

[Interviewees #: 6, 7, 19, 27, 28, 32, 33, 34, 36, TA #3, TA #4, TA #5, TA #6, TA #8, TA #10, TA #11, TA #12]. Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, said, “We’re familiar with that. A lot of the military [contracts] use small business set-asides.”

Interviewee #19, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified general contracting and traffic control firm, stated that the City of Portland currently sets aside certain scopes for participants in its Sheltered Market Program.

Interviewee #32, a Caucasian female owner of a WBE/ESB-certified excavation firm, stated that she has had direct experience with the City of Portland’s Sheltered Market Program small business set-asides.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she has had direct experience with small business set-asides through the City of Portland’s Sheltered Market Program.

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, stated that he is aware of small business set-asides being used by the City of Portland.

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that she is aware of small business set-asides, but “I have not seen it in practice.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that the City’s Sheltered Market Program has some small business set-asides, but there have been problems with this program because “they weren’t allowing the contractors actually to be profitable.” He said that when they put the work out to bid outside of the Sheltered Market Program, they increased the price and volume of work so that the work would be profitable. He said that this occurred about five years ago and the program may have been fixed.

Interviewee TA #11, a representative from the Port of Portland, said that she is aware of small business set-asides but the agency does not use them.

Some interviewees reported that they were not aware of any small business set-asides.

[Interviewees #: 42, 43].

Some interviewees thought that small business set-asides could be beneficial to small businesses. [Interviewees #: 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 23, 24, 25, 28, 29, 30, 31, 32, 37, 38, 42, 43, 46, 48, TA #1, TA #3, TA #7]. Interviewee # 7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that the City of Portland’s use of small business set-asides would be beneficial, but that the City of Portland should lower the minimum to 30 percent or 40 percent.

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that small business set-asides were a good idea.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that he saw “pluses and minuses” to the use of set-asides for small businesses.

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, said that she is cautiously supportive of small business set-asides. She stated, “I could be [okay] with a certain percentage of jobs being allowed for just emerging small businesses, to allow them to get their foot in the door.”

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, stated that small business set-asides may be beneficial for small businesses but he is concerned that most small business owners are new entrepreneurs, and may not “understand that if you don’t qualify for [a] certain job, you shouldn’t take it.” He stated that providing opportunities to small businesses would help them develop the expertise and experience necessary for them to succeed.

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated that he thinks small business set asides may be helpful for small businesses, including MBE/WBE/ESBs. He said, “Minority set-asides only, absolutely.”

Some interviewees did not think that implementing small business set-asides would be beneficial to small businesses or they did not like the idea of small business set-asides.

[Interviewees #: 1, 2, 5, TA #2, TA #8, TA #11]. Interviewee #5, the Caucasian male owner of an excavation firm, reported that he did not think small business set-asides were a good idea. He stated, “Whenever you give anybody an edge, it just doesn’t work. You can’t spot people points for being a small business.”

Interviewee TA #2, the director of an apprentice preparation program, stated, “I have a problem with ‘set-aside[s]. ... If it says, ‘set aside to assist a small business of minorities,’ then I say, yeah. But if it’s set-aside and ... it’s women benefiting — [Caucasian] women — I have a problem with that.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the organization does not support small business set-asides. He said that “there is a pretty strong view that companies that come into the business need to be competitive. We are happy to help teach them how to be [competitive], but ultimately there is a very low level of interest in set-asides.”

Interviewee TA #11, a representative from the Port of Portland, stated, “I am a little bit dubious about small business set-asides because ... it gives the businesses opportunity that is artificial and once they get to the point where they don’t qualify for the set-aside, then they don’t have the proven skills for competing in the open market.”

T. Mandatory Subcontracting Minimums.

Some interviewees reported that they were aware of mandatory subcontracting minimums.

[Interviewees #: 2, 8, 28, 33, 34, TA #4, TA #7, TA #8, TA #10, TA #11]. Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation

firm, stated that she has experience with mandatory contracting minimums. She said, “I’ve experienced it. There has to be a way to evaluate the bids. ... If you’re going to do that, people [who participate in that type of program] have to be qualified.”

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, said that she is aware of the City of Portland and PDC setting mandatory subcontracting minimums.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that mandatory subcontracting minimums are “one way to make sure people do the outreach. The City of Portland does that with the emerging small business[es], but they don’t with minority- and women-[owned] business[es]. So as a result, they always achieve that (ESB participation) first because they know they have to, and then it is always an aspirational goal on the minority- and women-[owned businesses]. There is a big focus on ESB as a result, so I think that the City should go back to some kind of minimum for minority- and women-[owned] businesses ... meet or exceed should be the goal.”

Some interviewees reported that they were not aware of mandatory subcontracting minimums. [Interviewees #: 27, 32, 43, TA #3, TA #5, TA #6, TA #12].

Some interviewees thought that mandatory subcontracting minimums could be beneficial to small businesses. [Interviewees #: 2, 3, 4, 6, 7, 9, 10, 11, 12, 13, 15, 17, 19, 20, 21, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 40, 42, 43, 47, 48, TA #1, TA #2, TA #3, TA #5, TA #6, TA #11]. Interviewee #2, the Caucasian male co-owner of a WBE/ESB-certified professional services firm, said that mandatory subcontracting minimums would be beneficial to small businesses because in this economy it is important to keep business in Oregon. He said, “The larger the project, the higher the probability that it could be given to a prime [from] outside the State,” so mandatory subcontracting minimums might keep more business in Oregon.

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, stated that she supports the use of mandatory subcontracting minimums, but only “if the contract is large enough, that might be beneficial.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, stated that she supports the use of mandatory subcontracting minimums, but “only if [the City of Portland] is going to follow up and make sure that the [primes] really actually use you, and not just mandate it and never check again.”

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, said that mandatory subcontracting minimums may be beneficial to small businesses. She reported, “It could work, but you end up with this ... ‘oh, the contractor has to hire the minority contractor,’ and they’re just going to give [them] the [less-desirable] work. We were going to bid a project like that, and this general contractor was just going to give us the roof work, which was a 10 percent goal, and I was like, ‘I’m not bidding the job. If you’re going hire me just to do the trashy work for that 10 percent, I don’t need the work.’”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, said that mandatory subcontracting minimums would be beneficial from the subcontractor’s perspective.

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that mandatory subcontracting minimums would be great.

Interviewee #36, two representatives of an employee-owned general engineering firm, stated that mandatory subcontracting minimums could be beneficial, but that the minimums must be included in bid documents and must state what the minimum goals are to ensure accountability.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that mandatory subcontracting minimums would be helpful to small businesses only to the extent that they are enforced and include penalties for non-compliance.

Other interviewees reported that they did not think that mandatory subcontracting minimums would be helpful to small businesses or that they did not like the idea of mandatory subcontracting minimums. [Interviewees #: 1, 5, 14, 22, TA #4, TA #8, TA #10]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated that he does not support agencies' use of mandatory subcontracting minimums. He stated, "I think it would help small business, but the company that invested the time to diversify, I don't think it would be fair to them."

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, stated that she does not support the use of mandatory subcontracting minimums. She stated, "And how do you think we are going to manage that one? And why would we do that? If you can have a general — mechanical, electrical, plumbing — that kind of stuff's always [going to] be subbed out. So why would we take the time to implement something you're not going to be able to manage, anyway? You want more subs on jobs? I guess that allows other companies opportunity, but I'm looking at [my firm], where we've got all these families that we help support, so you'd rather I give that to somebody else than support my guys? I don't think so."

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, said that he does not support the use of mandatory subcontracting minimums. He said, "You're hitting home there. To keep our quality up, we try to do everything in-house, and I could see how that could be a problem." Interviewee #22 stated that requiring primes to subcontract out a minimum portion of a job would mean that "the prime then has a bigger job of quality control, and it ends up costing more" to do the job.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that he does not support mandatory subcontracting minimums because they take the control away from the general contractor.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the organization does not support the use of mandatory subcontracting minimums.

U. Small Business Subcontracting Goals.

Some interviewees reported that they were aware of small business subcontracting goals.

[Interviewees #: 4, 26, 32, 33, 34, TA #3, TA #7, TA #8, TA #11, TA #12]. Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she has had direct experience with the small business subcontracting goals being used by the City of Portland and PDC.

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, stated that he is aware of the City and PDC using subcontracting goals.

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that “everybody has small business goals, but small businesses aren’t getting the contracts; it’s the big boys who continue to get the contracts.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the organization is aware of goals and the organization’s members have “come to the view that [goals are] just a [cost] of business.”

Other interviewees reported that they were not aware of any small business subcontracting goals. [Interviewees #: 27, 28, 42, 43].

Some interviewees thought that small business subcontracting goals could be beneficial to small businesses. [Interviewees #: 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, 20, 21, 23, 24, 25, 30, 31, 32, 33, 34, 38, 40, 42, 43, 47, 48, TA #1, TA #4, TA #7, TA #10, TA #11]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, said that subcontracting goals are beneficial to small businesses. She stated, “Yes — hard goals. Not just goals — hard goals.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that the City of Portland should follow the practice of the federal government, and create and meet small business subcontracting goals.

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, stated that small business subcontracting goals are beneficial, but any goals should specifically include a minority business goal.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that the City of Portland “has done a good job with [small business subcontracting goals]. I think PDC has also tried to implement some of their policies. It has resulted in a large number of small businesses starting up in Portland... There are fewer minority- and women-[owned] businesses now than there are emerging small businesses, because the focus is not on minorit[ies] and women.”

Some interviewees said that they did not like the idea of small business subcontracting goals or did not think that they would benefit small businesses. [Interviewees #: 1, 5, 14, 29, 37, TA #5, TA #8]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated that he does not support the use of subcontracting goals for small businesses. He said, “I think it would be good for small business, but penalize” other companies.

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, said that she does think that the use of subcontracting goals for small businesses would be beneficial. She stated, “No. Let’s just have one more list to try and track — I mean, if people want to bid work and they’re low, then they can get work.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, stated that small business subcontracting goals are not helpful for MBE businesses. He said, “Small business subcontracting goals that include ESBs and MBEs together are worthless to ensure fairness for minority contractors, as they really work to include ESBs and exclude MBEs.”

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said small business subcontracting goals are not helpful because “[The ESBs are] killing us.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that most of the mechanical, electrical, and plumbing work is already subcontracted out so these goals may not be helpful.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that his members are not “enthusiastic” about goals because “they believe ultimately it creates a greater sense of dependency on [goals] rather than allowing [small businesses] to learn how to be fully competitive.”

V. Formal Complaint / Grievance Procedures at the Public Agency.

Some interviewees reported that they were aware of current complaint and grievance procedures at public agencies. [Interviewees #: 2, 10, 11, 21, 23, 26, TA #2, TA #3, TA #4, TA #7, TA #8, TA #10, TA #11, TA #12]. Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, stated, “I know there was a [City of Portland] job where, again, we were the low bid [but] did not get it. There was a lot of — I call it horseplay. So my general contacted [the project owner] and said, ‘Hey, this isn’t right, the bid was shopped out. It’s not right. What do we do?’ [He called someone at the City.] Finally, he got someone to call him back, and they said, ‘fill this grievance thing out.’ Well, we never heard anything back. All it was was a bunch of lip service, as far as we were concerned. We just felt it needed to be said, because the person that got the job [should not have won the contract]. I think [the job] required [the participation of] apprentices, state apprentices. [The winning bidder] didn’t have any, because they were from out of state. So, we brought that to [the City of Portland’s] attention. Basically, one thing led to another, and we were just blown off. And that was kind of frustrating, because [the City’s documents stated] these are the requirements. So we made sure [we met them, that] we’re right there. And then to see someone who gets it, without [meeting] the same requirements — not good.”

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the organization is aware of formal complaint and grievance procedures at public agencies and that they are “regularly employed.” He said that he has not heard that the complaint procedures in place are inadequate.

Interviewee TA #11, a representative from the Port of Portland, stated that she is aware of formal complaint and grievance procedures within the agencies. She said that small businesses are reluctant

to issue a complaint, even when justified, because they are concerned about not getting work from the prime or owner again if they complain.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that he knows that there are “protest mechanisms in place.” He said that after “talking to some of the agencies in the City of Portland, [he believes the agencies] are getting a little frustrated because they feel that they are being overused.” He said that subcontractors are protesting, but their protests are not based on any alleged unfair practices; “they just didn’t get the job because they weren’t the low bid.”

Some interviewees reported that they were not aware of current complaint and grievance procedures at public agencies. [Interviewees #: 1, 8, 28, 32, 33, 34, 36, 42, 43, TA #5].

Interviewee #36, two representatives of an employee-owned general engineering firm, said that, “No formal process exists, but we have open channels at the job level. I firmly believe in handling situations at job level.”

Some interviewees thought that the availability of formal complaint and grievance procedures at public agencies could be beneficial to small businesses. [Interviewees #: 1, 4, 6, 7, 9, 10, 11, 12, 13, 15, 16, 17, 20, 23, 24, 28, 30, 31, 33, 34, 37, 38, 39, 43, 46, 47, 48, TA #1, TA #5].

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that formal complaint and grievance procedures would be beneficial. He said that “there’s a question about getting blacklisted if you have a question” about a bid award. He stated that the City of Portland should allow bidders to provide feedback about the contract award process, whether or not a bidder chooses to protest formally a bid award.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that she “definitely supported” formal complaint and grievance procedures. Interviewee #10 said that “we were going to protest [a bid award], but the rules state only the general [contractor] can [protest a bid award].” Interviewee #10 stated that if an agency does provide an opportunity to protest a bid award, that option should be available “to everyone who’s bidding, not just the five big guys.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, said that the formal complaint and grievance procedures the City of Portland has in place are beneficial to small businesses, but he noted that “the City asks for all this stuff, and says all this stuff, but if you actually became a complainer, then everybody tunes [out] and says, ‘Oh God, here he comes; he’s going to complain,’ or ‘Oh God, here’s the snitch.’ Nobody likes a complainer.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that she supports the use of formal complaint and grievance procedures, but stated, “The City would never go along with that. I have been there, done that.... They don’t have the open-mindedness to do it. They take it from the big firms because they bring the lawyers.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that “Formal complaint and grievance procedures at the public agency would be helpful and known supporters of MBE/WBE/ESB programs should always be involved.”

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, stated that formal complaint and grievance procedures at the public agencies may be beneficial, but he also said, “It will still be held against us for future work, so it’s best to shut up and do your work.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, stated that there is a need for a complaint or grievance process because in the absence of such policies, “I just don’t know where to go.”

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, stated that he thinks formal complaint or grievance procedures at the public agency would be helpful for small businesses. He said, “There should be a process available, it may not need to be formal.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that formal complaint and grievance procedures would be helpful. He said that these programs “have to shield the subcontractor” so that the subcontractor can complain without the possible repercussion of not getting any more work from that contractor.

Some interviewees reported that they did not think or were unsure of whether the implementation of formal complaint or grievance procedures at public agencies would be beneficial to small businesses. [Interviewees #: 3, 14, 22, TA #3, TA #6]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, stated, “I’m not a complainer, and I’m not ever going to call and tell on anybody, and I would never want anybody to do that to me.” Interviewee #3 stated that a person could use a public agency’s formal complaint and grievance procedures, “but all it’s going to be is, ‘they made me really mad, so I’m going to tell on them.’ And [the agency] is going to spin [its] wheels investigating mean, petty things. I think that’s who calls in those things; [it’s] mean people.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, said that she does not think that public agencies should have formal complaint procedures. She stated, “Isn’t that what the [State of Oregon’s Construction Contractors Board] is for?”

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, said that if you complain you do not get the contract.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that there needs to be more than grievance procedures. He said that there need to be penalties for contractors who do not comply with requirements.

IX. Race, Ethnicity, or Gender-Based Measures.

Some interviewees reported a positive experience in connection with the State MBE/WBE and Federal DBE Programs. [Interviewees #: 3, 10, 26, 27, 34, 43, TA #4, TA #12]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that she has had a “favorable” experience with the Office of Minority, Women and Emerging Small Business.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated his support for the Federal DBE Program. They said, “As long as they keep the minorities as a group, and not subdivide us [as ODOT has], then that’s good.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that the State MBE/WBE Program is a “good program.”

