

City of Seattle Disparity Study 2025



CITY OF SEATTLE DISPARITY STUDY

2025

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About the Study Team

Colette Holt & Associates (“CHA”) is a national law and consulting firm specializing in issues related to Minority, Women and Disadvantaged Business Enterprise programs, business diversity initiatives, and affirmative action issues. The firm has conducted court-approved disparity studies and designed court-approved programs for over 30 years, including for numerous governments. CHA also provides training, monitoring, and investigative services across the country to agencies and businesses. CHA is led by Colette Holt, J.D., the founding principal of Colette Holt & Associates and a nationally recognized attorney and expert. Ms. Holt is also a frequent expert witness, and a media author, on these issues. In addition to Ms. Holt, the firm consists of Steven C. Pitts, Ph. D., who serves as the team’s economist and statistician; Ilene Grossman, B.S., Project Administrator; Glenn Sullivan, B.S., Director of Technology; Victoria Farrell, MBA, Director Qualitative Data Collection; and Joanne Lubart, J.D., Associate Counsel.

Yates Consulting Group, founded in 2008, specializes in diversity and inclusion support for prime contractors and government agencies. President Henry Yates has more than 30 years’ experience in senior state and local government positions. He has helped national and local firms with recruitment, compliance, and monitoring of D/WMBE, small and veteran business performance. The firm has worked with CHA to collect anecdotal data on other disparity studies.

Contacto is a community consulting firm that brings together people and organizations to foster equitable communities and belonging. The firm is highly experienced in comprehensive community engagement strategies, community assessments, project and program management, communication plans, strategy and organizational support to government agencies, community-based organizations, and the private sector.

Acknowledgments

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Table of Contents

I. Executive Summary	1
A. Summary of Legal Standards for Contracting Equity Programs	1
B. City of Seattle’s Contracting Equity Programs	3
1. History of the City of Seattle’s Contracting Inclusion Policy Measures	3
2. Contracting Equity Programs’ Administration	4
3. City of Seattle’s WMBE Program	5
a. Eligibility	5
b. WMBE Aspirational Goals	5
c. WMBE Inclusion Plans	5
4. Contract Performance Policies	6
a. WMBE Substitutions and Contract Modifications	6
b. Reporting and Contract Compliance	7
5. Small Business Initiatives	7
6. U.S. Department of Transportation’s Federal Transit Administration Disadvantaged Business Enterprise Program	7
7. Technical Assistance, Vendor Training and Outreach	8
8. Staff Training	10
9. Experiences with City of Seattle’s Contracting Equity Programs	10
a. Business Owner Interviews	10
b. Electronic Survey Responses	12
C. Utilization, Availability and Disparity Analyses of the City of Seattle’s Contracts	13
D. Analysis of Disparities in City of Seattle’s Market Area	15
E. Qualitative Evidence of Race and Gender Barriers in City of Seattle’s Market Area	16
1. Business Owner Interviews	17
2. Electronic Business Survey	18
F. Recommendations for the City of Seattle’s Contracting Equity Programs	19
1. Enhance Electronic Contract Data Collection and Program Management	20
2. Centralize WMBE Program Administration	20
3. Increase Communication and Outreach to W/M/DBEs and Small Firms	21
4. Focus on Increasing Prime Contract Awards to W/M/DBEs and Small Firms	21
5. Consider Partnering with Other Agencies and Local Organizations to Provide a Bonding and Financing Program and Enhance Technical Assistance	23
6. Narrowly Tailor the WMBE Program	23
a. Revise Certification Eligibility for the WMBE Program	23
b. Revise WMBE Inclusion Plan Requirements	24
7. Use the Study To Set a Narrowly Tailored, Overall Annual Aspirational WMBE Goal	25
8. Use the Study to Set Narrowly Tailored WMBE Contract Goals	25
9. Use the Study to Implement the Disadvantaged Business Enterprise Program for Federal Transit Administration Funded Contracts	26

- a. Use the Study to Set the Triennial DBE Goal for FTA Funded Contracts. 26
- b. Continue to Employ Race-neutral Approaches to Ensure Equal Opportunities for FTA and
FAA Funded Contracts 27
- 10. Develop Performance Measures for Program Success 27
- 11. Conduct Regular Program Reviews. 28

II. Legal Standards for Contracting Equity Programs 29

- A. Summary of Constitutional Equal Protection Standards. 29
- B. Elements of Strict Scrutiny. 32
- C. Strict Scrutiny as Applied to United States Department of Transportation Disadvantaged
Business Enterprise Program. 37
 - 1. Elements of the DBE Program for USDOT Assisted Contracts 37
 - 2. Narrowly Tailoring the City of Seattle’s Disadvantaged Business Enterprise Program for Federal
Transit Administration Funded Contracts 40
- D. Establishing a “Strong Basis in Evidence” for a Contracting Equity Program for the City of
Seattle’s Locally Funded Contracts 46
 - 1. Define the City of Seattle’s Market Area 47
 - 2. Determine the City of Seattle’s Utilization of W/MBEs. 48
 - 3. Determine the Availability of W/MBEs in the City of Seattle’s Market Area. 48
 - 4. Examine Disparities between the City of Seattle’s Utilization of W/MBEs and
W/MBE Availability 54
 - 5. Analyze Economy-Wide Evidence of Race- and Gender-Based Disparities in the City of Seattle’s
Market Area 56
 - 6. Evaluate Anecdotal Evidence of Race- and Gender-Based Barriers to Equal Opportunities
in the City of Seattle’s Market Area 58
- E. Narrowly Tailoring a Contracting Equity Program for the City of Seattle 59
 - 1. Implement Race-Neutral Remedies 60
 - 2. Set Targeted W/MBE Goals 61
 - 3. Ensure the Flexibility of Goals and Requirements 62
 - 4. Review Program Eligibility Over-Inclusiveness and Under-Inclusiveness 63
 - 5. Evaluate the Burden on Third Parties. 64
 - 6. Examine the Duration and Review of the Program 66

III. City of Seattle’s Equity in Contracting Programs. 67

- A. History of the City of Seattle’s Contracting Inclusion Policy Measures 67
 - 1. City of Seattle’s WMBE Program. 67
 - 2. City of Seattle’s Race and Social Justice Initiative 68
- B. Contracting Equity Program Administration 68
- C. Women and Minority Owned Business Program. 70
 - 1. Eligibility 70
 - 2. Citywide and Department WMBE Aspirational Goals 70
 - 3. WMBE Inclusion Plans 71
 - a. Construction. 71

- b. Consultant Contracts 73
 - c. Purchasing Goods and Services 74
 - 4. Pre-award Procedures 74
 - 5. Contract Performance Policies 74
 - a. WMBE Substitutions and Contract Modifications 74
 - b. Reporting and Contract Compliance 75
- D. Small Business Initiatives 76
- E. The City of Seattle’s Disadvantaged Business Enterprise Program for FTA Contracts 77
- F. Technical Assistance, Vendor Training and Outreach 78
- G. Staff Training 81
- H. Experiences with the City of Seattle’s Contracting Equity Programs 82
 - 1. Business Owner and Stakeholder Interviews 82
 - a. Contracting Equity Programs 82
 - i. WMBEs’ Experiences with the Programs 82
 - ii. Meeting Inclusion Goals 87
 - b. Obtaining and Working on City Contracts 93
 - i. Payments 93
 - ii. Contract size 95
 - 2. Electronic Survey Responses 97
 - a. Impact of the City of Seattle’s W/MBE and DBE Programs 97
 - b. Outreach and Access to Information 102
 - c. Access to City of Seattle Contracting Opportunities 103
 - d. Monitoring Program Compliance 108
 - e. Project Labor and Community Workforce Agreements 109
 - f. Business Supportive Services 110
 - g. Joint Venture Arrangements and Mentor-Protégé Programs 112
- I. Conclusion 114

IV. Contract Data Analysis for the City of Seattle 115

- A. Contract Data Overview 115
- B. Summary of Findings 115
- C. Locally Funded Contracts: Contract Data Overview 117
 - 1. Locally Funded Contracts: The Geographic and Product Market for the City of Seattle Contracts 118
 - 2. Final Contract Data File for the City of Seattle’s Locally Funded Contracts 119
 - 3. Geographic Market for Locally Funded Contracts 124
 - 4. Locally Funded Contracts: Utilization of Firms in the City of Seattle’s Geographic and Product Market 124
 - 5. Locally Funded Contracts: The Availability of WMBEs in its Geographic and Product Market 138
 - 6. The Availability Data and Results 140
 - 7. Analysis of the Concentration of Contract Dollars among Firms 149
 - 8. Locally Funded Contracts: Disparity Analysis 155
- D. Federal Transit Administration Funded Contracts: Contract Data Overview 157

- 1. FTA Funded Contracts: The Geographic and Product Market 157
 - a. Final Contract Data File for FTA Funded Contracts. 157
 - b. Geographic Market for the City of Seattle Contracts. 158
- 2. FTA Funded Contracts: Utilization of Firms in the Geographic and Product Market 159
- 3. FTA Funded Contracts: The Availability of DBEs in the Geographic and Product Market 161
- 4. Analysis of the Concentration of Contract Dollars among Firms 163
- 5. FTA Funded Contracts: Disparity Analysis 163
- E. Conclusion 164

V. Analysis of Disparities in the City of Seattle’s Marketplace 165

- A. Introduction 165
- B. Disparate Treatment in the City’s Marketplace: Evidence from the Census Bureau’s 2018 - 2022 American Community Survey. 169
 - 1. All Industries Combined in the Seattle Metropolitan Area 171
 - 2. The Construction Industry in the Seattle Metropolitan Area 174
 - 3. The Construction-Related Services Industry in the Seattle Metropolitan Area 176
 - 4. The Goods Industry in the Seattle Metropolitan Area 178
 - 5. The Services Industry in the Seattle Metropolitan Area 180
 - 6. The Information Technology Industry in the Seattle Metropolitan Area 182
- C. Disparate Treatment in the City’s Marketplace: Evidence from the Census Bureau’s 2017 Annual Business Survey 184
 - 1. All Industries 186
 - 2. Construction 189
 - 3. Professional, Scientific, and Technical Services Industry 190
 - 4. Goods Industry 190
 - 5. Other Services Industry 191
 - 6. Conclusion. 192
- D. Evidence of Disparities in Access to Business Capital 192
 - 1. Federal Reserve Board Small Business Credit Surveys 192
 - a. 2023 Small Business Credit Survey. 192
 - b. 2022 Report on Firms Owned by People of Color 193
 - c. 2022 Small Business Credit Survey 194
 - d. 2021 Report on Firms Owned by People of Color 195
 - i. Overview. 195
 - ii. Performance and Challenges 196
 - iii. Emergency Funding 196
 - iv. Debt and Financing 197
 - v. Findings for Non-employer Firms 198
 - e. 2021 Small Business Credit Survey. 198
 - f. 2018 Small Business Credit Survey 199
 - i. Employer firms 199
 - ii. Non-employer firms 200
 - g. 2016 Small Business Credit Survey. 201
 - i. The 2016 Small Business Credit Survey: Report on Minority-Owned Firms. 201

ii. The 2016 Small Business Credit Survey: Report on Woman-Owned Firms 204

2. Small Business Administration Loans to African American Businesses (2020) 206

E. Conclusion 207

VI. Qualitative Evidence of Race and Gender Barriers in City of Seattle’s Market Area 209

A. Business Owner Interviews 211

1. Experiences with discriminatory attitudes and negative assumptions about competency. 211

2. Unequal access to networks and information 213

3. Barriers to obtaining and performing work 215

4. Impact of the COVID-19 pandemic 217

B. Anecdotal Survey of City of Seattle Firms 218

1. Respondents’ Profiles. 218

2. City Contract and Bidding Profile 225

3. Experiences in City of Seattle’s Market Area and Obtaining City Work. 228

a. Discriminatory Barriers and Perceptions on the basis of Race or Gender 228

b. Access to Formal/Informal Business and Professional Networks 230

c. Access to Financial Supports. 231

d. Obtaining Work on an Equal Basis 232

e. Prompt Payment 233

f. Participation in Supportive Services or Capacity Development Programs 235

g. W/M/DBEs’ Capacity to Perform on City Contracts 235

h. Bonding Capacity. 238

4. Anecdotal Marketplace Disequilibria Examination 241

5. Written Survey Responses from Minority and Woman Respondents. 245

a. Systemic Racial Barriers. 245

b. Gender Bias and Barriers 249

c. Access to Contract Opportunities. 255

d. Financial Barriers to Opportunities 257

e. Barriers to Equal Contract Terms. 260

f. Bias Against Smaller Firms 261

g. Impact of the COVID-19 Pandemic. 262

C. Conclusion 267

VII. Recommendations for the City of Seattle’s Contracting Equity Programs 269

A. Enhance Electronic Contract Data Collection and Program Management 269

B. Centralize WMBE Program Administration 270

C. Increase Communication and Outreach to W/M/DBEs and Small Firms. 270

D. Focus on Increasing Prime Contract Awards to W/M/DBEs and Small Firms 271

E. Consider Partnering with Other Agencies and Local Organizations to Provide a Bonding and Financing Program and Enhance Technical Assistance. 272

F. Narrowly Tailor the WMBE Program	273
1. Revise Certification Eligibility for the WMBE Program	273
2. Revise WMBE Inclusion Plan Requirements	274
3. Use the Study To Set a Narrowly Tailored, Overall Annual Aspirational WMBE Goal	275
4. Use the Study to Set Narrowly Tailored WMBE Contract Goals	275
G. Use the Study to Implement the Disadvantaged Business Enterprise Program for Federal Transit Administration Funded Contracts	277
1. Use the Study to Set the Triennial DBE Goal for FTA Funded Contracts	277
2. Continue to Employ Race-neutral Approaches to Ensure Equal Opportunities for FTA and FAA Funded Contracts	278
H. Develop Performance Measures for Program Success	278
I. Conduct Regular Program Reviews	278
Appendix A: Further Explanation of the Multiple Regression Analysis	281
Appendix B: Further Explanation of the Probit Regression Analysis	283
Appendix C: Significance Levels	285
Appendix D: Locally Funded Contracts: Utilization, Availability, and Disparity Ratio Analysis for Construction, Services and Goods Industries	287
Appendix E: Unweighted and Weighted Availability	311
Appendix F: Qualitative Evidence from Washington Disparity Studies	315
Appendix G: Glossary of Terms Used in the Report	321

List of Tables

- Table 1-1: Summary of Findings: 14
 The Geographic Market Share of Final Contract Data File
 (by funding source)
- Table 1-2: Summary of Findings: Locally Funded Contracts 14
 (1,705 Contracts)
- Table 1-3: Summary of Findings: FTA-Funded Contracts 15
 (43 Contracts)
- Table 4-1: Summary of Findings: 115
 Distribution of the FCDF Across Funding Sources
- Table 4-2: Summary of Findings: 116
 The Geographic Market Share of Final Contract Data File
 (by funding source)
- Table 4-3: Summary of Findings: Locally Funded Contracts 116
 (1,705 Contracts)
- Table 4-4: Summary of Findings: FTA Funded Contracts 116
 (43 Contracts)
- Table 4-5: Final Contract Data File 117
 Number of Contracts
 (Locally Funded)
- Table 4-6: Final Contract Data File 118
 Net Dollar Value of Contracts
 (Locally Funded)
- Table 4-7: Industry Percentage Distribution of City of Seattle Contracts by Dollars 119
 (Locally Funded)
- Table 4-8: NAICS Code Distribution of Contract Dollars in City of Seattle’s Constrained Product
 Market 125
 (Locally Funded)
- Table 4-9: Distribution of City of Seattle Contract Dollars by Race and Gender 130
 (Locally Funded)
 (total dollars)
- Table 4-10: Percentage Distribution of City of Seattle Contract Dollars by Race and Gender ... 134
 (Locally Funded)
 (share of total dollars)
- Table 4-11: Unweighted WMBE Availability for City of Seattle Contracts 141
 (Locally Funded)
- Table 4-12: Distribution of City of Seattle’s Spending by NAICS Code 145
 (Locally Funded)
 (the Weights)

Table 4-13: Aggregated Weighted WMBE Availability	149
(Locally Funded)	
Table 4-14: Comparison of the Share of City of Seattle Spending Captured by the Top Three NAICS Codes for Each Demographic Group	150
(Locally Funded)	
Table 4-15: The Top Three City of Seattle Spending NAICS Codes for Each Demographic Group	151
(Locally Funded Contracts)	
Table 4-16: Three NAICS Codes where Black Firms Received the Most Spending.	153
(Locally Funded)	
Table 4-17: Three NAICS Codes where Hispanic Firms Received the Most Spending.	153
(Locally Funded)	
Table 4-18: Three NAICS Codes where Asian Firms Received the Most Spending	154
(Locally Funded)	
Table 4-19: Three NAICS Codes where Native American Firms Received the Most Spending . . .	154
(Locally Funded)	
Table 4-20: Three NAICS Codes where White Woman Firms Received the Most Spending. . . .	155
(Locally Funded)	
Table 4-21: Disparity Ratios by Demographic Group	156
(Locally Funded)	
Table 4-22: Final Contract Data File	157
Number of Contracts (FTA Funded)	
Table 4-23: Final Contract Data File	157
Net Dollar Value of Contracts (FTA Funded)	
Table 4-24: Industry Percentage Distribution of City of Seattle Contracts by Dollars.	158
(FTA Funded)	
Table 4-25: NAICS Code Distribution of Contract Dollars in City of Seattle’s Constrained Product Market	159
(FTA Funded)	
Table 4-26: Distribution of City of Seattle Contract Dollars by Race and Gender	160
(total dollars) (FTA Funded)	
Table 4-27: Percentage Distribution of City of Seattle Contract Dollars by Race and Gender . . .	161
(share of total dollars) (FTA Funded)	
Table 4-28: Unweighted WMBE Availability for City of Seattle Contracts	162
(FTA Funded)	
Table 4-29: Distribution of City of Seattle’s Spending by NAICS Code (the Weights)	162
(FTA Funded)	
Table 4-30: Aggregated Weighted Availability for City of Seattle Contracts	163
(FTA Funded)	
Table 4-31: Disparity Ratios by Demographic Group	164
(FTA Funded Contracts)	

Table 5-1: Business Formation Rates 172
 All Industries, 2018 - 2022

Table 5-2: Business Formation Probability Differentials for 173
 Selected Groups Relative to White Men, All Industries, 2018 - 2022

Table 5-3: Wage Differentials for Selected Groups Relative to White Men 173
 All Industries, 2018 - 2022

Table 5-4: Business Earnings Differentials for Selected Groups Relative to White Men. 173
 All Industries, 2018 - 2022

Table 5-5: Business Formation Rates 174
 Construction, 2018 - 2022

Table 5-6: Business Formation Probability Differentials for 175
 Selected Groups Relative to White Men, Construction, 2018 - 2022

Table 5-7: Wage Differentials for Selected Groups Relative to White Men 175
 Construction, 2018 - 2022

Table 5-8: Business Earnings Differentials for Selected Groups Relative to White Men. 176
 Construction, 2018 - 2022

Table 5-9: Business Formation Rates 176
 Construction-Related Services, 2018 - 2022

Table 5-10: Business Formation Probability Differentials for 177
 Selected Groups Relative to White Men, Construction-Related Services, 2018 - 2022

Table 5-11: Wage Differentials for Selected Groups Relative to White Men. 177
 Construction-Related Services, 2018 - 2022

Table 5-12: Business Earnings Differentials for Selected Groups Relative to White Men. 178
 Construction-Related Services, 2018 - 2022

Table 5-13: Business Formation Rates, Goods, 2018 - 2022 178

Table 5-14: Business Formation Probability Differentials for 179
 Selected Groups Relative to White Men, Goods, 2018 - 2022

Table 5-15: Wage Differentials for Selected Groups Relative to White Men. 179
 Goods, 2018 - 2022

Table 5-16: Business Earnings Differentials for Selected Groups Relative to White Men. 179
 Goods, 2018 - 2022

Table 5-17: Business Formation Rates 180
 Services, 2018 - 2022

Table 5-18: Business Formation Probability Differentials for 181
 Selected Groups Relative to White Men, Services, 2018 - 2022

Table 5-19: Wage Differentials for Selected Groups Relative to White Men. 181
 Services, 2018 - 2022

Table 5-20: Business Earnings Differentials for Selected Groups Relative to White Men. 181
 Services, 2018 - 2022

Table 5-21: Business Formation Rates 182
 Information Technology, 2018 - 2022

Table 5-22: Business Formation Probability Differentials for Selected Groups 183
 Relative to White Men, Information Technology, 2018 - 2022

Table 5-23: Wage Differentials for Selected Groups Relative to White Men. 183
 Information Technology, 2018 - 2022

Table 5-24: Business Earnings Differentials for Selected Groups Relative to White Men.	184
Information Technology, 2018 - 2022	
Table 5-25: Two-Digit NAICS Code Definition of Sector	186
Table 5-26: Demographic Distribution of Sales and Payroll Data – Aggregated Groups.	188
All Industries, 2017	
Table 5-27: Disparity Ratios – Aggregated Groups	188
All Industries, 2017	
Table 5-28: Disparity Ratios – Aggregated Groups	189
Construction, 2017	
Table 5-29: Disparity Ratios – Aggregated Groups	190
Professional, Scientific, and Technical Services, 2017	
Table 5-30: Disparity Ratios – Aggregated Groups	190
Goods, 2017	
Table 5-31: Disparity Ratios – Aggregated Groups	191
Services, 2017	
Table 6-32: Race and Gender Distribution	218
Table D-1: Distribution of City of Seattle Contract Dollars by Race and Gender: Construction . .	288
(total dollars)	
(Locally Funded)	
Table D-2: Table Percentage Distribution of City of Seattle Contract Dollars	289
by Race and Gender: Construction	
(share of total dollars)	
(Locally Funded)	
Table D-3: Unweighted WMBE Availability for City of Seattle Contracts: Construction	290
(Locally Funded)	
Table D-4: Distribution of City of Seattle’s Spending by NAICS Code (the Weights):	291
Construction, (Locally Funded)	
Table D-5: Aggregated Weighted Availability for City of Seattle Contracts: Construction	292
(Locally Funded)	
Table D-6: Disparity Ratios by Demographic Group: Construction	293
(Locally Funded)	
Table D-7: Distribution of City of Seattle Contract Dollars by Race and Gender: Services	294
(total dollars)	
(Locally Funded)	
Table D-8: Percentage Distribution of City of Seattle Contract Dollars by Race and Gender: . . .	296
Services, (share of total dollars)	
(Locally Funded)	
Table D-9: Unweighted WMBE Availability for City of Seattle Contracts: Services	299
(Locally Funded)	
Table D-10: Distribution of City of Seattle’s Spending by NAICS Code (the Weights): Services . .	301
(Locally Funded)	
Table D-11: Aggregated Weighted Availability for City of Seattle Contracts: Services	303
(Locally Funded)	
Table D-12: Disparity Ratios by Demographic Group: Services	303
(Locally Funded)	

Table D-13: Distribution of City of Seattle Contract Dollars by Race and Gender: Goods 304
(total dollars)
(Locally Funded)

Table D-14: Percentage Distribution of City of Seattle Contract Dollars by Race and Gender: . . 305
Goods, (share of total dollars)
(Locally Funded)

Table D-15: Unweighted WMBE Availability for City of Seattle Contracts: Goods 306
(Locally Funded)

Table D-16: Distribution of City of Seattle’s Spending by NAICS Code (the Weights): Goods . . . 307
(Locally Funded)

Table D-17: Aggregated Weighted Availability for City of Seattle Contracts: Goods. 309
(Locally Funded)

Table D-18: Disparity Ratios by Demographic Group: Goods 309
(Locally Funded Contracts)

I. EXECUTIVE SUMMARY

Colette Holt & Associates (“CHA”) was retained by City of Seattle (“City”) to perform a disparity study of its City funded contracts and contracts funded by the Federal Transit Administration (“FTA”). The methodology for this study embodies the constitutional principles of *City of Richmond v. Croson*, Ninth Circuit Court of Appeals’ case law, regulatory requirements for federal aid contracts and best practices for designing race- and gender-conscious and small business contracting programs. The CHA approach has been specifically upheld by the federal courts. It is also the approach developed by Ms. Holt for the National Academy of Sciences that is now the recommended standard for conducting legally defensible disparity studies.

We determined the City’s utilization of Minority and Woman Business Enterprises (“WMBEs”) and Disadvantaged Business Enterprises (“DBEs”) (collectively, “W/M/DBEs”) ¹ on City construction and construction-related services and goods and services contracts for fiscal years 2016 through 2020; the availability of these firms as a percentage of all firms in the City’s geographic and industry market areas by funding source; and any disparities between the City’s utilization of minority- and woman-owned firms and their availability in the City’s geographic and product market. We further analyzed disparities in the Seattle metropolitan area and Washington economies, where contracting equity programs are relatively rare, to evaluate whether barriers continue to impede opportunities for minorities and women when remedial intervention is not imposed. We also gathered qualitative data about the experiences of W/M/DBEs in obtaining City contracts and associated subcontracts. We further evaluated City of Seattle’s WMBE Program and DBE Program for FTA funded contracts for conformance with constitutional standards, regulatory requirements and national best practices for government contracting equity programs.

A. Summary of Legal Standards for Contracting Equity Programs

To be effective, enforceable, and legally defensible, a race-based program for public sector contracts must meet the federal judicial test of constitutional “strict scrutiny”. Strict scrutiny is the highest level of judicial review. The City of Seattle

1. Throughout this report, the terms “MWBE” and “DBE” include firms that are certified by government agencies and minority- and woman-owned firms that are not certified. The inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts and that supports the remedial nature of these programs. See *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 723 (7th Cir. 2007) (“Northern Contracting III”) (The “remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net.”).

must meet this test to ensure that any race- and gender-conscious program is in federal legal compliance.

Strict scrutiny analysis has two prongs:

1. The government must establish its “compelling interest” in remediating race discrimination by current “strong evidence” of the persistence of discrimination. Such evidence may consist of the entity’s “passive participation” in a system of racial exclusion.
2. Any remedies adopted must be “narrowly tailored” to that discrimination; the program must be directed at the types and depth of discrimination identified.²

The compelling governmental interest prong has been met through two types of proof:

1. Statistical evidence of the underutilization of minority or woman firms by the agency and/or throughout the agency’s geographic and industry market area compared to their availability in the market area.
2. Anecdotal evidence of race- or gender-based barriers to the full and fair participation of minority and woman firms in the market area and seeking contracts with the agency. Anecdotal data can consist of interviews, surveys, public hearings, academic literature, judicial decisions, legislative reports, and other information.

The narrow tailoring prong has been met by satisfying five factors to ensure that the remedy “fits” the evidence:

1. The necessity of relief;
2. The efficacy of race-neutral remedies at overcoming identified discrimination;
3. The flexibility and duration of the relief, including the availability of waiver provisions;
4. The relationship of numerical goals to the relevant market; and
5. The impact of the relief on the rights of third parties.

In *Adarand v. Peña*,³ the United States Supreme Court extended the analysis of strict scrutiny to race-based federal enactments such as the U.S. Department of Transportation (“USDOT”) DBE program for federally assisted transportation contracts.⁴ Just as in the state and local government context, the national legislature

2. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).
3. *Adarand v. Peña*, 515 U.S. 200 (“*Adarand III*”) (1995).
4. 49 C.F.R. Part 26.

must have a compelling governmental interest for the use of race, and the remedies adopted must be narrowly tailored to that evidence.⁵

Most federal courts have subjected gender preferences to “intermediate scrutiny”.⁶ Gender-based classifications must be supported by an “exceedingly persuasive justification” and be “substantially related to the objective”.⁷ The quantum of evidence necessary to satisfy intermediate scrutiny is less than that required to satisfy strict scrutiny. The Ninth Circuit requires that gender-based classifications be supported by “sufficient probative evidence” and “exceedingly persuasive justification” and be “substantially related to the objective”.⁸ However, some appellate courts have applied strict scrutiny to the gender-based presumption of social disadvantage in reviewing the constitutionality of the DBE program⁹ or held that the results would be the same under strict scrutiny.¹⁰

To comply with *Adarand*, Congress reviewed and revised the DBE program statute and regulations¹¹ for federal-aid contracts in the transportation industry. The program governs the City of Seattle’s receipt of federal funds from the FTA. To date, every court that has considered the issue has found the regulations to be constitutional on their face. These cases provide important guidance to the City about how to narrowly tailor its DBE program.