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that the government agencies do a good job communicating MBE/WBE/ESB certification requirements to businesses.

Interviewee #34, the manager of a Caucasian male-owned specialty plumbing and general construction firm, stated that the City of Portland and PDC are two of the best organizations to encourage and require MBE/WBE/ESB participation on contracting.

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, said, with respect to the State of Oregon MBE/WBE program, that “It’s a good program. It’s just a lot of hoops to jump through to get to that qualification or certification.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that the organization’s members have had positive experiences with the State MBE/WBE Programs. He recommended that the MBE/WBE programs be promoted throughout all government offices. He said that the City of Portland and the PDC have a “good track record” with the MBE/WBE programs.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that the increased focus by agencies on MBE/WBE/ESB participation is helpful and legitimate.

Some interviewees reported challenges in connection with State MBE/WBE and Federal DBE Programs. [Interviewees #: 3, 4, 6, 7, 10, 14, 15, 22, 23, 24, 25, 28, 29, 31, 36, 37, 38, 44, 45, TA #5, TA #6, TA #8, TA #10, TA #11]. Interviewee #3, the Caucasian female owner of a WBE/DBE/ESB-certified hauling and trucking firm, reported that she “didn’t care much for ODOT’s last program [referring to the results of that agency’s disparity study]. Well, they excluded women. I didn’t think that was very smooth at all. And I just don’t understand how, per capita, women can have too much of that job. I don’t think that was realistic, I don’t think that was correct.” She stated, “It’s just my experience on the [Oregon Department of Transportation] highway jobs that they go to [African American] people, and that’s fine. And we work with those people, and I don’t have a problem with that.”

Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, said that the OMWESB “needs some assistance.” She said that the certification process could be improved. She stated, “I think they need to recover the whole aspect that it was to help women and minorities, especially underutilized firms, give greater access and opportunity where really it’s still very limited.” She said that the Federal DBE Program “has problems. They need to make sure that the DBE is true DBE; that it’s truly disadvantaged. I thought that [being disadvantaged] had to do with ethnicity, because [a member of] the dominant culture is not at a disadvantage. “

Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported, “I think one of the things that has always perplexed me a little bit — on the federal government contracts we bid on, they always want to know if you’re minority- or woman-owned [businesses]. When you ask them why they asked the question, they say, ‘Well, we don’t really keep track of it. It’s just a question that we’re supposed to ask.’ I think it would be interesting to see ... there are a number of women-owned businesses in this region. It would be interesting to know or understand if, in the scheme of things, the proportion of work is representative of businesses, whether [they are] women- or minority-owned.”

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, said that few, if any, firms use MBE-certified contractors. He stated, “Why are we doing it if it isn’t being used?”

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, said that in the State of Oregon it “doesn’t do you any good to be [certified as] a minority business, at this point, unless you’re a small percentage.”

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, reported that her “experience with the [Oregon Office of Minority, Women and Emerging Small Business] has not been overly positive. It’s a lot of excessive time and paperwork, which of course costs us money for something that is completely lacking in results, results that aren’t even necessary. We’ve tried to share some ideas with them, and they’ve been very closed-minded and not wanted to hear the results.” She stated that her firm “has gone through [OMWESB’s] whole process of bid solicitation and spent all the time and energy of the people we have solicited to; we’ve shown [OMWESB staff] the lists of contractors we’ve kept over time, and how many of the phone numbers are inaccurate and don’t work anymore; how many [companies] are out of business.... So after you solicit 100 people, you might get 10 who you get a bid from — that’s if you’re lucky. It might be 10 who say they’re [going to] bid it, and then you get like one bid. But the amount of time it takes to actually write all the people down on their form that you’re [going to] solicit to, call every single one of them after you’ve spent all the time faxing [inquiries] to them to see if they’re [going to] bid it, and document that. And then, the ream of bids you get on bid day? [You have to] shuffle through all those and see if any of their names are on here, which is also quite time-consuming — all for what reason?”

Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, said, “I have had no opportunities to work with the State-level programs and the fact that no goals exist mean they don’t want to work with us and there are no opportunities.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, stated, “I think [firms owned by racial or ethnic minorities or women] generate more points, and I think that’s unfair, because the points aren’t [awarded] based on quality.” He said that the minorities and women “go through their training, and they’re not trained for the real-world scenario. It depends on their background, where they came from.... It’s not easy, and they think they’re going to be handed it because they went through a program.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported, “I think we need a big turnaround, still, and I don’t know how long it’s going to take. But I know that a lot of the agencies — I think they’re trying, but I don’t think we’re there yet. We’ve got a long ways to go. I think the Port of Portland is the only [agency] that’s stepped

out of the box and said, ‘we’re going to really make this happen.’” He stated, “The Port has put the chopping block out, and said [to primes], ‘Look, this is what we’re going to have, we’re going to require this of you, so if you think you can be a GC (general contractor) and handle it, great.’” He stated, “What I mean by ‘stepping outside the box’ — The Port of Portland actually told the contractors, ‘This is the percentage of minority- and women-owned businesses that we are going to use to help build our facilities.’ And like I said, the last time [the City of Portland] did the disparity study — everybody can talk the talk and walk the walk and play the game, so to speak, but until it comes from the [project] owner, down, to make it happen.... If the City [of Portland] was to say [to primes], ‘It’s not only [agency] mandates ... it’s got to happen. If it doesn’t happen, you’re getting penalized for it.’ Then it’ll happen. Until then, it won’t.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that she thinks the Office of Minority, Women and Emerging Small Business needs to revamp its certification process. She stated, “I have been going to Washington looking for work, and ever since they got the Ninth Circuit Court [’s decision], [the Washington State Office of Minority and Women’s Business Enterprises has] been so proactive in doing good things. You can ... call in on the phone, and you can have classes; you don’t have to go anywhere....” She reported her experience with the City of Portland’s implementation of the Federal DBE Program. She stated, “They just pass [the responsibility] around. They say, ‘It’s the Federal,’ and then they say, ‘No, it’s the State.’ They say, ‘It’s up to the large firms,’ then they say, ‘No, it’s not the large firms, it’s the State, and it’s the local government.’” She stated, “It’s not even the State or the local governments, because there are all these other entities, like the City of Beaverton, other smaller cities that ... get a lot of [federal] money, and they don’t do anything, nothing, zero. So I guess to the credit of the City of Portland, you could say ‘good.’” Interviewee #24 reported, “I think the studies that they have [done] in the past have not been inclusive or looked at correctly.” She referred to the recent ODOT disparity study, and its analysis of that agency’s utilization of Hispanic firms. She said, “When you really start asking the question, ‘percentage of what? ... Even if [Hispanics] got the whole pie, the whole pie out of the overall contract is 1 percent — it means nothing, then we really haven’t gotten [any]thing. And if the professional service[s haven’t] been included, like in the case of the Asians, they said they haven’t gotten any [portion of work]. Well, I haven’t ever seen any Asians in the construction [industry], but you see them everywhere [else].... Has there been discrimination [against Asians] then?” Interviewee #24 questioned the methodology used to count Hispanic utilization in the ODOT disparity study.

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, stated, “There should be” measures exclusively directed to increasing the vitality of minority- and women-owned businesses. She stated, “They manipulate the whole certification process ... and there are companies that are certified that shouldn’t be certified.” She said that the Office of Minority, Women and Emerging Small Business should “take a closer look at who they’re certifying, maybe. Interviewing them, going to their sites ... something more in-depth” than current OMWESB evaluation practices. She said that public agencies could do more to assist MBE/WBE/ESB firms. She stated, “They have to be more M/W/ESB-friendly. They need to [walk] their [talk], and not just have set-asides on projects if they don’t mean to want us on the project. And not only that, but also invite us to those other projects with no set [MBE/WBE/ESB] goals.”

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, said that he knows that the MBE/WBE/ESB certifications

are a focus of the City and the PDC, but “stating that intention and actually delivering the quantified results is what I think should be shared with the public, and scrutinized and then retooled [based on the] shortcomings.”

Interviewee #29, the African American male owner of an MBE/DBE-certified excavation and trucking firm, said, “The State of Oregon is one great big disappointment. They have absolutely no intention of working with minority businesses, and have no success in achieving any sort of record of utilization. They take our tax dollars and block us from participating in any work, a bastion of non-existence. There is no oversight for any of the ODOT programs and AGC is allowed to be too cozy and too comfortable in a conspiratorial sort of way with ODOT. There is no linkage between supportive services program at FHWA and apprenticeship and employment programs and any support or relationship between critical program applications. ODOT and ODOT Civil Rights are miserable failures.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, said that “Most of my experience recently has been with [the Oregon] DOT and they have a lot of work to do to be more MBE-friendly.”

Interviewee #36, two representatives of an employee-owned general engineering firm, stated that the State MBE/WBE/ESB Certification has a backlog process and they noted that it takes a lot of time to complete the certification process. They said, with respect to ODOT and race-, ethnicity-, and gender-based measures, “I can’t figure out what’s with ODOT and why they are resisting this.”

Interviewee #37, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said that his firm has had the opportunity “to do some work in the DBE Program, very small, but they identify the most difficult high liability pieces that keep you in your place, keep you challenged and try to make you doubt your abilities.”

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, said, “The City and PDC seemed to be very confused about the DBE Program and who has the final word when using DOT Programs. They lose all of their original goals and objectives. State programs on State projects are a joke.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, said, in regards to the State’s MBE/WBE program, “I think that ODOT has their program off of their disparity study. One of the comments that I would say is that they failed to take the recommendations of the agency that did the disparity study.... What they did was intentionally implement only a fraction of that, because they didn’t want more friction amongst ethnicities and amongst the contractors than was previously there. After the disparity study is done they should adopt a majority of it.”

Interviewee #45, the Asian-Pacific Islander male owner of a non-certified metal fabrication firm, said, “This [certification] system never worked for me and my business.” He said, “I was SBA 8(a) certified from 2001 to 2008 and I saw no benefit to the program. I graduated, and it was a lot of paperwork to get into the program.”

Interviewee TA #5, the president of the National Association of Minority Contractors, said that there needs to be rules or goals “that are spread out through different ethnicities or genders.” He said that

ESBs and non-minority women “end up getting most of the work.” He said that certain ethnicities do not get any of the work. He suggested having separate goals for ESBs, non-minority women, and minorities. He said that his members feel that “the emphasis is on the ESB program” and therefore a lot of times they are not afforded an opportunity because it is directed toward the ESB.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that the MBE/WBE Program is “underfunded and it is not taken seriously.” He said that the certification “doesn’t have anything to do with qualifications ... [and] guarantees you nothing and gets you no contracts.” He said that Oregon does not track how the certifications benefit the certified firms and that this is “a waste of taxpayers’ dollars.” He recommended that the City and the PDC create their own programs to promote inclusiveness. He said that the State MBE/WBE Program is not effective, in part, because it can take four to six weeks to obtain certification. He said that the wrong people are being certified. He said there should be certification of the prime contractors asking for these multi-million dollar bids. He said that the “lowest of the lowest” are asked to certify that they are a minority or a woman, but “mainstream America can pick up contracts for billions of dollars.... This process is backwards.” He said that there is no enforcement of the goals.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that the organization views that State of Oregon MBE/WBE programs as “spotty at best.” He said that the MBE/WBE programs are not well-designed and sometimes are not clear in their expectations. He said that “there is very strong room for improvement” in the State of Oregon MBE/WBE programs. He said that he is not aware of any race, ethnicity, or gender-based programs that are useful because “philosophically I believe in the notion of helping people to arm themselves to be competitive on their own without that kind of assistance, but on the other hand I also believe that there has been a ... history of discrimination over the last 200 or so years that makes us need to watch for and police [discriminatory practices].”

Interviewee TA #10, three representatives of the Northwest College of Construction, said that they have heard about projects that require a certain amount of work to be performed by a specific ethnic group, and the contractors are frustrated because many times they cannot meet those goals. They said that many contractors cannot find qualified contractors that meet the ethnicity requirements and “you wouldn’t want to just give somebody a job because they meet the ethnicity requirement.”

Interviewee TA #11, a representative from the Port of Portland, stated that the Oregon Department of Transportation is really the only state agency that is providing much assistance to MBE/WBEs. She said, “The rest of the State of Oregon, on the government side, doesn’t seem to do much” for MBE/WBEs. She said, “I think the City has very good intentions but ... they tend to get caught up in the minutiae.” She said for years she has heard the City talk about creating a supplier diversity program, and “they say this like supplier diversity is different than what they are trying to do with minority, women, and emerging small businesses on their construction projects or in their professional services.... I feel like they ... just don’t consider the common sense approaches.... Let’s just get this done.... I think the City gets too bogged down in the details.” She said that the City and the PDC “especially” are too affected by public opinion. She stated, “If one group says ‘you’re not doing this well enough’ they’ll just stop what they’re doing and do an about-face.”

Other interviewees indicated a lack of knowledge regarding the State MBE/WBE and Federal DBE Programs. [Interviewees #: 6, 9, 13, 34, 40, 48, TA #8, TA #12]. Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, reported that she had no experience with the Federal DBE Program.

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that his firm did not “do any jobs while we were [certified] under the program, because we were doing other work.” He stated that his firm had no experience with the Federal DBE Program.

Interviewee #40, the Hispanic male co-owner of an MBE/DBE-certified structural engineering firm, said, “I have not experienced the DBE Program with the City of Portland and PDC projects at this point.”

Interviewee #48, the senior vice president of an MBE/DBE-certified general contracting firm, reported he has no experience with the Federal DBE Program.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that he has limited experience with the Federal DBE Program. He said that he has not heard his members complain about the Federal DBE requirements.

Interviewee TA #12, the executive secretary-treasurer of the Columbia Pacific Building Trades Council, said that he does not have experience with the Federal DBE Program.

X. Recommendations from Interviewees.

Race-, Ethnic-, and Gender Neutral Recommendations.

Some interviewees recommended that the City of Portland or PDC implement training programs and other measures to assist small businesses. [Interviewees #: 1, 4, 20, 23, 26, 33, TA #2, TA #5, TA #10, TA #11]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, said that his firm would benefit from participation in joint ventures, and that City could assist with “matching” joint venture partners. He said that this would be extremely helpful to his firm and other small businesses.

Interviewee #4, the African American female manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, stated, “They (the City and PDC) should provide technical assistance on projects over a million dollars to small businesses who lack the experience needed. The technical SMP (Sheltered Market Program) should not just be for the selected [providers]. There should be allotted hours for technical assistance [and] small businesses who want [it can] all show up to one class and then the [trainers] could go around and say, ‘Well, which area are you having trouble understanding?’ in, say, the bid documents. Something like that where [the City of Portland] can get more bang for [its] buck.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, said that small minority- and women-owned firms would benefit from technical assistance programs, such as training in the use of QuickBooks software, “and how to be a better bookkeeper, because ... in the beginning, it’s such a struggle, and you have to wear a bunch of different hats, stuff that I’ve never been or done. That’s a struggle.” She stated that entrepreneurs in the Hispanic community would benefit from assistance in marketing their firms and services. She said, “Teaching them how to get

out there and market themselves. I think it's unfair that they have to pay a price to learn that. I think that there's a lot of businesses that kind of help out and people should help, maybe do a one-day workshop, but maybe not charge a lot of money to have that class.... You have to make sure that you're teaching them something, and not taking from them because, in reality, they're struggling really bad.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, reported, “There's a whole bunch of programs out there; everyone wants to have a program. At some point, maybe they should put all their money together and help us, as small minority [businesses].... You have all these programs, but there's nobody to help us keep in business. We definitely want to work. We're not [saying], ‘just hand it to us.’ We'll bid on it; we always do.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that more could be done to make sure that business owners are “competent at what they do.” He said that it would be helpful for emerging small businesses and minority- and women-owned businesses to learn how to bid a job.

Interviewee #33, the Caucasian female owner of a WBE/ESB-certified general construction firm, stated that she would like the Sheltered Market Program to allow for businesses to rotate back into the program after a few years. She stated that if she had known then what she knows now, she would have taken advantage of more training opportunities offered through the program. She stated that she would like to see PDC and all other public agencies start Sheltered Market Programs based on the City of Portland's Program.

Interviewee TA #2, the director of an apprentice preparation program, stated, “Primes need to be required by [the Oregon Bureau of Labor and Industries] to provide certain types of support to subs, and that any time [primes] get any kind of government dollars, that that needs to happen, and [if primes don't meet those requirements], they need to be fined.” She recommended that the City of Portland create training programs specifically geared to the time restrictions faced by small business owners. She said, “Creat[e] a training that [recognizes the small business owners] are not able to sit in a class for a whole day.” She stated that owners of small businesses “just can't walk off their job.” She suggested that the City of Portland provide training that goes to the business owner's site, and is delivered by trainers “that are delivering the message ... where they allow small business owners or subcontractors to have input.”

Interviewee TA #5, the president of the National Association of Minority Contractors, recommended that current programs, like the Sheltered Market Program, “identify where their successes are and where they are falling short, and put a heavier emphasis on those areas that have not produced” the expected results. He said that the Sheltered Market Program should be reviewed annually by an outside committee to make corrections in the program.

Interviewee TA #10, three representatives of the Northwest College of Construction, recommended that the City and PDC educate those contractors who are new to City or PDC work about the apprenticeship requirements. They said that if a contractor does not plan for the apprenticeship requirement, it can create a negative atmosphere on the job site, because often times the contractor “does not appreciate that worker” and has an “attitude” that the apprentice is on the job. They said that the contractors who are aware of the apprenticeship requirement and participate in the program regularly “are extremely good at taking care of the worker.”

Interviewee TA #11, a representative from the Port of Portland, said that the best thing that can be done to assist small business is to convey to the businesses the importance of “good sound business practices.” She stated, “I think that is the key to success and the small businesses, whether they are minority-owned or women-owned, the ones that I have seen understand that they need to have good financial management ... they are the ones that succeed.”

Some interviewees recommended that the City of Portland or PDC provide assistance with financing, bonding, and insurance for small businesses. [Interviewees #: 1, 7, 9, 17, 20, 31].

Interviewee #1, the Caucasian male owner of a steel fabrication firm, said that the City should provide small businesses with insurance assistance and financing assistance.

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that greater access to bonds would increase the number of ESB contractors, especially in the construction industry. He stated that because bonding requirements are tied to a firm’s credit rating and experience, “if you don’t have experience, how are you going to get bonding?”

Interviewee #9, the Caucasian male co-owner of a WBE-certified excavation firm, stated that performance bonding was an impediment to market participation for many businesses. He stated, “[A] lot of small businesses can’t get the bonding because they’re a small business. If you’re just starting out, it’s rough.” He stated that he wasn’t “against bonds. They might be a good thing for lousy workers, but I would say that the City [of Portland] should look into the contractor’s license and see if they’ve had any backouts or didn’t perform” before requiring the bond.

Interviewee #17, the Native American male owner of an excavation firm, recommended that the City of Portland assist small businesses with insurance by creating a community insurance pool.

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, stated that minority- and women-owned small businesses would benefit from financial assistance programs, such as loan funds. She said, “Right now, to ... bid on a job where you have to provide material, being small ... there’s no way I could provide a bid on \$200,000 worth of material, plus the labor.... I don’t even look at those jobs, because I know [they are] undoable. And even if I [went] to a bank, I know they probably wouldn’t even give me the loan for it, even though I could probably do the job.”

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, suggested that public agencies develop smaller contract values in Division 2, and not require or reduce the bonding requirements when those requirements are not necessary to the project.

Some interviewees recommended that the City of Portland or PDC improve its communication within agencies and notification of work opportunities. [Interviewees #: 7, 10, 18, 20, 26, 43, TA #1, TA #4, TA #8].

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, stated that the City of Portland should provide potential bidders with earlier notification of upcoming projects. He said, “Often times, if you don’t know about a project, then once it’s on the bid notification, it’s usually too late to decide whether you can go after it or not.” He stated that earlier notification about City of Portland projects would help subcontractors because subcontractors would be able to “start talking to the primes about being

on their teams because [primes] decide their teams” even before City of Portland projects are listed in the notification system.

Interviewee #10, two representatives of a Native American-owned MBE/DBE-certified electrical contracting firm, stated that public agencies in Oregon should use newsletters to keep DBEs informed about upcoming program deadlines, classes, and available programs. Interviewee #10 recommended that agencies keep DBE-related information (e.g., program contacts and payment details) in an easy-to-find location on their websites. Interviewee #10 stated, “There should be a clearer, straight line from us to the government via the website.”

Interviewee #18, the Caucasian male owner of an excavation firm, said that he does not have much experience with public contracting, but “I’d like to see if there’s a website out there that would make it easy for you to see what they’re trying to accomplish.”

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, stated, “I think [the Office of Minority, Women, and Emerging Small Businesses] should put out lists of where you can go and bid ... their own personal list, and e-mail it once a month [to certified firms] so you know what’s going on. I just have the [phone] number.” She recommended that the City of Portland and the PDC should “put on their website[s] what the Workforce Training Center entails, and what you need to do to register, and maybe put a link on their website[s] saying, ‘This is what you need to do to register.’” Interviewee #20 stated that the City and PDC should “not have it together with the union, because [those agencies] are not a union company, so I don’t know why you have to take business classes with the union if you’re a business owner, which is totally different.”

Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, suggested that the City and PDC “consistently have a vehicle by which they can hear from the businesses themselves on what’s working, [and] ... what’s not working.”

Interviewee #43, the African American and Native American male owner of a non-certified concrete contracting firm, said, “I don’t know if they have it already — they probably do — but like on the website, maybe they can, for minority contractors, show what’s coming available, what you can bid on.... Offer it where it’s just on that website so those people in those categories can bid on stuff and they know exactly what’s coming up.”

Interviewee TA #1, the vice president and credit administrator of a commercial bank, stated, “I think it’s more just the outreach and getting that information out to the businesses, and making people aware that things are there. There’s a lot of businesses we run into that are just not aware of this source that they could tap into. We decline deals ... we don’t do every deal, so that’s one thing we do pride ourselves on is to be able to say, ‘Well, why don’t you go try this route ... or look at this.’ I think there could probably be more done with getting that knowledge out there.”

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, said that resource fairs would be helpful. He said that many times people have a difficult time assimilating the information and just getting the information out there can be helpful. He suggested moving the seminar that is generally held at the Hilton to north Portland.

Interviewee TA #8, the executive director of the Oregon Columbia Chapter of the Associated General Contractors, said that there is a lot of information in the marketplace that people are not aware of and they should be. He recommended that the City of Portland and the PDC have conversations with the business community to learn about what is happening on the ground rather than listening to individual constituencies that are pushing for specific self-interested goals. He said that he would encourage the government to do a “listening campaign” first and then look to see what programs are working and where there is room for improvement rather than coming in with a set of pre-determined proposals.

Some interviewees suggested that the City of Portland or PDC improve aspects of the bidding process. [Interviewees #: 23, 25, 38, TA #4]. Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, recommended that public agencies give small businesses more time to bid on projects.

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, recommended that the State reduce the paperwork burden on firms for small contracts, and that it should be clearer in its bid specifications about the paperwork required for a bid.

Interviewee #38, the African American male owner of an MBE/DBE/ESB-certified specialty electrical contracting firm, stated that a streamlined bidding process with something stronger than a good faith effort requirement would be advisable.

Interviewee TA #4, a representative of the Oregon and Southwest Washington regional office of the Pacific Northwest United Brotherhood of Carpenters, recommended that the City of Portland and the PDC be aware of predatory business practices by general contractors. He said that when a bid comes in on projects and there is a huge disparity in the numbers, then there must be an issue with the labor piece of the bid, because everyone pays the same for materials. He said that in this situation, someone is not being paid fairly.

Some interviewees recommended that the City of Portland or PDC make work opportunities more accessible to small businesses, including breaking up contracts into smaller pieces.

[Interviewees #: 1, 7, 8, 17, 20, 22, 23, 24, 27, 41, 44, 46, TA #3, TA #6, TA #7, PF #1].

Interviewee #1, the Caucasian male owner of a steel fabrication firm, stated that his primary recommendation to the City of Portland and the Portland Development Commission is to “generate more work. I’d like to see it.” He said that breaking large City projects into smaller ones would allow more firms to both bid for and participate on City projects.

Interviewee #7, the Native American male owner of an MBE/DBE/ESB-certified civil and environmental engineering firm, recommended that the City of Portland provide ESBs and MBEs with more opportunities to serve as primes, so these firms “can start to develop those relationships that the primes already have and take advantage of.” He suggested that the use of prime flex contracts and small business subcontracting goals would make work more accessible to small businesses. He also recommended increasing the income standards for the U.S. Small Business Administration’s North American Industry Classification System Codes (NAICS) tiers, particularly those for firms providing architectural and engineering services. He said, “The first tier’s pretty low. I think that we exceeded that in two years. It was only \$300,000. I mean, that’s only basically two people full time.”

Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that the OMWESB should consider creating a program to match small MBE/WBE/ESB firms with larger firms. She said, “It’s one thing to meet someone and get to know them and find out if they’re interested, but if there were people who were signed up that were looking for help,” the process would be more effective and efficient.

Interviewee #17, the Native American male owner of an excavation firm, recommended that the City of Portland break up large contracts into smaller portions to make work opportunities more accessible to small businesses.

Interviewee #20, the Hispanic female owner of an ESB-certified flooring firm, recommended that public agencies divide their contracting work up among several contractors and subcontractors. She said, “For the bidding of big jobs, divide it, instead of having one contractor do all of the flooring, how about having four or five of them, to give everybody a chance to work.”

Interviewee #22, the Caucasian male owner of an ESB-certified HVAC and refrigeration firm, recommended that the City of Portland and the PDC should have a pool of potential laborers or other types of personnel comprised of former contractors whose businesses “didn’t make it, and those people are on the street.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, recommended that public agencies encourage primes to use the construction manager general contracting (CMGC) planning, design, and construction method. He said, “CMGC work — that would be good, if we had some of these general contractors who could actually hire some of these minority contractors and put them to work.”

Interviewee #24, the Hispanic female owner of an MBE/WBE/DBE/ESB-certified civil engineering firm, reported that a sheltered market program for firms providing professional services would benefit firms like hers.

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, recommended breaking up larger contracts into smaller pieces to make business more accessible to small businesses. He also recommended the use of joint ventures to help small businesses increase their capabilities. He said that the joint venture relationships need to last for more than just one or two projects.

Interviewee #41, the female vice president of operations of an African American-owned non-certified construction management firm, said, “When the firms do well on M/W/ESB jobs, the value for future awards to them is low. Perhaps they should revisit practices that recognize people and firms that have done well.”

Interviewee #44, the African American male owner of an MBE/DBE-certified electrical contracting firm, said, “The City should contract directly with the minority businesses and not leave it in the hands of huge general contractors. They should create opportunities, for subcontracting opportunities, so that they’re hiring some of the subcontractors directly and not hiring a general contractor to oversee a major electrical project or major mechanical project. The City should look at all its projects in a way to say, ‘How can we utilize as many small contractors as possible? Do we need to de-bundle these projects?’ and look at the effectiveness of that.”

Interviewee #46, the Asian-Pacific Islander male owner of an MBE/DBE/ESB-certified structural engineering firm, said, “The way on-call services are currently bid is a very big problem, as they should be reserved for smaller businesses, but the larger businesses compete against us and we don’t get the opportunity to do what we do best.” He stated that he wants to make sure that PDC and the City of Portland recognize that small businesses want to work with them, and that they need to do some of these things that reach smaller companies.

Interviewee TA #3, a representative of the Hispanic Metropolitan Chamber, recommended that the process be simplified, break down the contracts, and require measurable outcomes on the larger contracts.

Interviewee TA #6, the executive director of the African American Chamber of Commerce and Alliance of Minority Chambers, said that the City and PDC “are trying to move in a positive direction” with the resources that are available. He said that the City has “stepped out on a limb” and become innovative in its programs. He said that the City has “to do a better job at getting small businesses and professionals trained to be able to step up to the next level.” He said that the City of Portland has a reputation of not being “open for business” and this makes it tough for all businesses. He said that it is up to the City, the PDC, and other government agencies to change this impression.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that breaking contracts into smaller pieces would enhance the availability and participation of small businesses. He said that there is a resistance to breaking up contracts because it is easier to manage a large contract, but he said that the City and the PDC are capable of managing several smaller contracts. He said that breaking up the contracts allows the subcontractor the opportunity to establish a relationship with the owner of the project rather than always working under the prime contractor. He said that project owners should focus on getting “small businesses into more of a prime role.” He said that the Sheltered Market Program could be expanded. He said that it would be beneficial if the experiences people have had with certain firms were made available to others. He said that it would be helpful to have a list of the firms that frequently work with Native Americans.

PF #1, the president of the Hispanic Chamber of Commerce, said that her organization supports several initiatives designed to make City and PDC work opportunities more accessible to small businesses, including: increasing the number of subcontracts, establishing smaller contract segments, and simplifying the City’s prequalification process.

One interviewee recommended that the City of Portland or PDC implement staffing changes.

[Interviewee #: 14]. Interviewee #14, the Caucasian female co-owner of a non-certified construction company, recommended that the City of Portland and PDC “try to limit the amount of people involved in a job. Maybe give [them] more work to do so they don’t have to spend so much time creating useless paperwork.”

One interviewee suggested that the City of Portland or PDC enforce the prevailing wage laws.

[Interviewee #: 8]. Interviewee #8, the Caucasian female owner of a WBE-certified sheet and architectural metal fabrication and installation firm, stated that Bureau of Labor and Industries should enforce the state’s prevailing wage laws.

A couple of interviewees suggested that fees and/or taxes on small businesses be reduced or eliminated. [Interviewees #: 9, 16]. Interviewee #9, the Caucasian male co-owner of a WBE-

certified excavation firm, stated that he did not understand why the City of Portland should receive tax revenue from work his firm performs in Portland. He said, “You pay your state tax, your federal tax. They should get their money somewhere else.” He stated, “No other city does that,” and that tracking the income his firm receives from projects in Portland is burdensome.

Interviewee #16, the Caucasian male owner of a heating and air conditioning company, recommended that all Oregon cities and other municipalities charge contractors “one single fee ... stop this nonsense, every single county, something like that ... they should have one single fee, so I don’t have to worry, ‘did I pay Milwaukie, did I pay Happy Valley?’”

Race-, Ethnic, and Gender-Based Recommendations.

Some interviewees recommended that the City of Portland or PDC provide greater oversight of the MBE/WBE and DBE Programs. [Interviewees #: 15, 23, TA #7]. Interviewee #15, the African American male owner of an MBE/DBE/ESB-certified specialty engineering firm, said, “What I really want to get across is that minorities come on board to do the best job that they can with what they have to offer. They want to be accountable and they just want to contribute to successful jobs. The City and PDC need to monitor their projects more and not allow them to be intimidated and persecuted on their jobs.”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, stated, “I think that the City and PDC should figure out ... a different way of going out and utilizing these minority companies. For one, if there’s a contractor bidding to a prime, it should not only be posted, but the City should call and verify it. ‘Are you working for so-and-so?’ Because they’re just letting it lapse. They want you to send it in at the time of the bid, but after that, it’s all forgotten. I’m sure there are [many City] jobs that [primes] have bid on, that I’ve bid on, that I’ve never got. I’m sure they used me — my name — when they first ... got the bid — because if [the prime doesn’t] go back and explain to the sub that you got the job, because [the sub] is bidding on so much stuff, one [job] could fall through the crack. If you don’t call me, I don’t know.”

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that the City should look at how their contracts are awarded and to what degree contracts are being awarded to minorities and women.