B. City of Seattle’s Contracting Equity Programs

1. History of the City of Seattle’s Contracting Inclusion Policy Measures

The City of Seattle has adopted citywide policies to maximize contracting equity and inclusion efforts directed to WMBEs. A cornerstone of this effort is the City’s WMBE Program. In 2005, the City enacted the Equality in Contracting Ordinance that requires all departments to pursue affirmative efforts to ensure WMBE participation in City contracting and subcontracting. To follow the Code’s directive, the City has issued a series of Executive Orders to estab-

-
5. See, for example, *Croson*, 488 U.S. at 492-493; *Adarand III*, 515 U.S. 200, 227; see generally *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013).
 6. See, for example, *Builders Ass’n of Greater Chicago v. City of Cook, Chicago*, 256 F.3d 642 (7th Cir. 2001).
 7. Cf. *United States v. Virginia*, 518 U.S. 515, 532 n.6 (1996).
 8. *Western States Paving, Inc. v. Washington Department of Transportation*, 407 F. 3d 983, 998 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006).
 9. *Northern Contracting III*, 473 F.3d at 715, 720.
 10. *Western States Paving Co., Inc. v. Washington State Department of Transportation*, 2013 W.L.1607239 at *13 fn.6 (9th Cir. 2005).
 11. 49 C.F.R. Part 26.

lish the WMBE Program policy and reaffirm the City’s commitment to the Program and its objectives.

The most recent Executive Order issued in 2023, Order 2023-07, Equity and Opportunity in City Contracting, expanded contracting equity for Black, Indigenous, and people of color owned firms; extended additional resources and support for WMBEs; reinforced accountability and transparency of City Departments; strengthened City policy and practices to promote contracting equity; expanded contracting equity initiatives to include Lesbian, Gay, Bisexual, Transgender and Queer (“LGBTQ”)-, veteran-, and immigrant-owned businesses; and maximized small business participation through federally funded programs and City funded small business development and technical support programs.

The 2004 Race and Social Justice Initiative (“RSJI”) supports these efforts. Managed by the Seattle Office for Civil Rights (“SOCR”), the Initiative seeks to end institutional racism within City government and work toward a vision where racial disparities will be eliminated and racial equity achieved. In 2023, the City of Seattle passed an ordinance codifying RSJI. A main goal of RSJI is to require open and fair procurements, competitive and fair pricing, environmentally-sustainable solutions, best labor practices, access to equal benefits and utilization of W/MBEs, when applicable, in City bid decisions and contracts.

2. Contracting Equity Programs’ Administration

The City’s WMBE and DBE programs are administered citywide by the Purchasing and Contracting Division (“PC”), within the Finance and Administrative Services Department (“FAS”). Construction contracts, large purchases and long-term competitively bid contracts for goods and services are centrally managed through PC. Management of consultant solicitations and contracts is decentralized. Each City department awards and executes its own consultant contracts, following the guidelines issued by PC. Outreach for the WMBE Program is managed by a separate function within FAS that reports directly to the Chief Administrative Officer.¹²

To assist with WMBE Program implementation, major City departments have a designated WMBE advisor responsible for reviewing the scope or the specifications; identifying WMBE opportunities; and helping with WMBE outreach and compilation of a bidders list.

The WMBE Advisory Committee, established through Executive Order 2019-06 and continued under Executive Order 2023-07, provides guidance to the City

12. Departments such as Seattle Public Utilities (“SPU”) and the Seattle Department of Transportation (“SDOT”) conduct outreach and events targeted to WMBEs independently from FAS.

of Seattle regarding practices in support of equity, inclusion and participation of WMBEs in City contracts.

3. City of Seattle’s WMBE Program

a. Eligibility

To be eligible to participate in the City’s WMBE program, businesses may self-identify as an WMBE by registering through the City’s Online Business Directory (“OBD”). A firm indicates its business expertise and status as a WMBE business (if applicable) during registration. A "Women or Minority Business" means a business that is at least 51% owned by a woman and/or a minority (including, but not limited to, African Americans, Native Americans, Asians, and Hispanics) group members.

The City also accepts WMBE certifications obtained through the Washington State Office of Minority and Women’s Business Enterprises (“OMWBE”).

b. WMBE Aspirational Goals

Each City department and office must develop an annual aspirational goal for purchasing and consultants. Aspirational goals are not set for construction projects. Aspirational goals are submitted to the Mayor’s Office and FAS. WMBE goals are rolled up to develop Citywide aspirational WMBE goals. To reach these goals, City departments are required to have plans and procedures in place that promote WMBE utilization.

c. WMBE Inclusion Plans

The City does not set contract goals on construction, consulting and purchasing contracts but requests voluntary commitments from bidders and proposers. WMBE utilization is encouraged through bid and proposal scoring incentive points applied to the bidder’s/proposer’s required Inclusion Plan. The Inclusion Plan is due at bid or proposal time, unless indicated otherwise in the solicitation. Failure to submit an Inclusion Plan when required can render the bid or proposal non-responsive and result in rejection from consideration. The Inclusion Plan becomes a material part of the final contract.

Inclusion Plans are required for Construction procurements valued at \$300,000 or greater. Up to 16 points are awarded for utilizing and assisting WMBEs in three ways: 1. Committing to a voluntary, non-binding, aspirational WMBE percentage goal based the total value of the contract (up to six points). 2. Offering business support strategies for all small firms of early release of retainage and advance mobilization pay (up to four points). 3.

Committing to a WMBE utilization guarantee as a percentage of the total contract value, dollar value or a scope of work (up to six points). The formula for awarding points for the aspirational goal commitment and WMBE utilization guarantee is based on average WMBE utilization for the previous three years on City projects for the same type of work, plus additional points if average past performance is exceeded. Bidders not submitting an inclusion plan or earning less than 10 points are considered non-responsive and the Bid will be rejected.

After initial evaluation for responsiveness and responsibility, the contractor must submit a performance bond, insurance and a Social Equity Plan, which includes a section for the WMBE Inclusion Plan Supplement, Apprenticeship Utilization Plan and Priority Hire Plan.

Inclusion plans are required for consultant procurements valued at \$395,000 or greater. Proposers are required to state voluntary MBE and WBE goals and the total WMBE goal they are intending to achieve on the entire contract (including a zero goal). GFE to develop and achieve the proposed voluntary goals are mandatory. Participation of WMBEs must be broken down by core work based on the scope of the contract and value-added functions that are peripheral to the intended contract scope. Signatures of all WMBEs participating on the contract are required, if the Proposer decided to list any. Proposers must also provide WMBE utilization percentages for three past projects and outline inclusion strategies for WMBE teaming arrangements, team assignments and capacity development. The Consultant Inclusion Plan is scored based on evidence of GFE to develop aspirational goals, integration of WMBEs into the team and core work, integration of WMBE firms in value-added work opportunities, evidence of effective mentoring, training or capacity-building, strategies to assure WMBE utilization and evidence of strong past performance.

WMBE utilization is encouraged for non-blanket contract purchases less than \$67,000. For goods and services purchases estimated above \$67,000, Inclusion Plans may be required when subcontracting opportunities are identified. Inclusion Plan requirements are similar to those for consultant contracts.

4. Contract Performance Policies

a. WMBE Substitutions and Contract Modifications

The managing department must approve all substitutions or reduction of a guarantee of WMBE participation and/or reduction to aspirational WMBE goals during the contract period. On all construction and some purchasing contracts, FAS is also responsible for approving the change. Where the firm

has established the basis for the substitution or reduction to the City's satisfaction, it must use GFE to recruit another WMBE. WMBE substitutions or reductions are generally allowed under specific circumstances where the WMBE cannot perform on the contract, change orders or other circumstances if approved by FAS' Director.

b. Reporting and Contract Compliance

WMBE utilization is evaluated throughout the life of the contract. The City uses the B2Gnow® data collection system to track utilization and payments to all subcontractors, including WMBEs. FAS PC regularly monitor payment reports to ensure compliance with the Inclusion Plan. Contract performance is also evaluated against the Inclusion Plan at closeout. Any deficiencies found are documented. Deficiencies can result in debarment or a negative rating of the contractor that can affect award of future projects.

5. Small Business Initiatives

The City employs various initiatives to encourage participation of small businesses on City contracts, including WMBEs. City departments can use the Consultant Roster to select consultants for projects estimated to cost \$395,000 or less. To be included on the Roster, firms must meet the U.S. Small Business Administration, the State of Washington or King County's small business size standards and qualifications. Additionally, the City has implemented policies to assist small firms and WMBEs. These include breaking projects into discrete, biddable items; notifying WMBE business associations of bid or RFP opportunities, identifying potential subcontracting specialties for bids and notifying firms in the City's databases; inviting WMBEs that are not already listed to add themselves to the OBD list during the solicitation process; and creating and publishing a list of WMBEs and making it accessible to non-certified firms.

6. U.S. Department of Transportation's Federal Transit Administration Disadvantaged Business Enterprise Program

As a recipient of U.S. Department of Transportation ("USDOT") funds through the FTA, the City is required as a condition of receipt to implement a DBE program in compliance with 49 C.F.R. Part 26. The Director of Departmental Relations in the FAS serves as the Disadvantaged Business Enterprise Liaison Officer ("DBELO") and is responsible for implementing all aspects of the DBE Program. The DBELO has direct, independent access to the Mayor's Office.

To participate in the DBE program, firms must be DBE certified by OMWBE. DBEs must meet the requirements of 49 C.F.R. Part 26, including the business size and personal net worth limits.

The City's proposed overall FTA FFY 2023-2025 DBE goal is 20.4%, with 8.4% achieved through race-conscious and 12.0% race-neutral means. The City must meet the maximum feasible portion of its DBE goal through race-neutral means in accordance with USDOT regulations.

The City applies contract monitoring and enforcement policies and procedures to FTA funded contracts similar to those it applies to its non-federally assisted contracts. Federal Small Business Enterprise Utilization Certification Forms from each proposed DBE must be submitted no later than three hours after bid opening. DBE compliance is a condition of responsiveness. The City follows the counting provisions of the DBE program regulations.

The City is required to establish a race-neutral Small Business Program pursuant to 49 C.F.R. §26.39. These initiatives include reducing barriers created by bidding and contract requirements, reducing contract size, encouraging prime contractors to subcontract work they would otherwise perform themselves, performing outreach and encouraging business networking, and offering technical assistance and business development support services.

7. Technical Assistance, Vendor Training and Outreach

The City provides extensive outreach, training and technical support services programs to encourage W/M/DBE participation in City contracting. The City contracts with several local organizations to provide technical assistance and business support. Programs include:

- On-demand technical assistance and business development training either in-person or remotely through the Business Impact NW ("BINW") and Tabor 100.
- Individual, no-cost advising on all phases of small business development, no-cost or low-cost webinars, eLearning, and workshops on a variety of business topics through the Washington Small Business Development Center.
- The City holds office hours at Tabor 100 most days of the week. Here, WMBEs can park for free and speak with City personal from a variety of City departments to receive assistance.
- Technical, strategic, marketing and planning services, and business consulting to established minority-owned firms through Seattle City Light's Mentor Protégé Technical Assistance Program.
- Technical assistance and business development specifically designed for WMBEs through a partnership between Seattle City Light and the University of Washington Foster School of Business' Ascend Program.

- Small business operational support through the City’s Economic Development Department’s Accounting and Business Consulting program.
- Technical assistance and business development services to Black-owned and other underserved construction and power utility businesses through the Liberty Project, a collaboration between the City, Tabor 100 (a WMBE association), the University of Washington and Seattle University.

FAS facilitates Citywide Meet and Greets. Departments, on their own or with the help of FAS. WMBEs are invited to targeted networking events, where they can learn about projects within their scope of work and meet the decisionmakers on the upcoming project.

City departments are available for questions and assistance to WMBEs. The email addresses and contacts for each department are readily available through the City’s website.

PC conducts a monthly online event, First Fridays, Doing Business with the City of Seattle, to allow vendors to meet PC staff. Three sessions are held for each of the procurement types. First Fridays sessions are also offered in Spanish.

The City’s website¹³ provides access to information and many resources for small and W/M/DBE firms. This includes online tools and links that allow easy registration and access to the Business Directory and the Consultant Roster, current bid opportunities and the subcontractor pay portals. A separate link is provided for information about the FTA/DBE Program.¹⁴

Purchasing and Contracting publishes an online newsletter, WMBE Connections, which highlights information important to contracting with the City. The City also provides a database of upcoming solicitations and procurement opportunities, WMBE program updates and WMBE utilization reports.

The City partners with the National Association of Minority Contractors, the Northwest Minority Builders Alliance, the Association of Women and Minority Businesses, Tabor 100 and other organizations to disseminate information about upcoming contracting opportunities and solicitation requirements at their monthly meetings. City staff attend to answer questions, offer guidance, provide WMBE program updates and present WMBE utilization reports.

Various City departments host trade shows and events to foster networking with primes and other City vendors, highlight upcoming projects and give W/M/DBEs an opportunity to meet City staff. These include the Annual Reverse Vendor Trade show hosted by Purchasing and Contracting, Ready to Prime

13. <https://www.seattle.gov/purchasing-and-contracting/social-equity/wmbe>

14. <https://www.seattle.gov/purchasing-and-contracting/social-equity/fta/dbe-program>

hosted by the Seattle Department of Transportation (“SDOT”), the Seattle Public Utilities Consultant Business Opportunities Forum hosted by the SPU and the Seattle IT Vendor Forum and the North Puget Sound Small Business Summit.

The City participates in a multitude of contracting conferences and events hosted by other Seattle agencies and industry groups to provide information, outreach and networking opportunities to W/M/DBE firms. Some offered in the past two years include the Washington Regional Contracting Forum, the Alliance Northwest Event, Small Business Contractor’s Day, and the Seattle IT Vendor Forum.

8. Staff Training

PC staff regularly attend the American Contract Compliance Association’s annual National Training Institute, where they receive extensive training on national best practices for M/W/DBE programs. Staff routinely participate in FTA and the Washington Department of Transportation’s Federal Highway Administration trainings that provide program DBE program updates. City staff attend the annual B2Gnow® User Training and LCP Tracker User Conferences.

In addition, mandatory WMBE online training for FAS staff is planned for the fall of 2024 and is expected to be completed by year-end. The online training will review the City’s commitment and expectations regarding the City’s commitment to their WMBE program and provide tools and resources to utilize WMBEs. Starting in 2025, the online training will be extended to all City employees.

9. Experiences with City of Seattle’s Contracting Equity Programs

a. Business Owner Interviews

To explore the impacts of City of Seattle’s programs, we interviewed 91 individuals about their experiences and solicited their suggestions for changes. We also collected written comments.

Impact of the programs: Most WMBE participants in the interviews supported the City’s efforts and found them important to the success of their businesses. A minority-owned firm reported that once it was no longer certified, business dropped dramatically.

Some firms found the program less useful. WMBEs in more specialized sub-industries found the programs less beneficial. The lack of trade-by-trade contract goals reduced the utility of the program for some specialized

firms. On call or Job Order Contracts sometimes did not lead to work for all listed WMBEs.

For some consultants, obtaining information about upcoming contracts in sufficient time to put together a diverse team was a challenge.

There were some reports of inadequate or inconsistent monitoring or application of program or contractual commitments.

Support: While the City provides an array of technical assistance and supportive services for certified firms, several participants mentioned the need for more training on understanding contracts, especially master contracts. Assistance with setting up joint ventures was another request. Some prime contractors suggested a formal mentor-protégé program.

Meeting Inclusion Goals: Most large prime vendors reported they were able to provide sufficient participation by WMBEs to be awarded the project.

Several participants found it onerous to comply with the WMBE program. One interviewee believed the City sets unreasonable contract goals. Some smaller prime bidders found the program to be burdensome. Firms in more specialized lines of work often found it difficult to utilize WMBEs. Projects procured using the design-build contracting method presented special challenges. Job order contracts were another procurement method that was sometimes problematic. Meeting the City's inclusion objectives on on-call contracts was also sometimes difficult.

Several prime vendors reported the City was reasonable in permitting substitutions of non-performing certified firms during contract performance. Some participants expressed concerns about possibly being subject to sanctions for not meeting a contract goal.

Subcontractor requirements: The City's requirement that prime contractors pay their WMBE subcontractors within 30 days was burdensome to some firms, especially smaller firms. Some WMBEs that can serve as prime vendors stated that the City's subcontracting requirement hindered their opportunities and growth.

Contract Size: The size of City projects was often an impediment to small firms obtaining work.

Payments: Reports of how timely the City pays firms were mixed. Some firms lauded the city's payment process. Others stated they had payment issues. Change orders during contract performance were reported by several participants to present payment delays. One material supplier stated

that the City should pay for materials in hand once the contractor has bought them.

b. Electronic Survey Responses

Written comments were collected from 163 survey respondents about their experiences with the City programs.

Impact of the programs: Overall, M/W/DBE respondents supported the City's contracting equity programs. Several W/M/DBEs complimented the City and requested continuation of program requirements. Many stated the programs have been essential to obtaining contracts and subcontracts with the City. Several M/W/DBEs said the programs helped to develop industry relationships and learn about contracting opportunities. The programs also made it easier to access information. Others reported they had not benefited from the programs.

Certification: Some minority and woman-owned firms thought the process required for OMWBE certification, particularly renewals, was too cumbersome. One W/M/DBE expressed support for the City's acceptance of self-certification. The limit on the owner's personal net worth requirement for OMWBE certification was a barrier to some firms.

Outreach and Access to Information: In addition to the City's expansive current efforts, many W/M/DBEs requested more outreach and networking opportunities with primes and City staff. Networking and access to information were seen as critical for obtaining contracts. One Native American owned firm found it difficult to attend networking events because of their distance from the venue. Some W/M/DBEs requested more support services.

Access to Contracting Opportunities: Some M/W/DBE respondents suggested the City "unbundle" contracts to support their opportunities to perform as prime contractors. Several M/W/DBEs suggested the City's RFP process could be improved to reduce barriers to small businesses. Insurance requirements were a barrier for a few M/W/DBEs.

Several respondents reported the same firms were repeatedly awarded City prime contracts. Some W/M/DBEs stated that larger prime vendors repeatedly use the same firms to meet equity requirements.

Some W/M/DBEs would like more technical assistance with bid preparation, RFP responses and contract negotiations.

Monitoring Program Compliance: M/W/DBEs requested more monitoring to ensure prime contractors comply with requirements of the program once the contract is awarded.

Payments: Many W/M/DBEs reported the delay in payment from primes caused cash flow issues for them. A few W/MDBEs had encountered delayed payments from the City.

Project Labor and Community Workforce Agreements: The City's Apprentice Program and Project Labor and Community Workforce Agreements ("CWAs") were barriers to some small firms obtaining work for City of Seattle.

Experiences with Business Supportive Services: Businesses that had participated in supportive services generally found them helpful. Mixed or negative experiences with supportive services were reported by some. In addition to those currently available, several W/M/DBEs requested additional services to support their business growth. W/M/DBEs viewed assistance with obtaining financing, bonding and insurance as necessary for success of their business.

Experiences with Joint venture arrangements and Mentor-protégé programs: Mentor-protégé programs and joint ventures were possible approaches to help M/W/DBEs. Those that participated in these arrangements generally reported good experiences. Several requested more assistance with initiating mentoring or teaming arrangements.

C. Utilization, Availability and Disparity Analyses of the City of Seattle's Contracts

We analyzed data from the City of Seattle's locally funded and U.S. Department of Transportation's Federal Transit Administration ("FTA") funded contracts for fiscal years 2016 through 2020. We received contract records from the City that contained 1,748 contracts, worth \$1,082,039,355. To conduct the analysis, we constructed all the fields necessary where they were missing in City of Seattle's contract records (e.g., industry type; zip codes; six-digit North American Industry Classification System ("NAICS") codes of prime contractors and subcontractors; payments, race; gender; etc.). These results were used to create the overall Final Contract Data File ("FCDF") for each funding source.

The City's geographic market area for locally funded contracts was found to consist of the three counties that make up the Seattle metropolitan area: King County, Pierce County and Snohomish. For FTA-funded contracts, the geographic market was determined to be King County. Table 1-1 presents data on how much the geographic market contains of each funding sources' FCDF.

**Table 1-1: Summary of Findings:
The Geographic Market Share of Final Contract Data File
(by funding source)**

Funding Source	Geographic Market Share of FCDF
Locally funded	71.7%
FTA	89.6%

Source: CHA analysis of City of Seattle data

CHA determined the share of contract dollars received by different demographic groups (utilization); each group’s availability, weighted the each NAICS code’s share of overall City spending (weighted availability); and the disparity between the utilization and weighted availability (disparity ratio). CHA conducted this analysis separately for locally funded¹⁵ and FTA funded contracts. Tables 1-2 and 1-3 present these data.

**Table 1-2: Summary of Findings: Locally Funded Contracts
(1,705 Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE
Utilization	8.3%	1.9%	7.8%	2.5%	8.6%	29.2%	70.8%
Weighted Availability	1.5%	1.0%	2.1%	1.1%	5.0%	10.6%	89.4%
Disparity Ratio	573.1%***	191.2%***	369.2%***	226.2%***	173.4%***	274.2%***	79.3%‡***

Source: CHA analysis of City of Seattle data

‡ Indicates substantive significance

*** Statistically significant at the 0.001 level

15. The City asked us to examine the locally funded contracts after disaggregating the contracts into three distinct groups: Construction; Services; and Goods. These results are provided in Appendix D.

**Table 1-3: Summary of Findings: FTA-Funded Contracts
(43 Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE
Utilization	0.2%	2.8%	2.1%	0.9%	6.9%	12.9%	87.1%
Weighted Availability	1.2%	0.7%	2.7%	0.6%	4.9%	10.1%	89.9%
Disparity Ratio	19.2%‡	388.8%	77.5%‡	167.6%	139.9%	128.2%	96.9%

Source: CHA analysis of City of Seattle data

‡ Indicates substantive significance

The federal courts have held that disparity results must be analyzed to determine whether the results are “significant”. There are two distinct methods to measure a result’s significance. First, a “large” or “substantively significant” disparity is commonly defined by courts as utilization that is equal to or less than 80% of the availability measure. A substantively significant disparity supports the inference that the result may be caused by the disparate impacts of discrimination.¹⁶ Second, statistically significant disparity means that an outcome is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from random chance alone.¹⁷ A more in-depth discussion of statistical significance is provided in Chapter IV and Appendix C.

D. Analysis of Disparities in City of Seattle’s Market Area

Evidence of the experiences of WMBE firms outside of contracting affirmative action programs is relevant and probative of the likely results of the City continuing to use only race- and gender-neutral measures. To examine the outcomes throughout the City’s market area, we explored two Census Bureau datasets and the government and academic literature relevant to how discrimination in the City’s industry market and throughout the wider economy affects the ability of

16. See U.S. Equal Employment Opportunity Commission regulation, 29 C.F.R. §1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).

17. A chi-square test – examining if the utilization rate was different from the weighted availability – was used to determine the statistical significance of the disparity ratio.

minorities and women to fairly and fully engage in the City's prime contract and subcontract opportunities.

We analyzed the following data and literature:

- The Census Bureau's American Community Survey from 2018-2022 for the Seattle Metropolitan Area, the City's geographic market. This rich data set establishes with greater certainty any causal links between race, gender and economic outcomes. We employed a multiple regression statistical technique to examine the rates at which minorities and women form firms. In general, we found that even after considering potential mitigating factors, business formation rates by Blacks, Hispanics and White women are lower compared to White males. The data indicate that non-Whites and White women receive lower wages and Blacks and White women receive lower business earnings after controlling for possible explanatory factors. These analyses support the conclusion that barriers to business success do affect non-Whites and White women entrepreneurs.
- State of Washington Industry Data from the Census Bureau's 2018 Annual Business Survey, which contains 2017 data, the most recent data available. This dataset indicated large disparities between M/WBE firms and non-M/WBE firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), and the payroll of employer firms.
- Surveys and literature on barriers to access to commercial credit and the development of human capital. These sources further establish that minorities and women continue to face constraints on their entrepreneurial success based on race. These constraints negatively impact the ability of firms to form, to grow, and to succeed. These results support the conclusions drawn from the anecdotal interviews and analysis of the City of Seattle's contract data that M/WBEs face obstacles to achieving success on contracts outside of business diversity programs.

All three types of evidence have been found by the courts to be relevant and probative of whether a government will be a passive participant in overall marketplace discrimination without some type of affirmative intervention. This evidence supports the conclusion that the City should consider the use of race- and gender-conscious contract goals to ensure a level playing field for all firms.

E. Qualitative Evidence of Race and Gender Barriers in City of Seattle's Market Area

In addition to quantitative data, anecdotal evidence of firms' marketplace experiences is relevant to evaluating whether the effects of current or past discrimina-

tion continue to impede opportunities for M/W/DBEs such that narrowly tailored race-conscious contract goals are needed to ensure equal opportunities to compete for City of Seattle prime contracts. To explore this type of anecdotal evidence, we received input from 91 participants in small group interviews. We also received 163 net responses to an electronic anecdotal survey and written comments during the study period. While the general topics were similar using both data gathering tools, the free-flowing nature of the interviews and the specific concerns of participants also directed the discussions.

1. Business Owner Interviews

Many minority and woman owners reported that while progress has been made in integrating their firms into public and private sector contracting opportunities through programs like City of Seattle's, barriers on the basis of race and/or gender remain.

- W/MBEs, especially those owned by woman, suffered from negative stereotypes and demeaning attitudes and behaviors.
- Some firms reported that being an MBE can make it more difficult to hire good staff because there can be a stigma to being associated with a minority firm.
- Preexisting networks and information channels were reported to often exclude W/MBEs.
- Regular occasions to interact with prime contractors and City staff were repeatedly mentioned as a way to increase opportunities. Some consultants suggested there needs to be a vehicle for smaller firms to introduce themselves to the City's project managers and key firm staff before solicitations are issued.
- Working with local W/MBE contracting groups was helpful to some owners.
- Another suggested approach was to require interested bidders to provide their information as a condition of being able to submit a bid or proposal. The system used by the Port of Seattle was lauded as a model.
- Some small firms and W/MBEs found it difficult to receive fair treatment.
- Many WBEs felt that prime contractors only use them to meet inclusion requirements.
- A minority-owned firm reported that once it was no longer certified, business dropped dramatically.

- A few interviewees reported that they had more opportunities in the private sector than on public projects.
- The City's use of Community Workforce Agreements and Project Labor Agreements was a major issue for many W/MBEs.
- One common proposal was to exempt W/MBEs from these requirements or to set a threshold for their application.
- The impact of the COVID-19 pandemic on W/MBEs was mixed. Some participants reported significant negative impacts. These ranged from the loss of employees to the loss of networking opportunities.

2. Electronic Business Survey

Results from the electronic survey were similar to those of the interviews. Among minority- and woman-owned firms, 42.3% reported that they still experience barriers to equal contracting opportunities; 36.5% said their competency was questioned because of their race or gender; and 24.8% indicated that they had experienced job-related sexual or racial harassment or stereotyping.

Responses to the survey's open-ended questions expressed these experiences in further detail. The following is a summary of the most common submissions.

- Minority firms reported experiencing discriminatory barriers that limit opportunities to fairly compete for contracts.
- Race discrimination was reported to often be subtle. Several minority firms reported experiencing demeaning remarks and harassment. Many minority firms reported experiencing stereotyping and negative assumptions about their competency and capabilities.
- Many women reported sexist attitudes and negative biases about their competency, skill and professionalism that limits access to business opportunities. Sexual harassment and sexist remarks reportedly remain a challenge for many women. Many women reported sexist behaviors and stereotypical attitudes about their role and authority.
- Minority and woman owners often felt that prime bidders often use them only as window dressing or to check a box.
- W/M/DBEs reported not having access to information and networks that are available to larger, non-minority or woman-owned firms.
- Many W/M/DBEs experienced barriers in trying to obtain financing. Lack of access to capital and high rates when loans are obtained impedes

growth and the ability to compete. Small and new firms faced particularly large challenges.

- Reasons for credit decisions were not always apparent and some participants believed they were based on minority or gender status. Some W/M/DBEs found alternatives to large banks or found that restrictions eased over time.
- The inability and cost to obtain bonding and insurance were barriers for many W/M/DBEs.
- Some minority and woman respondents reported being charged higher pricing for materials based on their race, ethnicity and gender.
- Many reported that they were expected to charge less than their white male counterparts because of their status as a certified or minority or woman-owned firm.
- Some W/M/DBEs reported barriers based on their size.
- During the Covid-19 pandemic, many W/M/DBEs reported a contraction in their business. Firms suffered from multiple disruptions that included drastically reduced contracting opportunities and revenue, widespread workforce and material shortages, and higher material and labor costs. The lack of in-person meetings made it challenging to do business. Several W/M/DBEs reported that it took time to adjust to new technology and processes to conduct business remotely. Many W/M/DBEs experienced labor shortages and the loss of key employees. For some firms, staff and worker shortages persist. Some W/MDBEs were affected early on in the pandemic but found workarounds to limit the impact. A few W/M/DBEs reported that the pandemic did not negatively affect their business operations. Several indicated their businesses benefited from the pandemic.