One interviewee recommended that the City of Portland or PDC make certain changes to the MBE/WBE and DBE Programs. [Interviewee #: 1]. Interviewee #1, the Caucasian male owner of a steel fabrication firm, recommended that public agencies “require [M/W/ESB-certified firms] to work for the same dollar everybody else bids at. If they are [going to] have to meet certain percentage ... they have to do it for the same dollars to be fair to both parties.” He recommended that the Office of Minority, Women and Emerging Small Business revamp its process to make it “more difficult to get a minority status.” He said that a firm should not “be [certified as a] minority[-owned firm] because they have a minority owner. It should have to be, maybe 40, 50, 60 percent minority employees to have to qualify. Then, I would think the minority program would do its job. Maybe you can’t get minorities to cover every spectrum of your business environment, so you may need Caucasian people to do 20 or 30 percent of your work. That’s fine, but at least you’re doing something to help minorities, and that was the purpose of the program.”

Some interviewees recommended that the City of Portland or PDC provide training programs and notification of work opportunities to MBE/WBE/DBEs. [Interviewees #: 11, 27, 28, 30, 36, TA #2, TA #7]. Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, recommended that “there should be programs out there that take certified [MBE and WBE] firms and make sure [they] have the bid process down, help [them] with finances, with capital, especially accounts receivables, and making payroll, because that’s a big one for a lot of people; help people with equipment purchasing or financing.” He also suggested that the Sheltered Market Program focus more on providing assistance to racial and ethnic minorities.

Interviewee #27, the African American male president and owner of an MBE/ESB-certified painting firm, said that the City and the PDC “have done a great job.” He suggested that a couple of times a year the PDC should have a meeting with minority businesses to discuss upcoming PDC projects and plans. He said that this information would give contractors a better opportunity to bid on the projects.

Interviewee #28, the Caucasian male executive director of an organization that provides low-income individuals with small business assistance, recommended that the City and PDC “dig more deeply into the range of diversity in the community ... to tap the skill-sets of people from Central and Eastern Europe ... [and] all minority contracting group[s] that [are] skilled and at the same time under-connected.”

Interviewee #30, the Caucasian female owner of a WBE-certified construction firm, stated that “Some minorities need more assistance to get to the experience level so that they are better subs to work with.”

Interviewee #36, two representatives of an employee-owned general engineering firm, stated that they would like to see more resources devoted to help build the capacity of MBE/WBE/ESB/DBEs.

Interviewee TA #2, the director of an apprentice preparation program, stated that “a pot of money should be set aside to support [MBE/WBE/ESBs with] training.” She stated that she believes the City of Portland should set aside money for this purpose.

Interviewee TA #7, the president of the Native American Chamber of Oregon, said that some organizations have provided outreach to Native Americans to try and encourage them to become more involved in the trades. He said that more programs to encourage Native Americans’ participation in the trades would be helpful.

Some interviewees recommended that the City provide more information concerning the opportunities with the MBE/WBE/DBE Program and the certification process, and create a committee for feedback from MBE/WBE/DBE Program participants. [Interviewees #: 6, 21]. Interviewee #6, the Caucasian female owner and president of a WBE-certified moving and storage company, recommended that the City of Portland determine “what the goal is and what the steps are going to be to hopefully reach the [objective] and, of course, share that knowledge with the community.”

Interviewee #21, the Caucasian female owner of an ESB-certified plumbing firm, recommended that public agencies make it easier for entrepreneurs to “get [a]hold of someone to find out how you get an ESB [certification], how do you get a WBE [certification]? These are questions that took me quite

a while to get through the red tape to find out. Or, sharing the information. When we found out, ‘Yeah, I [have a company that could be] an ESB,’ it was at one of the [OMWESB] seminars I went to...it was very informative. So I started doing some checking and getting everything taken care of — that information is golden. I know that there are a couple [of small businesses] here” that could benefit from this information.

Some interviewees recommended that the City of Portland or PDC encourage or require prime contractors to use MBE/WBE/DBE firms. [Interviewee #: 26, PF #7]. Interviewee #26, the African American male president and co-owner of an MBE-certified staffing firm, said that owners, general contractors, engineers and architects should be in the same room with the subcontractors. He said that contract owners need to be very public about their desire to have the general contractors on their projects be inclusive of disadvantaged businesses and minority- and women-owned businesses.

PF #7, representing the Columbia Pacific Construction Trades Council, indicated that mandatory MBE/WBE goals would be an effective way to encourage utilization of minority- and women-owned firms: “The way to best address [underutilization of MBE/WBEs] is you have to have good, hard goals to put minorities, women on those jobs. The only way I know to get those good hard goals in enforceable, community benefit agreements which are forms or project labor agreement ... We can put those rules in our agreements. We can enforce them. We can make sure those goals stay throughout the contracting process and through procurement systems for years.”

Some interviewees recommended the continuation of projects with ‘goals.’ [Interviewees #: 4, 11, 23, 25, 31, TA #11]. Interviewee #4, the African American female general manager and owner of an MBE/WBE/DBE/ESB-certified general contracting firm, reported, “When it comes to the apprenticeship training, they need to have hard goals for journeying out minorities and women, and there should be goals for any large employer that does over a certain volume dollar contract within their workforce, when it comes to management level and how the apprenticeship is really supposed to work and how we’re developing a skilled workforce, ongoing.” She recommended that prime contractors set aside contract portions on which only MBE/WBE/ESB firms would bid. She stated that if primes were “really serious and genuine” about increasing their utilization of MBE/WBE/ESB firms, “it would be easy for them to break out [\$50,000] to \$100,000 contracts” and request that MBE/WBE/ESB firms that were members of OAME and NAMCO bid on them.” She said that MBE/WBE/ESB firms would then “have a fair chance, versus [competing against] everybody in the world.”

Interviewee #11, the African American male owner of an MBE/DBE/ESB-certified flagging and traffic-control firm, recommended that the PDC have goals for its contractors for the use of MBE/WBE/ESBs. He also recommended that the City of Portland “set its aspirational goals higher. All the City requires is that a contractor do a good faith [effort]. They don’t really have goals; they just say, ‘we just want to see that you made an effort.’”

Interviewee #23, the African American male owner of an MBE/DBE/ESB-certified general contracting firm, recommended that State of Oregon agencies “up their participation of DBEs a little higher than they have” currently.

Interviewee #25, the Hispanic female owner and president of an MBE/WBE/DBE/ESB-certified remediation services and selective demolition firm, said, “I know there are some agencies that have no

set [MBE/WBE/DBE] goals, they have only the aspiration goals. I mean, come on — that's ridiculous. I mean, I think if they are going to have set goals, they should have set goals." Interviewee #25 stated that government agencies should "not only have a 10 percent set goal for a very large project. I think that the larger the project there is, the larger percentage of goals that should be set.

Interviewee #31, the African American male owner of an MBE/ESB/DBE-certified firm providing specialty services in the construction industry, stated that "Goals would be useful at the state level on all of their projects, not just a selected few."

Interviewee TA #11, a representative from the Port of Portland, stated that the agency stopped putting DBE goals on projects in 2006 because of the Western States Paving case and "we saw the women-[owned] business participation really decrease and we saw the minority-[owned] business participation go away completely ... I don't know why the general contractors were not soliciting bids from women- and minority-owned businesses and why they were not selecting those [businesses], other than the fact that we did not have a goal that made them do it." She said that since the agency reinstated goals in 2009, "we are starting to see participation [of women- and minority-owned firms] come back."

A few interviewees recommended that all programs and certifications based on race, ethnicity, or gender be eliminated. [Interviewees #: 5, 14, WT #4]. Interviewee #5, the Caucasian male owner of an excavation firm, said that the City of Portland needs "to get rid of the idea of 'minority,' they need to get to the idea of 'people.'" He stated, "There should be no minority status.... Minority status means that basically, you're going to get 10 percent of the work, and you're not going to have to do anything for it, because we need you. We're on federal money, or we're on state money, and the state mandates that you have 10 percent minorities on these jobs. When you're a minority, that's just giving you a free ride. That means that it doesn't matter what you do, what you say, how you act — you can just sit there all day — they can't fire you. You're there because you're a minority. And when you're on a job because of who you are and what you are, instead of what you can do, that's totally wrong." He said, "The women are equal, you know, and everybody should go under the same deal. If you want to work, you could do the job, there should be no minority status, especially in [the City] of Portland.... From the construction industry, they've already been getting way more jobs than anybody.... At any time those minorities do get jobs, they're doing — a few years ago they were ... hauling the dirt [on a Water Bureau-related project], and I had never seen so much [messing] around. And these guys... basically the [African American] folk, and you know [they said], 'you can't get rid of me, you can't fire me. I can sit here all afternoon ... and there isn't one thing you can do to me.' And that's the deal." He stated, "Everybody knows — everybody else has to work, but when they're on the jobs, it's just a joke." Interviewee #5 reported that the City of Portland "should just say, 'here's the job; bid the job ... if you can do it, you get it.' And then if they want to throw in, you know, you have to have 10 percent minority people or something like that. But that's not the way they do it. The way they do it is that they coddle the 10 percent.... That's not right. And in 2010, there should be no minority or anybody else, because ... the [Caucasian] man is the minority, and that's the truth.... The whole deal with giving minorities preference should totally be gone away with. And that's not only in construction, but in life."

Interviewee #14, the Caucasian female co-owner of a non-certified construction company, stated that there are no measures or programs for minority- or women-owned firms that are useful or needed. She stated, "They don't need special programs. That's kind of insulting their intelligence. I'm kind of

surprised they haven't taken the other side of this, instead of getting their hand held. Because, as a woman, I sit there and think, 'You know what? If I'm going to make it in business, I'm going to make it. I'm going to do what I need to do to make it, and if I don't, I don't.' I don't need somebody to sit there and create special programs to sit there and hold my hand, which essentially insults my intelligence, because they must think I'm not capable of doing this on my own."

WT #4, representing a local construction firm, remarked that preferences for MBE/WBEs should not come at the expense of local firms: "I would like to see [MBE/WBE] programs suspended or restructured to assure that local jobs are not being lost to out of state contractors for the sole purpose of meeting a criteria. [For example], take the recent construction of Jel-Wen Park. The steel fabrication contract was awarded to an out-of-state contractor for the sole purpose of securing minority [participation]. This simple action resulted in increased costs for the scope of work, 10,000 lost man hours for local workers, loss of state income taxes, and loss of local economic impacts."

XI. Comments about the disparity study.

Some participants of the public forum as well as individuals who submitted written testimony offered comments regarding the disparity study draft report. [PF #3, PF #6, PF #7, PF #17, PF #18, PF #21, WT #5]. PF #3, representing the National Association of Minority Contractors (NAMCO) indicated that the disparity study understated actual disparities between utilization and availability of minority- and women-owned firms: "Based on NAMCO's view of the system, of the study, our impression is that it undercounts what the real disparities are ... the general impression is that what you see in the study is not reflective of [the] reality of our people on the ground every day, trying to earn a living. ... NAMCO wants to say that because of the limitations of the study the real underutilization is not apparent there."

PF #6, representing a women-owned electrical contracting firm, indicated that he had some concerns about the disparity study's estimates of minorities and women in the construction industry: "I have some concerns about the study, and, specifically, that would be Appendix E, page 6 where they talk about construction workers on the job in Oregon. For one thing, I work with a union who is seriously progressive when it comes to women in the trades and they only have 2.56 percent female journeymen and 10 percent in apprenticeship programs right now. I don't know where [the disparity study is] coming up with [the reported] percentage — [it has] got to be counting women in the office ... We need to start talking about the people who have their hands on the tools, and their feet on the constructions site. We are not going to be able to talk about disparity if we can't come up with true numbers."

Similarly, PF #18 also questioned the accuracy of some of the percentages presented in Appendix E, based on personal experience: "I was asked to comment on the Appendix E on the charts of the percentage of women that are working in the trades in Oregon, and I can just say from my own anecdotal experience that 10 percent is not the number of women that I see on the job. I was once on the job with two other women, but there were 150 people there on that job so you tell me what that is. That is one woman for every fifty trades people."

PF #7, representing the Columbia Pacific Trades Council, expressed concern about the data sources that the disparity study used to make conclusions about unions: "I would like to speak to one of the conclusions in the study. That was, the reason for the disparity in contract work is too high or too low in the study can be traced directly to exclusionary practices by union apprenticeship programs."

The sources they used to make that conclusion are over a generation old. We have come a long ways [since then].”

PF #17, representing a minority-owned contracting firm, took issue with the method that the disparity study used to measure availability: “[The availability study] is the craziest thing I have ever seen ... [minority-owned firms] are virtually extinct. ... How are you going to come up with [availability estimates using Dun & Bradstreet]? You can’t get nothing from nothing and these guys used things like Dun & Bradstreet. Most of us don’t pay any attention to no D&B. ... Who the heck is D&B? You obviously didn’t talk to us in the community about that kind of stuff.”

WT #5, representing the Coalition of Black Men, also took issue with the methodology that the disparity study used to measure availability: “BBC should not look at such a limited pool of contractors to determine availability of minority businesses. Limiting the pool only to firms that responded to the survey and only had current capacity to do work on scopes typically done by the city is limiting. ... The disparity study analysis should look at all available MBE contractors, whether they are doing City work or not, and count them in the available pool of MBE contractors. There are MBE firms that are of significant size to complete City work and refuse to work with the City due to its procurement and project management practices. However, that does not mean they would never work with the City. They will work with the City if their procurement practices improve.”

PF #21, the former president of the Portland branch of the National Association for the Advancement of Colored People, said that he wants the City to stop doing disparity studies and to start taking action to address discrimination in local contracting industries: “ ... The time for studies is over. It is necessary that the City of Portland, PDC, give contracts to disadvantaged businesses, period. It is important and necessary that the City of Portland and PDC do not give these contracts to Hoffman Construction and any construction groups that do not support these disadvantage businesses, period. If they do not want to do it, do not give them the contract, and, if necessary, go out of state and get contractors that have a commitment to minority businesses, period, and that is the solution. No more studies, no more studies. I am sick and tired of the studies. We pay hundreds of thousands of dollars to people to do these studies and we still come up with the same old game — disparities, disparities, disparities, and we keep hearing minority businesses crying out and they jump through the hoops but they still lack the capital, the bonding, and the insurance. No more studies — it is time for the City and PDC to act.”

APPENDIX K.

Inventory of Neutral Programs

In addition to the race- and gender-neutral measures the City of Portland and the Portland Development Commission currently have in place, there are a number of neutral programs that other public, private and non-profit organizations administer in Portland. Figure K-1, on the next page, provides examples of those programs. Figure K-2 highlights small business assistance and other neutral programs offered by specific organizations in the Portland marketplace.