F. Recommendations for the City of Seattle’s Contracting Equity Programs

Based on the results of this Study, case law and national best practices for contracting equity programs, we make the following recommendations. We acknowledge that many of our suggestions will require additional staff and funds.

1. Enhance Electronic Contract Data Collection and Program Management

The City uses the B2Gnow® diversity management system on all construction contracts, consultant contracts with an Inclusion Plan and on selected Purchasing contracts. Many types of procurement do not require Plans and are not captured in B2GNow®. We suggest that the system be configured to capture spending for all formally procured contracts issued by all departments. The data points should include contract type; the contractor tier (prime or subcontractor); race; gender; and six-digit North American Industry Classification System (“NAICS”) codes. This will permit the City to fully evaluate all its relevant spend and identify gaps in equal opportunities to compete. It will also facilitate any future research, as it was quite onerous and time consuming to reconstruct contract records for this Report.

Further, the current B2Gnow® system is fragmented and information is siloed. All departments should be mandated to report into the system, with connectivity between departments.

Some City staff members requested additional training on using the system for program management. While data might be entered, some were unsure how to evaluate the information to assist with program implementation, including generating useful reports.

2. Centralize WMBE Program Administration

The City has a somewhat decentralized structure for administration of its business equity programs. The Purchasing and Contracting Division (“PC”) is responsible for creating program guidelines. For consulting and purchasing contracts, each department, with the assistance of PC and oversight from the Mayor’s Office, establishes its own WMBE annual plan; sets voluntary WMBE goals for consulting and purchasing contracts; executes its own consultant contracts; and monitors its own projects and contracts. The Finance and Administrative Services (“FAS”) Department meets with other departments regularly to discuss their goals and other program topics.

This structure has led to some confusion and differing approaches to implementation, as well as fragmented and often incomplete data collection and monitoring. It also created challenges in performing the contract data analysis for this Report because data were spread across multiple departments and collected and entered into multiple formats. Centralizing all program operations in PC will ensure consistent application of program elements, reduce duplication and confusion and support complete and accurate reporting.

3. Increase Communication and Outreach to W/M/DBEs and Small Firms

A common complaint from W/M/DBEs was the difficulty in accessing timely information about City opportunities. An annual contracting forecast¹⁸ of larger contracts will permit vendors to plan their work and form teams to facilitate opportunities for W/M/DBEs and small firms.¹⁹ It is common that teams are formed months in advance of major solicitations, and given that small firms usually do not employ large marketing staffs, they need time to contact possible partners and cement relationships.

Further, as is the case with many governments, the study revealed that W/M/DBEs are receiving few opportunities in several subindustry codes. We suggest that special outreach be conducted to firms in those sectors. Activities could include targeted emails about future contracts and how to become listed on the consultant rosters; meet the buyer sessions and matchmaking events focusing on those industries; and identification of firms that are not currently certified, but might be eligible for inclusion, to encourage applications for certification by the State of Washington's Office of Minority and Women's; Business Enterprises ("OMWBE").

Many W/M/DBEs seemed unaware of the numerous City outreach, technical assistance and supportive services offerings. This suggests that a targeted marketing campaign would be useful. A campaign might be conducted in conjunction with OMWBE during the certification process. Regular alerts through the registration system would also be helpful to educate owners about the many programs available.

4. Focus on Increasing Prime Contract Awards to W/M/DBEs and Small Firms

Many small firm owners would like to perform as prime vendors on government contracts. While the WMBE program has been successful in reducing barriers, more could be done. Enhancements could include:

- Developing a protocol to unbundle projects into less complex scopes and lower dollar values. The Small Works program can be expanded to create smaller projects. Not only will this permit smaller firms to perform, but it will also reduce the barriers of surety bonding and financing projects.

18. A list of upcoming construction projects is regularly posted on the City's webpage. <https://www.seattle.gov/documents/Departments/FAS/PurchasingAndContracting/Contracting/PW-projects-pdf.pdf>

19. FAS recently spearheaded several targeted "meet and greets" where relevant City departments provide forecasts of their upcoming opportunities and access to department staff responsible for projects.

- Reviewing experience requirements with the goal of reducing them to the lowest level necessary to ensure that the bidder or proposer has adequate experience, perhaps by recognizing similar though not identical types of work, including work performed for other governments and private sector clients.
- Adopting “quick pay” schedules (*e.g.*, more frequently than every 30 days) and permitting mobilization payments to all subcontractors for construction contracts on a race- and gender-neutral basis, not just WMBEs, DBEs and Small Business Concerns. The City should also consider paying for offsite materials in hand at the time when the contractor has to buy them, rather than making the contractor absorb that cash outlay before installation.

Many professional services firms expressed frustration at the difficulties in obtaining contracts. A common request was to revise the system for setting rates for design contracts. Firm owners and representatives, both from W/M/DBEs and larger consulting firms, mentioned the complexity, burdensomeness and unfairness of the current approach, which requires firms to justify their overhead, salaries and other costs. We suggest that the City review and possibly revise these standards. A task force of industry leaders and associations, including the American Council of Engineering Companies and minority and woman business organizations focused on these industries, could be appointed to make specific recommendations for improvements.

The City should consider providing additional points in best value or negotiated contracts for a prime proposer using a firm that is new to City work. We heard from many firm owners and some City staff that more needs to be done to diversify the subcontractor pool and support new relationships between large consultants and certified firms. This is one approach that will incentivize proposers to seek out new partners on City opportunities.

Another suggestion is to consider a fixed markup percentage for subcontractors (perhaps 5%) to encourage large firms to use certified and small firms as much as possible. Several large consulting firms stated that the City’s prohibition on marking up a subconsultant’s billing rates to account for the increased costs of managing another firm was a disincentive to using WMBE and DBE subconsultants to the maximum possible extent, including on contracts with no goals.

5. Consider Partnering with Other Agencies and Local Organizations to Provide a Bonding and Financing Program and Enhance Technical Assistance

We recommend that the City implement a bonding and working capital program for construction contractors that includes a surety and a lender that agree to bond and finance graduates of the training program. A successful program goes beyond information and education by providing a surety and a lender that agree to bond and finance graduates of the training program. There are some excellent programs that provide this type of support to W/M/DBEs and other small contractors to increase their capacities.²⁰

Other needed support includes marketing, legal, and accounting services; assistance with regulatory compliance; and support for the other aspects of managing a business needed to work successfully on City contracts. Engineering firms could benefit from assistance with setting overhead rates and submitting winning proposals. Perhaps the City can partner with WSDOT, Sound Transit and the Port of Seattle to increase the availability of these services and the pool of firms that can participate.

6. Narrowly Tailor the WMBE Program

The current approach has been very successful in achieving parity for minority and woman firms on locally funded, non-FTA funded contracts and associated subcontracts. We suggest the following improvements to more narrowly tailor the program to meet the requirements of strict constitutional scrutiny.

a. Revise Certification Eligibility for the WMBE Program

The City currently permits a firm to self-identify as minority- or woman-owned. There is no investigation of whether the firm is in fact owned managed and controlled by one of more minority persons or women. In marked contrast to the DBE program, there is also no limit on the personal net worth of the owner(s) or the gross receipts of the business. All that is required is the mere attestation that the firm is minority- or woman-owned.

This lack of criteria limiting the program's benefits to small firms owned by socially and economically disadvantaged owners may well be found by the federal courts to run afoul of strict constitutional scrutiny. While obviously much less burdensome than the rigorous standards and processes required

20. Examples of successful programs include those at LAX, <https://imwis.com/recent-news-second-most-recent-story>; Los Angeles Metro, https://media.metro.net/about_us/bonding_program/images/cdbp_factsheet.pdf; and the Illinois Tollway, <https://www.illinoistollway.com/technicalassistance>.

for DBE certification, the provision of the program’s remedial benefits solely on the basis of race or gender may not be sufficiently narrowly tailored. As discussed in Chapter II, one of the hallmarks of the DBE program is that “wealthy minority owners and wealthy minority firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage.”²¹

We therefore recommend that the City require that to be eligible to be counted towards its overall, WMBE goal or contract goals, a firm must be certified as either an MBE, WBE or DBE by OMWBE. This will ensure that the program’s eligibility criteria are narrowly tailored.

b. Revise WMBE Inclusion Plan Requirements

We suggest eliminating the requirement that a certified WMBE bidding or proposing as a prime vendor must submit an Inclusion Plan. A WMBE prime bidder whose self-performance meets or exceeds the contract goal should be not required to further subcontract to another WMBE. The contract goal is the boundary of what an agency can require using a race- and gender-conscious tool. There is no basis for requiring more than goal attainment. Further, if the objective is to support and grow minority and woman businesses, requiring additional subcontracting, with its attendant costs and possible loss of profits, is counter to the objectives of the program. WMBEs should not be marked down for not having programs to benefit themselves.

Next, the Inclusion Plan scoring cannot operate as a minimum level or quota of WMBE participation. The flexibility requirement of narrow tailoring means that a firm that makes good faith efforts (“GFE”) to meet a contract goal must be evaluated the same way as one that meets or exceeds the goal. The current Plan scoring system translates into a minimum level of WMBE participation necessary to receive enough points to continue in the evaluation process. For consulting contracts, the more aggressive the Inclusion Plan, the more points will be awarded to the proposal. We urge the City to add the component that firms not setting a voluntary goal receive the same points as ones who set them, if they display sufficient evidence of GFE. As with the DBE program, a WMBE utilization commitment in the bid or proposal should become a binding element of the contract, thereby providing certainty to all parties, in contrast to the non-binding, voluntary goal proposed by the prime vendor.

21. *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d. 964, 973 (8th Cir. 2003), *cert. denied*, 541 U.S. 1041 (2004).

We further suggest that the City not award extra evaluation points for firms that exceeded the contract goal on an earlier contract. This likewise violates the narrow tailoring requirement that the program must be flexible and treat firms that made GFEs the same as those that meet or exceed the goal. Race-neutral measures must be used to the maximum feasible extent, and providing benefits for exceeding the remedial measure of the contract goal may be considered by the federal courts to be overreach. However, past performance can be examined in determining whether a firm has made GFE on a current contract when it did not meet the contract goal in the solicitation, as evidence of its commitment to inclusion in general.

Finally, we suggest that the City consider implementing the Utilization Plan module from B2Gnow[®]. This will permit easier application of the new approach and support timely and accurate monitoring of compliance with equity commitments.

7. Use the Study To Set a Narrowly Tailored, Overall Annual Aspirational WMBE Goal

The City's WMBE program has been very successful in opening opportunities for minority and woman firms. However, when we examined whether firms were concentrated within an industry, or between industries, on the basis of race or gender, a picture emerged of unequal outcomes for WMBEs compared to non-WMBEs. In addition, as documented in Chapter V, when examining outcomes in the wider economy, it is clear that minorities and women do not yet enjoy full and fair access to opportunities to compete in the City's market area. Our interviews with individual business owners and stakeholders and the results of our other studies for Washington governments further buttress the conclusion that race and sex discrimination remain persistent barriers to equal construction and construction-related contracting opportunities. Many minority and female owners reported that without affirmative intervention to increase opportunities through contract goals, they will continue to be denied full and fair chances to compete. We therefore conclude that the City has a basis under federal strict constitutional scrutiny standards to implement narrowly tailored race- and gender-based measures.

The weighted, aggregated WMBE availability detailed in Chapter IV can be used to set the overall, annual aspirational goal.

8. Use the Study to Set Narrowly Tailored WMBE Contract Goals

Given the strong results of the City's equity program, it is critical that it narrowly tailor any use of race- or gender-conscious measures going forward. As described above, the City currently does not set contract goals on construc-

tion, consulting and purchasing contracts but requests voluntary commitments from bidders and proposers.

We suggest the current approach be revised to use the study's detailed, unweighted availability estimates as the starting point for contract specific goals. As discussed in Chapter II, an agency's constitutional responsibility is to ensure that goals are narrowly tailored to the specifics of the project. Using the study's data will provide a consistent, clear and replicable approach that addresses current market conditions. As described above, while the existing process is flexible, in that a bidder makes up its own goal, it also requires a minimum commitment to using WMBEs. We believe the widely accepted approach that uses study availability data is more defensible. It would also reduce the complexity of the program and harmonize it with the implementation of the DBE program.

Written procedures spelling out the steps should be drafted and widely disseminated. A list of the six-digit NAICS codes used to set the goal could be listed in the bid documents to provide guidance on how to meet the target for that solicitation.

There is a contract goal setting module available in the B2Gnow® system that is designed to use our study data. Implementing the module will facilitate this process, ensure consistency of application and produce up-to-date reports. Adoption of a narrowly tailored contract goal setting methodology will likely involve the need for some training for City project managers and other staff with contracting responsibilities.

9. Use the Study to Implement the Disadvantaged Business Enterprise Program for Federal Transit Administration Funded Contracts

a. Use the Study to Set the Triennial DBE Goal for FTA Funded Contracts

49 C.F.R. Part 26 requires a recipient to engage in a two-step process to set a triennial goal for DBE participation. One approved method is to use data from a disparity study. We therefore recommend that the City use the DBE aggregated weighted availability findings in Chapter IV to determine the Step One base figure for the relative availability of DBEs required by §26.45(c).²² These results are the estimates of total DBE availability that reflect the importance of each subindustry to the City's overall FTA funded contracting activity.

22. Table 4-9, Aggregated Weighted Availability.

Under §26.45(d), the City must perform a Step Two analysis.²³ It must consider whether to adjust the Step One figure to reflect the effects of the DBE program and the level of DBE availability that would be expected in the absence of discrimination. The City can use the statistical disparities in Chapter V of the rates at which DBEs form businesses as a possible marker of the availability of minority- and woman-owned businesses that would be expected “but for” discrimination. This is the type of “demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.”²⁴ However, we note that there is no direct case law upholding this type of “but for” analysis. We therefore advise the City to proceed with caution in using the economy-wide data for an adjustment.

b. Continue to Employ Race-neutral Approaches to Ensure Equal Opportunities for FTA and FAA Funded Contracts

As a recipient under the jurisdiction of the Ninth Circuit Court of Appeals, the City is required to limit its use of race-conscious contract goals to those groups that have suffered discrimination in its market area. The results of the disparity analyses of the City’s contracting activities on locally and FTA funded contracts suggest that DBEs have been able to achieve parity solely through race-neutral approaches. We therefore recommend that the City continue its race-neutral approaches to level the playing field for these contracts.

10. Develop Performance Measures for Program Success

The City should develop quantitative performance measures for overall success of its local WMBE and DBE programs to evaluate the effectiveness of various approaches in reducing any disparities and systemic barriers identified by the study. In addition to meeting goals, possible benchmarks might be:

- Progress towards meeting the overall, annual WMBE and DBE goals.
- The number of bids or proposals, industry and the dollar amount of the awards and the goal shortfall, where the bidder was unable to meet the goals and submitted GFE to do so.
- The number, dollar amount and the industry code of bids or proposals rejected as non-responsive for failure to make good faith efforts to meet the goal.

23. “Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal.” 49 C.F.R. §26.45(d).

24. 49 C.F.R. §26.45(d)(3); *see also* §23.51.

- The number, industry and dollar amount of W/M/DBE substitutions during contract performance.
- Increased bidding by certified firms as prime vendors.
- Increased prime contract awards to certified firms.
- Increased “capacity” of certified firms, as measured by bonding limits, size of jobs, profitability, complexity of work, etc.
- Increased variety in the subindustries in which W/M/DBEs are awarded prime contracts and subcontracts.

11. Conduct Regular Program Reviews

To meet the requirements of strict constitutional scrutiny and the DBE program regulations, as well as ensure that best practices in program administration continue to be applied, the City should conduct a full and thorough review of the evidentiary basis and the implementation of its programs approximately every five to seven years.

II. LEGAL STANDARDS FOR CONTRACTING EQUITY PROGRAMS

A. Summary of Constitutional Equal Protection Standards

To be effective, enforceable, and legally defensible, a race-based affirmative action program for public sector contracts, regardless of funding source, must meet the judicial test of constitutional “strict scrutiny”. Strict scrutiny is the highest level of judicial review.²⁵ Strict scrutiny analysis is comprised of two prongs:

1. The government must establish its “compelling governmental interest” in remediating race discrimination by current “strong evidence” of the persistence of discrimination. Such evidence may consist of the entity’s “passive participation” in a system of racial exclusion.
2. Any remedies adopted must be “narrowly tailored” to that discrimination; the program must be directed at the types and depth of discrimination identified.²⁶

The compelling governmental interest prong has been met through two types of proof:

1. Statistical evidence of the underutilization of minority or woman firms by the agency and/or throughout the agency’s geographic and industry market area compared to their availability in the market area. These are disparity indices, comparable to the type of “disparate impact” analysis used in employment discrimination cases.
2. Anecdotal evidence of race- or gender-based barriers to the full and fair participation of minority- and woman-owned firms in the market area or in seeking contracts with the agency. Anecdotal data can consist of interviews, surveys, public hearings, academic literature, judicial decisions, legislative reports, and other information.

25. Strict scrutiny of remedial race-conscious programs is used by courts to evaluate governmental action that classifies persons on a “suspect” basis, such as race. It is also used in actions purported to infringe upon fundamental rights. Legal scholars frequently note that strict scrutiny constitutes the most rigorous form of judicial review. *See, for example*, Richard H. Fallon, Jr., *Strict Judicial Scrutiny*, 54 U.C.L.A. Law Review 1267, 1273 (2007).

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

The narrow tailoring prong has been met by satisfying five factors to ensure that the remedy “fits” the evidence:

1. The necessity of relief;²⁷
2. The efficacy of race-neutral remedies at overcoming identified discrimination;²⁸
3. The flexibility and duration of the relief, including the availability of waiver provisions;²⁹
4. The relationship of numerical goals to the relevant market;³⁰ and
5. The impact of the relief on the rights of third parties.³¹

In *Adarand v. Peña*,³² the United States Supreme Court extended the analysis of strict scrutiny to race-based federal enactments such as the United States Department of Transportation (“USDOT”) Disadvantaged Business Enterprise (“DBE”) program for federally assisted transportation contracts.³³ Just as in the local government context, the national legislature must have a compelling governmental interest for the use of race, and the remedies adopted must be narrowly tailored to that evidence.³⁴ Most federal courts have subjected preferences for Woman-Owned Business Enterprises (“WBEs”) to “intermediate scrutiny”.³⁵ The quantum of evidence necessary to satisfy intermediate scrutiny is less than that required to satisfy strict scrutiny. The Ninth Circuit requires that gender-based classifications be supported by “sufficient probative evidence” and “exceedingly persuasive justification” and be “substantially related to the objective”.³⁶ However, appellate courts have applied strict scrutiny to the gender-based presumption of social dis-

27. *United States v. Paradise*, 480 U.S. 149, 171 (1987).

28. *Id.*

29. *Id.*

30. *Croson*, 488 U.S. at 506.

31. *Id.*

32. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995) (“*Adarand III*”).

33. 49 C.F.R. Part 26 and Part 23.

34. *See, for example, Croson*, 488 U.S. at 492-493; *Adarand III*, 515 U.S. 200, 227; *see generally Fisher v. University of Texas*, 133 S. Ct. 2411 (2013).

35. *See, e.g., Associated Utility Contractors of Maryland v. Mayor of Baltimore*, 83 F. Supp. 2d 613, 620 (D. Md. 2000) (“*Baltimore I*”); *W.H. Scott Construction Co., Inc. v. City of Jackson, Mississippi*, 199 F.3d 206, 215 (5th Cir. 1999); *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895 (11th Cir. 1997) (“*Engineering Contractors II*”); *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1519 (10th Cir. 1994) (“*Concrete Works II*”); *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990, 1009-1011 (3rd Cir. 1993) (“*Philadelphia II*”); *Coral Construction Co. v. King County*, 941 F.2d 910, 930-931 (9th Cir. 1991).

36. *Western States Paving, Inc. v. Washington Department of Transportation*, 407 F. 3d 983, 998 (9th Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006).

advantage in reviewing the constitutionality of the DBE program³⁷ or held that the results would be the same under strict scrutiny.³⁸

Classifications not based upon a suspect class (race, ethnicity, religion, national origin or gender) are subject to the lesser standard of review called “rational basis” scrutiny.³⁹ The Ninth Circuit Court of Appeals applies intermediate scrutiny to gender conscious programs.⁴⁰ In contrast to strict scrutiny and to intermediate scrutiny, rational basis means the governmental action or statutory classification must be “rationally related” to a “legitimate” government interest.⁴¹ The courts have held there are no equal protection implications under the Fourteenth Amendment of the United States Constitution for groups not subject to systemic discrimination.⁴²

Unlike most legal challenges, the defendant bears the initial burden of producing “strong evidence” in support of its race-conscious program.⁴³ The plaintiff must then proffer evidence to rebut the government’s case, and bears the ultimate burden of production and persuasion that the affirmative action program is unconstitutional.⁴⁴ “[W]hen the proponent of an affirmative action plan produces sufficient evidence to support an inference of discrimination, the plaintiff must rebut that inference in order to prevail.”⁴⁵

A plaintiff “cannot meet its burden of proof through conjecture and unsupported criticism of [the government’s] evidence.”⁴⁶ To successfully refute the government’s case, a plaintiff must introduce “credible, particularized evidence” that rebuts the government’s showing of a strong basis in evidence.⁴⁷ For example, in the challenge to the Minnesota and Nebraska DBE programs, “plaintiffs presented evidence that the data was susceptible to multiple interpretations, but they failed to present affirmative evidence that no remedial action was necessary because

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- 37. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 720 (7th Cir. 2007), *cert. denied*, 15-1827, June 26, 2017 (“*Northern Contracting III*”).
 - 38. *Western States Paving*, 407 F.3d at 998.
 - 39. *See, generally, Coral Construction*, 941 F. 2d at 910; *Equal. Found. v. City of Cincinnati*, 128 F. 3d 289 (6th Cir. 1997).
 - 40. *See, for example, Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation*, 713 F.3d at 1195 (9th Cir. 2013); *Western States Paving*, 407 F.3d at 990 n.6.
 - 41. *Heller v. Doe*, 509 U.S. 312, 320 (1993).
 - 42. *United States v. Carolene Products Co.*, 304 U.S. 144 (1938).
 - 43. *Aiken v. City of Memphis*, 37 F.3d 1155, 1162 (6th Cir. 1994).
 - 44. *Scott*, 199 F.3d at 219; *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1166 (10th Cir. 2000), 532 U.S. 941, *cert. granted then dismissed as improvidently granted*, 534 U.S. 103 (2001) (“*Adarand VII*”).
 - 45. *Engineering Contractors II*, 122 F.3d at 916.
 - 46. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 989 (10th Cir. 2003), *cert. denied*, 540 U.S. 1027 (2003) (10th Cir. 2003) (“*Concrete Works IV*”).
 - 47. *H.B. Rowe Co., Inc. v. Tippett*, 615 F.3d 233 (4th Cir. 2010); *Midwest Fence Corp. v. U.S. Department of Transportation, Illinois Department of Transportation, Illinois State Toll Highway Authority*, 84 F. Supp. 3d 705 (N.D. Ill. 2015), *affirmed*, 840 F.3d 932 (7th Cir. 2016) (“*Midwest Fence II*”).

minority-owned small businesses enjoy non-discriminatory access to, and participation in, federally assisted highway contracts. Thus, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.”⁴⁸ When the statistical information is sufficient to support the inference of discrimination, the plaintiff must prove that the statistics are flawed.⁴⁹ A plaintiff cannot rest upon general criticisms of studies or other related evidence; it must meet its burden that the government’s proof is inadequate to meet strict scrutiny, rendering the legislation or government program illegal.⁵⁰

To meet strict scrutiny, studies have been conducted to gather the statistical and anecdotal evidence necessary to support the use of race- and gender-conscious measures to combat discrimination. These are commonly referred to as “disparity studies” because they analyze any disparities between the opportunities and experiences of minority- and woman-owned firms and their actual utilization compared to White male-owned businesses. High quality studies also examine the elements of the agency’s program to determine whether it is sufficiently narrowly tailored. The following is a detailed discussion of the legal parameters and the requirements for conducting studies to support defensible programs.

B. Elements of Strict Scrutiny

In its landmark decision in *City of Richmond v. J.A. Croson Co.*, the United States Supreme Court established the constitutional contours of permissible race-based public contracting programs. Reversing long established Equal Protection jurisprudence, the Court, for the first time, extended the highest level of judicial examination from measures designed to limit the rights and opportunities of minorities to legislation that inures to the benefit of these victims of historic discrimination. Strict scrutiny requires that a government entity prove both its “compelling governmental interest” in remediating identified discrimination based upon “strong evidence” and that the measures adopted to remedy that discrimination are “narrowly tailored” to that evidence. However benign the government’s motive, race is always so suspect a classification that its use must pass the highest constitutional test of “strict scrutiny”.

The Court struck down the City of Richmond’s Minority Business Enterprise Plan (“Plan”) because it failed to satisfy the strict scrutiny analysis applied to “race-based” government programs. The City’s “setaside” Plan required prime contrac-

48. *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d 964, 970 (8th Cir. 2003), *cert. denied*, 541 U.S. 1041 (2004).

49. *Coral Construction*, 941 F. 2d at 921; *Engineering Contractors II*, 122 F.3d at 916.

50. *Adarand VII*, 228 F.3d at 1166; *Engineering Contractors II*, 122 F.3d at 916; *Concrete Works II*, 36 F.3d at 1522-1523; *Webster v. Fulton County, Georgia*, 51 F.Supp.2d 1354, 1364 (N.D. Ga. 1999), *aff’d per curiam*, 218 F. 3d 1267 (11th Cir. 2000); *see also Wygant v. Jackson Board of Education*, 476 U.S. 267, 277-278 (1986).

tors awarded City construction contracts to subcontract at least 30% of the project to Minority-Owned Business Enterprises (“MBEs”). A business located anywhere in the nation was eligible to participate so long as it was at least 51% owned and controlled by minority citizens or lawfully admitted permanent residents.

The Plan was adopted following a public hearing during which no direct evidence was presented that the City had discriminated on the basis of race in contracts or that its prime contractors had discriminated against minority subcontractors. The only evidence before the City Council was: (a) Richmond’s population was 50% Black, yet less than one percent of its prime construction contracts had been awarded to minority businesses; (b) local contractors’ associations were virtually all White; (c) the City Attorney’s opinion that the Plan was constitutional; and (d) generalized statements describing widespread racial discrimination in the local, Virginia, and national construction industries.

In affirming the court of appeals’ determination that the Plan was unconstitutional, Justice Sandra Day O’Connor’s plurality opinion rejected the extreme positions that local governments either have *carte blanche* to enact race-based legislation or must prove their own active participation in discrimination:

[A] state or local subdivision...has the authority to eradicate the effects of private discrimination within its own legislative jurisdiction.... [Richmond] can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment...[I]f the City could show that it had essentially become a “passive participant” in a system of racial exclusion ...[it] could take affirmative steps to dismantle such a system.⁵¹

Strict scrutiny of race-based remedies is required to determine whether racial classifications are in fact motivated by notions of racial inferiority or blatant racial politics. This highest level of judicial review “smokes out” illegitimate uses of race by ensuring that the legislative body is pursuing an important enough goal to warrant use of a highly suspect tool.⁵² It also ensures that the means chosen “fit” this compelling goal so closely that there is little or no likelihood that the motive for the classification was illegitimate racial prejudice or stereotype. The Court made clear that strict scrutiny is designed to expose racial stigma; racial classifications are said to create racial hostility if they are based on notions of racial inferiority.

Richmond’s evidence was found to be lacking in every respect.⁵³ The City could not rely upon the disparity between its utilization of MBE prime contractors and

51. 488 U.S. at 491-92.

52. See also, *Grutter v. Bollinger*, 539 U.S. 306, 327 (2003) (“Not every decision influenced by race is equally objectionable, and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the reasons advanced by the governmental decisionmaker for the use of race in that particular context.”).

Richmond’s minority population because not all minority persons would be qualified to perform construction projects; general population representation is irrelevant. No data were presented about the availability of MBEs in either the relevant market area or their utilization as subcontractors on City projects.

According to Justice O’Connor, the extremely low MBE membership in local contractors’ associations could be explained by “societal” discrimination or perhaps Blacks’ lack of interest in participating as business owners in the construction industry. To be relevant, the City would have to demonstrate statistical disparities between eligible MBEs and actual membership in trade or professional groups. Further, Richmond presented no evidence concerning enforcement of its own anti-discrimination ordinance. Finally, the City could not rely upon Congress’ determination that there has been nationwide discrimination in the construction industry. Congress recognized that the scope of the problem varies from market to market, and, in any event, it was exercising its powers under Section Five of the Fourteenth Amendment of the United States Constitution. Local governments are further constrained by the Amendment’s Equal Protection Clause.

In the case at hand, the City has not ascertained how many minority enterprises are present in the local construction market nor the level of their participation in City construction projects. The City points to no evidence that qualified minority contractors have been passed over for City contracts or subcontracts, either as a group or in any individual case. Under such circumstances, it is simply impossible to say that the City has demonstrated “a strong basis in evidence for its conclusion that remedial action was necessary.”⁵⁴

This analysis was applied only to Blacks. The Court emphasized that there was “absolutely no evidence” of discrimination against other minorities. “The random inclusion of racial groups that, as a practical matter, may have never suffered from discrimination in the construction industry in Richmond, suggests that perhaps the City’s purpose was not in fact to remedy past discrimination.”⁵⁵

Having found that Richmond had not presented evidence in support of its compelling interest in remediating discrimination—the first prong of strict scrutiny—the Court made two observations about the narrowness of the remedy—the second prong of strict scrutiny. First, Richmond had not considered race-neutral means to increase MBE participation. Second, the 30% quota had no basis in evidence and was applied regardless of whether the individual MBE had suffered discrimination.⁵⁶ The Court noted that the City “does not even know how many MBEs in the

53. The City cited past discrimination and its desire to increase minority business participation in construction projects as the factors giving rise to the Plan.

54. *Croson*, 488 U.S. at 510.

55. *Id.*

relevant market are qualified to undertake prime or subcontracting work in public construction projects.”⁵⁷

Apparently recognizing that her opinion might be misconstrued to eliminate all race-conscious contracting efforts, Justice O’Connor closed with these admonitions:

Nothing we say today precludes a state or local entity from taking action to rectify the effects of identified discrimination within its jurisdiction. If the City of Richmond 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. Where 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. Under such circumstances, the City could act to dismantle the closed business system by taking appropriate measures against those who discriminate based on race or other illegitimate criteria. In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion... Moreover, 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.⁵⁸

While much has been written about *Croson*, it is worth stressing what evidence was, and was not, before the Court. First, Richmond presented *no* evidence regarding the availability of MBEs to perform as prime contractors or subcontractors and *no* evidence of the utilization of minority-owned subcontractors on City contracts.⁵⁹ Nor did Richmond attempt to link the remedy it imposed to any evidence specific to the program; it used the general population of the City rather than any measure of business availability.

Some commentators have taken this dearth of any particularized proof and argued that only the most particularized proof can suffice in all cases. They leap from the Court’s rejection of Richmond’s reliance on only the percentage of Blacks in the City’s population to a requirement that only firms that bid or have the “capacity” or “willingness” to bid on a particular contract at a particular time can

56. *See Grutter*, 529 U.S. at 336-337 (quotas are not permitted; race must be used in a flexible, non-mechanical way).

57. *Croson*, 488 U.S. at 502.

58. *Id.* at 509 (citations omitted).

59. *Id.* at 502.

be considered in determining whether discrimination against Black businesses infects the local economy.⁶⁰

This argument has been rejected explicitly by some courts. In denying the plaintiff's summary judgment motion to enjoin the City of New York's M/WBE construction ordinance, the court stated:

[I]t is important to remember what the *Croson* plurality opinion did and did not decide. The Richmond program, which the *Croson* Court struck down, was insufficient because it was based on a comparison of the minority population in its entirety in Richmond, Virginia (50%) with the number of contracts awarded to minority businesses (0.67%). There were no statistics presented regarding the number of minority-owned contractors in the Richmond area, *Croson*, 488 U.S. at 499, and the Supreme Court was concerned with the gross generality of the statistics used in justifying the Richmond program. There is no indication that the statistical analysis performed by [the consultant] in the present case, which does contain statistics regarding minority contractors in New York City, is not sufficient as a matter of law under *Croson*.⁶¹

Further, Richmond made no attempt to narrowly tailor a goal for the procurement at issue that reflected the reality of the project. Arbitrary quotas, and the unyielding application of those quotas, did not support the stated objective of ensuring equal access to City contracting opportunities. The *Croson* Court said nothing about the constitutionality of flexible goals based upon the availability of MBEs to perform the scopes of the contract in the government's local market area. In contrast, the USDOT DBE program avoids these pitfalls. 49 C.F.R. Part 26 "provides for a flexible system of contracting goals that contrasts sharply with the rigid quotas invalidated in *Croson*".

While strict scrutiny is designed to require clear articulation of the evidentiary basis for race-based decision-making and careful adoption of remedies to address discrimination, it is not, as Justice O'Connor stressed, an impossible test that no proof can meet. Strict scrutiny need not be "fatal in fact".

60. See, for example, *Northern Contracting III*, 473 F.3d 715, 723.

61. *North Shore Concrete and Associates, Inc. v. City of New York*, 1998 U.S. Dist. Lexis 6785, *28-29 (E.D. N.Y. 1998); see also *Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo*, 981 F.2d 50, 61-62 (2nd Cir. 1992) ("Croson made only broad pronouncements concerning the findings necessary to support a state's affirmative action plan"); cf. *Concrete Works II*, 36 F.3d at 1528 (City may rely on "data reflecting the number of MBEs and WBEs in the marketplace to defeat the challenger's summary judgment motion").

C. Strict Scrutiny as Applied to United States Department of Transportation Disadvantaged Business Enterprise Program

1. Elements of the DBE Program for USDOT Assisted Contracts

In *Adarand v. Peña*,⁶² the Supreme Court again overruled long settled law and extended the analysis of strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment to federal enactments. To comply with *Adarand*, Congress reviewed and revised the DBE program statute⁶³ and implemented regulations⁶⁴ for federal-aid contracts in the transportation industry. The program governs the City's receipt of federal funds from the Federal Transit Administration ("FTA") and the Federal Aviation Administration ("FAA").

To date, every court that has considered the issue has found the regulations to be constitutional on their face.⁶⁵ These cases provide important guidance to the City about how to narrowly tailor its DBE program, as well as any race-conscious initiatives for locally funded contracts to meet federal law.

All courts have held that Congress had strong evidence of widespread racial discrimination in the construction industry. The Ninth Circuit held that "[a]n light of the substantial body of statistical and anecdotal material considered at the time of TEA-21's enactment, Congress had a strong basis in evidence for concluding that, in at least some parts of the country, discrimination within the transportation contracting industry hinders minorities' ability to compete for federally funded contracts." Relevant evidence before Congress included:

- Disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms;
- Disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners;
- The large and rapid decline in minorities' participation in the construction industry when affirmative action programs were struck down or abandoned; and

62. *Adarand III*, 515 U.S. 200 (1995).

63. *See the Transportation Equity Act for the 21st Century* ("TEA-21"), Pub. L. No. 105-178 (b)(1), June 22, 1998, 112 Stat. 107, 113.

64. 49 C.F.R. Part 26.

65. *See, for example, Midwest Fence II; Corporation v. Illinois DOT*, 840 F.3d 932 (7th Cir. 2016); *Northern Contracting III*, 473 F.3d 715; *AGC v. CalTrans*; *Western States Paving*, 407 F.3d at 994 ; *Sherbrooke*; *Adarand VII*; *M.K. Weeden Construction v. State of Montana*, 2013 WL 4774517 (D. Mont.) (September 4, 2013).

- Various types of overt and institutional discrimination by prime contractors, trade unions, business networks, suppliers, and sureties against minority contractors.⁶⁶

Next, the regulations were facially narrowly tailored. Unlike the prior program,⁶⁷ the new Part 26 rule provides that:

- The overall goal must be based upon demonstrable evidence of the number of DBEs ready, willing, and able to participate on the recipient's federally assisted contracts.
- The goal may be adjusted to reflect the availability of DBEs "but for" the effects of the DBE program and of discrimination.
- The recipient must meet the maximum feasible portion of the goal through race-neutral measures as well as estimate that portion of the goal it predicts will be met through such measures.
- The use of quotas and set-asides is limited to only those situations where there is no other remedy.
- The goals are to be adjusted during the year to remain narrowly tailored.
- Absent bad faith administration of the program, a recipient cannot be penalized for not meeting its goal.
- Periodic review is undertaken by Congress during surface transportation reauthorizations to ensure adequate durational limits.
- The inclusion of provision allowing for individual determinations of social and economic disadvantage.
- Exemptions or waivers from program requirements are available.
- The presumption of social disadvantage for racial and ethnic minorities and women is rebuttable, "wealthy minority owners and wealthy minority firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage."⁶⁸

These elements have led the courts to conclude that the program is narrowly tailored on its face. First, the regulations place strong emphasis on the use of race-neutral means that assist all small firms to achieve minority and woman participation. The City must also estimate the portion of the goal it predicts will

66. *Western States Paving*, 407 F.3d at 992-93.

67. The DBE program regulation in effect prior to March of 1999 was set forth in 49 C.F.R. Part 23.

68. *Sherbrooke*, 345 F.3d. at 973.

be met through race-neutral and race-conscious measures (contract goals).⁶⁹ This requirement has been central to the holdings that the DBE regulations meet narrow tailoring.⁷⁰ Further, a recipient may terminate race-conscious contract goals if it meets its annual overall goal through race-neutral means for two consecutive years. Finally, the authorizing legislation is subject to Congressional reauthorization that will ensure periodic public debate.

In 2015, Congress reauthorized the DBE program and again concluded that the evidence before it “provided a strong basis” to continue the program.⁷¹ Relevant evidence before Congress fell into four main categories: (1) evidence of discriminatory barriers to the formation of qualified MBEs; (2) evidence of discriminatory barriers to the success of qualified MBEs; (3) evidence from local disparity studies; and (4) evidence from the results of removing affirmative action programs.⁷²

More recently, in the *Infrastructure Investment and Jobs Act (IIJA)*, also known as the *Bipartisan Infrastructure Law (BIL)*,⁷³ Congress received and reviewed testimony and voluminous documentation of race and gender discrimination from numerous sources, including congressional hearings and other investigative activities, disparity studies, scientific reports, reports issued by public and private agencies at every level of government, news reports, academic publications, reports of discrimination by organizations and individuals, and discrimination lawsuits. This evidence demonstrates that race- and gender-neutral efforts alone continue to be insufficient to address the nationwide problem. Congress found that despite the real improvements caused by the DBE program, minority- and woman-owned businesses across the country continue to confront serious and significant race- and gender-based obstacles to success on USDOT funded transportation contracts.⁷⁴

69. 49 C.F.R. §26.45(f)(3).

70. *See, e.g., Sherbrooke*, 345 F.3d at 973.

71. *Fixing America’s Surface Transportation Act (Fast Act)*, Pub. L. No. 114-94, Section 1101 (b), 129 Stat. 1323-1325 (23 U.S.C. 101 *et. seq.*) (2015).

72. *Adarand VII*, 228 F.3d at 1167-1175; *see also Sherbrooke*, 345 F.3d at 969-970; *Western States Paving*, 407 F.3d at 720-721, and Appendix – The Compelling Interest for Affirmative Action in Federal Procurement: A Preliminary Survey, 61 Fed. Reg. 26050 (May 23, 1996) (citing approximately thirty congressional hearings since 1980 concerning MBEs).

73. Pub. L. No. 117-58, 117th Congress (2021).

74. The Invest in America Act also addresses aspects of the COVID-19 pandemic and states that its incidents and effects on DBEs constitute another reason for continuing the USDOT DBE Program.

2. **Narrowly Tailoring the City of Seattle’s Disadvantaged Business Enterprise Program for Federal Transit Administration Funded Contracts**

Agencies that receive USDOT aid contracts for projects that equal or exceed an accumulative amount of \$250,000.00 in a fiscal year must have a DBE program and must meet related requirements as an expressed condition of receiving these funds. Therefore, the City must establish a DBE program plan for its FTA funded contracts in conformance with 49 C.F.R. Part 26 (“Part 26”).

While the Ninth Circuit has agreed with the other Federal courts that have reviewed the DBE program and found that Part 26 and its authorizing statutes are constitutional, it has said that in order to be narrowly tailored, the race-conscious elements of a national program must be limited to those parts of the country where its race-based measures are demonstrably needed. The Ninth Circuit has moved beyond the DBE regulatory and legal framework and added the requirement that a recipient must provide additional evidence beyond the national data in the record upon which Congress relied in enacting the DBE program in order to narrowly tailor the agency’s DBE program. In *Western States Paving v. Washington State Department of Transportation*, the court was persuaded by USDOT’s argument that race-conscious goals can only be applied by recipients in those localities where the effects of discrimination are present. “As the United States correctly observed in its brief and during oral argument, it cannot be said that TEA-21 is a narrowly tailored remedial measure unless its application is limited to those states in which the effects of discrimination are actually present.”⁷⁵ In addition, each group sought to be included in race-conscious relief must have suffered discrimination in the agency’s market area.⁷⁶

WSDOT failed to introduce any evidence at the summary judgment stage to address the question whether “the effects of discrimination [are] present in the Department’s markets.”⁷⁷ The court was proffered no statistical or anecdotal data similar to that presented to the district court in the challenge to the Minnesota Department of Transportation’s DBE program.⁷⁸ “The record is therefore devoid of any evidence suggesting that minorities currently suffer-- or have ever suffered--discrimination in the Washington transportation contracting industry. We must therefore conclude that Washington’s application of TEA-21 conflicts with the guarantees of equal protection because the State’s

75. 407 F.3d at 998.

76. 407 F.3d at 999.

77. 407 F.3d at 996.

78. See generally, *Sherbrooke* (Minnesota and Nebraska had conducted studies. CHA served as counsel to the Minnesota DOT report.).

DBE program is not narrowly tailored to further Congress's remedial objective."⁷⁹

As the result of the decision in *Western States Paving*, states in the Ninth Circuit must establish the presence of discrimination within their transportation contracting industry. Even if discrimination is present within the state, the program is narrowly tailored only if it applies to those minority groups that have actually suffered discrimination.

In the wake of *Western States*, the Office of General Counsel of USDOT issued official institutional guidance in the form of *Questions and Answers Concerning Response to Western States Paving Co. v. Washington State Department of Transportation (USDOT Guidance)* for the benefit of states in the Ninth Circuit.⁸⁰ The USDOT Guidance calls for consideration of both statistical and anecdotal evidence and advises recipients to gather evidence of discrimination and its effects separately for each of the presumptively disadvantaged Part 26 groups. Recipients should consider, as they plan their studies, the evidence-gathering efforts that Federal courts have approved in the past and specifically points to the studies in the *Sherbrooke* and *Northern Contracting* cases.⁸¹ In conducting subsequent studies, research should include:

- Evidence for each racial and ethnic group and White women.
- An assessment of any anecdotal and complaint evidence of discrimination.
- Evidence of barriers in obtaining bonding and financing and disparities in business formation and earnings.
- Disparity analyses between DBE utilization by the agency and the availability of DBEs to perform in its markets.
- Comparison of DBE utilization on contracts with goals to utilization on contracts without goals.
- Evidence-gathering efforts that Federal courts have approved in the past.

Under Part 26, the City of Seattle must use a two-step goal-setting process to establish its overall triennial goal for its FTA and FAA funded contracts. The overall triennial goals must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on its USDOT assisted contracts. As discussed in the

79. 407 F.3d at 999.

80. <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/western-states-paving-company-case-qa>.

81. *Sherbrooke*; *Northern Contracting III*.

USDOT Guidance, a disparity study is the preferred method in the Ninth Circuit to determine the availability of DBEs to perform in the recipient's market.⁸²

Under Step 1, the City must determine the base figure for the relative availability of DBEs. Under Step 2, the City must examine all evidence available in its jurisdiction to determine whether to adjust the base figure. The City must consider the current capacity of DBEs, as measured by the volume of work DBEs have performed in recent years.

To perform Step 1—estimating the base figure of DBE availability—the study must conduct the following analyses. First, it must empirically establish the geographic and product dimensions of its contracting and procurement market area. This is a fact driven inquiry; it may or may not be the case that the market area is the government's jurisdictional boundaries.⁸³ A commonly accepted definition of geographic market area applied in this Report is the contiguous locations that account for at least 75% of the agency's contract and subcontract dollar payments.⁸⁴ Likewise, the accepted approach is to analyze those detailed industries that make up at least 75% of the prime contract and subcontract payments for the Study period.⁸⁵ This is the methodology recommended in the Transportation Research Board's *National Disparity Study Guidelines*. Second, the study must calculate the availability of DBEs in the City's market area, discussed below.

Programs based upon studies similar to the "custom census" methodology employed for this Report have been deemed a rich and relevant source of data and have been upheld repeatedly. This includes the availability analysis and the examination of disparities in the business formation rates and business earnings of minorities and women compared to similarly situated non-minority males. The Illinois Department of Transportation's ("IDOT's") DBE program was upheld based on this approach combined with other economy-wide and anecdotal evidence. The USDOT's institutional guidance for Part 26 refers approvingly to this case. IDOT's plan was based upon sufficient proof of discrimination such that race-neutral measures alone would be inadequate to assure that DBEs operate on a "level playing field" for government contracts.

The stark disparity in DBE participation rates on goals and non-goals contracts, when combined with the statistical and anecdotal evidence of discrimination in the relevant marketplaces, indicates that IDOT's 2005 DBE goal represents a

82. An availability study using a methodology similar to that of this Report was upheld as the basis for the Illinois Department of Transportation's DBE program, as well as the Illinois Tollway's program for non-federally funded contracts.

83. *Concrete Works II*, 36 F.3d at 1520 (to confine data to strict geographic boundaries would ignore "economic reality").

84. J. Wainwright and C. Holt, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*, National Academies of Sciences, Engineering, and Medicine, 2010 ("*National Disparity Study Guidelines*").

85. *Id.* at 50-51.

“plausible lower-bound estimate” of DBE participation in the absence of discrimination... Plaintiff presented no persuasive evidence contravening the conclusions of IDOT’s studies, or explaining the disparate usage of DBEs on goals and non-goals contracts... IDOT’s proffered evidence of discrimination against DBEs was not limited to alleged discrimination by prime contractors in the award of subcontracts. IDOT also presented evidence that discrimination in the bonding, insurance, and financing markets erected barriers to DBE formation and prosperity. Such discrimination inhibits the ability of DBEs to bid on prime contracts, thus allowing the discrimination to indirectly seep into the award of prime contracts, which are otherwise awarded on a race- and gender-neutral basis. This indirect discrimination is sufficient to establish a compelling governmental interest in a DBE program... Having established the existence of such discrimination, a governmental entity 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.⁸⁶

In upholding the Minnesota Department of Transportation’s DBE program using the same approach, the Eighth Circuit opined that while plaintiff attacked the study’s data and methods,

it failed to establish that better data was [sic] available or that Mn/DOT was otherwise unreasonable in undertaking this thorough analysis and in relying on its results. The precipitous drop in DBE participation in 1999, when no race-conscious methods were employed, supports Mn/DOT’s conclusion that a substantial portion of its 2001 overall goal could not be met with race-neutral measures, and there is no evidence that Mn/DOT failed to adjust its use of race-conscious and race-neutral methods as the year progressed, as the DOT regulations require.⁸⁷

More recently, the Seventh Circuit affirmed the district court and upheld the Illinois Tollway’s DBE program for non-federal-aid contracts based upon a Colette Holt & Associates disparity study utilizing this methodology. Plaintiff’s main objection to the defendant’s evidence was that it failed to account for “capacity” when measuring DBE availability and underutilization. As is well established, “Midwest would have to come forward with ‘credible, particularized evidence’ of its own, such as a neutral explanation for the disparity

86. *Northern Contracting II*, at *82 (internal citations omitted); see *Croson*, 488 U.S. at 492.

87. *Sherbrooke*, 3345 F.3d at 973.

between DBE utilization and availability showing that the government's data is flawed, demonstrating that the observed disparities are statistically insignificant or presenting contrasting statistical data. [citation omitted]. Plaintiff "fail[ed] to provide any independent statistical analysis or make this showing here."⁸⁸ Midwest offered only mere conjecture about how the defendants' studies' supposed failure to account for capacity may or may not have impacted other evidence demonstrating actual bias.

In the Ninth Circuit, recipients must take the further step of ensuring that only those groups that have suffered discrimination in its marketplace are eligible for race-conscious relief. In practice, this means that the agency must have commissioned a disparity study that found that a group no longer is subject to discriminatory barriers and enjoys a level playing field for recipient prime contracts and subcontracts. If a group is no longer "underutilized", a firm owned by a member of an otherwise presumptively socially disadvantaged group may not be credited toward meeting contract goals.⁸⁹ Further, the availability of any such group cannot be part of the analysis to set contract goals.⁹⁰

Guidance on the application of this test has been provided by courts in the Ninth Circuit in the wake of *Western States*. In the challenge to the California Department of Transportation's ("CalTrans") DBE program, the court affirmed the district court's judgment that CalTrans program was sufficiently narrowly tailored.⁹¹ CalTrans properly relied upon a disparity study to determine whether there was evidence of discrimination in California's contracting industry.

The district court in *Mountain West Holding Co., Inc. v. Montana*,⁹² applied *Western States Paving* and rejected the plaintiff's argument that the Montana Department of Transportation's DBE goal-setting program unlawfully required prime contractors to give preference to minority and female subcontractors competing for work with prime contractors on state jobs. Montana established sufficient evidence to demonstrate discrimination in the Department's transportation contracting industry. The court relied on evidence demonstrating that participation by DBEs declined after Montana abandoned contract goals in the wake of *Western States Paving*, as well as anecdotal evidence of a "good

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88. See *Midwest Fence Corp. v. U.S. Department of Transportation*, 84 F. Supp. 3d 705 (N.D. Ill. 2015) (*Midwest Fence I'*).
89. No case has addressed whether a firm certified under the individual consideration of social and economic disadvantage criteria set out in Appendix E to Part 26 can be counted towards contract goals.
90. Part 26, §26.45 (h) states that overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.
91. *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation*, 713 F.3d 1187 (9th Cir. 2013).
92. 2017 WL 2179120 (9th Cir. May 16, 2017), Memorandum Opinion (Not for Publication), dismissing in part, reversing in part and remanding the U.S. District Court decision at 2014 WL 6686734 (D. Mont. 2014).

ol' boys" network within the state's contracting industry.⁹³ Following Mountain West's appeal, the Ninth Circuit determined that the claims for injunctive and declaratory relief were moot, since Montana does not currently employ gender- or race-conscious goals, and the goals were several years old.

As discussed in Chapter VI of this report, there is no requirement that anecdotal evidence be verified. The *CalTrans* case specifically rejects such a test. Further,

AGC also discounts the anecdotal evidence because some accounts ascribe minority underutilization to factors other than overt discrimination, such as difficulties with obtaining bonding and breaking into the "good ole boy" network of contractors. However, federal courts and regulations have identified precisely these factors as barriers that disadvantage minority firms because of the lingering effects of discrimination. [citations omitted] Moreover [sic], AGC ignores the many incidents of racial and gender discrimination presented in the anecdotal evidence. Caltrans does not claim, and the anecdotal evidence does not need to prove, that every minority-owned business is discriminated against. It is enough that the anecdotal evidence supports Caltrans' [sic] statistical data showing a pervasive pattern of discrimination.⁹⁴

Even where an agency has established its right to employ race-conscious contract goals on appropriate solicitations, the recipient must use race-neutral measures to the maximum feasible extent.⁹⁵ There is no requirement that an agency must try or exhaust all possible race-neutral approaches and prove they failed before it can implement contact goals.⁹⁶

Difficulty in accessing procurement opportunities, restrictive bid specifications, excessive experience requirements, and overly burdensome insurance and/or bonding requirements, for example, might be addressed by the City without resorting to the use of race or gender in its decision-making. Effective remedies include unbundling of contracts into smaller units, providing technical support, and developing programs to address issues of financing, bonding, and insurance important to all small and emerging businesses.⁹⁷ Further, gov-

93. *Id.*

94. *Id.* at *9; see also *Mountain West Holding Co. v. Montana Department of Transportation*, 2014 WL 6686734 (D. Mont. 2014) (study uncovered substantial anecdotal evidence of discrimination in Montana's transportation contracting market, including evidence of a "good ole boy network."); *H.B. Rowe*, 615 F.3d at 261 ("such networks exert a chronic and pernicious influence on the marketplace that calls for remedial action.").

95. 49 C.F.R. §26.51(a).

96. 2013 WL 1607239 at *10.

97. *Id.*

ernments have a duty to ferret out and punish discrimination against minorities and women by their contractors, staff, lenders, bonding companies or others.⁹⁸ It was precisely these types of race-neutral remedies applied by CalTrans that the Ninth Circuit pointed to in holding its program to meet strict scrutiny.⁹⁹

D. Establishing a “Strong Basis in Evidence” for a Contracting Equity Program for the City of Seattle’s Locally Funded Contracts

The case law on the DBE program should guide any race-conscious¹⁰⁰ contracting equity program or benefits for the City’s locally funded contracts. Whether the program is called a “W/MBE” program or a “DBE” program or any other moniker, the federal constitutional test of strict scrutiny applies.¹⁰¹ As discussed, 49 C.F.R. Part 26 has been upheld by every court, and a local M/WBE program will likely be judged against this federal legal framework.¹⁰² As previously noted, programs for veterans, persons with disabilities, preferences based on geographic location or truly race- and gender-neutral small business efforts are not subject to strict scrutiny but rather the lower level of scrutiny called “rational basis”. Therefore, no evidence comparable to that in a disparity study is needed to enact such initiatives.

It is well established that disparities between an agency’s utilization of W/MBEs and their availability in the relevant marketplace provide a sufficient basis for the consideration of race- or gender-conscious remedies. Proof of the disparate impacts of economic factors on W/MBEs and the disparate treatment of such firms by actors critical to their success is relevant and probative under the strict scrutiny standard. Discrimination must be shown using sound statistics and econometric models to examine the effects of systems or markets on different groups, as well as by evidence of personal experiences with discriminatory conduct, policies, or systems.¹⁰³ Specific evidence of discrimination or its absence may be direct or circumstantial and should include economic factors and opportunities in the private sector affecting the success of W/MBEs.¹⁰⁴

98. *Crosan*, 488 U.S. at 503 n.3.

99. 2013 WL 1607239 at *10.

100. The term “race-neutral” includes gender neutrality.

101. We express no opinion on the application of any state law provisions to a race-conscious City program or program elements.

102. *Midwest Fence II*, 840 F.3d. at 953.

103. *Adarand VII*, 228 F.3d at 1166 (“statistical and anecdotal evidence are appropriate”).

104. *Id.*

Croson's admonition that “mere societal” discrimination is not enough to meet strict scrutiny is met where the government presents evidence of discrimination in the industry targeted by the program. “If such evidence is presented, it is immaterial for constitutional purposes whether the industry discrimination springs from widespread discriminatory attitudes shared by society or is the product of policies, practices, and attitudes unique to the industry... The genesis of the identified discrimination is irrelevant.” There is no requirement to “show the existence of specific discriminatory policies and that those policies were more than a reflection of societal discrimination.”¹⁰⁵

The City need not prove that it is itself guilty of discrimination to meet its burden. In upholding Denver’s M/WBE construction program, the court stated that Denver can show its compelling interest by “evidence of private discrimination in the local construction industry coupled with evidence that it has become a passive participant in that discrimination...[by] linking its spending practices to the private discrimination.”¹⁰⁶ Denver further linked its award of public dollars to discriminatory conduct through the testimony of minority and woman owners that identified general contractors who used them on City projects with M/WBE goals but refused to use them on private projects without goals.

The following are the evidentiary elements courts will examine in determining the federal constitutional validity of a City race- and gender-conscious program and the steps in performing a disparity study necessary to meet those elements.

1. Define the City of Seattle’s Market Area

The first step is to determine the relevant geographic market area in which the City operates. *Croson* states that a state or local government may only remedy discrimination within its own contracting market area. The City of Richmond was specifically faulted for including minority contractors from across the country in its program, based on national data considered by Congress.¹⁰⁷ The City must therefore empirically establish the geographic and product dimensions of its contracting and procurement market area to ensure that the program meets strict scrutiny. This is a fact driven inquiry; it may or may not be the case that the market area is the government’s jurisdictional boundaries.¹⁰⁸ This Report employs long established economic principles to empirically establish the City’s geographic and product market area to ensure that any program based on the study satisfies strict scrutiny.

105. *Concrete Works IV*, 321 F.3d at 976.

106. *Id.* at 977.

107. *Croson*, 488 U.S. at 508.