Figure K-1. Examples of small business assistance and other neutral programs in Portland

Neutral Remedies	Examples in the local marketplace
Technical assistance	<p>Technical assistance programs are readily available throughout the Portland area. Those programs primarily provide general information and assistance for business startups and growing businesses. Examples range from Small Business Development Centers that serve all groups to more targeted programs for minorities and women through minority chambers of commerce. The programs focus on business planning, marketing, financial management and the procurement process. Some technical assistance providers such as the Service Corps of Retired Executives (SCORE) and the Turner School of Construction focus on business advice and mentoring. Most technical assistance programs available in the Portland area are not industry-specific.</p>
Mentor-protégé programs	<p>The Port of Portland launched its mentor-protégé program in the mid-1990s to increase the number and strength of MBE/WBE companies in the local construction industry. Firms are selected for the mentor-protégé program based on their qualifications and are required to participate in the program for three years. The cost of each mentor-protégé relationship is \$15,000 and is sponsored by other agencies in the Portland area, including the Oregon Department of Transportation (Oregon DOT) and the Association of General Contractors. The City of Portland has been a program supporter.</p> <p>The Oregon DOT, SCORE and several minority chambers offer less formal mentor-protégé programs to help develop minority- and women-owned firms in the local marketplace. These programs support emerging businesses to increase their strength and competitiveness by providing business mentoring, peer advisement and technical assistance.</p>
Small business finance & capital assistance	<p>Small business financing is available through several local institutions within the Portland area. For example, the Albina Community Bank and Shorebank Pacific Bank provide low interest loans, matched savings accounts and microenterprise lending for creation and expansion of small businesses. Typical loan amounts are \$500 to \$50,000. Other agencies like Mercy Corps Northwest, Microenterprise of Oregon, TriMet and the Oregon Association of Minority Entrepreneurs (OAME) offer a variety of business lending programs using federal and private funds.</p> <p>Examples of federally-funded finance programs include the USDOT Office of Small and Disadvantaged Business Short Term Lending Program for certified DBEs and the SBA guaranteed loans programs.</p> <p>Other agencies in the Portland area provide training on how to obtain financing, including the Portland State University Business Outreach Program, Microenterprise of Oregon, SBDC and the Hispanic Chamber of Commerce.</p>
Networking, outreach and advocacy	<p>A number of agencies serve as advocates for small business participation on public projects (including participation of MBE/WBEs). These organizations sponsor focus sessions, seminars, training workshops and networking events to highlight small businesses and encourage their use on government and private sector projects. Local organizations facilitating outreach, networking and advocacy include the Portland Business Alliance, minority chambers of commerce, National Association of Minority Contractors Oregon and the Oregon Native American Business & Entrepreneurial Network.</p>
Business incubator	<p>Several organizations throughout the Portland area administer business incubator programs, offering entrepreneurial firms hands-on management assistance and shared office services, equipment and technology. Examples of local organizations that operate business incubators include the OAME, Avita & Associates, the City of Beaverton and the Metropolitan Contractor Improvement Partnership (MCIP).</p>

Source: BBC Research & Consulting.

Figure K-2.
Examples of small business assistance and other neutral programs offered by Portland-area organizations

Portland-area programs and organizations providing assistance to small business	Bonding	Budgeting	Business incubator program	Business plan development	Business support	Construction estimating	Financial management	Loan, bonding, venture capital assistance	Business location and site development	Marketing assistance	Mentor/protege program	Microloans (less than \$5,000)	M/W/ESB assistance	Networking with prime contractors	Professional services assistance	Public training/consulting	Venture capital	Workforce training and hiring program
Advocate's Office for Minority, Women & Emerging Small Businesses					■											■		
African American Chamber of Commerce		■				■	■							■		■		
Alaska Oregon Western Washington Better Business Bureau																		
Albina Community Bank								■									■	
Albina Opportunities Corporation								■									■	
Alliance of Portland Business Neighborhood Associations		■				■	■							■		■		
American Council of Engineering Companies Oregon														■				
Asian Pacific Chamber of Commerce		■				■	■							■				
Associated General Contractors Oregon		■		■	■	■	■		■	■	■		■	■				
Avita and Associates		■				■	■							■				
Child Care Improvement Project																		
City of Beaverton														■				
City of Portland														■				
City of Vancouver														■				■
Federal Highway Administration	■							■										
Hacienda Community Development Corporation (CDC)																■		
Hispanic Chamber of Commerce		■				■	■									■		
Korean Society of Oregon		■		■			■		■					■				
Lewis and Clark Law School				■			■							■				

Source: BBC Research & Consulting.

Figure K-2. (continued)
Examples of small business assistance and other neutral programs offered by Portland-area organizations

Portland-area programs and organizations providing assistance to small business	Bonding	Budgeting	Business incubator program	Business plan development	Business support	Construction estimating	Financial management	Loan, bonding, venture capital assistance	Business location and site development	Marketing assistance	Mentor/protege program	Microloans (less than \$5,000)	M/W/ESB assistance	Networking with prime contractors	Professional services assistance	Public training/consulting	Venture capital	Workforce training and hiring program
Mercy Corps Northwest		■				■	■	■						■		■		
Metropolitan Contractor Improvement Partnership (MCIP)		■				■	■							■		■		
Micro Enterprise Services of Oregon		■		■	■		■							■		■		
Microenterprise Services of Oregon		■		■			■	■		■							■	
Multnomah County																		■
National Association of Minority Contractors Oregon (NAMCO)		■				■	■							■				
Native American Chamber of Commerce		■				■	■							■				
Oregon Association of Minority Entrepreneurs (OAME)		■		■	■		■	■	■			■		■				
Oregon Business Development Department																		
Oregon Department of Environmental Quality																		
Oregon Department of Transportation (ODOT)																		
Oregon Employment Department																		
Oregon Entrepreneurs Network																		
Oregon Manufacturing Extension Partnership		■		■	■		■		■					■				
Oregon Microenterprise Network:		■		■	■		■							■				
Oregon Native American Business & Entrepreneurial Network (ONABEN)		■					■							■				
Oregon Secretary of State																		
Oregon State University Food Innovation Center					■													

Source: BBC Research & Consulting.

Figure K-2. (continued)
Examples of small business assistance and other neutral programs offered by Portland-area organizations

Portland-area programs and organizations providing assistance to small business	Bonding	Budgeting	Business incubator program	Business plan development	Business support	Construction estimating	Financial management	Loan, bonding, venture capital assistance	Business location and site development	Marketing assistance	Mentor/protege program	Microloans (less than \$5,000)	M/W/ESB assistance	Networking with prime contractors	Professional services assistance	Public training/consulting	Venture capital	Workforce training and hiring program
Oregon State University School of Engineering											■							
Philippine Chamber of Commerce		■				■	■									■		
Port of Portland																		
Portland Area Business Association																		
Portland Business Alliance																		
Portland Development Commission (PDC)							■	■	■									
Portland State University		■		■	■		■		■									
Service Corps of Retired Executives (SCORE)		■		■	■			■			■						■	
Shorebank Pacific																		
Small Business Administration: Local Portland Resources	■							■	■									
Small Business Advisory Council																		
Small Business Development Centers		■		■	■		■		■	■						■		
Trillium Artisans Program		■		■			■		■	■								
TriMet																		
Tumer Construction University		■		■	■		■		■	■								
US Dept of Transportation																		
Women Entrepreneurs of Oregon																		
Zero Waste Alliance																		

Source: BBC Research & Consulting.

APPENDIX L.
Detailed Disparity Results — Construction

Figure L-2.
Type: Construction
Time Period: July 1, 2004 - June 30, 2009
Program: All
Role: Prime contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	2,134	\$902,434	\$902,434				
(2) MBE/WBE	788	\$74,664	\$74,664	8.3	5.5	2.8	151.6
(3) WBE	424	\$48,377	\$48,377	5.4	3.5	1.8	152.3
(4) MBE	364	\$26,287	\$26,287	2.9	1.9	1.0	150.4
(5) African American-owned	116	\$4,329	\$4,332	0.5	0.5	0.0	100.1
(6) Asian-Pacific American-owned	13	\$1,122	\$1,122	0.1	0.2	-0.1	57.7
(7) Subcontinent Asian American-owned	96	\$1,883	\$1,884	0.2	0.0	0.2	200+
(8) Hispanic American-owned	98	\$13,923	\$13,932	1.5	0.5	1.0	200+
(9) Native American-owned	40	\$5,013	\$5,017	0.6	0.7	-0.1	83.4
(10) Unknown MBE	1	\$17					
(11) MBE/WBE-certified	607	\$55,696	\$55,696	6.2			
(12) Woman-owned (certified)	265	\$30,764	\$30,764	3.4			
(13) Minority-owned (certified)	342	\$24,932	\$24,932	2.8			
(14) African American-owned (certified)	115	\$4,303	\$4,306	0.5			
(15) Asian-Pacific American-owned (certified)	11	\$571	\$571	0.1			
(16) Subcontinent Asian American-owned (certified)	91	\$1,696	\$1,697	0.2			
(17) Hispanic American-owned (certified)	86	\$13,337	\$13,347	1.5			
(18) Native American-owned (certified)	38	\$5,008	\$5,012	0.6			
(19) Unknown Minority-owned (certified)	1	\$17					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	549	\$44,108	\$44,108	4.9			
(22) Minority- or Women-owned ESB	301	\$18,437	\$18,437	2.0			
(23) Majority-owned ESB	248	\$25,671	\$25,671	2.8			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure L-3.
Type: Construction
Time Period: July 1, 2004 - June 30, 2009
Program: All
Role: Prime contractors

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c/ column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	547	\$660,414	\$660,414				
(2) MBE/WBE	140	\$16,502	\$16,502	2.5	2.4	0.1	105.1
(3) WBE	87	\$12,796	\$12,796	1.9	1.5	0.4	129.1
(4) MBE	53	\$3,706	\$3,706	0.6	0.9	-0.3	64.0
(5) African American-owned	19	\$612	\$615	0.1	0.2	-0.1	39.1
(6) Asian-Pacific American-owned	4	\$142	\$143	0.0	0.1	-0.1	26.4
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	19	\$970	\$974	0.1	0.3	-0.1	56.5
(9) Native American-owned	10	\$1,966	\$1,975	0.3	0.3	0.0	101.9
(10) Unknown MBE	1	\$17					
(11) MBE/WBE-certified	100	\$10,536	\$10,536	1.6			
(12) Woman-owned (certified)	49	\$6,908	\$6,908	1.0			
(13) Minority-owned (certified)	51	\$3,628	\$3,628	0.5			
(14) African American-owned (certified)	19	\$612	\$615	0.1			
(15) Asian-Pacific American-owned (certified)	4	\$142	\$143	0.0			
(16) Subcontinent Asian American-owned (certified)	0	\$0	\$0	0.0			
(17) Hispanic American-owned (certified)	17	\$892	\$896	0.1			
(18) Native American-owned (certified)	10	\$1,966	\$1,975	0.3			
(19) Unknown Minority-owned (certified)	1	\$17					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	144	\$9,675	\$9,675	1.5			
(22) Minority- or Women-owned ESB	64	\$4,246	\$4,246	0.6			
(23) Majority-owned ESB	80	\$5,429	\$5,429	0.8			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure L-4.
Type: Construction
Time Period: July 1, 2004 - June 30, 2009
Program: All
Role: Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	1,587	\$242,020	\$242,020				
(2) MBE/WBE	648	\$58,162	\$58,162	24.0	13.9	10.2	173.4
(3) WBE	337	\$35,582	\$35,582	14.7	9.0	5.7	162.8
(4) MBE	311	\$22,581	\$22,581	9.3	4.8	4.5	193.2
(5) African American-owned	97	\$3,717	\$3,717	1.5	1.1	0.4	135.0
(6) Asian-Pacific American-owned	9	\$980	\$980	0.4	0.6	-0.2	69.7
(7) Subcontinent Asian American-owned	96	\$1,883	\$1,883	0.8	0.1	0.7	200+
(8) Hispanic American-owned	79	\$12,953	\$12,953	5.4	1.3	4.0	200+
(9) Native American-owned	30	\$3,047	\$3,047	1.3	1.7	-0.4	74.8
(10) Unknown MBE	0	\$0					
(11) MBE/WBE-certified	507	\$45,160	\$45,160	18.7			
(12) Woman-owned (certified)	216	\$23,857	\$23,857	9.9			
(13) Minority-owned (certified)	291	\$21,304	\$21,304	8.8			
(14) African American-owned (certified)	96	\$3,691	\$3,691	1.5			
(15) Asian-Pacific American-owned (certified)	7	\$429	\$429	0.2			
(16) Subcontinent Asian American-owned (certified)	91	\$1,696	\$1,696	0.7			
(17) Hispanic American-owned (certified)	69	\$12,446	\$12,446	5.1			
(18) Native American-owned (certified)	28	\$3,042	\$3,042	1.3			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	405	\$34,433	\$34,433	14.2			
(22) Minority- or Women-owned ESB	237	\$14,191	\$14,191	5.9			
(23) Majority-owned ESB	168	\$20,242	\$20,242	8.4			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure L-5.
Type: Construction
Time Period: July 1, 2004 - June 30, 2009
Program: Good Faith Efforts
Role: Prime contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	1,635	\$874,813	\$874,813				
(2) MBE/WBE	619	\$65,517	\$65,517	7.5	5.1	2.4	147.6
(3) WBE	327	\$41,229	\$41,229	4.7	3.2	1.5	145.0
(4) MBE	292	\$24,288	\$24,288	2.8	1.8	1.0	152.0
(5) African American-owned	91	\$3,659	\$3,659	0.4	0.5	0.0	89.7
(6) Asian-Pacific American-owned	9	\$980	\$980	0.1	0.2	-0.1	54.1
(7) Subcontinent Asian American-owned	84	\$1,848	\$1,848	0.2	0.0	0.2	200+
(8) Hispanic American-owned	75	\$13,075	\$13,075	1.5	0.5	1.0	200+
(9) Native American-owned	33	\$4,726	\$4,726	0.5	0.6	-0.1	86.2
(10) Unknown MBE	0	\$0					
(11) MBE/WBE-certified	478	\$50,733	\$50,733	5.8			
(12) Woman-owned (certified)	205	\$27,719	\$27,719	3.2			
(13) Minority-owned (certified)	273	\$23,014	\$23,014	2.6			
(14) African American-owned (certified)	90	\$3,633	\$3,633	0.4			
(15) Asian-Pacific American-owned (certified)	7	\$429	\$429	0.0			
(16) Subcontinent Asian American-owned (certified)	79	\$1,661	\$1,661	0.2			
(17) Hispanic American-owned (certified)	65	\$12,567	\$12,567	1.4			
(18) Native American-owned (certified)	32	\$4,724	\$4,724	0.5			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	376	\$37,382	\$37,382	4.3			
(22) Minority- or Women-owned ESB	221	\$14,955	\$14,955	1.7			
(23) Majority-owned ESB	155	\$22,427	\$22,427	2.6			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure L-6.
Type: Construction
Time Period: July 1, 2004 - June 30, 2009
Program: Good Faith Efforts
Role: Prime contractors

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	195	\$635,343	\$635,343				
(2) MBE/WBE	20	\$8,018	\$8,018	1.3	1.8	-0.5	70.4
(3) WBE	15	\$6,178	\$6,178	1.0	1.1	-0.1	88.7
(4) MBE	5	\$1,839	\$1,839	0.3	0.7	-0.4	41.5
(5) African American-owned	0	\$0	\$0	0.0	0.2	-0.2	0.0
(6) Asian-Pacific American-owned	0	\$0	\$0	0.0	0.1	-0.1	0.0
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	1	\$158	\$158	0.0	0.2	-0.2	13.2
(9) Native American-owned	4	\$1,681	\$1,681	0.3	0.2	0.0	115.8
(10) Unknown MBE	0	\$0					
(11) MBE/WBE-certified	11	\$6,067	\$6,067	1.0			
(12) Woman-owned (certified)	6	\$4,228	\$4,228	0.7			
(13) Minority-owned (certified)	5	\$1,839	\$1,839	0.3			
(14) African American-owned (certified)	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned (certified)	0	\$0	\$0	0.0			
(16) Subcontinent Asian American-owned (certified)	0	\$0	\$0	0.0			
(17) Hispanic American-owned (certified)	1	\$158	\$158	0.0			
(18) Native American-owned (certified)	4	\$1,681	\$1,681	0.3			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	10	\$3,542	\$3,542	0.6			
(22) Minority- or Women-owned ESB	3	\$1,077	\$1,077	0.2			
(23) Majority-owned ESB	7	\$2,465	\$2,465	0.4			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure L-7.
Type: Construction
Time Period: July 1, 2004 - June 30, 2009
Program: Good Faith Efforts
Role: Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	1,440	\$239,470	\$239,470				
(2) MBE/WBE	599	\$57,499	\$57,499	24.0	13.8	10.2	174.2
(3) WBE	312	\$35,050	\$35,050	14.6	9.0	5.7	163.3
(4) MBE	287	\$22,449	\$22,449	9.4	4.8	4.6	194.5
(5) African American-owned	91	\$3,659	\$3,659	1.5	1.1	0.4	134.4
(6) Asian-Pacific American-owned	9	\$980	\$980	0.4	0.6	-0.2	70.9
(7) Subcontinent Asian American-owned	84	\$1,848	\$1,848	0.8	0.1	0.7	200+
(8) Hispanic American-owned	74	\$12,917	\$12,917	5.4	1.3	4.1	200+
(9) Native American-owned	29	\$3,045	\$3,045	1.3	1.7	-0.4	75.6
(10) Unknown MBE	0	\$0					
(11) MBE/WBE-certified	467	\$44,666	\$44,666	18.7			
(12) Woman-owned (certified)	199	\$23,491	\$23,491	9.8			
(13) Minority-owned (certified)	268	\$21,174	\$21,174	8.8			
(14) African American-owned (certified)	90	\$3,633	\$3,633	1.5			
(15) Asian-Pacific American-owned (certified)	7	\$429	\$429	0.2			
(16) Subcontinent Asian American-owned (certified)	79	\$1,661	\$1,661	0.7			
(17) Hispanic American-owned (certified)	64	\$12,409	\$12,409	5.2			
(18) Native American-owned (certified)	28	\$3,042	\$3,042	1.3			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	366	\$33,840	\$33,840	14.1			
(22) Minority- or Women-owned ESB	218	\$13,878	\$13,878	5.8			
(23) Majority-owned ESB	148	\$19,962	\$19,962	8.3			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure L-8.