108. *Concrete Works II*, 36 F.3d at 1520 (to confine data to strict geographic boundaries would ignore “economic reality”).

A commonly accepted definition of geographic market area for disparity studies is the locations that account for at least 75% of the agency's contract and subcontract dollar payments.¹⁰⁹ Similarly, the accepted approach is to analyze those detailed industries that make up at least 75% of the prime contract and associated subcontract payments for the study period.¹¹⁰ This produces the utilization results within the geographic market area.¹¹¹

2. Determine the City of Seattle's Utilization of W/MBEs

The study should next determine the City's utilization of W/MBEs in its geographic market area. Generally, this analysis should be limited to formally procured contracts, since it is unlikely that it is realistic or useful to set goals on small dollar purchases. Developing the file for analysis involves the following steps:

1. Develop the initial contract data files. This involves first gathering the City's records of its payments to prime contractors, and if available, the prime contractors' payments to associated subcontractors.
2. Develop the final contract data file. Whatever data are missing (often race and gender ownership, North American Industry Classification System ("NAICS") or other industry codes, work descriptions or other important information not collected by the City) must be reconstructed by the consultant. Using surveys is unlikely to yield sufficient data. It is also important to research whether a firm that has an address outside the market area has a location in the geographic market area (contract records often have far flung addresses for payments). All necessary data for at least 80% of the contract dollars in the final contract data files should be collected to ensure a comprehensive file that mirrors the City's contracting and procurement activities.

3. Determine the Availability of W/MBEs in the City of Seattle's Market Area

Next, the study must estimate the availability of minorities and women in the City's relevant geographic market area to participate in the City's contracts as prime contractors and associated subcontractors. Based on the product and geographic utilization data, the study should calculate unweighted and weighted W/MBE availability estimates of ready, willing, and able firms in the

109. J. Wainwright and C. Holt, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*, National Academies of Sciences, Engineering, and Medicine, 2010 ("*National Disparity Study Guidelines*").

110. *Id.* at 50-51.

111. For this Report, we found the City's market area to be the Seattle Metropolitan Statistical Area. Please see Chapter III for additional details.

City's market. These results will be a narrowly tailored, dollar-weighted average of all the underlying industry availability numbers; larger weights will be applied to industries with relatively more spending and lower weights applied to industries with relatively less spending. The availability figures should be sub-divided by race, ethnicity, and gender.

The availability analysis involves the following steps:

1. The development of the Merged Business Availability List. Three data sets are used to develop the Merged Business Availability List:
 - The firms in the W/M/DBE Master Directory. This methodology includes both certified firms and non-certified firms owned by minorities or women.¹¹² The Master Directory consists of all available government and private W/M/DBE directories, limited to firms within the City's geographic and product market.
 - The firms contained in the City's contract data file. This will require the elimination of any duplications because a firm might have received more than one contract for work in a given NAICS code during the study period.
 - Firms extracted from the Dun & Bradstreet MarketPlace/Hoovers database, using the relevant geographic and product market definitions.
2. The estimation of unweighted availability. The Merged Business Availability List will be the available universe of relevant firms for the study. This process will significantly improve the identification of minority-owned and woman-owned businesses in the business population. Race and sex must be assigned to any firm not already classified.¹¹³ This will produce estimates of woman and minority business availability in the City's markets for each NAICS code in the product market; for woman and minority business availability for all NAICS codes combined; and for the broad industry categories of goods, services, and construction. The detailed results should also be the basis for contract specific goal setting methodology.
3. The estimation of weighted availability. Using the weights from the utilization analysis, the unweighted availability should be adjusted for the share of the City's spending in each NAICS code. The unweighted availability determination will be weighted by the share of dollars the City

112. See *National Disparity Study Guidelines*, Chapter III, at 33-34.

113. We note this is an improvement over the approach described in the *National Disparity Study Guidelines*, which recommended a survey to assign classifications. While it is more labor intensive to actually assign race, gender and industry code to each firm than using a mathematical formula derived from survey results, it greatly improves the accuracy of the assignments, resulting in more narrowly tailored results.

actually spends in each NAICS code, derived from the utilization analysis. These resulting weighted availability estimates will be used in the calculation of disparity indices.

This adjustment is important for two reasons. First, disparity analyses compare utilization and availability. The utilization metrics are shares of dollars. The unweighted availability metrics are shares of firms. In order to make comparable analyses, the dollar shares are used to weight the unweighted availability. Second, any examination of the City’s overall usage of available firms must be conducted with an understanding of what NAICS codes received what share of agency spending. Absent this, a particular group’s availability share (high or low) in an area of low spending would carry equal weight to a particular group’s availability share (high or low) in an area of large spending.

This methodology for estimating availability is usually referred to as the “custom census” approach with refinements. This approach is favored for several reasons. As recognized by the courts and the *National Disparity Study Guidelines*,¹¹⁴ this methodology in general is superior to the other methods for at least four reasons.

- First, it provides an internally consistent and rigorous “apples to apples” comparison between firms in the availability numerator and those in the denominator. Other approaches often have different definitions for the firms in the numerator (e.g., certified W/MBEs or firms that respond to a survey) and the denominator (e.g., registered vendors or the Census Bureau’s County Business Patterns data).
- Second, by examining a comprehensive group of firms, it “casts a broader net” beyond those known to the agency. As held by the federal court of appeals in finding the Illinois Department of Transportation’s program to be constitutional, the “remedial nature of [DBE programs] militates in favor of a method of DBE availability calculation that casts a broader net” than merely using bidders lists or other agency or government directories.¹¹⁵ A broad methodology is also recommended by the Federal DBE Program, which has been upheld by every court.¹¹⁶ A custom census is less likely to be tainted by the effects of past and present discrimination than other methods, such as bidders lists, because it seeks out firms in

114. J. Wainwright and C. Holt, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*, National Academies of Sciences, Engineering, and Medicine, 2010 (“*National Disparity Study Guidelines*”).

115. *Northern Contracting III*, 473 F.3 at 723.

116. *See Tips for Goal Setting in the Disadvantaged Business Enterprise (DBE) Program*, https://www.transportation.gov/sites/dot.gov/files/docs/Tips_for_Goal-Setting_in_DBE_Program_20141106.pdf.

the agency's market areas that have not been able to access its opportunities.

- Third, this approach is less impacted by variables affected by discrimination. Factors such as firm age, size, qualifications, and experience are all elements of business success where discrimination would be manifested. Several courts have held that the results of discrimination – which impact factors affecting capacity – should not be the benchmark for a program designed to ameliorate the effects of discrimination. They have acknowledged that minority and woman firms may be smaller, newer, and otherwise less competitive than non-W/MBEs because of the very discrimination sought to be remedied by race-conscious contracting programs. Racial and gender differences in these “capacity” factors are the outcomes of discrimination and it is therefore inappropriate as a matter of economics and statistics to use them as “control” variables in a disparity study.¹¹⁷
- Fourth, it has been upheld by every court that has reviewed it, including in the failed challenge to the Illinois Department of Transportation's DBE program¹¹⁸ and most recently in the successful defense of the Tollway's DBE program.¹¹⁹

Other methodologies relying only on vendor or bidder lists may overstate or understate availability as a proportion of the City's actual markets because they reflect only the results of the agency's own activities, not an accurate portrayal of marketplace behavior. Other methods of whittling down availability by using assumptions based on surveys with limited response rates or guesses about firms' capacities easily lead to findings that woman and minority businesses no longer face discrimination. Firms that fail to respond to a survey are called “unavailable” even if the firm is actually working on agency contracts.

Many plaintiffs have argued that studies must somehow control for “capacity” of W/MBEs to perform specific agency contracts. The definition of “capacity” has varied based upon the plaintiff's particular point of view, but it has generally meant firm age, firm size (full time employees), firm revenues, bonding limits and prior experience on agency projects (no argument has been made outside of the construction industry).

This test has been rejected by the courts when directly addressed by the plaintiff and the agency. As recognized by the courts and the *National Disparity*

117. For a detailed discussion of the role of capacity in disparity studies, see the *National Disparity Study Guidelines*, Appendix B, *Understanding Capacity*.

118. *Northern Contracting III*, 473 F.3d 715.

119. *Midwest Fence II*, 840 F.3d at 932; see also *Northern Contracting III*, 473 F.3d 715 (CHA served as testifying experts for the Tollway).

Study Guidelines, these capacity factors are not race- and gender-neutral variables. Discriminatory barriers depress the formation of firms by minorities and women, and the success of such firms in doing business in both the private and public sectors. In a perfectly discriminatory system, M/WBEs would have no “capacity” because they would have been prevented from developing any “capacity”. That certainly would not mean that there was no discrimination or that the government must sit by helplessly and continue to award tax dollars within the “market failure” of discrimination and without recognition of systematic, institutional race- and gender-based barriers. It is these types of “capacity” variables where barriers to full and fair opportunities to compete will be manifested. Capacity limitations on availability would import the current effects of past discrimination into the model, because if W/MBEs are newer or smaller because of discrimination, then controlling for those variables will mask the phenomenon of discrimination that is being studied. In short, identifiable indicators of capacity are themselves impacted and reflect discrimination. The courts have agreed. Based on expert testimony, judges understand that factors such as size and experience reflect outcomes influenced by race and gender: “M/WBE construction firms are generally smaller and less experienced *because* of discrimination.”¹²⁰ Significantly, *Croson* does not “require disparity studies that measure whether construction firms are able to perform a *particular contract*.”¹²¹

To rebut this framework, a plaintiff must proffer its own study showing that the disparities disappear when whatever variables it believes are important are held constant and that controlling for firm specialization explained the disparities.¹²² “Since the state defendants offered evidence to do so, the burden then shifted to Midwest Fence to show a genuine issue of material fact as to whether the state defendants had a substantial basis in evidence for adopting their DBE programs. Speculative criticism about potential problems will not carry that burden.”¹²³ “To successfully rebut the [Illinois] Tollway’s evidence of discrimination, [plaintiff] Midwest [Fence] must come forward with a neutral explanation for the disparity, show that the Tollway’s statistics are flawed, demonstrate that the observed disparities are insignificant, or present contrasting data of its own. *See Concrete Works IV*, 321 F.3d at 959 (citation omitted). Again, the Court finds that Midwest has failed to make this showing.”¹²⁴

120. *Concrete Works IV*, 321 F.3d at 983 (emphasis in the original).

121. *Id.*

122. Conjecture and unsupported criticism of the government are not enough. The plaintiff must rebut the government’s evidence and introduce “credible, particularized evidence” of its own. *See Midwest Fence II*, 840 F.3d at 932, 942 (upholding the Illinois Tollway’s program for state funded contracts modeled after Part 26 and based on CHA’s expert testimony).

123. *Midwest Fence II*, 840 F.3d at 952.

124. *Midwest Fence I*, 84 F. Supp. 3d 705.

There are also practical reasons to not circumscribe availability through “capacity” limitations. First, there is no agreement concerning what variables are relevant or how those variables are to be measured for the purpose of examining whether race and gender barriers impede the success of minority and woman entrepreneurs. [“Plaintiff’s’ expert] and Midwest Fence have not explained how to account for relative capacity.”¹²⁵ For example, a newly formed firm might be the result of a merger of much older entities or have been formed by highly experienced owners; it is unclear how such variations would shed light on the issues in a disparity study. Second, since the amount of necessary capacity will vary from contract to contract, there is no way to establish universal standards that would satisfy the capacity limitation. Third, firms’ capacities are highly elastic. Businesses can add staff, rent equipment, hire subcontractors, or take other steps to be able to perform a particular scope on a particular contract. Whatever a firm’s capacity might have been at the time of the study, it may well have changed by the time the agency seeks to issue a specific future solicitation. Fourth, there are no reliable data sources for the type of information usually posited as important by those who seek to reduce availability estimates using capacity factors. While a researcher might have information about firms that are certified as M/WBEs or that are prequalified by an agency (which usually applies only to prime construction firms), there is no database for that information for non-certified firms, especially White male-owned firms that usually function as subcontractors. Any adjustment to the numerator (W/MBEs) must also be made to the denominator (all firms), since a researcher cannot assume that all firms owned by White males have adequate capacity but that firms owned by minorities or women do not.

Capacity variables, such as the length of time the owner has been in business, the receipts of the firms, the number of employees and other information, should be examined at the economy-wide level of business formation and earnings, discussed in Chapter V, not at the first stage of the analysis. To import these variables into the availability determination would confirm the downward bias that discrimination imposes on W/MBEs’ availability and the upward bias enjoyed by non-W/MBEs. These factors should also be explored during anecdotal data collection, discussed in Chapter VI, to develop data on how the formation and development of W/MBEs are affected by these types of factors. The ability of firms to perform a particular contract or scope of work is also relevant to contract goal setting, where the agency must use its judgment about whether to adjust the initial goal that results from the study data based on current market conditions and current firm availability.

125. *Midwest Fence II*, 840 F.3d at 952.

4. Examine Disparities between the City of Seattle’s Utilization of W/MBEs and W/MBE Availability

A disparity study for a local government must analyze whether there are statistically significant disparities between the availability of W/MBEs and their utilization on agency contracts.

Where 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... In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion.¹²⁶

This is known as the “disparity ratio” or “disparity index” which is a critical element of the statistical evidence. A disparity ratio measures the participation of a group in the government’s contracting opportunities by dividing that group’s utilization by the availability of that group and multiplying that result by 100. Courts have looked to disparity indices in determining whether strict scrutiny is satisfied.¹²⁷ An index less than 100% indicates that a given group is being utilized less than would be expected based on its availability.

The courts have held that disparity results must be analyzed to determine whether the results are “significant”. There are two distinct methods to measure the significance of a result. First, a “large” or “substantively significant” disparity is commonly defined by courts as utilization that is equal to or less than 80% of the availability measure. This is based on the Equal Employment Opportunity Commission’s “eighty percent rule” that a ratio less than 80% presents a *prima facie* case of discrimination by supporting the inference that the result may be caused by the disparate impacts of discrimination.¹²⁸ Second, statistically significant disparity means that an outcome is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from random chance alone.¹²⁹ A more in-depth discussion of statistical significance is provided in Appendix C.

126. *Croson*, 488 U.S. at 509; see *Webster*, 51 F.Supp.2d at 1363, 1375.

127. *Scott*, 199 F.3d at 218; see also *Concrete Works II*, 36 F.3d at 1526-1527; *O’Donnell Construction Co., Inc. v. State of Columbia*, 963 F.2d 420, 426 (D.C. Cir. 1992); *Cone Corporation v. Hillsborough County*, 908 F.2d 908, 916 (11th Cir. 1990), *cert. denied*, 498 U.S. 983 (1990).

128. 29 C.F.R. §1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”); see *Engineering Contractors II*, 122 F3d at 914.

In addition to creating the disparity ratio, correct measures of availability are necessary to determine whether discriminatory barriers depress the formation of firms by minorities and women, and the success of such firms in doing business in both the private and public sectors, known as an “economy-wide” disparity analysis.¹³⁰

The City need not prove that the statistical inferences of discrimination are “correct”. In upholding Denver’s M/WBE Program, the Tenth Circuit Court of Appeals noted that strong evidence supporting Denver’s determination that remedial action was necessary need not have been based upon “irrefutable or definitive” proof of discrimination. Statistical evidence creating inferences of discriminatory motivations was sufficient and, therefore, evidence of market area discrimination was properly used to meet strict scrutiny. To rebut this type of evidence, the plaintiff must prove by a preponderance of the evidence that such proof does not support those inferences.¹³¹

Nor must the City demonstrate that the “ordinances will *change* discriminatory practices and policies” in the local market area; such a test would be “illogical” because firms could defeat the remedial efforts simply by refusing to cease discriminating.¹³²

The City need not prove that private firms directly engaged in any discrimination in which the government passively participates do so intentionally, with the purpose of disadvantaging minorities and women.

Denver’s only burden was to introduce evidence which raised the inference of discriminatory exclusion in the local construction industry and link its spending to that discrimination.... Denver 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. To impose such a burden on a municipality would be tantamount to requiring proof of discrimination and would eviscerate any reliance the municipality could place on statistical studies and anecdotal evidence.¹³³

129. A chi-square test – examining if the utilization rate was different from the weighted availability - is used to determine the statistical significance of the disparity ratio.

130. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868 at *69 (Sept. 8, 2005) (“*Northern Contracting II*”) (IDOT’s custom census approach was supportable because “discrimination in the credit and bonding markets may artificially reduce the number of M/WBEs”).

131. *Concrete Works IV*, 321 F. 3d at 971.

132. *Id.* at 973 (emphasis in the original).

133. *Id.* at 971.

Similarly, statistical evidence by its nature cannot identify the individuals responsible for the discrimination; there is no need to do so to meet strict scrutiny, as opposed to an individual or class action lawsuit.¹³⁴

5. Analyze Economy-Wide Evidence of Race- and Gender-Based Disparities in the City of Seattle’s Market Area

The courts have repeatedly held that analysis of disparities in the rates at which W/MBEs in the government’s markets form businesses compared to similar non-W/MBEs, their earnings from such businesses, and their access to capital markets are highly relevant to the determination of whether the market functions properly for all firms regardless of the race or gender of their ownership. These analyses contributed to the successful defense of the Illinois Tollway’s DBE program¹³⁵. As similarly explained by the Tenth Circuit, this type of evidence:

demonstrates the existence of two kinds of discriminatory barriers to minority subcontracting enterprises, both of which show a strong link between racial disparities in the federal government's disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination. The first discriminatory barriers are to the formation of qualified minority subcontracting enterprises due to private discrimination, precluding from the outset competition for public construction contracts by minority enterprises. The second discriminatory barriers are to fair competition between minority and non-minority subcontracting enterprises, again due to private discrimination, precluding existing minority firms from effectively competing for public construction contracts. The government also presents further evidence in the form of local disparity studies of minority subcontracting and studies of local subcontracting markets after the removal of affirmative action programs.... The government's evidence is particularly striking in the area of the race-based denial of access to capital, without which the formation of minority subcontracting enterprises is stymied.¹³⁶

134. *Id.* at 973.

135. *Midwest Fence I*, 2015 WL 1396376 at *21 (“Colette Holt's updated census analysis controlled for variables such as education, age, and occupation and still found lower earnings and rates of business formation among women and minorities as compared to white men.”).

136. *Adarand VII*, 228 F.3d at 1147, 1168-69.

Business discrimination studies and lending formation studies are relevant and probative because they show a strong link between the disbursement of public funds and the channeling of those funds due to private discrimination. “Evidence that private discrimination results in barriers to business formation is relevant because it demonstrates that M/WBEs are precluded *at the outset* from competing for public construction contracts. Evidence of barriers to fair competition is also relevant because it similarly demonstrates that *existing* M/WBEs are precluded from competing for public contracts.”¹³⁷ Despite the contentions of plaintiffs that possibly dozens of factors might influence the ability of any individual to succeed in business, the courts have rejected such impossible tests and held that business formation studies are not flawed because they cannot control for subjective descriptions such as “quality of education”, “culture” and “religion”.¹³⁸

For example, in unanimously upholding the DBE program, the courts agree that disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms and the disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners are strong evidence of the continuing effects of discrimination.¹³⁹ The Eighth Circuit Court of Appeals took a “hard look” at the evidence Congress considered, and concluded that the legislature had:

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. In rebuttal, [the plaintiffs] presented evidence that the data were susceptible to multiple interpretations, but they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to and participation in highway contracts. Thus, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.¹⁴⁰

137. *Id.*

138. *Concrete Works IV*, 321 F.3d at 980.

139. *Id.*; *Western States*, 407 F.3d at 993; *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2004 U.S. Dist. LEXIS 3226 at *64 (N.D. Ill., Mar. 3, 2004) (“*Northern Contracting I*”).

140. *Sherbrooke*, 345 F.3d. at 970; *see also, Adarand VII*, 228 F.3d at 1175 (Plaintiff has not met its 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.”).

6. Evaluate Anecdotal Evidence of Race- and Gender-Based Barriers to Equal Opportunities in the City of Seattle’s Market Area

A study should further explore anecdotal evidence of experiences with discrimination in contracting opportunities because it is relevant to the question of whether observed statistical disparities are due to discrimination and not to some other non-discriminatory cause or causes. As observed by the Supreme Court, anecdotal evidence can be persuasive because it “brought the cold [statistics] convincingly to life.”¹⁴¹ Testimony about discrimination practiced by prime contractors, bonding companies, suppliers, and lenders has been found relevant regarding barriers both to minority firms’ business formation and to their success on governmental projects.¹⁴² While anecdotal evidence is insufficient standing alone, “[p]ersonal accounts of actual discrimination or the effects of discriminatory practices may, however, vividly complement empirical evidence. Moreover, anecdotal evidence of a [government’s] institutional practices that exacerbate discriminatory market conditions are [sic] often particularly probative.”¹⁴³ “[W]e do not set out a categorical rule that every case must rise or fall entirely on the sufficiency of the numbers. To the contrary, anecdotal evidence might make the pivotal difference in some cases; indeed, in an exceptional case, we do not rule out the possibility that evidence not reinforced by statistical evidence, as such, will be enough.”¹⁴⁴

There is no requirement that anecdotal testimony be “verified” or corroborated, as befits the role of evidence in legislative decision-making as opposed to judicial proceedings. “[Plaintiff] offered no rationale as to why a fact finder could not rely on the State’s ‘unverified’ anecdotal data. Indeed, 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’ narrative of an incident told from the witness’ perspective and including the witness’ perceptions.”¹⁴⁵ Likewise, the Tenth Circuit held that “Denver was not required to present corroborating evidence and [plaintiff] was free to present its own witnesses to either refute the incidents described by Denver’s witnesses or to relate their own perceptions on discrimination in the Denver construction industry.”¹⁴⁶

141. *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 399 (1977).

142. *Adarand VII*, 228 F.3d at 1168-1172.

143. *Concrete Works II*, 36 F.3d at 1520,1530.

144. *Engineering Contractors II*, 122 F.3d at 926.

145. *Rowe*, 615 F.3d at 249.

146. *Concrete Works IV*, 321 F.3d at 989.

E. Narrowly Tailoring a Contracting Equity Program for the City of Seattle

Even if the City has a strong basis in evidence to believe that race-based measures are needed to remedy identified discrimination, the program must still be narrowly tailored to that evidence. In striking down the City of Chicago’s earlier M/WBE construction program, the court held that “remedies must be more akin to a laser beam than a baseball bat.”¹⁴⁷ In contrast, as discussed above, programs that closely mirror those of the DBE program¹⁴⁸ have been upheld using that framework.¹⁴⁹ The courts have repeatedly examined the following factors in determining whether race-based remedies are narrowly tailored to achieve their purpose:

- The necessity of relief;¹⁵⁰
- The efficacy of race- and gender-neutral remedies at overcoming identified discrimination;¹⁵¹
- The relationship of numerical benchmarks for government spending to the availability of minority- and woman-owned firms and to subcontracting goal setting procedures;¹⁵²
- The flexibility of the program requirements, including the provision for good faith efforts to meet goals and contract specific goal setting procedures;¹⁵³
- The relationship of numerical goals to the relevant market;¹⁵⁴
- The impact of the relief on third parties;¹⁵⁵ and
- The over inclusiveness of racial classifications.¹⁵⁶

147. *Builders Association of Greater Chicago v. City of Chicago*, 298 F. Supp.2d 725, 742 (N.D. Ill. 2003).

148. Although numerous regulatory pronouncements have been issued since the federal DBE program was revamped in 1999, the 1999 rule remains in effect.

149. *See, e.g., Midwest Fence II*, 840 F.3d at 953 (upholding the Illinois Tollway’s program for state funded contracts modelled after Part 26 and based on CHA’s expert testimony).

150. *Croson* at 507; *Adarand III* at 237-238.

151. *Paradise* at 171.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Croson* at 506.

156. *Paradise* at 171; *see also Sherbrooke*, 345 F.3d at 971-972.

1. Implement Race-Neutral Remedies

Race-neutral approaches are necessary components of a defensible and effective race-conscious program,¹⁵⁷ and the failure to seriously consider such remedies has proven fatal to several programs.¹⁵⁸ The trial court in the City of Chicago case noted that “there was little testimony about the effectiveness of race-neutral programs.”¹⁵⁹

Difficulty in accessing procurement opportunities, restrictive bid specifications, excessive experience requirements, and overly burdensome insurance and/or bonding requirements, for example, might be addressed by the City without resorting to the use of race or gender in its decision-making. Effective remedies include unbundling of contracts into smaller units that facilitate small business participation; providing technical support; and developing programs to address issues of financing, bonding, and insurance important to all small and emerging businesses.¹⁶⁰ Further, governments have a duty to ferret out and punish discrimination against minorities and women by their contractors, staff, lenders, bonding companies or others.¹⁶¹

The requirement that the agency must meet the maximum feasible portion of its aspirational goal through race-neutral measures, as well as estimate that portion of the goal that it predicts will be met through such measures, has been central to the holdings that the DBE program rule meets narrow tailoring.¹⁶² The highly disfavored remedy of race-based decision making should be used only as a last resort.

However, strict scrutiny does not require that every race-neutral approach must be implemented and then proven ineffective before race-conscious remedies may be utilized.¹⁶³ While an entity must give good faith consideration to

157. *Croson*, 488 U.S. at 507 (Richmond considered no alternatives to race-based quota); *Associated General Contractors of Ohio v. Drabik*, 214 F.3d 730, 738 (6th Cir. 2000) (“*Drabik II*”); *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 91 F.3d 586, 609 (3rd Cir. 1996) (“*Philadelphia III*”) (City’s failure to consider race-neutral alternatives was particularly telling); *Webster*, 51 F.Supp.2d at 1380 (for over 20 years County never seriously considered race-neutral remedies); cf. *Aiken*, 37 F.3d at 1164 (failure to consider race-neutral method of promotions suggested a political rather than a remedial purpose).

158. *See, e.g., Florida A.G.C. Council, Inc. v. State of Florida*, Case No.: 4:03-CV-59-SPM at 10 (N. Dist. Fla. 2004) (“There is absolutely no evidence in the record to suggest that the Defendants contemplated race-neutral means to accomplish the objectives” of the statute.); *Engineering Contractors II*, 122 F.3d at 928.

159. *BAGC v. Chicago*, 298 F. Supp.2d at 742.

160. *See* 49 C.F.R. §26.51; *Midwest Fence II*, 840 F. 3d at 973 (“the Illinois Tollway has implemented at least four race-neutral programs to increase DBE participation, including: a program that allows smaller contracts to be unbundled from larger ones, a Small Business Initiative that sets aside contracts for small businesses on a race-neutral basis, partnerships with agencies that provide support services to small businesses, and other programs designed to make it easier for smaller contractors to do business with the Tollway in general. The Tollway’s race-neutral measures are consistent with those suggested under the Federal Regulations”).

161. *Croson*, 488 U.S. at 503 n.3; *Webster*, 51 F.Supp.2d at 1380.

162. *See, e.g., Sherbrooke*, 345 F.3d. at 973.

race-neutral alternatives, “strict scrutiny does not require exhaustion of every possible such alternative...however irrational, costly, unreasonable, and unlikely to succeed such alternative might be... [S]ome degree of practicality is subsumed in the exhaustion requirement.”¹⁶⁴ Actual results matter, too. “Like [the Illinois Department of Transportation], the [Illinois] Tollway uses race- and gender-neutral measures.... Those measures have not produced substantial DBE participation, however, so the Tollway also sets DBE participation goals.”¹⁶⁵

2. Set Targeted W/MBE Goals

Numerical goals or benchmarks for the participation of MWBEs must be substantially related to their availability in the relevant market.¹⁶⁶ For example, the DBE program requires that the overall goal must be based upon demonstrable evidence of the number of DBEs ready, willing, and able to participate on the recipient’s federally assisted contracts.¹⁶⁷ “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. This stands in stark contrast to the program struck down in *Croson*.”¹⁶⁸

It is settled case law that goals for a particular solicitation should reflect the particulars of the contract, not reiterate annual aggregate targets or be based on guesses; goals must be contract specific. In holding the City of Chicago’s former construction program to be insufficiently narrowly tailored, the court found that the MBE and WBE goals were “formulistic” percentages not related to the availability of firms.¹⁶⁹ Contract goals must be based upon availability of M/WBEs to perform the anticipated scopes of the contract, location, progress towards meeting annual goals, and other factors.¹⁷⁰ Not only is transparent, detailed contract goal setting legally mandated,¹⁷¹ but this approach also reduces the need to conduct good faith efforts reviews, as well as the temptation to create “front” companies and sham participation to meet unreasonable contract goals. While this is more labor intensive than defaulting to the annual, overall goals, narrow tailoring requires contract goal setting.