Type: Construction
 Time Period: July 1, 2004 - June 30, 2009
 Program: Informal/emergency contracts
 Role: Prime contractors, Subcontractors and Suppliers

Contracts Under \$ 100k

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column e, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	231	\$8,026	\$8,026				
(2) MBE/WBE	85	\$2,946	\$2,946	36.7	20.2	16.5	182.0
(3) WBE	46	\$1,821	\$1,821	22.7	13.4	9.3	169.0
(4) MBE	39	\$1,125	\$1,125	14.0	6.7	7.3	200+
(5) African American-owned	16	\$403	\$409	5.1	0.9	4.2	200+
(6) Asian-Pacific American-owned	4	\$142	\$144	1.8	0.6	1.2	200+
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	13	\$419	\$425	5.3	2.7	2.6	199.5
(9) Native American-owned	5	\$144	\$146	1.8	2.6	-0.7	70.9
(10) Unknown MBE	1	\$17					
(11) MBE/WBE-certified	69	\$2,299	\$2,299	28.6			
(12) Woman-owned (certified)	32	\$1,252	\$1,252	15.6			
(13) Minority-owned (certified)	37	\$1,047	\$1,047	13.0			
(14) African American-owned (certified)	16	\$403	\$410	5.1			
(15) Asian-Pacific American-owned (certified)	4	\$142	\$144	1.8			
(16) Subcontinent Asian American-owned (certified)	0	\$0	\$0	0.0			
(17) Hispanic American-owned (certified)	11	\$341	\$346	4.3			
(18) Native American-owned (certified)	5	\$144	\$147	1.8			
(19) Unknown Minority-owned (certified)	1	\$17					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	76	\$2,656	\$2,656	33.1			
(22) Minority- or Women-owned ESB	41	\$1,439	\$1,439	17.9			
(23) Majority-owned ESB	35	\$1,217	\$1,217	15.2			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure L-9.

Type: Construction
Time Period: July 1, 2004 - June 30, 2009
Program: Informal/emergency contracts
Role: Prime contractors

Contracts Under \$ 100k

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	216	\$7,913	\$7,913				
(2) MBE/WBE	77	\$2,890	\$2,890	36.5	20.1	16.4	181.5
(3) WBE	41	\$1,789	\$1,789	22.6	13.4	9.2	169.1
(4) MBE	36	\$1,101	\$1,101	13.9	6.8	7.2	200+
(5) African American-owned	15	\$396	\$402	5.1	0.9	4.2	200+
(6) Asian-Pacific American-owned	4	\$142	\$144	1.8	0.6	1.2	200+
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	11	\$403	\$409	5.2	2.7	2.5	193.8
(9) Native American-owned	5	\$144	\$146	1.9	2.6	-0.7	71.6
(10) Unknown MBE	1	\$17					
(11) MBE/WBE-certified	64	\$2,272	\$2,272	28.7			
(12) Woman-owned (certified)	30	\$1,248	\$1,248	15.8			
(13) Minority-owned (certified)	34	\$1,023	\$1,023	12.9			
(14) African American-owned (certified)	15	\$396	\$402	5.1			
(15) Asian-Pacific American-owned (certified)	4	\$142	\$144	1.8			
(16) Subcontinent Asian American-owned (certified)	0	\$0	\$0	0.0			
(17) Hispanic American-owned (certified)	9	\$325	\$330	4.2			
(18) Native American-owned (certified)	5	\$144	\$147	1.9			
(19) Unknown Minority-owned (certified)	1	\$17					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	71	\$2,629	\$2,629	33.2			
(22) Minority- or Women-owned ESB	38	\$1,422	\$1,422	18.0			
(23) Majority-owned ESB	33	\$1,207	\$1,207	15.3			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure L-10.

Type: Construction
 Time Period: July 1, 2004 - June 30, 2009
 Program: Informal/emergency contracts
 Role: Subcontractors and Suppliers

Contracts Under \$ 100k

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c/ column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	15	\$113	\$113				
(2) MBE/WBE	8	\$56	\$56	49.2	23.7	25.5	200+
(3) WBE	5	\$32	\$32	28.6	17.2	11.5	166.7
(4) MBE	3	\$23	\$23	20.6	6.5	14.1	200+
(5) African American-owned	1	\$7	\$7	6.5	1.8	4.7	200+
(6) Asian-Pacific American-owned	0	\$0	\$0	0.0	1.4	-1.4	0.0
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.0	0.0	100.0
(8) Hispanic American-owned	2	\$16	\$16	14.1	1.8	12.3	200+
(9) Native American-owned	0	\$0	\$0	0.0	1.5	-1.5	0.0
(10) Unknown MBE	0	\$0	\$0				
(11) MBE/WBE-certified	5	\$27	\$27	23.8			
(12) Woman-owned (certified)	2	\$4	\$4	3.2			
(13) Minority-owned (certified)	3	\$23	\$23	20.6			
(14) African American-owned (certified)	1	\$7	\$7	6.5			
(15) Asian-Pacific American-owned (certified)	0	\$0	\$0	0.0			
(16) Subcontinent Asian American-owned (certified)	0	\$0	\$0	0.0			
(17) Hispanic American-owned (certified)	2	\$16	\$16	14.1			
(18) Native American-owned (certified)	0	\$0	\$0	0.0			
(19) Unknown Minority-owned (certified)	0	\$0	\$0				
(20) Unknown MWBE (certified)	0	\$0	\$0				
(21) ESB-certified	5	\$27	\$27	24.2			
(22) Minority- or Women-owned ESB	3	\$17	\$17	15.0			
(23) Majority-owned ESB	2	\$10	\$10	9.2			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure L-11.
Type: Construction
Time Period: July 1, 2004 - June 30, 2009
Program: Sheltered Market Program
Role: Prime contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	93	\$3,774	\$3,774				
(2) MBE/WBE	38	\$2,255	\$2,255	59.8	19.6	40.2	200+
(3) WBE	22	\$1,605	\$1,605	42.5	12.0	30.5	200+
(4) MBE	16	\$649	\$649	17.2	7.6	9.6	200+
(5) African American-owned	4	\$216	\$216	5.7	1.2	4.5	200+
(6) Asian-Pacific American-owned	0	\$0	\$0	0.0	1.0	-1.0	0.0
(7) Subcontinent Asian American-owned	2	\$7	\$7	0.2	0.0	0.2	200+
(8) Hispanic American-owned	9	\$424	\$424	11.2	3.1	8.1	200+
(9) Native American-owned	1	\$2	\$2	0.1	2.3	-2.2	2.9
(10) Unknown MBE	0	\$0					
(11) MBE/WBE-certified	29	\$1,688	\$1,688	44.7			
(12) Woman-owned (certified)	14	\$1,041	\$1,041	27.6			
(13) Minority-owned (certified)	15	\$647	\$647	17.1			
(14) African American-owned (certified)	4	\$216	\$216	5.7			
(15) Asian-Pacific American-owned (certified)	0	\$0	\$0	0.0			
(16) Subcontinent Asian American-owned (certified)	2	\$7	\$7	0.2			
(17) Hispanic American-owned (certified)	9	\$424	\$424	11.2			
(18) Native American-owned (certified)	0	\$0	\$0	0.0			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	74	\$3,315	\$3,315	87.9			
(22) Minority- or Women-owned ESB	31	\$1,938	\$1,938	51.3			
(23) Majority-owned ESB	43	\$1,378	\$1,378	36.5			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure L-12.
Type: Construction
Time Period: July 1, 2004 - June 30, 2009
Program: Sheltered Market Program
Role: Prime contractors

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	60	\$3,133	\$3,133				
(2) MBE/WBE	25	\$1,878	\$1,878	59.9	18.9	41.1	200+
(3) WBE	14	\$1,253	\$1,253	40.0	10.9	29.0	200+
(4) MBE	11	\$625	\$625	20.0	7.9	12.0	200+
(5) African American-owned	4	\$216	\$216	6.9	1.2	5.7	200+
(6) Asian-Pacific American-owned	0	\$0	\$0	0.0	0.9	-0.9	0.0
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.0	0.0	100.0
(8) Hispanic American-owned	7	\$409	\$409	13.1	3.4	9.7	200+
(9) Native American-owned	0	\$0	\$0	0.0	2.4	-2.4	0.0
(10) Unknown MBE	0	\$0	\$0				
(11) MBE/WBE-certified	21	\$1,447	\$1,447	46.2			
(12) Woman-owned (certified)	10	\$822	\$822	26.2			
(13) Minority-owned (certified)	11	\$625	\$625	20.0			
(14) African American-owned (certified)	4	\$216	\$216	6.9			
(15) Asian-Pacific American-owned (certified)	0	\$0	\$0	0.0			
(16) Subcontinent Asian American-owned (certified)	0	\$0	\$0	0.0			
(17) Hispanic American-owned (certified)	7	\$409	\$409	13.1			
(18) Native American-owned (certified)	0	\$0	\$0	0.0			
(19) Unknown Minority-owned (certified)	0	\$0	\$0				
(20) Unknown MWBE (certified)	0	\$0	\$0				
(21) ESB-certified	58	\$3,002	\$3,002	95.8			
(22) Minority- or Women-owned ESB	23	\$1,747	\$1,747	55.8			
(23) Majority-owned ESB	35	\$1,255	\$1,255	40.1			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Figure L-13.
Type: Construction
Time Period: July 1, 2004 - June 30, 2009
Program: Sheltered Market Program
Role: Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c/ column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	33	\$641	\$641				
(2) MBE/WBE	13	\$377	\$377	58.8	23.2	35.6	200+
(3) WBE	8	\$353	\$353	55.0	17.2	37.8	200+
(4) MBE	5	\$24	\$24	3.8	6.0	-2.2	63.1
(5) African American-owned	0	\$0	\$0	0.0	1.5	-1.5	0.0
(6) Asian-Pacific American-owned	0	\$0	\$0	0.0	1.1	-1.1	0.0
(7) Subcontinent Asian American-owned	2	\$7	\$7	1.0	0.1	0.9	200+
(8) Hispanic American-owned	2	\$15	\$15	2.4	1.7	0.7	139.7
(9) Native American-owned	1	\$2	\$2	0.4	1.6	-1.2	23.9
(10) Unknown MBE	0	\$0					
(11) MBE/WBE-certified	8	\$241	\$241	37.5			
(12) Woman-owned (certified)	4	\$219	\$219	34.1			
(13) Minority-owned (certified)	4	\$22	\$22	3.4			
(14) African American-owned (certified)	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned (certified)	0	\$0	\$0	0.0			
(16) Subcontinent Asian American-owned (certified)	2	\$7	\$7	1.0			
(17) Hispanic American-owned (certified)	2	\$15	\$15	2.4			
(18) Native American-owned (certified)	0	\$0	\$0	0.0			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	16	\$314	\$314	48.9			
(22) Minority- or Women-owned ESB	8	\$191	\$191	29.7			
(23) Majority-owned ESB	8	\$123	\$123	19.2			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure L-14.

Contracts over \$100k

Type: Construction
 Time Period: July 1, 2004 - June 30, 2009
 Program: Informal/emergency contracts
 Role: Prime contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c/ column e, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	175	\$15,821	\$15,821				
(2) MBE/WBE	46	\$3,946	\$3,946	24.9	15.7	9.2	158.7
(3) WBE	29	\$3,722	\$3,722	23.5	11.5	12.1	200+
(4) MBE	17	\$225	\$225	1.4	4.3	-2.8	33.3
(5) African American-owned	5	\$51	\$51	0.3	0.8	-0.5	40.0
(6) Asian-Pacific American-owned	0	\$0	\$0	0.0	0.3	-0.3	0.0
(7) Subcontinent Asian American-owned	10	\$29	\$29	0.2	0.1	0.1	200+
(8) Hispanic American-owned	1	\$5	\$5	0.0	1.5	-1.5	2.1
(9) Native American-owned	1	\$140	\$140	0.9	1.5	-0.6	58.8
(10) Unknown MBE	0	\$0	\$0				
(11) MBE/WBE-certified	31	\$977	\$977	6.2			
(12) Woman-owned (certified)	14	\$752	\$752	4.8			
(13) Minority-owned (certified)	17	\$225	\$225	1.4			
(14) African American-owned (certified)	5	\$51	\$51	0.3			
(15) Asian-Pacific American-owned (certified)	0	\$0	\$0	0.0			
(16) Subcontinent Asian American-owned (certified)	10	\$29	\$29	0.2			
(17) Hispanic American-owned (certified)	1	\$5	\$5	0.0			
(18) Native American-owned (certified)	1	\$140	\$140	0.9			
(19) Unknown Minority-owned (certified)	0	\$0	\$0				
(20) Unknown MWBE (certified)	0	\$0	\$0				
(21) ESB-certified	23	\$754	\$754	4.8			
(22) Minority- or Women-owned ESB	8	\$105	\$105	0.7			
(23) Majority-owned ESB	15	\$649	\$649	4.1			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure L-15.

Type: Construction
 Time Period: July 1, 2004 - June 30, 2009
 Program: Informal/emergency contracts
 Role: Prime contractors

Contracts over \$100k

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c/ column e, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	76	\$14,025	\$14,025				
(2) MBE/WBE	18	\$3,716	\$3,716	26.5	15.1	11.3	174.9
(3) WBE	17	\$3,576	\$3,576	25.5	11.1	14.4	200+
(4) MBE	1	\$140	\$140	1.0	4.1	-3.1	24.5
(5) African American-owned	0	\$0	\$0	0.0	0.8	-0.8	0.0
(6) Asian-Pacific American-owned	0	\$0	\$0	0.0	0.3	-0.3	0.0
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	0	\$0	\$0	0.0	1.5	-1.5	0.0
(9) Native American-owned	1	\$140	\$140	1.0	1.5	-0.5	67.8
(10) Unknown MBE	0	\$0					
(11) MBE/WBE-certified	4	\$750	\$750	5.3			
(12) Woman-owned (certified)	3	\$609	\$609	4.3			
(13) Minority-owned (certified)	1	\$140	\$140	1.0			
(14) African American-owned (certified)	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned (certified)	0	\$0	\$0	0.0			
(16) Subcontinent Asian American-owned (certified)	0	\$0	\$0	0.0			
(17) Hispanic American-owned (certified)	0	\$0	\$0	0.0			
(18) Native American-owned (certified)	1	\$140	\$140	1.0			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	5	\$502	\$502	3.6			
(22) Minority- or Women-owned ESB	0	\$0	\$0	0.0			
(23) Majority-owned ESB	5	\$502	\$502	3.6			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure L-16.