163. *Grutter*, 529 U.S. at 339.

164. *Coral Construction*, 941 F.2d at 923.

165. *Midwest Fence II*, 840 F. 3d at 938.

166. *Webster*, 51 F.Supp.2d at 1379, 1381 (statistically insignificant disparities are insufficient to support an unexplained goal of 35% M/WBE participation in County contracts); *see also Baltimore I*, 83 F.Supp.2d 613, 621.

167. 49 C.F.R. §26.45 (b).

168. *Sherbrooke*, 345 F.3d. at 972.

169. *BAGC v. Chicago*, 298 F. Supp.2d at 740.

170. *Midwest Fence I*, 84 F. Supp. 3d at 739.

171. *See also Coral Construction*, 941 F.2d at 924.

3. Ensure the Flexibility of Goals and Requirements

It is imperative that remedies not operate as fixed quotas.¹⁷² A W/MBE program must provide for contract awards to firms who fail to meet the contract goals but make good faith efforts to do so. In *Croson*, the Court refers approvingly to the contract-by-contract waivers used in the DBE program,¹⁷³ a feature that has been central to the holding that the DBE program meets the narrow tailoring requirement. If the standards for evaluating whether a bidder who fails to meet the contract goal has made good faith efforts to do so,

seems vague, that is likely because it was meant to be flexible.... A more rigid standard could easily be too arbitrary and hinder prime contractors' ability to adjust their approaches to the circumstances of particular projects. *Midwest Fence's* real argument seems to be that in practice, prime contractors err too far on the side of caution, granting significant price preferences to DBEs instead of taking the risk of losing a contract for failure to meet the DBE goal. *Midwest Fence* contends this creates a de facto system of quotas because contractors believe they must meet the DBE goal in their bids or lose the contract. But Appendix A to the [DBE program] regulations cautions against this very approach.... Flexibility and the availability of waivers affect whether a program is narrowly tailored. The regulations caution against quotas; provide examples of good faith efforts prime contractors can make and states can consider; and instruct a bidder to use "good business judgment" to decide whether a price difference between a DBE and a non-DBE subcontractor is reasonable or excessive in a given case. For purposes of contract awards, this is enough to "give fair notice of conduct that is forbidden or required," [citation omitted].¹⁷⁴

Chicago's program failed narrow tailoring by imposing a "rigid numerical quota" on prime bidders' utilization of MBEs and WBEs.¹⁷⁵ By contrast, the constitutionally sound Illinois Tollway's program provides for detailed waiver provisions, including rights of appeal of adverse determinations that the bidder made a good faith effort to meet a contract goal.¹⁷⁶

172. See 49 C.F.R. §26.43 (quotas are not permitted and set-aside contracts may be used only in limited and extreme circumstances "when no other method could be reasonably expected to redress egregious instances of discrimination").

173. *Croson*, 488 U.S. at 508; see also *Adarand VII*, 228 F.3d at 1181.

174. *Midwest Fence II*, 840 F.3d at 948.

175. *BAGC v. Chicago*, 298 F. Supp.2d at 740 ("Waivers are rarely or never granted... The City program is a rigid numerical quota...formulistic percentages cannot survive strict scrutiny.").

176. *Midwest Fence I*, 84 F. Supp. 3d at 739.

4. Review Program Eligibility Over-Inclusiveness and Under-Inclusiveness

The over- or under-inclusiveness of those persons to be included in the City’s program is an additional consideration and addresses whether the remedies truly target the evil identified. Over-inclusiveness addresses the question whether a remedial program grants preferences or confers benefits to groups without examining whether each group is actually disadvantaged.

The groups to be included must be based upon evidence demonstrating disparities caused by discrimination.¹⁷⁷ The “random inclusion” of ethnic or racial groups that may never have experienced discrimination in the entity’s market area may indicate impermissible “racial politics”.¹⁷⁸ In striking down Cook County, Illinois’ construction program, the Seventh Circuit remarked that a “state or local government that has discriminated just against Blacks may not by way of remedy discriminate in favor of Blacks and Asian-Americans and women.”¹⁷⁹ However, at least one court has held some quantum of evidence of discrimination for each group is sufficient; *Croson* does not require that each group included in the ordinance suffer equally from discrimination.¹⁸⁰ Therefore, remedies should be limited to those firms owned by the relevant minority groups, as established by the evidence, that have suffered actual harm in the market area.¹⁸¹

The over-inclusiveness concern is mitigated by the requirement that the firm’s owner(s) must be disadvantaged.¹⁸² The DBE program’s rebuttable presumptions of social and economic disadvantage, including the requirement that the disadvantaged owner’s personal net worth not exceed a certain ceiling and that the firm meet the Small Business Administration’s size definitions for its industry, have been central to the courts’ holdings that it is narrowly tailored.¹⁸³ “[W]ealthy minority owners and wealthy minority-owned firms are

177. *Philadelphia II*, 6 F.3d 990, 1007-1008 (strict scrutiny requires data for each minority group; data was insufficient to include Hispanics, Asians, or Native Americans).

178. *Webster*, 51 F.Supp.2d at 1380–1381.

179. *Builders Association of Greater Chicago v. County of Cook*, 256 F.3d 642, 646 (7th Cir. 2001).

180. *Concrete Works IV*, 321 F.3d at 971 (Denver introduced evidence of bias against each group; that is sufficient); *cf. Midwest Fence II*, 840 F.3d at 945 (“Midwest has not argued that any of the groups in the table [in the expert report] were not in fact disadvantaged at all.”).

181. *Rowe*, 615 F.3d at 233, 254 (“[T]he statute contemplates participation goals only for those groups shown to have suffered discrimination. As such, North Carolina’s statute differs from measures that have failed narrow tailoring for over-inclusiveness.”).

182. DBE program eligibility is limited to small businesses under the SBA size limits and owners whose personal net worth is not over the prescribed threshold. Additionally, a qualifying small business owned by a White male can become a program beneficiary based upon criteria set forth in Part 26 for an individual showing of social and economic disadvantage. *See generally, Northern Contracting I*; Part 26, Appendix E: *Individual Determinations of Social and Economic Disadvantage*.

excluded, and certification is available to persons who are not presumptively [socially] disadvantaged but can demonstrate actual social and economic disadvantage. Thus, race is made relevant in the program, but it is not a determinative factor.”¹⁸⁴ In contrast, Chicago’s program was held to fail strict scrutiny because “[t]he ‘graduation’ revenue amount is very high, \$27,500,000, and very few have graduated. There is no net worth threshold. A third generation Japanese American from a wealthy family, and with a graduate degree from MIT, qualifies (and an Iraqi immigrant does not).”¹⁸⁵

5. Evaluate the Burden on Third Parties

Failure to make “neutral” changes to contracting and procurement policies and procedures that disadvantage W/MBEs and other small businesses may result in a finding that the program unduly burdens non-W/MBEs.¹⁸⁶ However, “innocent” parties can be made to share some of the burden of the remedy for eradicating racial discrimination.¹⁸⁷

The Court reiterates that setting goals as a percentage of total contract dollars does not demonstrate an undue burden on non-DBE subcontractors. The Tollway's method of goal setting is identical to that prescribed by the Federal Regulations, which this Court has already found to be supported by “strong policy reasons” [citation omitted].... Here, where the Tollway Defendants have provided persuasive evidence of discrimination in the Illinois road construction industry, the Court finds the Tollway Program's burden on non-DBE subcontractors to be permissible.¹⁸⁸

Burdens must be proven and cannot constitute mere speculation by a plaintiff.¹⁸⁹ “Implementation of the race-conscious contracting goals for which [the

183. *Sherbrooke*, 345 F.3d at 973; *see also Grutter*, 539 U.S. at 341; *Adarand VII*, 228 F.3d at 1183-1184 (personal net worth limit is element of narrow tailoring); *cf. Associated General Contractors of Connecticut v. City of New Haven*, 791 F.Supp. 941, 948 (D. Conn. 1992), *vacated on other grounds*, 41 F.3d 62 (2nd Cir. 1992) (definition of “disadvantage” was vague and unrelated to goal).

184. *Sherbrooke*, 345 F.3d. at 973.

185. *BAGC v. Chicago*, 298 F. Supp.2d at 739-740.

186. *See Engineering Contractors Assoc. of South Florida, Inc. v. Metropolitan Dade County*, 943 F.Supp. 1546, 1581-1582 (S.D. Fla. 1996) (“*Engineering Contractors I*”) (County chose not to change its procurement system).

187. *Concrete Works IV*, 321 F.3d at 973; *Wygant*, 476 U.S. at 280-281; *Adarand VII*, 228 F.3 at 1183 (“While there appears to be no serious burden on prime contractors, who are obviously compensated for any additional burden occasioned by the employment of DBE subcontractors, at the margin, some non-DBE subcontractors such as *Adarand* will be deprived of business opportunities”); *cf. Northern Contracting II*, at *5 (“Plaintiff has presented little evidence that is [sic] has suffered anything more than minimal revenue losses due to the program.”).

188. *Midwest Fence I*, 84 F. Supp. 3d at 739.

189. *Rowe*, 615 F.3d at 254 (prime bidder had no need for additional employees to perform program compliance and need not subcontract work it can self-perform).

federal authorizing legislation] provides will inevitably result in bids submitted by non-DBE firms being rejected in favor of higher bids from DBEs. Although the result places a very real burden on non-DBE firms, this fact alone does not invalidate [the statute]. If it did, all affirmative action programs would be unconstitutional because of the burden upon non-minorities.”¹⁹⁰

Narrow tailoring does permit certified firms acting as prime contractors to count their self-performance towards meeting contract goals if the study finds discriminatory barriers to prime contract opportunities. There is no requirement that a program be limited only to the subcontracting portions of contracts. Part 26 provides this remedy also is for discrimination against DBEs seeking prime contractor work,¹⁹¹ and it does not limit the application of the program to only subcontracts.¹⁹² The trial court in upholding the Illinois DOT’s DBE program explicitly recognized that barriers to subcontracting opportunities also affect the ability of DBEs to compete for prime work on a fair basis.

This requirement that goals be applied to the value of the entire contract, not merely the subcontracted portion(s), is not altered by the fact that prime contracts are, by law, awarded to the lowest bidder. While it is true that prime contracts are awarded in a race- and gender-neutral manner, the Regulations nevertheless mandate application of goals based on the value of the entire contract. Strong policy reasons support this approach. Although laws mandating award of prime contracts to the lowest bidder remove concerns regarding direct discrimination at the level of prime contracts, the indirect effects of discrimination may linger. The ability of DBEs to compete successfully for prime contracts may be indirectly affected by discrimination in the subcontracting market, or in the bonding and financing markets. Such discrimination is particularly burdensome in the construction industry, a highly competitive industry with tight profit margins, considerable hazards, and strict bonding and insurance requirements.¹⁹³

190. *Western States Paving*, 407 F.3d at 995.

191. 49 C.F.R. §26.53(g) (“In determining whether a DBE bidder/offeror for a prime contract has met the contractor goal, count the work the DBE has committed to perform with its own forces as well as the work that it has committed to be performed by DBE subcontractors and suppliers.”).

192. 49 C.F.R. §26.45(a)(1).

193. *Northern Contracting II*, 2005 U.S. Dist. LEXIS 19868 at 74.

6. Examine the Duration and Review of the Program

Race-based programs must have durational limits. A race-based remedy must “not last longer than the discriminatory effects it is designed to eliminate.”¹⁹⁴ The unlimited duration and lack of review were factors in the court’s holding that the City of Chicago’s M/WBE program was no longer narrowly tailored; Chicago’s program was based on 14-year-old information which, while it supported the program adopted in 1990, no longer was sufficient standing alone to justify the City’s efforts in 2004.^{195,196} How old is too old is not definitively answered;¹⁹⁷ however, governments would be wise to analyze data at least once every five or six years.¹⁹⁸

In contrast, the DBE program’s periodic review by Congress has been repeatedly held to provide adequate durational limits.^{199,200} Similarly, “two facts [were] particularly compelling in establishing that [North Carolina’s M/WBE program] was narrowly tailored: the statute’s provisions (1) setting a specific expiration date and (2) requiring a new disparity study every five years.”²⁰¹

194. *Adarand III*, 515 U.S. at 238.

195. *BAGC v. Chicago*, 298 F.Supp.2d at 739.

196. The City’s program was revised to comply with the court’s decision in 2004 and subsequently reauthorized based on new data in 2009 and 2015.

197. See, e.g., *Associated General Contractors of Ohio, Inc. v. Drabik*, 50 F.Supp.2d 741, 747, 750 (S.D. Ohio 1999) (“*Drabik I*”) (“A program of race-based benefits cannot be supported by evidence of discrimination which is now over twenty years old.... The state conceded that it had no additional evidence of discrimination against minority contractors, and admitted that during the nearly two decades the Act has been in effect, it has made no effort to determine whether there is a continuing need for a race-based remedy.”); *Brunet v. City of Columbus*, 1 F.3d 390, 409 (6th Cir. 1993), cert. denied sub nom. *Brunet v. Tucker*, 510 U.S. 1164 (1994) (fourteen-year-old evidence of discrimination was “too remote to support a compelling governmental interest.”).

198. Chicago’s program was amended based on new evidence in 2009 and 2015.

199. See *Western States Paving*, 407 F.3d at 995.

200. The Federal DBE Program was reauthorized in the Infrastructure and Investment and Jobs Act, Public Law No: 117-58 earlier this year.

201. *Rowe*, 615 F.3d at 253.

III. CITY OF SEATTLE'S EQUITY IN CONTRACTING PROGRAMS

This Chapter describes the City of Seattle's Women- and Minority-owned Business ("WMBE") Program for state and locally funded construction, consulting and purchasing (goods and services) contracts and the Disadvantaged Business Enterprise ("DBE") Program for Federal Transit Administration ("FTA") funded contracts. We first provide overviews of the elements of the programs. We then provide results of our interviews with businesses about the implementation of the programs and results from our electronic survey of business owners.

A. History of the City of Seattle's Contracting Inclusion Policy Measures

1. City of Seattle's WMBE Program

The City of Seattle has adopted citywide policies to maximize contracting equity and inclusion efforts directed to WMBEs. A cornerstone of this effort is the City's WMBE Program to promote the inclusion of these businesses on City contracts.

The 2005 Equality in Contracting Ordinance requires all departments to pursue affirmative efforts to ensure WMBE participation in City contracting and sub-contracting. The Code reflected findings by the City that WMBEs were significantly under-represented and underutilized in City contracting.

To follow the Code's directive, the City has issued a series of Executive Orders that establish the WMBE Program policy and reaffirm the City's commitment to the Program and its objectives. Executive Order 2010-05, Outreach to Women and Minority-Owned Businesses, directs each City department to pursue equitable WMBE utilization opportunities; report on measurable WMBE aspirational goals, including submission of an annual WMBE Plan to the Department of Executive Administration ("DEA"); and to perform extensive outreach out to the WMBE community.

Executive Order 2019-06, Economic Inclusion and Contracting Equity, called for an increase in WMBE outreach efforts; established a Mayoral Women and Minority Owned Business Advisory Committee to provide guidance and feedback on contracting equity initiatives; enhanced collection of equity data and

compliance measures to monitor and enforce the Program; and strengthened City department accountability in implementing the Program.

Executive Order 2023-07, Equity and Opportunity in City Contracting, expanded contracting equity for Black, Indigenous, and people of color owned firms; extended additional resources and support for WMBEs; reinforced accountability and transparency of City Departments; strengthened City policy and practices to promote contracting equity; expanded contracting equity initiatives to include Lesbian, Gay Bisexual, Transgender and Queer (“LGBTQ”)-, veteran-, immigrant-owned businesses; and maximized small business participation through federally funded programs and City of Seattle funded small business development and technical support programs.

2. City of Seattle’s Race and Social Justice Initiative

Supporting the City’s contracting equity efforts is the 2004 Race and Social Justice Initiative (“RSJI”), managed by the Seattle Office for Civil Rights (“SOCR”). The Initiative seeks to end institutional racism within City government and work toward a vision where racial disparities will be eliminated and racial equity achieved. A main goal of RSJI is to ensure open and fair procurements, competitive and fair pricing, environmentally sustainable solutions, best labor practices, access to equal benefits and utilization of W/MBEs, when applicable, in City bid decisions and contracts.

In 2014, the Mayor issued two executive orders affirming the City’s commitment to RSJI’s provisions. Executive Order 2014-02, Race and Social Justice Initiative, directs City departments to undertake initiatives providing measurable outcomes, greater accountability and community-wide efforts to achieve racial equity in the Seattle community. Executive Order 2014-03 Equity in City Contracting, directs each City department to undertake measures to increase opportunities for WMBEs and to encourage Seattle businesses to support these efforts. It seeks to identify and change internal City processes to better assure that the goals of WMBE participation in City contracting can be achieved. In 2023, the City of Seattle passed an ordinance²⁰² codifying RSJI.

B. Contracting Equity Program Administration

The City’s WMBE and DBE Programs are administered citywide by the Purchasing and Contracting Division (“PC”), within the Finance and Administrative Services Department (“FAS”). Construction contracts, large purchases and long-term competitively bid contracts for goods and services are centrally managed through PC.

202. Ordinance 121717 (Seattle Municipal Code Chapter 20.42)

PC is responsible for coordinating Citywide aspirational goal setting for purchasing and consultant spend and managing the voluntary contract goal and commitment process for construction projects. This includes past performance assignment, inclusion plan scoring, social equity plan review, bid tabulation, the contract execution process and monitoring utilization on executed contracts.

Management of consultant solicitations and contracts is decentralized. Each City department awards and executes its own consultant contracts, following the guidelines issued by PC. Each department is responsible for monitoring its own projects and establishing WMBE annual plans and voluntary WMBE goals for consulting and purchasing contracts. The Consultant Contracting Advisory Group is a City internal group that meets every other month to discuss best practices in consultant contracting for engineering and architectural firms.

Routine outreach for the WMBE Program is also managed by PC, including large events, First Friday and community interest group sponsorship and meeting participation.²⁰³

To assist with WMBE Program implementation, City capital departments have a designated WMBE advisor responsible for supporting meeting aspirational goals; identifying WMBE opportunities; and helping with WMBE outreach. Other City departments appoint WMBE leads who assist with program outreach and implementation. WMBE interdepartmental meetings are conducted bimonthly with all City WMBE Advisors and leads to discuss policies, procedures and best practice and recommend modifications.

FAS also supports and assists SOCR with implementing the City's Race and Social Justice Initiative's commitment.

The WMBE Advisory Committee established through Executive Order 2019-06 and continued under Executive Order 2023-07 provides guidance to the City of Seattle regarding practices in support of equity, inclusion and participation of WMBEs in City contracts. The Advisory Committee is composed of 12 members that represent four stakeholder sectors: vendors, consultants, construction contractors and community organizations. Members are currently appointed by the Mayor and FAS and hold two-year terms.

203. Departments such as Seattle Public Utilities ("SPU") and the Seattle Department of Transportation ("SDOT") conduct outreach and events targeted to WMBE firms independently from FAS.

C. Women and Minority Owned Business Program

1. Eligibility

To be eligible to participate in the City’s WMBE program, businesses may self-identify as an WMBE by registering through the City’s Online Business Directory (“OBD”). A firm indicates its business expertise and status as a WMBE business (if applicable) during registration. A "Women or Minority Business" means a business that is at least 51% owned by women and/or minority (including, but not limited to, African Americans, Native Americans, Asians, and Hispanics) group members.

The City also accepts certifications obtained through the Washington State Office of Minority and Women’s Business Enterprises (“OMWBE”). To qualify for OMWBE M/WBE certification, a firm must:

- Be an independent for-profit small business.
- Meet the U.S. Small Business Administration size standards for small businesses, with an overall limit of \$30.72M in gross receipts over a three-year average.
- Be majority owned by a woman, minority or socially disadvantaged individual(s).
- Be majority owned by an individual or individuals whose a personal net worth is less than \$2.047M (excluding the primary residence and equity in the business).
- Be registered with the Washington Secretary of State.

2. Citywide and Department WMBE Aspirational Goals

Each City department and office must develop an annual aspirational goal for purchasing and consultants. If the Department or Office is expected to spend less than \$67,000 per year, they can opt to have FAS assign an annual goal for them. Aspirational goals are not set for construction projects. Aspirational goals are submitted to the Mayor’s Office and FAS. Once approved, departmental WMBE goals are rolled up to develop Citywide aspirational WMBE goals. The 2024 goals are 23% for purchasing and 27% for consultants.

To reach these goals, City departments are required to have plans and procedures in place that promote WMBE utilization. Each quarter, PC publishes a WMBE report that includes a scorecard for each department and its WMBE goal and utilization to date.

3. WMBE Inclusion Plans

The City does not set contract goals on construction, consulting and purchasing contracts but requests voluntary, non-binding, aspirational commitments from bidders and proposers. WMBE utilization is encouraged through bid and proposal scoring points applied to the bidder's/proposer's required Inclusion Plan.

Construction, Consulting and Purchasing have separate Inclusion Plan forms that document the proposer's good faith efforts ("GFE") to include WMBEs. The Inclusion Plan is due at bid or proposal time, unless indicated otherwise in the solicitation. Failure to submit an Inclusion Plan when required can render the bid or proposal non-responsive and result in rejection from consideration. The Inclusion Plan becomes a material part of the final contract.

a. Construction

Inclusion Plans are required for Construction procurements valued at \$300,000 or greater. Up to 16 points are awarded for utilizing and assisting WMBEs in three ways: 1. Committing to a voluntary, non-binding WMBE percentage goal based on the total value of the contract (up to 6 points). This goal is what the contractor can reasonably expect and does not require prior confirmed commitments from WMBE subcontracting firms. 2. Offering business support strategies for all small firms of early release of retainage and advance mobilization pay business support strategies (up to four points). 3. Committing to a WMBE utilization guarantee as a percentage of the total contract value, dollar value or a scope of work (up to six points). Guarantees must be arranged in writing with WMBE firms in advance of submission of the Inclusion Plan. The formula for awarding points for the aspirational goal commitment²⁰⁴ and WMBE utilization guarantee²⁰⁵ is based on average WMBE utilization for the previous three years on City projects for the similar type of work. Three-year past performance averages are calculated by PC and are posted in the project's ad. Bidders

204. Bidder will receive between 0 and 6 points for its Aspirational WMBE Goals, with proportional points based on a straight-line Total Aspirational Goal is half of Past Performance + 2%. Six points are awarded if the Bidder meets or exceeds Past Performance by 2 or more percentage points.

205. A bidder will receive between 0 and 6 points for WMBE Guarantees, receiving a proportional number of points based on a straight-line formula to Past Performance. A bidder will receive 3 points if the dollar-value of the Guarantees equals half of the Past Performance percentage. Six points are awarded if the Bidder commitments meet or exceed Past Performance.

earning less than 10 points are considered non-responsive and the Bid will be rejected.

Construction Contracts \$300,000 or Greater		
The Construction Inclusion Plan requires the bidder identify the good faith efforts the bidder will use to include WMBE firms on the City project. Three options for evidencing good faith efforts. Each option is worth points which can vary depending on information supplied by the Bidder.		
Bidders must earn at least 10 points. Bidders that earn less than 10 points are considered non-responsive.		
Voluntary Goal	Business Support Strategies	WMBE Guarantee
Non-binding, voluntary goal based on what prime can reasonably expect.	Offer of early release of retainage and/or advance mobilization pay	Guarantee to utilize specific WMBE firms. Commitment must be prearranged with the WMBE and is binding once the contract is signed.
6 points	4 points	6 points
WMBE utilization for the previous 3 years for similar projects is used to help determine goal and for scoring.	Can offer either or both	WMBE utilization for the previous 3 years for similar projects is used to help determine goal and for scoring.
Bidder will receive between 0 and 6 points for its Aspirational WMBE Goals, with proportional points based on a straight-line formula to Past Performance (plus 2%) identified for the project as advertised in the bid solicitation. Bidder receives 3 points if the Total Aspirational Goal is half of Past Performance + 2%. Six points are awarded if the Bidder meets or exceeds Past Performance by 2 or more percentage points.	Each support strategy receives 2 points.	A bidder will receive between 0 and 6 points for WMBE Guarantees, receiving a proportional number of points based on a straight-line formula to Past Performance. A bidder will receive 3 points if the dollar-value of the Guarantees equals half of the Past Performance percentage. Six points are awarded if the Bidder commitments meet or exceed Past Performance.

WMBEs listed on Construction Inclusion Plans do not need to be self-identified and registered with OBD at time of bid but must do so before contract execution. For scoring purposes, self-performance is allowed for work above 30%. To receive points, subcontracted work must be commercially useful and a distinct element of work that includes managing and supervising the work. The contractor is asked to evaluate the amount of work subcontracted, industry practices and other relevant factors to determine whether the work is commercially useful.

After initial evaluation for responsiveness and responsibility, the contractor must submit a performance bond, insurance and a Social Equity Plan, which includes a section for WMBE Inclusion Plan Supplement, Apprenticeship Utilization Plan and Priority Hire Plan.

The City uses a Job Order Contract (“JOC”)²⁰⁶, an alternative procurement process that allows issuing Work Orders, up to \$500,000 each for a maxi-

mum of \$6 million per year. Prime JOC contractors are selected based on qualification and price. One scored element solicitation in WMBE inclusion, proposers describe their understanding of the local market, outreach approach, WMBE aspirational goal, mentoring approach and designate a WMBE lead. A JOC requires that 90% of the work be subcontracted providing a great opportunity for WMBE utilization. The current proposed overall WMBE aspirational goal for the JOC master contract is 60%. The JOC prime contractor submits an Inclusion Plan stating the subcontracting opportunities for each work order. The WMBE aspirational goal for a work order need not match the 60% overall aspirational contract goal. PC meets monthly with the JOC prime contractor to review contract requirements and provisions, including WMBE utilization, outreach events, issues affecting WMBEs and mentorship efforts.

b. Consultant Contracts

Inclusion plans are required for consultant procurements valued at \$395,000 or greater. Proposers are required to state voluntary MBE and WBE goals and the total WMBE goal they are intending to achieve on the entire contract (including a zero goal). GFE to develop and achieve the proposed voluntary goals are mandatory. WMBEs must be WA State certified or self-certified at the time the proposal is submitted.

Participation of WMBEs must be broken down by core work based on the scope of the contract and value-added functions that are peripheral to the intended contract scope. The proposer is required to indicate the percentage of the total contract that will be spent with each WMBE, the tasks the WMBE will be performing and in what project phase, and specific WMBE staff who have expertise critical to performance of the task, if applicable. Proposers must provide the same information for value added functions, with the exception of percentages for each task. Signatures of all WMBEs participating on the contract are required.

Proposers must also provide WMBE utilization percentages for three past projects and outline inclusion strategies for WMBE teaming arrangements, team assignments and capacity development.

The Consultant Inclusion Plan is scored based on evidence of GFE to develop aspirational goals, integration of WMBEs into the team and core work, integration of WMBE firms in value-added work opportunities, evidence of effective mentoring, training or capacity-building, strategies to assure WMBE utilization and evidence of strong past performance. Consultants are encouraged to provide meaningful aspirational goals that are sim-

206. RCW39.10.440 - <http://app.leg.wa.gov/RCW/default.aspx?cite=39.10.440>

ilar or better than past performance on similar work. Consultants can seek guidance from departments and also refer to the City utilization reports.²⁰⁷

Self-performed work by WMBE consultants can be tabulated as part of the Aspirational Goal and Core Work.

c. Purchasing Goods and Services

WMBE utilization is encouraged for non-blanket contract purchases less than \$67,000. For goods and services purchases estimated above \$67,000, Inclusion Plans may be required on a case-by-case basis for contracts when subcontracting opportunities are identified. Inclusion Plan requirements are similar to those for consultant contracts. The evaluation scoring matrix is stated in the RFP. WMBEs can self-perform to meet the aspirational goals and WMBE utilization guarantees on the contract.

4. Pre-award Procedures

The City holds pre-bid conferences for specific solicitations to provide an opportunity for networking with potential vendors and providing important information about the solicitation. To assist firms with WMBE requirements, the Social Equity fact sheet outlines WMBE construction contracting inclusion provisions, along with requirements for prevailing wages, apprenticeship and acceptable work sites.

All vendors are encouraged to register in the City's OBD.

5. Contract Performance Policies

a. WMBE Substitutions and Contract Modifications

The managing department must approve all substitutions or reduction of a guarantee of WMBE participation during the contract period on construction and purchasing contracts or an aspirational goal on all contracts. WMBE substitutions or reductions are generally allowed under specific circumstances where the WMBE cannot perform on the contract, if change orders are issued by the City or other circumstances, if approved by the FAS Director. For construction projects, the City's Project Manager must complete the Public Works WMBE Inclusion Plan Change Request Form, which is submitted to the department's WMBE Advisor for review and then to PC for final approval. If a WMBE guarantee reduction is approved, the prime contractor must conduct GFE to recruit another WMBE firm (if applicable). For purchase contracts, waivers must be approved by the City's buyer. For

207. <http://www.seattle.gov/purchasing/wmbereports.htm>.

consultant contracts, waivers are approved by the department managing the contract. Where the firm has established the basis for the substitution to the City's satisfaction, it must use GFE to recruit another WMBE.

WMBE substitutions are generally allowed under the following circumstances:

- Bankruptcy of the WMBE.
- Failure of the WMBE to provide the required bond.
- The WMBE cannot perform the work because it is debarred, not properly licensed, does not meet the subcontractor approval criteria, or in some other way is ineligible to work.
- Failure of the WMBE subcontractor to comply with a requirement of law applicable to subcontracting.
- Death or disability of the principal of the WMBE, rendering it unable to perform the work.
- Dissolution of the WMBE.
- Failure of the WMBE to perform satisfactorily in previous projects not known to the bidder at the time of bid or proposal.
- Failure or refusal of the WMBE to perform work for reasons other than contract term or pricing disputes.
- A change in scope of the contract which removes the guaranteed work from the project.
- The WMBE does not execute an offered contract that reflects the terms and pricing of the guarantee, after the subcontractor was given adequate time to execute the offered subcontract.
- A change order that reduces the scope of work of a WMBE guarantee or other reason, if approved by PC.

b. Reporting and Contract Compliance

WMBE utilization is evaluated throughout the life of the contract. The City uses the B2Gnow® data collection system to track utilization and payments to all subcontractors, including WMBEs. FAS and PC regularly monitor payment reports to ensure compliance with the Inclusion Plan. Contracts are typically evaluated at their midpoint by the project manager, FAS or PC staff. If the City determines that the contractor is not making GFE, the contractor may be put on notice or held in breach of contract and the City may take punitive action that includes withholding invoice payments.

Contract performance is also evaluated against the Inclusion Plan at close-out. Any deficiencies found are documented. Deficiencies can result in debarment or a negative rating of the contractor that can affect award of future projects. To maintain a positive standing, contractors must demonstrate the following at closeout:

- Substantial attainment of the aspirational goal. Failure to substantially attain the goal may evidence a failure in good faith to develop or pursue the goal that was submitted to the City as reasonable; for construction contracts, an attainment under 80% of the goal is considered deficient.
- Timely and accurate reporting and requested materials.
- Using all WMBE Guarantees listed in the Inclusion Plan unless the City has authorized a substitution.
- Making guaranteed payments in accordance with contract provisions.
- Few or well-managed disputes.
- Robust utilization and meaningful partnership with WMBE firms on your team.
- The work of the WMBE was commercially useful.

D. Small Business Initiatives

The City employs various initiatives to encourage participation of small businesses on City contracts, including WMBEs. City departments can use the Consultant Roster to select consultants for projects estimated to cost \$395,000 or less. To be included on the Roster, firms must meet the U.S. Small Business Administration, the State of Washington or King County's small business size standards and qualifications. When firms register for OBD and set up a business profile, they can also register for the City's Consultant Roster. Businesses can choose among 96 service categories. Multiple categories can be selected.

Additionally, the City has implemented the following policies to assist small firms and WMBEs:

- Breaking out phases or components into discrete, biddable items when it is likely to improve small business and WMBE utilization.
- Notifying WMBE business associations of bid and RFP opportunities.
- Identifying potential subcontracting specialties for bids using the OBD, OMWBE, CDCC databases and other sources to build an outreach list.

- Inviting WMBEs that are not already listed to add themselves to the OBD list during the solicitation process.
- Creating and publishing a list of WMBEs and making it accessible to non-certified firms.

E. The City of Seattle’s Disadvantaged Business Enterprise Program for FTA Contracts

As a recipient of U.S. Department of Transportation (“USDOT”) funds through the FTA, the City is required as a condition of receipt to implement a DBE program in compliance with 49 C.F.R. Part 26.

The Director of Departmental Relations in the FAS serves as the Disadvantaged Business Enterprise Liaison Officer (“DBELO”) and is responsible for implementing all aspects of the DBE Program. The DBELO has direct, independent access to the Director of FAS and the Mayor’s Office. FAS responsibilities include, but are not limited to, developing, implementing and monitoring the DBE Program in coordination with City departments that issue contracts under the program.

To participate in the DBE program, firms must be DBE certified by OMWBE. DBEs must meet the requirements of 49 C.F.R. Part 26, including the business size and personal net worth limits. OMWBE maintains the Washington State Unified Certified Program Directory of certified DBEs. The Directory is posted online.²⁰⁸

The City maintains a Bidders List that encompasses information about all DBE and non-DBE firms that bid on FTA assisted contracts.

The City’s proposed overall FTA FFY 2023-2025 DBE goal is 20.4%, with 8.4% achieved through race-conscious and 12.0% race-neutral means. The City must meet the maximum feasible portion of its DBE goal through race-neutral means in accordance with USDOT regulations.

The City applies contract monitoring and enforcement policies and procedures to FTA funded contracts similar to those it applies to its non-federally assisted contracts. Signed Disadvantaged Enterprise Utilization Certification Forms from each proposed DBE must be submitted no later than three hours after bid opening. DBE compliance is a condition of responsiveness. The City follows the counting provisions of the DBE program regulations. The City conducts regular reviews to ensure that DBEs are performing a Commercially Useful Function (“CUF”). A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. Contractors that fail to comply with program requirements can be

208. www.omwbe.wa.gov/directory-certified-firm

deemed to be in breach of contract, which may result in the City withholding progress payments and potential exclusion from future contracting opportunities.

The City is required to establish a race-neutral Small Business Program pursuant to 49 C.F.R. §26.39. These initiatives include reducing barriers created by bidding and contract requirements, reducing contract size, encouraging prime contractors to subcontract work they would otherwise perform themselves, performing outreach and encouraging business networking, and offering technical assistance and business development support services.

F. Technical Assistance, Vendor Training and Outreach

The City provides extensive outreach, training and technical support services programs to encourage W/M/DBE participation in City contracting. The City contracts with several local organizations to provide technical assistance and business support. Programs include:

- On-demand technical assistance and business development training either in-person or remotely through Tabor 100 and BINW. Technical assistance helps firms to respond to City contracting opportunities; understand City contract requirements; register in the City's Business Directory and Consultant Roster; prepare invoices; understand the debriefing process; and navigate City Departments. Capacity building training covers understanding business credit and financial statements; referrals to access loans; capacity planning; maintaining business certifications and profiles; principles of negotiation, finance, planning, strategic communication and leadership. Instruction can be on an individual firm or group basis.
- The City holds office hours at Tabor 100 most days of the week. Here, WMBEs can park for free and speak with City personal from a variety of City departments to receive assistance.
- Individual, no-cost advising on all phases of small business development, no-cost or low-cost webinars, eLearning, and workshops on a variety of business topics through the Washington Small Business Development Center.
- Technical, strategic, marketing and planning services, and business consulting to established minority-owned firms through Seattle City Light's Mentor Protégé Technical Assistance Program offered in partnership with the Minority Business Development Agency – Tacoma Business Center. City Light prime contractors are strategically recruited to participate in the program.
- Technical assistance and business development specifically designed for WMBEs through a partnership between Seattle City Light and the University of Washington Foster School of Business' Ascend Program.

- The City's Economic Development Department's Accounting and Business Consulting program, which helps Seattle-based small businesses to implement sustainable financial solutions and operational strategies. Up to 10 hours of free one-on-one counseling are available to businesses seeking to re-establish operations after COVID-related disruption and wanting to build capacity.
- Technical assistance and business development services to Black-owned and other underserved construction and power utility businesses through the Liberty Project, a collaboration between the City, Tabor 100 (a WMBE association), the University of Washington and Seattle University. The one-year program provides business consulting and strategy guidance; finance and accounting services; marketing services; technology services; equipment assessments/upgrades; and guidance on contract bid preparation.

City departments are available for questions and assistance to WMBEs. The email addresses and contacts for each department are readily available through the City's website. Firms are encouraged to contact the buyer specializing in the firm's products to learn about current contracts, request a copy of the contract, timing for re-solicitation, information about upcoming solicitations and further referral to City staff that might be interested in the firm's products and services. The City has partnered with Tabor 100 to set up office space in the Tabor Economic Development HUB where Purchasing and Contracting Division staff are available weekly to small businesses and WMBE.

PC conducts a monthly online event, First Fridays, Doing Business with the City of Seattle, to allow vendors to meet PC staff. Three sessions are held for each of the procurement types. Some include how to access online plans and specifications for construction projects, the products and services that the City buys for purchasing procurements and the application process for the Consultant Roster. First Fridays sessions are also offered in Spanish.

FAS and Departments facilitate Meet and Greets, inviting WMBEs to targeted networking events, where they can learn about projects within their scope of work, and they can meet the decision-makers on upcoming projects.

Seattle City Light hosts several meet and greet events throughout the year, inviting WMBEs to showcase their products and services for the department's project managers. The Department also hosts events, meets with WMBEs and facilitates meetings with City Light decision-makers upon request.

The City's website²⁰⁹ provides access to information and many resources for small and W/M/DBE firms. This includes online tools and links that allow easy registration and access to the Business Directory and the Consultant Roster, current bid

209. <https://www.seattle.gov/purchasing-and-contracting/social-equity/wmbe>

opportunities and the subcontractor pay portals. The Purchasing and Contracting WMBE page includes a flyer about doing business with the City, the WMBE Annual Reports since 2014, goal information, WMBE outreach plans, relevant WMBE Executive Orders, quarterly WMBE utilization, technical assistance reports and surveys and a list of City department WMBE advisors and their contact information. Links are provided to FAQs about doing business with the City, as well as WMBE Inclusion Plans and change request forms. A separate link is provided for information about the FTA/DBE Program²¹⁰.

Purchasing and Contracting publishes an online newsletter, WMBE Connections, which highlights information important to contracting with the City. The City also provides information about upcoming solicitations and procurement opportunities, WMBE program updates and WMBE utilization reports.

The City partners with the National Association of Minority Contractors, the Northwest Minority Builders Alliance, the Association of Women and Minority Businesses, Tabor 100 and other organizations to disseminate information about upcoming contracting opportunities and solicitation requirements at their monthly meetings. City staff attend to answer questions, offer guidance, provide WMBE program updates and present WMBE utilization reports.

Various City departments host trade shows and events to foster networking with primes and other City vendors, highlight upcoming projects and give W/M/DBEs an opportunity to meet City staff. Examples include:

- Annual Reverse Vendor Trade Show hosted by Purchasing and Contracting to give WMBEs the opportunity to meet staff from City departments and other public agencies. Vendors learn about upcoming solicitations, procurements and sustainable purchasing while networking with other local vendors.
- Ready to Prime, hosted by the Seattle Department of Transportation (“SDOT”). The City’s capital departments, WMBE advisors and project managers provide information and networking opportunities to small/WMBE firms wanting to become prime contractors. City staff discuss similarities/differences between engaging on SDOT work as a subconsultant and as a prime consultant. The event also features refresher information for experienced prime contractors on key expectations and requirements for successful contracting.
- Seattle Public Utilities Consultant Business Opportunities Forum provides information about upcoming SPU consulting projects and contracting equity information. The City’s capital departments, WMBE advisors and project managers participate. The Forum is an opportunity for WMBE consultants to network and meet City staff.

210. <https://www.seattle.gov/purchasing-and-contracting/social-equity/fta/dbe-program>

- The Seattle IT Vendor Forum, tailored to technology companies that are interested in working with the City. The event gives vendors an opportunity to meet City staff face-to-face, attend presentations by City IT leaders, engage in peer-to-peer networking and meet one-on-one time with IT managers.

The City leads or participates in a multitude of contracting conferences and events hosted by other Seattle agencies and industry groups to provide information, outreach and networking opportunities to W/M/DBE firms. Some offered in the past two years include:

- The Washington Regional Contracting Forum, a semi-annual event connecting small businesses to contracting opportunities where PC highlights upcoming projects or the year.
- The Alliance Northwest Event hosted by Thurston Economic Development Council (“Thurston EDC”) and the Washington Apex Accelerator. City Capital departments and WMBE advisors participate in workshops and matchmaking sessions between small businesses, government agencies, and prime contractors.
- Small Business Contractor’s Day sponsored by Thurston EDC and Apex and held at the Association of Women and Minority Businesses, a trade show and members event featuring workshops and matchmaking sessions between small businesses and WMBEs, government agencies and prime contractors.
- The North Puget Sound Small Business Summit helps small businesses with educational and networking opportunities with public, private and business resources.

G. Staff Training

PC staff regularly attend the American Contract Compliance Association’s annual National Training Institute, where they receive extensive training on national best practices for M/W/DBE programs. Staff routinely participate in FTA and the Washington Department of Transportation’s Federal Highway Administration trainings that provide program DBE program updates. City staff attend the annual B2Gnow® User Training and LCP Tracker User Conferences.

In addition, mandatory WMBE online training for FAS staff is planned for the fall of 2024 and is expected to be completed by year-end. The online training will review the City’s commitment and expectations regarding the City’s commitment to its WMBE program and provide tools and resources to utilize WMBEs. Starting in 2025, the online training will be extended to all City employees.

H. Experiences with the City of Seattle’s Contracting Equity Programs

To explore the impacts of the City’s race- and gender-neutral and contracting equity contracting policies and procedures, we conducted seven group interviews with 91 business owners and stakeholder organizations about their experiences and their suggestions for changes. We collected written comments from 163 minority and woman respondents and non-WMBE businesses about their experiences with the City’s programs through an electronic survey. We also received written comments throughout the study period.

The following are summaries of the topics discussed during the group interviews. Quotations are indented and have been edited for readability. They are representative of the views expressed during the sessions by participants.

1. Business Owner and Stakeholder Interviews

a. Contracting Equity Programs

i. WMBEs’ Experiences with the Programs

Most WMBE participants in the interviews supported the City’s efforts and found them important to the success of their businesses.

[The] City's minority program is a pretty wonderful program.

The City of Seattle in particular is one [agency] where I do see opportunities come through. Definitely have seen an increase in that. So, kudos to them for that.

I do consider us to be a success story for the MWBE program. We started out small, and it was women in the organizations who opened the door to us as a woman-owned organization. But once we proved ourselves, everybody started using us, and we have not found any problems with inclusion, with managers not wanting to work with us, with anybody not believing that we can do the work because we have demonstrated time after time, year after year, that we're competent. And like I said, we graduated from the program, we're way too wealthy to belong anymore.

At least, there's people there that are more willing to understand their own biases and open up to others.

They do a lot of work on that, and I was very pleased. They're still fighting it themselves.... I think a lot of it comes down to culture at the agency and the City of Seattle did a much better job than others in their internal culture and work.

As far as keeping that set aside or at least keeping the programs, I think it's really important because I think we'd have a very hard time getting anything at this point without the moral emphasis of those programs.

I've been on two actual projects with the city where I was a subconsultant and I did get a significant amount of work. Those firms probably wouldn't have used me if there were not the women-owned business goals. So, I really appreciate that.

We're fortunate that we have a couple of city contracts and I think the people who are trying to make all of this work have good intent for the most part. Really, really do want to do better for the community and to address systemic inequities. But man, they don't make it easy.

A minority-owned firm reported that once it was no longer certified, business dropped dramatically.

[No longer being a certified minority-owned firm] has [had] a huge impact on our business. Because a lot of companies use you and because we're a niche company, we're not a company that is widely, everybody does. It did impact us quite a bit. But it's because people think that they need to get their, what we call brownie points business. You got to get your low points to get all your MBE goals or DBE goals or whatever goals they're called, whatever flavor. So, a lot of companies just used us primarily as their go-to for those niche business or niche services.... Because a lot of firms will, and I used to do this when I was a prime, to go through a list and just to look for MBEs, DBEs or whatever, to fill the holes that I needed on my team.

Some firms reported inadequate or inconsistent monitoring or application of program or contractual commitments.

We need a little more accountability about the primes, because we want to see if the primes are really, really

using the minority contractors or they're just calling and saying, "Oh by the way, are you going to bid on this project or not?" We just want to make sure they are really, really sincere in utilizing the minority companies.

We've had experiences of being a subcontractor who was never given, we were not given the work we were promised to be given. That happened with a number of large primes.

You introduce yourself to public firms or prime firms and all those things doesn't really work. They take your name down, and then they feel like they can use you to win the contract. After they win, nothing happens. They don't even call us to work. We keep on knocking and knocking. They say, "Oh, our people are working now." They actually put percentage on it, but throughout the duration of the contract, we weren't called in to do anything.... Sometimes we call the city and we tell us to talk to the prime. So, it is kind of like in a circle like that.... Do they hold the project managers accountable? Do they make annual performance or project managers to reflect the goal of the City or the county?

The City does have some good programs and some good people, but it's not uniformly practiced throughout the City. In other words, you can be a contractor on one project and your project can run smoothly. You can be a contractor on another project with a different group of city employees and contractors and have problems from day one through the time that you need the contract. So, there needs to be uniform application of whatever programs, processes, and procedures that they have.

I don't really see a lot of accountability coming from whoever the client is to ensure that whoever ends up being on the interview team that gets the contract is actually those that are doing the work.... It's mainly resulted is in me just doing my own contracts, because the larger firms, I don't necessarily trust them.

Some WMBEs in more specialized subindustries found the programs less beneficial.

Our DBE and MBE doesn't come into factor at all in winning projects, basically because they've already met the requirements with the other trades.... We don't land a lot of work because of our DBE or MBE. Sometimes it's appreciated. They're like, "Oh, great, we'll add it." They're happy to bring the percentage of MBE workers on the project. They're happy to bring that up. But, usually, it's not like a deciding factor when they're looking at our numbers.

The lack of trade-by-trade contract goals reduced the utility of the program for some specialized firms.

One of the main problems, is that when a goal is requested, it's not a goal per trade, it's a goal overall. So, sometimes, a lot of time contractors, they say, we are just going to schedule construction, or landscaping, construction cleanup or landscaping, and that's our DBE goal.

On call or Job Order Contracts sometimes did not lead to work for all listed WMBEs.

I've been on on-call contracts where I have got no work. I know it's complicated because there's a lot of firms on those contracts. So, I know there's multiple people that can do those services. But I'd say trying to make sure on the contracts that if there's multiple WIMB firms, that all of the firms are utilized. I know overall they're getting the percentages but making sure that all of the firms on those contracts are being used throughout if it's a two-year contract.

A lot of agencies will put out on-calls without any actual projects behind those on-calls. They'll just put them out, so that they have the mechanism to contract when they need to contract.

While the City provides an array of technical assistance and supportive services for certified firms, several participants mentioned the need for more training on understanding contracts, especially master contracts.

I do also feel taken advantage of as a small business because we're contract weak, meaning we don't truly understand the contracts like a lawyer or bigger businesses would be able to dive into the contract and

afford to pay people to read through not only the subcontract but the master contract. And the master contract is even more difficult to understand how it pertains to you. But all of our subcontracts refer to that master contract.... I would certainly be interested in classes on how to dissect and tackle these contracts and how they affect us as a business. I think that would be really helpful and something that we could utilize.

I think [reduced fee legal services] would be fantastic. And also understanding the city's master contracts.... Maybe some education on how to negotiate, because that seems like a really hard thing.

One consultant counseled firms to look elsewhere for assistance.

If you want technical assistance, you won't get it from the City of Seattle. You need to take advantage of other jurisdictions that offer it, like WSDOT, through the Tabor 100 for women and minority businesses or for the DBE program with the [Minority Business Development Agency] as the designee. So, the technical assistance we used to have is gone.

Assistance with setting up joint ventures was another request.

Joint ventures are usually specific and we really need some joint venture training here in the Puget Sound, State of Washington area because we could be doing a lot of work if we knew exactly how it worked, if others knew how it worked.

Some prime contractors suggested a formal mentor-protégé program.

We have been involved really closely with a lot of the WSDOT Mentor-Protege programs and I think that it's a really great program. We've been able to develop real close relationships with several different firms off of that since you're partnered for a period of time. So, we've done that more formal program.

It's a good idea. We have not [participated in any formal programs], although we have to report on what sort of mentoring we're doing. And again, we have just a few WMBE subs and the ones that we have are fairly sophisticated. They've been in business for a while, they've done a lot of work with the City.

ii. Meeting Inclusion Goals

Most large prime vendors reported they were able to provide sufficient participation by WMBEs to be awarded the project.

We've always met our goals.

When there's not a goal put into the RFP, we still assume that there's pretty high goals, so we usually target for what we know SDOT is trying to achieve across all of their programs as the baseline for what we want for inclusion and go from that point.

Locally, we participate in a couple of the local things. NAMAC is one, the Northwest Mountain Minority Builders is another. And then with the AGC, Associated General Contractors, we have a minority business, I think they call it, meeting that is annual, and I've participated in that the last couple years and this year again. And it's just to meet people. They tell you about what they do for work and what kind of services they have and how they contract and they get to meet us.

One interviewee reported that the City sets unreasonable contract goals.

[There is a standard goal of 18% WMBE participation] for projects \$5M and above, I believe. And we might be one of the first projects that went into, I think it's a City ordinance that created this. So, yeah, it was very high. They didn't look at what work was involved in this particular contract. This applies to every project, \$5M and up.

Some smaller prime bidders found the program to be burdensome.

We don't have a marketing department. And so, it is really challenging. I don't know when I have the time to go to a networking event. I barely have the time to go to this meeting.

Another challenge for some consultants is obtaining information about upcoming contracts in sufficient time to put together a diverse team.

Since COVID there hasn't been quite as much information coming out from the City on what upcoming contracts we can anticipate. And that impacts our ability to be able to put together teams and for our

subs to be able to reach out to us ahead of time and try to get onto multiple teams. There used to be a regular document that would come out probably quarterly that had upcoming contracts on that.... There used to be one that was for consultant RFPs that could be anticipated in the next several months. It was almost like a rolling year look ahead that would come out. And it was something that I think was just put on the back burner when everything went a little bit nuts during COVID, but it's something that hasn't been brought back. So, I don't know if they have a staffing capacity issue with that, but I think that that would be helpful for a lot of firms.... A lot of times firms will come and they'll say, "Well, I went to the pre-proposal meeting and tried to get on teams," and I would just say that that's too late for most teams.

Firms in more specialized lines of work often found it difficult to utilize WMBEs.

If you have a very specific scope, which we do, it's not like building a new building or bridge or something where you would have a lot of different types of work.... We don't have really much self-performed work, so it has been difficult. We had to look for things like a cleaner that we might not even need, and we're two years into the project and we've never even subcontracted a final cleaner because it's such a slow moving process. Nothing is public facing, so we're doing a lot of that ourselves. And we have focused more on apprenticeship more than the WMBE. We have hired where we can. There's a very small scope for mechanical work. We did find a WMBE firm for that.

The other conundrum for us is that we are also asked quite often in the RFQ to one, explain why this consultant is the right fit, meaning their technical expertise, and two, what's our relationship with that consultant? How long have we worked together, what's our collaboration? And so those are two hurdles that it's not just that we can go out and find any structural engineer, mechanical electrical engineer who's an MBE. It's that one, they have to have the right expertise. Is this a seismic retrofit of an unreinforced masonry building? Does that structural engineer have deep expertise in that project type, for example? And then

two, we don't want to just have to be a marriage of convenience that we just pluck someone because they're MWBE. As the architect, we need to have this really long-standing trust and collaboration with our subconsultants in order to deliver good architecture. And so, I think it's a much longer process that we need to do a better job on building those relationships and actually working together over years. I think that's what it really takes. And as a small firm, that's just been tough for us to get there.... when we put together our inclusion plan, the metrics they're asking for is what percentage of the overall contract would go to MWBE firms? And for us, the architecture is usually 40-50% of the overall contract. The next biggest chunk is structural or mechanical electrical. Those can be 20-25% depending on the project type. And then lighting landscape can be quite small depending on the project. And we do a lot of building renovations, so landscape is usually pretty insignificant. So, for us to make a significant impact, it's really structural and MEP that we need more relationships with MWBE firms.

One firm had not been selected for a contract because it did not provide enough WMBE participation.

It's a challenge sometimes to get MBE consultants from certain disciplines. And what we need to do is provide an overall percentage of the contract that would go to MWBE firms. And since we're not one, we really need our consultants, structural, mechanical, electrical, lighting design, civil engineer, landscape architect. Those are the big ones, but usually part of a team we have to put together. And we recently actually lost a project we were really interested in. I did get a debrief from the project manager and he said one of the reasons we weren't selected is that our inclusion plan was not as strong as other candidates. And I respect that and appreciate it, but it's tough for us. And part of the reason it's tough is that it's hard to find structural engineering firms that are women and minority owned. It's hard to find mechanical and electrical engineering firms that are women and minority owned. It's really very few. And we often have lighting designers and landscape architects that are women owned. But it's

tough. It's hard. And maybe we're not doing a hard enough job doing our own research to find those firms and build relationships with them, but it's definitely affected us and it's something that we need to get better at it.

Several prime vendors reported the City was reasonable in permitting substitutions of non-performing certified firms during contract performance.

We do have one that we are trying to substitute now that is not performing. And the City has been pretty reasonable on that, although we've gotten pretty far along where we've impacted the schedule through their non-performance. And I think in the end they'll probably say, "Well, that's your problem," but I mean, that's something we deal with all the time. It's not a big deal. But they are reasonable. They understand, and I think that it's a voluntary goal helps. And then as long as we're doing our due diligence on the other things, we're still showing what we've done and who's certified or qualified to do the work that is available and that they are or not WMBE or that we've reached out to these folks and they don't have capacity or whatever.

Some participants expressed concerns about possibly being subject to sanctions for not meeting a contract goal.

There's nothing written in our contract, but there's a lot of warnings about that. Even when they know, "Okay, you have this job's elevators and we don't care. What have you done to meet the goal?" "Well, it's a licensing and union issue. There's nothing we've done." "Well, that's going to hurt you if you try to get another job with City of Seattle." It was a little heavy-handed.

Projects procured using the design-build contracting method present special challenges.

We did have some painting and drywall work and all those we were able to fill with WMBE subs. We weren't able to name some of those early or during the tender process because this is a design-build project. So, we didn't have a design at the time, but we did earmark those areas and said we'll fill as many dollars as we can there and try and use only WMBE subs for that, and the

other bidder had the same issue so it wasn't too heavily weighted other than the promise that we will do that work.

Meeting the contract goals, like you mentioned, has been difficult. A lot of the work hasn't happened because it wasn't required in the end or it comes very late in the project.

Job order contracts were another procurement method that was sometimes problematic.

With our job order contract work, we sub pretty much 100% of the work out. We're allowed to do up to 10%, but usually it doesn't end up making sense to do any of the work other than little things like cleanup or some punch list items. So, I would probably echo a lot of what [he] already said. Any specialized scopes are really hard to get our inclusion percentage. And sorry, I didn't even tell you. Our inclusion percentage goal is 60%. Six zero. So, when you look at our overhead costs, our superintendent truck, any kind of fee, it's pretty much 100% of the subcontractors is how I invite and walk these projects. I don't typically invite a non-WMBE sub to come look at one of the jobs.

I typically use subs from the self-reported database. So, some of them are not small enough to get certified by the state as women or minority-owned. But basically, I have a group of subs that I pretty much call every time, depending on the scope, obviously, that show up. And if I can get three to show up on a certain scope like mechanical or electrical, I'm lucky. And so, what it does end up doing is it limits my subcontracting pool and they know that, and I don't get the most competitive pricing. And so, when I come with my work orders, when I prepare my work orders for the city, probably 99% of the time, I'm well over their engineer's estimate because they're not considering this smaller sub pool that we're bidding from.

Meeting the City's inclusion objectives on on-call contracts was sometimes difficult.

The biggest challenge with that is that when we go after on-call contracts, oftentimes they have a slew of

different potential services that might arise under that on-call, but of course it's indefinite what might actually come out under that contract. If we're going after a structures contract and we have geotechnical firms on there, we can be pretty confident that regardless of what comes out under the on-call, we are probably going to be able to utilize that firm. Where it creates a little bit of a challenge for us is when we are looking at hiring specialty sub firms that we do not know for sure whether or not SDOT is going to have a task order associated with that scope of work.... I might be hesitant to put on a DBE firm for that scope of services when if I have a firm that's non-DBE assigned to that scope of services, then I'm not having to commit to definitely giving them that piece of work. And we've had it arise a couple of times in the past where we have committed specialty services to DBE firms and then if we don't get issued a task that uses those services, then we are in the position of needing to defend why we didn't use that firm on this contract and do the associated paperwork with that. We've never received sanctions or anything like that, but we have had to explain why we didn't use that firm and do a significant amount of documentation around that to the point where it feels a little bit like you're getting a slap on the hand when our hands were tied.