Type: Construction
 Time Period: July 1, 2004 - June 30, 2009
 Program: Informal/emergency contracts
 Role: Subcontractors and Suppliers

Contracts over \$100k

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c/ column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	99	\$1,796	\$1,796				
(2) MBE/WBE	28	\$230	\$230	12.8	20.2	-7.4	63.5
(3) WBE	12	\$146	\$146	8.1	14.6	-6.4	55.9
(4) MBE	16	\$84	\$84	4.7	5.6	-0.9	83.4
(5) African American-owned	5	\$51	\$51	2.8	1.1	1.7	200+
(6) Asian-Pacific American-owned	0	\$0	\$0	0.0	0.9	-0.9	0.0
(7) Subcontinent Asian American-owned	10	\$29	\$29	1.6	0.3	1.3	200+
(8) Hispanic American-owned	1	\$5	\$5	0.3	1.5	-1.3	18.2
(9) Native American-owned	0	\$0	\$0	0.0	1.8	-1.8	0.0
(10) Unknown MBE	0	\$0	\$0				
(11) MBE/WBE-certified	27	\$227	\$227	12.6			
(12) Woman-owned (certified)	11	\$143	\$143	7.9			
(13) Minority-owned (certified)	16	\$84	\$84	4.7			
(14) African American-owned (certified)	5	\$51	\$51	2.8			
(15) Asian-Pacific American-owned (certified)	0	\$0	\$0	0.0			
(16) Subcontinent Asian American-owned (certified)	10	\$29	\$29	1.6			
(17) Hispanic American-owned (certified)	1	\$5	\$5	0.3			
(18) Native American-owned (certified)	0	\$0	\$0	0.0			
(19) Unknown Minority-owned (certified)	0	\$0	\$0				
(20) Unknown MWBE (certified)	0	\$0	\$0				
(21) ESB-certified	18	\$252	\$252	14.0			
(22) Minority- or Women-owned ESB	8	\$105	\$105	5.9			
(23) Majority-owned ESB	10	\$146	\$146	8.2			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure L-17.

Type: Construction
 Time Period: July 1, 2004 - June 30, 2009
 Program: Good Faith Efforts
 Role: Prime contractors

Contracts under \$1M

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	124	\$33,722	\$33,722				
(2) MBE/WBE	15	\$3,583	\$3,583	10.6	14.7	-4.0	72.4
(3) WBE	11	\$2,640	\$2,640	7.8	9.9	-2.0	79.3
(4) MBE	4	\$943	\$943	2.8	4.8	-2.0	58.4
(5) African American-owned	0	\$0	\$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	0	\$0	\$0	0.0	0.6	-0.6	0.0
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	1	\$158	\$158	0.5	1.2	-0.7	38.6
(9) Native American-owned	3	\$785	\$785	2.3	1.8	0.5	126.7
(10) Unknown MBE	0	\$0					
(11) MBE/WBE-certified	8	\$2,307	\$2,307	6.8			
(12) Woman-owned (certified)	4	\$1,364	\$1,364	4.0			
(13) Minority-owned (certified)	4	\$943	\$943	2.8			
(14) African American-owned (certified)	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned (certified)	0	\$0	\$0	0.0			
(16) Subcontinent Asian American-owned (certified)	0	\$0	\$0	0.0			
(17) Hispanic American-owned (certified)	1	\$158	\$158	0.5			
(18) Native American-owned (certified)	3	\$785	\$785	2.3			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	8	\$1,770	\$1,770	5.2			
(22) Minority- or Women-owned ESB	2	\$731	\$731	2.2			
(23) Majority-owned ESB	6	\$1,039	\$1,039	3.1			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

APPENDIX M.
Detailed Disparity Results — Professional
Services

Figure M-1

Figure M- :		2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Type																
Construction																
Professional, technical and expert services		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Contract role																
Prime/Sub		x			x			x			x			x		
Prime			x			x			x			x			x	
Sub/supplier				x			x			x			x			x
Contracting method																
All		x	x								x	x	x	x	x	x
On-call					x	x	x									
Standard								x	x	x						
Contract size																
All		x	x	x	x	x	x	x	x	x						
Over \$100K														x	x	x
Under \$100k											x	x	x			

Figure M-2.
Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: On-call and standard
Role: Prime contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	1,091	\$91,303	\$91,303				
(2) MBE/WBE	340	\$31,942	\$31,942	35.0	14.6	20.4	200+
(3) WBE	136	\$6,229	\$6,229	6.8	7.4	-0.5	92.7
(4) MBE	204	\$25,713	\$25,713	28.2	7.2	21.0	200+
(5) African American-owned	36	\$7,461	\$7,464	8.2	1.3	6.9	200+
(6) Asian-Pacific American-owned	55	\$2,592	\$2,593	2.8	4.0	-1.2	70.7
(7) Subcontinent Asian American-owned	17	\$9,395	\$9,398	10.3	0.1	10.2	200+
(8) Hispanic American-owned	68	\$4,231	\$4,232	4.6	1.1	3.6	200+
(9) Native American-owned	27	\$2,025	\$2,026	2.2	0.8	1.5	200+
(10) Unknown MBE	1	\$10					
(11) MBE/WBE-certified	275	\$23,014	\$23,014	25.2			
(12) Woman-owned (certified)	103	\$4,673	\$4,673	5.1			
(13) Minority-owned (certified)	172	\$18,341	\$18,341	20.1			
(14) African American-owned (certified)	29	\$1,403	\$1,403	1.5			
(15) Asian-Pacific American-owned (certified)	38	\$1,599	\$1,599	1.8			
(16) Subcontinent Asian American-owned (certified)	17	\$9,395	\$9,395	10.3			
(17) Hispanic American-owned (certified)	62	\$3,929	\$3,929	4.3			
(18) Native American-owned (certified)	26	\$2,015	\$2,015	2.2			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	264	\$14,694	\$14,694	16.1			
(22) Minority- or Women-owned ESB	143	\$7,293	\$7,293	8.0			
(23) Majority-owned ESB	121	\$7,401	\$7,401	8.1			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure M-3.
Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: On-call and standard
Role: Prime contractors

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c/ column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	468	\$54,384	\$54,384				
(2) MBE/WBE	101	\$15,359	\$15,359	28.2	13.2	15.0	200+
(3) WBE	40	\$2,532	\$2,532	4.7	6.1	-1.4	76.5
(4) MBE	61	\$12,826	\$12,826	23.6	7.1	16.4	200+
(5) African American-owned	12	\$5,907	\$5,907	10.9	1.5	9.4	200+
(6) Asian-Pacific American-owned	17	\$529	\$529	1.0	4.6	-3.6	21.1
(7) Subcontinent Asian American-owned	3	\$4,818	\$4,818	8.9	0.0	8.8	200+
(8) Hispanic American-owned	21	\$1,395	\$1,395	2.6	0.6	1.9	200+
(9) Native American-owned	8	\$178	\$178	0.3	0.4	-0.1	83.9
(10) Unknown MBE	0	\$0					
(11) MBE/WBE-certified	77	\$8,405	\$8,405	15.5			
(12) Woman-owned (certified)	31	\$1,947	\$1,947	3.6			
(13) Minority-owned (certified)	46	\$6,458	\$6,458	11.9			
(14) African American-owned (certified)	7	\$41	\$41	0.1			
(15) Asian-Pacific American-owned (certified)	11	\$282	\$282	0.5			
(16) Subcontinent Asian American-owned (certified)	3	\$4,818	\$4,818	8.9			
(17) Hispanic American-owned (certified)	17	\$1,139	\$1,139	2.1			
(18) Native American-owned (certified)	8	\$178	\$178	0.3			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	53	\$2,605	\$2,605	4.8			
(22) Minority- or Women-owned ESB	25	\$812	\$812	1.5			
(23) Majority-owned ESB	28	\$1,793	\$1,793	3.3			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure M-4.
Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: On-call and standard
Role: Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c/ column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	623	\$36,919	\$36,919				
(2) MBE/WBE	239	\$16,584	\$16,584	44.9	16.5	28.4	200+
(3) WBE	96	\$3,697	\$3,697	10.0	9.2	0.8	108.4
(4) MBE	143	\$12,887	\$12,887	34.9	7.3	27.6	200+
(5) African American-owned	24	\$1,554	\$1,555	4.2	1.0	3.2	200+
(6) Asian-Pacific American-owned	38	\$2,063	\$2,064	5.6	3.1	2.5	178.1
(7) Subcontinent Asian American-owned	14	\$4,577	\$4,580	12.4	0.1	12.3	200+
(8) Hispanic American-owned	47	\$2,836	\$2,838	7.7	1.7	6.0	200+
(9) Native American-owned	19	\$1,847	\$1,849	5.0	1.3	3.7	200+
(10) Unknown MBE	1	\$10					
(11) MBE/WBE-certified	198	\$14,609	\$14,609	39.6			
(12) Woman-owned (certified)	72	\$2,726	\$2,726	7.4			
(13) Minority-owned (certified)	126	\$11,883	\$11,883	32.2			
(14) African American-owned (certified)	22	\$1,362	\$1,362	3.7			
(15) Asian-Pacific American-owned (certified)	27	\$1,317	\$1,317	3.6			
(16) Subcontinent Asian American-owned (certified)	14	\$4,577	\$4,577	12.4			
(17) Hispanic American-owned (certified)	45	\$2,790	\$2,790	7.6			
(18) Native American-owned (certified)	18	\$1,837	\$1,837	5.0			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	211	\$12,089	\$12,089	32.7			
(22) Minority- or Women-owned ESB	118	\$6,480	\$6,480	17.6			
(23) Majority-owned ESB	93	\$5,608	\$5,608	15.2			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure M-5.
Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: On-call
Role: Prime contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c/ column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	429	\$26,363	\$26,363				
(2) MBE/WBE	143	\$15,814	\$15,814	60.0	13.8	46.2	200+
(3) WBE	57	\$2,184	\$2,184	8.3	7.9	0.4	105.2
(4) MBE	86	\$13,630	\$13,630	51.7	6.0	45.7	200+
(5) African American-owned	14	\$5,326	\$5,330	20.2	2.4	17.8	200+
(6) Asian-Pacific American-owned	22	\$1,007	\$1,007	3.8	1.9	1.9	199.7
(7) Subcontinent Asian American-owned	9	\$5,049	\$5,053	19.2	0.1	19.1	200+
(8) Hispanic American-owned	27	\$1,408	\$1,409	5.3	0.9	4.5	200+
(9) Native American-owned	13	\$831	\$831	3.2	0.6	2.5	200+
(10) Unknown MBE	1	\$10					
(11) MBE/WBE-certified	120	\$10,196	\$10,196	38.7			
(12) Woman-owned (certified)	48	\$2,028	\$2,028	7.7			
(13) Minority-owned (certified)	72	\$8,168	\$8,168	31.0			
(14) African American-owned (certified)	11	\$293	\$293	1.1			
(15) Asian-Pacific American-owned (certified)	16	\$760	\$760	2.9			
(16) Subcontinent Asian American-owned (certified)	9	\$5,049	\$5,049	19.2			
(17) Hispanic American-owned (certified)	24	\$1,245	\$1,245	4.7			
(18) Native American-owned (certified)	12	\$821	\$821	3.1			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	94	\$4,859	\$4,859	18.4			
(22) Minority- or Women-owned ESB	52	\$2,835	\$2,835	10.8			
(23) Majority-owned ESB	42	\$2,024	\$2,024	7.7			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure M-6.
Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: On-call
Role: Prime contractors

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c/ column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	220	\$19,407	\$19,407				
(2) MBE/WBE	64	\$12,385	\$12,385	63.8	13.2	50.6	200+
(3) WBE	20	\$1,133	\$1,133	5.8	7.3	-1.5	80.0
(4) MBE	44	\$11,251	\$11,251	58.0	5.9	52.1	200+
(5) African American-owned	7	\$5,052	\$5,052	26.0	3.0	23.0	200+
(6) Asian-Pacific American-owned	14	\$452	\$452	2.3	1.8	0.5	129.2
(7) Subcontinent Asian American-owned	3	\$4,818	\$4,818	24.8	0.1	24.8	200+
(8) Hispanic American-owned	15	\$805	\$805	4.1	0.7	3.5	200+
(9) Native American-owned	5	\$123	\$123	0.6	0.3	0.4	200+
(10) Unknown MBE	0	\$0					
(11) MBE/WBE-certified	51	\$6,942	\$6,942	35.8			
(12) Woman-owned (certified)	19	\$1,132	\$1,132	5.8			
(13) Minority-owned (certified)	32	\$5,810	\$5,810	29.9			
(14) African American-owned (certified)	4	\$20	\$20	0.1			
(15) Asian-Pacific American-owned (certified)	8	\$206	\$206	1.1			
(16) Subcontinent Asian American-owned (certified)	3	\$4,818	\$4,818	24.8			
(17) Hispanic American-owned (certified)	12	\$642	\$642	3.3			
(18) Native American-owned (certified)	5	\$123	\$123	0.6			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	22	\$731	\$731	3.8			
(22) Minority- or Women-owned ESB	11	\$385	\$385	2.0			
(23) Majority-owned ESB	11	\$346	\$346	1.8			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure M-7.
Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: On-call
Role: Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c/ column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	209	\$6,955	\$6,955				
(2) MBE/WBE	79	\$3,429	\$3,429	49.3	15.7	33.6	200+
(3) WBE	37	\$1,051	\$1,051	15.1	9.5	5.6	159.3
(4) MBE	42	\$2,379	\$2,379	34.2	6.2	28.0	200+
(5) African American-owned	7	\$273	\$274	3.9	0.7	3.3	200+
(6) Asian-Pacific American-owned	8	\$554	\$557	8.0	2.2	5.8	200+
(7) Subcontinent Asian American-owned	6	\$231	\$232	3.3	0.3	3.1	200+
(8) Hispanic American-owned	12	\$603	\$605	8.7	1.4	7.3	200+
(9) Native American-owned	8	\$707	\$710	10.2	1.6	8.6	200+
(10) Unknown MBE	1	\$10					
(11) MBE/WBE-certified	69	\$3,254	\$3,254	46.8			
(12) Woman-owned (certified)	29	\$896	\$896	12.9			
(13) Minority-owned (certified)	40	\$2,359	\$2,359	33.9			
(14) African American-owned (certified)	7	\$273	\$273	3.9			
(15) Asian-Pacific American-owned (certified)	8	\$554	\$554	8.0			
(16) Subcontinent Asian American-owned (certified)	6	\$231	\$231	3.3			
(17) Hispanic American-owned (certified)	12	\$603	\$603	8.7			
(18) Native American-owned (certified)	7	\$697	\$697	10.0			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	72	\$4,128	\$4,128	59.4			
(22) Minority- or Women-owned ESB	41	\$2,450	\$2,450	35.2			
(23) Majority-owned ESB	31	\$1,678	\$1,678	24.1			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure M-8.
Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: Standard
Role: Prime contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	662	\$64,941	\$64,941				
(2) MBE/WBE	197	\$16,128	\$16,128	24.8	14.8	10.0	167.3
(3) WBE	79	\$4,046	\$4,046	6.2	7.2	-0.9	87.1
(4) MBE	118	\$12,083	\$12,083	18.6	7.7	10.9	200+
(5) African American-owned	22	\$2,135	\$2,135	3.3	0.8	2.5	200+
(6) Asian-Pacific American-owned	33	\$1,585	\$1,585	2.4	4.9	-2.4	50.1
(7) Subcontinent Asian American-owned	8	\$4,346	\$4,346	6.7	0.1	6.6	200+
(8) Hispanic American-owned	41	\$2,823	\$2,823	4.3	1.2	3.2	200+
(9) Native American-owned	14	\$1,194	\$1,194	1.8	0.8	1.0	200+
(10) Unknown MBE	0	\$0					
(11) MBE/WBE-certified	155	\$12,818	\$12,818	19.7			
(12) Woman-owned (certified)	55	\$2,645	\$2,645	4.1			
(13) Minority-owned (certified)	100	\$10,173	\$10,173	15.7			
(14) African American-owned (certified)	18	\$1,110	\$1,110	1.7			
(15) Asian-Pacific American-owned (certified)	22	\$839	\$839	1.3			
(16) Subcontinent Asian American-owned (certified)	8	\$4,346	\$4,346	6.7			
(17) Hispanic American-owned (certified)	38	\$2,684	\$2,684	4.1			
(18) Native American-owned (certified)	14	\$1,194	\$1,194	1.8			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	170	\$9,835	\$9,835	15.1			
(22) Minority- or Women-owned ESB	91	\$4,458	\$4,458	6.9			
(23) Majority-owned ESB	79	\$5,378	\$5,378	8.3			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure M-9.
Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: Standard
Role: Prime contractors

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c/ column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	248	\$34,977	\$34,977				
(2) MBE/WBE	37	\$2,974	\$2,974	8.5	13.3	-4.8	64.1
(3) WBE	20	\$1,399	\$1,399	4.0	5.4	-1.4	74.0
(4) MBE	17	\$1,575	\$1,575	4.5	7.9	-3.4	57.3
(5) African American-owned	5	\$855	\$855	2.4	0.6	1.9	200+
(6) Asian-Pacific American-owned	3	\$76	\$76	0.2	6.2	-6.0	3.5
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	6	\$589	\$589	1.7	0.6	1.1	200+
(9) Native American-owned	3	\$55	\$55	0.2	0.5	-0.3	34.4
(10) Unknown MBE	0	\$0	\$0				
(11) MBE/WBE-certified	26	\$1,463	\$1,463	4.2			
(12) Woman-owned (certified)	12	\$815	\$815	2.3			
(13) Minority-owned (certified)	14	\$648	\$648	1.9			
(14) African American-owned (certified)	3	\$21	\$21	0.1			
(15) Asian-Pacific American-owned (certified)	3	\$76	\$76	0.2			
(16) Subcontinent Asian American-owned (certified)	0	\$0	\$0	0.0			
(17) Hispanic American-owned (certified)	5	\$496	\$496	1.4			
(18) Native American-owned (certified)	3	\$55	\$55	0.2			
(19) Unknown Minority-owned (certified)	0	\$0	\$0				
(20) Unknown MWBE (certified)	0	\$0	\$0				
(21) ESB-certified	31	\$1,874	\$1,874	5.4			
(22) Minority- or Women-owned ESB	14	\$427	\$427	1.2			
(23) Majority-owned ESB	17	\$1,447	\$1,447	4.1			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure M-10.
Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: Standard
Role: Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c/ column e, row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	414	\$29,964	\$29,964				
(2) MBE/WBE	160	\$13,154	\$13,154	43.9	16.7	27.2	200+
(3) WBE	59	\$2,646	\$2,646	8.8	9.2	-0.4	96.2
(4) MBE	101	\$10,508	\$10,508	35.1	7.5	27.6	200+
(5) African American-owned	17	\$1,281	\$1,281	4.3	1.0	3.2	200+
(6) Asian-Pacific American-owned	30	\$1,509	\$1,509	5.0	3.4	1.7	150.2
(7) Subcontinent Asian American-owned	8	\$4,346	\$4,346	14.5	0.1	14.4	200+
(8) Hispanic American-owned	35	\$2,233	\$2,233	7.5	1.8	5.6	200+
(9) Native American-owned	11	\$1,140	\$1,140	3.8	1.2	2.6	200+
(10) Unknown MBE	0	\$0	\$0				
(11) MBE/WBE-certified	129	\$11,355	\$11,355	37.9			
(12) Woman-owned (certified)	43	\$1,830	\$1,830	6.1			
(13) Minority-owned (certified)	86	\$9,525	\$9,525	31.8			
(14) African American-owned (certified)	15	\$1,089	\$1,089	3.6			
(15) Asian-Pacific American-owned (certified)	19	\$763	\$763	2.5			
(16) Subcontinent Asian American-owned (certified)	8	\$4,346	\$4,346	14.5			
(17) Hispanic American-owned (certified)	33	\$2,188	\$2,188	7.3			
(18) Native American-owned (certified)	11	\$1,140	\$1,140	3.8			
(19) Unknown Minority-owned (certified)	0	\$0	\$0				
(20) Unknown MWBE (certified)	0	\$0	\$0				
(21) ESB-certified	139	\$7,961	\$7,961	26.6			
(22) Minority- or Women-owned ESB	77	\$4,031	\$4,031	13.5			
(23) Majority-owned ESB	62	\$3,930	\$3,930	13.1			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure M-11.

Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: On-call and standard
Role: Prime contractors, Subcontractors and Suppliers

Contracts Under \$100k

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	428	\$9,432	\$9,432				
(2) MBE/WBE	108	\$2,387	\$2,387	25.3	18.3	7.0	138.5
(3) WBE	51	\$1,167	\$1,167	12.4	12.7	-0.3	97.3
(4) MBE	57	\$1,220	\$1,220	12.9	5.6	7.4	200+
(5) African American-owned	9	\$51	\$52	0.5	0.7	-0.2	75.8
(6) Asian-Pacific American-owned	22	\$590	\$595	6.3	3.0	3.3	200+
(7) Subcontinent Asian American-owned	1	\$9	\$9	0.1	0.1	0.0	79.1
(8) Hispanic American-owned	16	\$429	\$432	4.6	0.8	3.8	200+
(9) Native American-owned	8	\$131	\$133	1.4	0.9	0.5	150.6
(10) Unknown MBE	1	\$10					
(11) MBE/WBE-certified	86	\$1,888	\$1,888	20.0			
(12) Woman-owned (certified)	40	\$1,001	\$1,001	10.6			
(13) Minority-owned (certified)	46	\$887	\$887	9.4			
(14) African American-owned (certified)	9	\$51	\$51	0.5			
(15) Asian-Pacific American-owned (certified)	15	\$338	\$338	3.6			
(16) Subcontinent Asian American-owned (certified)	1	\$9	\$9	0.1			
(17) Hispanic American-owned (certified)	14	\$367	\$367	3.9			
(18) Native American-owned (certified)	7	\$121	\$121	1.3			
(19) Unknown Minority-owned (certified)	0	\$0	\$0				
(20) Unknown MWBE (certified)	0	\$0	\$0				
(21) ESB-certified	72	\$1,297	\$1,297	13.8			
(22) Minority- or Women-owned ESB	33	\$727	\$727	7.7			
(23) Majority-owned ESB	39	\$570	\$570	6.0			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure M-12.
Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: On-call and standard
Role: Prime contractors

Contracts Under \$100k

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c/ row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	338	\$8,597	\$8,597				
(2) MBE/WBE	78	\$2,149	\$2,149	25.0	18.1	6.9	138.1
(3) WBE	33	\$1,039	\$1,039	12.1	12.4	-0.4	97.1
(4) MBE	45	\$1,110	\$1,110	12.9	5.7	7.3	200+
(5) African American-owned	7	\$41	\$41	0.5	0.7	-0.3	64.6
(6) Asian-Pacific American-owned	17	\$529	\$529	6.1	3.1	3.1	198.4
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	14	\$419	\$419	4.9	0.8	4.1	200+
(9) Native American-owned	7	\$121	\$121	1.4	0.9	0.5	151.2
(10) Unknown MBE	0	\$0	\$0				
(11) MBE/WBE-certified	64	\$1,726	\$1,726	20.1			
(12) Woman-owned (certified)	27	\$924	\$924	10.7			
(13) Minority-owned (certified)	37	\$802	\$802	9.3			
(14) African American-owned (certified)	7	\$41	\$41	0.5			
(15) Asian-Pacific American-owned (certified)	11	\$282	\$282	3.3			
(16) Subcontinent Asian American-owned (certified)	0	\$0	\$0	0.0			
(17) Hispanic American-owned (certified)	12	\$357	\$357	4.2			
(18) Native American-owned (certified)	7	\$121	\$121	1.4			
(19) Unknown Minority-owned (certified)	0	\$0	\$0				
(20) Unknown MWBE (certified)	0	\$0	\$0				
(21) ESB-certified	47	\$1,093	\$1,093	12.7			
(22) Minority- or Women-owned ESB	23	\$636	\$636	7.4			
(23) Majority-owned ESB	24	\$457	\$457	5.3			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure M-13.
Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: On-call and standard
Role: Subcontractors and Suppliers

Contracts Under \$100k

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	90	\$835	\$835				
(2) MBE/WBE	30	\$238	\$238	28.5	20.0	8.5	142.4
(3) WBE	18	\$128	\$128	15.4	15.5	-0.2	98.9
(4) MBE	12	\$110	\$110	13.2	4.5	8.7	200+
(5) African American-owned	2	\$10	\$11	1.3	0.5	0.8	200+
(6) Asian-Pacific American-owned	5	\$61	\$67	8.1	1.9	6.2	200+
(7) Subcontinent Asian American-owned	1	\$9	\$10	1.2	0.2	0.9	200+
(8) Hispanic American-owned	2	\$10	\$11	1.3	1.0	0.4	137.3
(9) Native American-owned	1	\$10	\$11	1.3	0.9	0.4	142.8
(10) Unknown MBE	1	\$10					
(11) MBE/WBE-certified	22	\$163	\$163	19.5			
(12) Woman-owned (certified)	13	\$77	\$77	9.3			
(13) Minority-owned (certified)	9	\$85	\$85	10.2			
(14) African American-owned (certified)	2	\$10	\$10	1.2			
(15) Asian-Pacific American-owned (certified)	4	\$56	\$56	6.7			
(16) Subcontinent Asian American-owned (certified)	1	\$9	\$9	1.0			
(17) Hispanic American-owned (certified)	2	\$10	\$10	1.2			
(18) Native American-owned (certified)	0	\$0	\$0	0.0			
(19) Unknown Minority-owned (certified)	0	\$0	\$0				
(20) Unknown MWBE (certified)	0	\$0	\$0				
(21) ESB-certified	25	\$204	\$204	24.4			
(22) Minority- or Women-owned ESB	10	\$91	\$91	10.9			
(23) Majority-owned ESB	15	\$112	\$112	13.4			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure M-14.
Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: On-call and standard
Role: Prime contractors, Subcontractors and Suppliers

Contracts \$100k and over

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	663	\$81,871	\$81,871				
(2) MBE/WBE	232	\$29,555	\$29,555	36.1	14.1	22.0	200+
(3) WBE	85	\$5,062	\$5,062	6.2	6.7	-0.6	91.7
(4) MBE	147	\$24,493	\$24,493	29.9	7.4	22.5	200+
(5) African American-owned	27	\$7,410	\$7,410	9.1	1.3	7.7	200+
(6) Asian-Pacific American-owned	33	\$2,002	\$2,002	2.4	4.1	-1.7	59.1
(7) Subcontinent Asian American-owned	16	\$9,386	\$9,386	11.5	0.1	11.4	200+
(8) Hispanic American-owned	52	\$3,802	\$3,802	4.6	1.1	3.5	200+
(9) Native American-owned	19	\$1,894	\$1,894	2.3	0.7	1.6	200+
(10) Unknown MBE	0	\$0	\$0				
(11) MBE/WBE-certified	189	\$21,125	\$21,125	25.8			
(12) Woman-owned (certified)	63	\$3,671	\$3,671	4.5			
(13) Minority-owned (certified)	126	\$17,454	\$17,454	21.3			
(14) African American-owned (certified)	20	\$1,352	\$1,352	1.7			
(15) Asian-Pacific American-owned (certified)	23	\$1,261	\$1,261	1.5			
(16) Subcontinent Asian American-owned (certified)	16	\$9,386	\$9,386	11.5			
(17) Hispanic American-owned (certified)	48	\$3,561	\$3,561	4.3			
(18) Native American-owned (certified)	19	\$1,894	\$1,894	2.3			
(19) Unknown Minority-owned (certified)	0	\$0	\$0				
(20) Unknown MWBE (certified)	0	\$0	\$0				
(21) ESB-certified	192	\$13,397	\$13,397	16.4			
(22) Minority- or Women-owned ESB	110	\$6,565	\$6,565	8.0			
(23) Majority-owned ESB	82	\$6,832	\$6,832	8.3			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure M-15.
Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: On-call and standard
Role: Prime contractors

Contracts \$100k and over

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	130	\$45,787	\$45,787				
(2) MBE/WBE	23	\$13,210	\$13,210	28.8	12.3	16.5	200+
(3) WBE	7	\$1,493	\$1,493	3.3	4.9	-1.6	66.7
(4) MBE	16	\$11,716	\$11,716	25.6	7.4	18.2	200+
(5) African American-owned	5	\$5,866	\$5,866	12.8	1.6	11.2	200+
(6) Asian-Pacific American-owned	0	\$0	\$0	0.0	4.9	-4.9	0.0
(7) Subcontinent Asian American-owned	3	\$4,818	\$4,818	10.5	0.0	10.5	200+
(8) Hispanic American-owned	7	\$976	\$976	2.1	0.6	1.5	200+
(9) Native American-owned	1	\$56	\$56	0.1	0.3	-0.2	42.9
(10) Unknown MBE	0	\$0	\$0				
(11) MBE/WBE-certified	13	\$6,679	\$6,679	14.6			
(12) Woman-owned (certified)	4	\$1,023	\$1,023	2.2			
(13) Minority-owned (certified)	9	\$5,656	\$5,656	12.4			
(14) African American-owned (certified)	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned (certified)	0	\$0	\$0	0.0			
(16) Subcontinent Asian American-owned (certified)	3	\$4,818	\$4,818	10.5			
(17) Hispanic American-owned (certified)	5	\$781	\$781	1.7			
(18) Native American-owned (certified)	1	\$56	\$56	0.1			
(19) Unknown Minority-owned (certified)	0	\$0	\$0				
(20) Unknown MWBE (certified)	0	\$0	\$0				
(21) ESB-certified	6	\$1,512	\$1,512	3.3			
(22) Minority- or Women-owned ESB	2	\$176	\$176	0.4			
(23) Majority-owned ESB	4	\$1,336	\$1,336	2.9			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure M-16.
Type: Construction-related professional services
Time Period: July 1, 2004 - June 30, 2009
Contract type: On-call and standard
Role: Subcontractors and Suppliers

Contracts \$100k and over

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / row 1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	533	\$36,084	\$36,084				
(2) MBE/WBE	209	\$16,345	\$16,345	45.3	16.4	28.9	200+
(3) WBE	78	\$3,569	\$3,569	9.9	9.1	0.8	108.8
(4) MBE	131	\$12,776	\$12,776	35.4	7.3	28.1	200+
(5) African American-owned	22	\$1,544	\$1,544	4.3	1.0	3.3	200+
(6) Asian-Pacific American-owned	33	\$2,002	\$2,002	5.5	3.2	2.4	175.1
(7) Subcontinent Asian American-owned	13	\$4,568	\$4,568	12.7	0.1	12.5	200+
(8) Hispanic American-owned	45	\$2,826	\$2,826	7.8	1.8	6.1	200+
(9) Native American-owned	18	\$1,837	\$1,837	5.1	1.3	3.8	200+
(10) Unknown MBE	0	\$0					
(11) MBE/WBE-certified	176	\$14,446	\$14,446	40.0			
(12) Woman-owned (certified)	59	\$2,648	\$2,648	7.3			
(13) Minority-owned (certified)	117	\$11,798	\$11,798	32.7			
(14) African American-owned (certified)	20	\$1,352	\$1,352	3.7			
(15) Asian-Pacific American-owned (certified)	23	\$1,261	\$1,261	3.5			
(16) Subcontinent Asian American-owned (certified)	13	\$4,568	\$4,568	12.7			
(17) Hispanic American-owned (certified)	43	\$2,780	\$2,780	7.7			
(18) Native American-owned (certified)	18	\$1,837	\$1,837	5.1			
(19) Unknown Minority-owned (certified)	0	\$0					
(20) Unknown MWBE (certified)	0	\$0					
(21) ESB-certified	186	\$11,885	\$11,885	32.9			
(22) Minority- or Women-owned ESB	108	\$6,389	\$6,389	17.7			
(23) Majority-owned ESB	78	\$5,496	\$5,496	15.2			

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE and Unknown Minority-owned (certified) were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 10 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.