We want to propose on your projects, but the biggest mistake we could ever make would be to propose on something and then have a service failure. And we expect the same of any of our DBEs who are on our team. So, they need to have a really solid staffing plan for anything that we go after. And that means that we don't have people sitting around on their hands able to just mobilize to deliver a project at any time. We're busy enough that we need to line it up and make sure that it fits with staffing.

The City's requirement that prime contractors pay their WMBE subcontractors within 30 days was burdensome to some firms, especially smaller firms.

That is a tough nut to crack trying to pay before you've been paid when you don't know whenever you're going to get paid or how consistently it's going to be.

We want to help these smaller subs get more business. We want to pay them promptly. If they could work on a quicker way to pay us, that would be helpful.

Some WMBEs that can serve as prime vendors stated that the City's subcontracting requirement hindered their opportunities and growth. The requirement that even a certified firm must subcontract was a disincentive to receiving prime contracts.

The flip side with their inclusion plans is they don't necessarily reward inclusion at the prime level. So, there have been times where you're scoring, maybe we could prime this project, but if the services we need to add to complete the work, if we are having trouble finding a WMBE sub for that, then we're better off to sub to someone else and take a larger portion.

What I found during the pre-bid meetings and conferences, they were very adamant about working with minority-owned businesses, and I'm certified as well. However, when I would reach out, everybody wants to be a prime.

b. Obtaining and Working on City Contracts

i. Payments

Reports of how timely the City pays firms were mixed. Some firms lauded the city's payment process.

Payment is one very positive thing. The city is requiring us to pay all invoices within 30 days, whether they've paid us or not, that's in the contract. But in reality [on a contract with an agreed upon schedule of values], they pay a little bit in advance to help us facilitate this. And sometimes if we say, "Hey, we have this sub coming on board and they're going to be short," they're more than happy to support that as long as there's some sort of explanation. Yeah, they've been great about that.

Others stated they had payment issues on City projects.

I have trouble getting paid. I do have to deal with sometimes 20 different PMs per year, and it's also different departments. You have City Light, you have facilities management, you have parks, you have SPU, so it's not always the same process.... We will be told, "We

don't care if you've been paid or not. You need to pay your subs."

Our experience in working with the city or the state has been that we are usually on the tail end of that 90 days. I can't attribute that to being a woman-owned company or a minority, but certainly have not experienced a sooner payout.

Prompt pay is a big issue and that's both public and private.... We were getting paid very late with the City of Seattle in particular. I'm talking 120 days. 90 days was very common.

Change orders during contract performance were reported by several participants to present payment delays.

The change orders, you are lucky if you get paid in one year.... If the City can help us streamline the change process, because this is a vicious cycle.

A lot of times the City will say, "Just do the work." That directive's coming from them. Even though I have a price in front of them. I'll price the change order very quickly, have it in front of them and they're like, "We're not going to approve that price, but we want you to do the work." And that becomes a very difficult situation because later on it turns into, "Okay, I had lost 30% doing this work.... They're like, "Oh no, per the master contract, you have to do this or you're going to be in default."

Slow return of retainage on construction contracts was reported to hurt some firms.

Retainage is also an issue for us. That's basically all of our profits for the job. Sometimes it could take a very long time to get your retainage.

A lot of times, for a small minority business owned, that is struggling to grow, and cash flow is a very big issue, having [retainage], and having to wait a year on a project to get the [retainage back, is a big issue.... Or sometimes you need to wait for the payment 60, 90 days after you are completed with your work.

One material supplier stated that the City should pay for materials in hand when the contractor has to buy them.

Another cashflow issue that's caused by city contracts is the refusal to pay for stored materials that are not onsite. Since most of our work is done offsite, because we build all the products offsite and sometimes, they'll store and sometimes the job sites will be delayed months, years, we're stuck with these materials. No [the City doesn't pay for materials in hand]. Most of the time they only pay for them when they're onsite. So, when materials are 30% of our contract, that could be huge. Sometimes I can negotiate it if the job is delayed. I purchased the materials, the job's delayed. And these materials are stored in a licensed, bonded insured warehouse, so I don't have any problems meeting those kind of requirements. And to be honest, our materials are much safer at our warehouse until they're installed. We've had a lot of materials walk off the job site.

ii. Contract size

The size of City projects was often an impediment to small firms obtaining work.

Some of the work can be split into smaller packages.... If there's a real need, desire to award work to minorities, trying to package the work so that it's not necessarily attractive to large companies. Because the large companies are not going to spend a lot of their time on a package that's maybe \$200-300,000. But if they take a big project that can be split and they make it very, very large, then it becomes very attractive to the large companies. You have maybe 10 of them. And as a small company, you cannot be competitive in this.

Make it bite-sized pieces.... It's always been, "Okay, we have to check off this box and use the box and you have this expertise and so we need you to use that. I don't want to say use you, but we need you to fill in that space to do that work." But I'm at the point now where it's like, okay, I don't mind being a sub, but money is money at the end of the day, but I would like to be able to be in control of the project that I'm working on.

Maybe parse out some of those so it's more equitable and you have businesses of like size that are competing for certain RFPs or competing for bids, where you're not a small fish, if you will, trying to compete with a whale when it comes to the resources to gather and respond and put forward a response to a bid.

Unbundle the work, make the contracts smaller, have smaller contracts that our companies can bid directly on, not have to go in as a sub.

One thing that I would like to speak a little bit more about is really getting into breaking down these contracts into smaller contracts and not just by the hourly rate.

I do appreciate how the City of Seattle does their breakup of their projects and their different amounts and how many people have to go for the bid. So, if the project's under a certain amount, they don't have to have it out to a public bid. But on some of their public bids, I do find that they put too much in [the solicitation].

One of the problems is that, and this is systemic, it's built into the process, is that the agencies have these large projects that they want to do, x million bucks, great. Then, they want to hire somebody who's going to project manage all that stuff.... That person has to come with a team and they want 31 flavors of engineers and designers and architects and everything.

I'm going to echo the unbundling of projects, and that would be supportive of being able to get more work.

2. Electronic Survey Responses

Written comments from the electronic survey have been categorized and are presented below. Comments are indented and have been edited for readability.

a. Impact of the City of Seattle's W/MBE and DBE Programs

Overall, M/W/DBE respondents supported the City's contracting equity programs. Many stated the programs have been essential to obtaining contracts and subcontracts with the City.

This program is the reason I felt comfortable starting a business. I knew I had the technical skill, but was concerned about the ability to generate business in my first years. If not for this program, I would not have had the courage to start a small engineering firm dedicated to creating a safe, supportive environment for women to thrive.

It gives me an opportunity to bid on larger projects with the big boys.

Seattle's commitment has changed our arc of growth.

I have received contracts that gave points to proposals with significant utilization of WMBEs.

Drastically, we have grown because of Seattle's commitment to goals.

It helps by having contractors solicitate [sic] for services to meet their goals.

It's helped me continue to have a lot of business with UW, because that certification is important to them.

Many of my clients prefer to utilize a firm with WMBE accreditation, especially those we are helping with marketing communications.

We have received one contract, and I believe our designation as WBE helped.

By requiring participation goals, we are able to get contract opportunities.

Diversity requirements have led to our inclusion on teams.

Given my small business an opportunity to compete with larger businesses and get awarded contracts that otherwise may not have come my way.

People have found me and solicited me for my status.

Provided opportunities we would have otherwise not [been] invited.

Recently connecting with SCL WMBE manager has brought more opportunities to us.

Setting goals on projects has certainly encouraged the use of our business.

Some bids have been awarded to us because we meet these requirements.

The certification has helped us seem more legitimate. We've also seen an uptick in potential projects we could take on.

The WMBE program has helped my business significantly.

Many M/W/DBE firms found the programs helped to develop industry relationships and learn about contracting opportunities.

By connecting me with businesses looking for graphic designers local to the area.

We now have relationships with City stakeholders that we did not previously have - we shall see if they yield results.

It allows us to build relationships and prove our performance as a small contractor.

It has helped me meet other agencies.

We've connected with other firms and dual transfer of knowledge.

Brought more interest in getting bids from us for projects.

The programs also made it easier to access information.

Provide[s] information on project opportunities at least six months in advance.

Provides great information.

[The programs have helped by business by providing] some trainings and information.

It has allowed us to learn about potential requests for our services and allowed us to serve the City.

Others reported they had not benefited.

It hasn't yet. I've been starting to hear from the OMWBE office but the trails die and then I don't hear from anyone for a year and that dies too.

It hasn't. We became certified to help the state agencies (especially WSDOT) that we were already working with get credit with their federal funders. We do not benefit from the certification ourselves.

So far, I've not gained much from it, but I hope to.

People call me to ask if I'm bidding on stuff. I always hear "Here's a job. You want it? If you mess up, [name] goes down the toilet. Good luck."

In my 24 years of running my business, the City of Seattle has used one vendor under a sole source provider umbrella which essentially eliminates the possibility of bidding on and earning a contract.

The OWMBE component of City of Seattle contracts appears to be included in proposal language but never considered in selecting a vendor. Even when there is direct outreach from City of Seattle buyers per OWMBE status there is little follow-through or contract award.

So far, no contract and renewing especially DBE certification is not a fair process for Small Business but we keep doing it in the hopes of getting a contract.

The city seems to focus on DBEs from the OMWBE. I see very little assistance or emphasis on MBEs.

To be honest, it hasn't helped my business. It's way too much work to try and obtain any contracts, as well as a lot of run around & no clear path to obtain contracts.

We learned a lot about contracting and how much money we were required to front, so would not apply again without a larger operating reserve.

Several W/M/DBEs complimented the City and requested continuation of program requirements.

Keep up the good work!

Keep up the great work. We need you.

Keep up the positive work.

Continue requirement for the involvement of WBE or WOSB on projects.

Continue to include diversity requirements in contracts.

Some minority and woman-owned firms thought the process required for OMWBE certification, particularly renewals, was too cumbersome.

Certification is a lengthy process and difficult to navigate.

Please make it easier to get the renewal done, if you have everything already on file, for the love of God please let us just say "nothing has changed". It takes so much time to do the renewals.

Too much paperwork and too many questions that do not relate to our company sizes.

I applied for WBE and DBE at the same time. For some reason there was a clerical error on my application and only the WBE box was checked. When I received my WBE certification, I was surprised that it did not include the DBE certification also. I was told that I would have to reapply separately for the DBE. I was never denied, but I have not since applied for it, as I wasn't sure if I would need it. It's a tremendous amount of paperwork to apply and I just haven't done it yet.

Certification with OMWBE is not cheap and small businesses have to renew each year whether they get a contract or not.

I think the WBE certification [is] overly complicated and time consuming.

The [certification] application process was so long and convoluted. I did apply for this initially and never knew what happened with it. I qualify for the requirements on paper.

Too much paperwork and too many questions that do not relate to our company size.

States don't want to accept each other's MWBE certifications. We are certified in WA, OR, and VA. But it is too hard and the paperwork is too burdensome to get certified nationally even though we work with 32 states. So, most of them refuse to accept that we are 100% woman owned.

One W/M/DBE expressed support for the City's acceptance of self-certification.

Appreciate that they have allowed self-certification.

The limit on the owner's personal net worth requirement for OMWBE certification was a barrier to some firms.

No, our firm is 100% owned by a woman, but our firm's application was denied due to the owner's personal net worth.

[My] assets [are] too high [to qualify].

The [firm] owner's personal net worth is too high [to qualify].

MBE firm's certification should not be limited by relatively low net worth of \$1.32M for the owner of the firm. There really should be no limit for the net worth of the owner, for the firm to compete with majority owned firms. Owners of those firms normally enjoy significant net worth. An MBE has to contend with barriers regardless of net worth.

The MBE certification programs have a relatively low cap for the total net worth of the owner of a minority or woman owned firm for it to maintain certification. So, if the owner's net worth increases above that limit, the firm will lose its certification. This severely limits the ability of firms to grow and compete with majority owned firms.

Some M/W/DBEs want mandatory MBE/WBE/DBE solicitation goals that are evaluated as a condition of award.

Set goals and hold accountability for purchases made to maintain buildings. There's a lot more focus on big projects and prime contractors hiring subs. The city could shift much more spend in the repair and replacement space very easily to direct contractors.

Instead of voluntary goals make the MWBE involuntary and actually take a stance on the disadvantages minority's face every day. Native Americans were forced to relocate and abandon homes for signing their dependence to the United States govt and its states within. Native Americans should have a different type of access to projects than even other minorities considering we are the only minority with a treaty obligated to us reserved rights as American citizens. A clear separation of minority classes should also involve a different type of treatment.

If DBE goals were expanded to all state and federal contracts.

Changing DEI goals to DEI requirements.

Continue to establish WBE goals on contracts - not just language that Prime contractors should show they are trying to include them.

b. Outreach and Access to Information

In addition to the City's expansive current efforts, many W/M/DBE firms requested more outreach and networking opportunities with primes and City staff. Networking and access to information were seen as critical for obtaining contracts.

Getting into the room with those who need my services [and] introduction to Prime in my field [would be helpful].

Increased opportunities to network with prime vendors/contractors [would help my business].

Learning more about hiring people to go after larger contracts. And getting to know more of the people in the industry.

Meeting people and information that I don't have [would help my business].

More open houses, workshops, and networking. It all helps.

I would like more networking opportunities with the agencies in the City that could hire me.

Keep me more informed of calendar events and opportunities.

Reach out more. Where are these opportunities?

Access to design/marketing related requests from other businesses. I don't always receive requests that match my services.

A workshop on how to connect with businesses requesting services within specific industries.

Job alerts with a sufficient timeframe for bidding, clearer expectations on bids.

I simply need more information. Unsure what to recommend.

Some W/M/DBEs requested more services.

Would like to see more programs available so small businesses can learn about the opportunities available to them. Also courses or classes that can strengthen business ethics.

To reach out to small businesses and see what their challenges are and actually have a plan in place to assist them and a diversity group that helps.

We need more networking opportunities.

One Native American owned firm found it difficult to attend networking events because of their distance from the venue.

The events we see are mid-week in Seattle in the late afternoons or evenings. That's several hours away and difficult to schedule.

c. Access to City of Seattle Contracting Opportunities

Some M/W/DBE respondents suggested the City “unbundle” contracts to support their opportunities to perform as prime contractors.

More opportunity with smaller contracts for now.

The City recasting some major RFPs into a smaller, discrete packages that are easier to respond to. This includes breaking up (where it'll work) some behemoth RFPs into small contracts under the \$64,000 non-RFP, direct-let threshold and eliminating where it makes sense.

Make smaller projects available that don't require so much staff.

Often the RFP projects are bigger than I can handle.

Several M/W/DBEs suggested the City’s RFP process could be improved to reduce barriers to small businesses.

Encourage government agencies to reduce the amount of labor it takes to respond to their RFPs.

The short timespan for responding to RFQs/RFPs and the onerous response process require more on-the-ready resources than my small business's capacity. In some cases, it is simply not possible for a small business owner/sole practitioner to respond within the limited response timeframe.

Onerous, laborious RFP processes.

RFPs are overly complicated and time consuming to find and apply for, especially for smaller businesses who can offer a lot of value at a smaller scale.

Insurance requirements were a barrier for a few M/W/DBEs.

Increase the threshold and reduce requirements for small contracts. Reduce or waive insurance requirements for small contractors and low-risk projects.

Reduce the insurance requirement (especially covering the prime or city) for small WBEs.

Less insurance restriction on small business,

Paperwork and reporting required during the contract period were viewed by some respondents as too time consuming.

Think about the PROCESSES that become inadvertently punitive. Women and people of color are more likely to be self-financed, small firms who have little or no margin to protect against loss of income due to contracting or process hold ups. STREAMLINE.

Remove the administrative barriers. It's really a time-sucking endeavor for a small business to access multiple sites especially as a subcontractor.

Offer technical assistance to small contractors throughout the life of the contract. Bring back easier application and reporting approaches used during the pandemic. It was possible to reduce barriers to equitable contracting then, it can be maintained now.

Less paperwork! My last contract with the City took almost THREE MONTHS and a hundred hours of time just to contract.

Don't require so much paperwork. Too hard for a sole proprietor.

Several respondents supported changes to make contract requirements less burdensome.

The City places far too much value on prior work experience with the City, which have resulted in the same firms having essentially a stranglehold on over the City's contracts.

Continue to revise your bidding processes for clarification and ease of the bidding process. Provide clear responses for supplemental criterion requirements that do not meet your requests.

Grow the consultant pool by hiring firms with less prior work experience with the City and compensate fairly for the work they perform (labor rates, ODC reimbursement, escalation).

Several respondents reported the same firms were repeatedly awarded City prime contracts.

There are places to look for RFPs, but it feels like it usually goes to the vendors that they know. Which was confirmed for me at the Reverse Vendor Tradeshow when someone from the city told me that we would have a better shot being a subcontractor with one of the 3 firms that they work with.

There is a loophole in the City of Seattle procurement policy that allows large consulting opportunities - \$350,000+ - to be awarded without public solicitation if they are awarded to a DBE/WMBE firm. This is ostensibly to benefit small/DBE/WMBE firms, but I have seen - first hand - how it does EXACTLY the opposite, as this loophole is used to award business...six figure business...to the same firms again and again, seemingly based on personal relationships. This is business that we and other WMBE firms never get to compete for...even as a DBE/WMBEs...because it is directly awarded to insiders who happen to be WMBE without any competitive bidding or public solicitation. While I understand some direct awards are necessary in order to be able to move quickly in response to a need (the \$50,000 limit for non-WMBEs seems reasonable in this regard), a \$350,000+ limit is outrageous. It HURTS small DBE businesses as a whole while benefitting a limited few.

I also assume that city managers have their favorite primes/subcontractors, and I'm loathe to invest a huge amount of time into generating responses to a demanding RFP when I believe that city staffers likely already have the firm in mind that they plan to let to.

A selection process which allows firms who have been underutilized to obtain contracts. The current system

rewards firms which have already been awarded contracts previously and penalizes firms which have not. This system makes it impossible for a firm to establish a new working relationship with the City, State, counties and school districts in Washington.

My recommendation is to help us, as certified in the program, receive contracts that have yet to be selected by more prominent firms. Many City agencies look to what they know instead of what is correct and different for the city or state. I look over the city's contact log, and it is usually the same agencies getting the contracts and doing the same things with them. There is nothing.

We often find that offices tasked with creating opportunities for small disadvantaged business pick winners or keep work internal to the organization instead of creating the growth opportunities they are tasked with.

Some W/M/DBEs stated that larger prime vendors repeatedly use the same firms to meet equity requirements.

The magnitude of many projects does not lend itself to small business contracting, and the large GCs tend to go with the firms on their plantation.

It is difficult to get awarded projects due to contractors seem to have their go-to person already.

Setasides for small businesses and W/M/DBEs was another recommendation.

Need set aside projects for SBEs.

More minority-based set asides for Native American small businesses, which would not be a racial precedence because in Title 25 of the U.S. code the federal government has a duty to uphold native Americans and promote small business growth.

Dedicated opportunities for small WMBE firms with maximum revenue thresholds enabling prime contract opportunities for small business to compete with one another versus competing against much larger businesses with much greater resources.

Having set aside SBE contracts so small businesses do not have to compete with larger firms but compete with small businesses.

Set aside work.

Provide set aside contracts for small business.

Some W/M/DBEs would like more technical assistance with bid preparation, RFP responses and contract negotiations.

A playbook on step by step how to get contracts. I didn't even know GCs have a PRE-application for subs.

More education on contract negotiations and reading.

More training on how to contract with City of Seattle.

Bidding competency growth in order to compete as low bidder.

Could use help either meeting people and/or with learning how to write a winning bid. I don't have the network or know-how to bid properly.

It would be extremely helpful to create programs that startups can take advantage of. We have people who are qualified but not necessary understand how to get contracts and work from beginning to end on a project.

d. Monitoring Program Compliance

M/W/DBEs requested more to ensure prime contractors comply with requirements of the program once the contract is awarded.

They need to make sure these primes are really using the WMBE program, because they are not.

Several W/M/DBEs urged greater scrutiny of certified firms to identify "front" companies.

Verify businesses are actually woman-owned.

In the technology field most companies that are 51% woman owned, the woman actually doesn't do the work the husband does the work and they just list the wife to get certification.

Many W/M/DBEs reported the delay in payment from primes caused cash flow issues for them.

Allowing better options for cash flow in helping small businesses when getting paid. The paperwork requirements from the GCs delay the release of payments and makes us finance the jobs. We are at the mercy of our subcontractors and suppliers lien releases and reporting prior to payment releases. At today's interest rates, we cannot take on [more] risk. We will only take on small projects due to this reason.

Getting paid within two weeks of completing work. Meeting payroll as a new construction company is very challenging. Is almost impossible when I have to wait 30-90 days, which is the case on government projects.

Less than 90 days payment program.

Prompt payment for work performed.

Best way to help an WMBE or DBE is to get payments into those businesses faster. It is hard to survive with constant late payments.

Develop a system where certified companies can be paid earlier. Or receive a deposit before starting work.

Most importantly, getting paid in 30 days so we can pay payroll and vendors promptly. This is even harder to get paid fast as a sub.

Get them paid in 30 days from submittal of invoice even if they are a sub.

A few W/MDBEs had encountered delayed payments from the City.

The City of Seattle should support contractors who they contract with, including those projects for other departments such as the Parks Department. When we contract with the City of Seattle, we expect the City of Seattle to ensure other departments they push us on to are executing change orders in a timely manner and making prompt payments. It becomes a frustrating and difficult experience when we are told it is not the City of Seattle's problem, even though our contract is with City of Seattle. I could write a book on how this situation negatively impacts small businesses, the competitive marketplace, as well as simple willingness of those to bid with you (at any level).

Yes, I believe there should be a quick payment clause set up in the LARGE contracts. We progress bill, but typically have to wait 60-90 days to get the 1st payment and this has been really hard.

Another contract has been fraught with late or irregular payments. For small businesses, these things are killers. If I'm a giant business I could absorb those losses. People should not be asked to wait on payments or to work for free. It makes no sense and it's so hard for those already struggling.

e. Project Labor and Community Workforce Agreements

The City's Apprentice Program and Priority Hire and Community Workforce Agreements ("CWAs") were barriers to some small firms obtaining work for City of Seattle.

Make certified businesses exempt from apprentice programs, it is difficult to comply when you are non-union.

The CWA requirements seem to be in contrast with WMBE and DBE goals.

Changing the new CWA requirements to help small business instead of hurting them.

f. Business Supportive Services

Businesses that had participated in supportive services generally found them helpful.

Working with Tabor 100 to complete the infrastructure and reorganization to be ready to do business.

All positive [experiences with supportive services].

Apex Accelerators is an incredible association.

APEX, SCORE, are great programs to help.

Being a Solution Provider through the PNWR training in 2023 was a great experience and was able to connect with other small business owners and share knowledge.

We have taken advantage of grants and loans made available to small businesses. We are also active in diversity organizations such as AMAC (Airport Minority Advisory

Council). We also utilize resources through our Chamber of Commerce and work with other certified business owners.

Good, glad to have access to business development resources.

I gained a lot of knowledge in estimating.

I [received] help [from the] City & County [to] get financing for projects (bonds, govt grants/loans, rates) but do not [receive] help [from] private firms with financing.

It has been time consuming but valuable for us as an organization when it is available.

I've appreciated the 1:1 coaching. It takes a lot of unpaid time that I need to devote to responding to RFPs or doing actual paid work.

Really good. The Northwest Native Chamber of Commerce has offered me so much support.

Mixed or negative experiences with supportive services were reported by some.

Mixed. They have been of benefit, no question, but have yet to actually yield revenue of any sort.

I did not find the course I took was culturally competent, and when I provided this feedback, I received a defensive message back. So, I am more mindful now of choosing programs that are designed to center the experiences of business owners of color.

[They were] not very lucrative for our company.

I was in a diversity program with a major prime yet they provided information to help me which was inaccurate. I had to find insurance and bonding on my own.

We have been for years a member of the [group] and obtained training but it has not helped as the gatekeepers at the City of Seattle decide.

I've been to a few things where it's supposed to teach us how to get into these contracts, but they never start at square one. They always assume we already have an understanding about something. So, we start off lost and it doesn't get any better.

In addition to those currently available, several W/M/DBEs requested additional services to support their business growth.

Assign a consultant to small businesses that can actually help businesses in ways that are useful. Like implementing systems & processes as well as building out backend operations to assist with scaling.

I'm looking forward to... support from the city of Seattle in terms of safety and small business growth!

Find ways to increase small contractors' administrative and financial management capacities.

Offer resources that help expand capacity for business development and marketing.

Capacity development programs, networking, resource management and more exposure [would assist my business to grow].

W/M/DBEs viewed assistance with obtaining financing, bonding and insurance as necessary for success of their business.

Access to capital in the form of grants, 0% loans, business development [are necessary for my business to grow].

More [assistance with] cash flow & bonding capacity to get more bigger projects.

A business loan so I can stop renting equipment and continue working during winter months.

Having access to capital to be able to finance the jobs for a couple of months before the first payment application.

More financing.

A loan would help my business grow.

Access to bonding and access to payroll loans.

Implement a WMBE/DBE small business innovation grants program that funds new program services designed and implemented by small WMBE/DBE business owners for encouraging and supporting more people of color and in starting their own businesses.

g. Joint Venture Arrangements and Mentor-Protégé Programs

Mentor-protégé programs and joint ventures were possible approaches to help M/W/DBEs. Those that participated in these arrangements generally reported good experiences.

Because of our size, we have partners that are also OMWBE that we work with to give ourselves a better shot at success on projects.

SBA federal JV has been going well. We are beginning to see projects come our way.

Seattle Strategic Partnership Program has been extremely helpful in understanding certain things.

We are just starting to conduct business with firms beyond the three of us who have LLCs and have been pursuing business together. We are partnering with larger companies in hopes of winning some additional business.

We have a JV with another government Contractor for work.

I had a mentor who was extremely helpful. I learned so much and use what I learned in my business.

The SBA's Mentor Protege Program is quite valuable with the right mentor.

Several requested assistance with initiating mentoring or teaming arrangements.

I would appreciate support even shadowing another entity so that we can be trusted more.

I also think the City could innovate on structuring RFPs to promote team applications for gigs. There have been several DEI-related RFPs that I might have gone for, but not as prime (as a single shingle, I don't have the administrative capacity to manage that). Team applications could be advantaged or facilitated through a letter of intent pre-RFP process, perhaps. This might be particularly helpful for DEI work, where RFPs are often not necessarily accurate in terms of what an org **actually** needs, vs what they **think** they need.

Would be great to meet with mentor(s)/business owners to get ideas and guidance for marketing, sales, and revenue growth strategies.

Patient mentorship that can talk in regular words or explain the words they are saying. I'm one hell of an electrician, but horrible at the business end.

A mentor to help walk me thru the ins and outs [would be helpful].

Please promote collaboration opportunities with individual/small business owners and prime contractors on large projects.

Access to mentor programs or some way to implement more formal management systems.

I feel to encourage startups it would be important to create shadowing programs where a business that knows the ins and outs gave direct access to a day-to-day hands-on training and working together and eventually have them as their subcontractor.

Possibly mentorship from another small business owner who went from being the sole employee to adding others.

I. Conclusion

Overall, WMBEs benefited from City's contracting programs. The programs were generally supported by participants and viewed as important to their growth and development. While some prime vendors found it challenging, most were generally able to comply with program requirements. However, there are some areas for improvement, including, removing hurdles that make it difficult for subcontractors to move into the role of prime vendors; modifying contracting policies to benefit small and specialized firms; assuring consistent monitoring of program contractual commitments; facilitating timely payments; expanding technical assistance training; and developing teaming arrangements and joint ventures to build WMBE capacity. While many firms experienced disruption in business during the COVID-19 pandemic, most have recovered with little residual impact.

IV. CONTRACT DATA ANALYSIS FOR THE CITY OF SEATTLE

A. Contract Data Overview

We analyzed data from the City of Seattle’s locally funded and U.S. Department of Transportation’s Federal Transit Administration (“FTA”) funded contracts for fiscal years 2016 through 2020. We received contract records from the City that contained 1,748 contracts, worth \$1,082,039,355. To conduct the analysis, we constructed all the fields necessary where they were missing in the City’s contract records (*e.g.*, industry type; zip codes; six-digit North American Industry Classification System (“NAICS”) codes of prime contractors and subcontractors; payments, race; gender; etc.). These results were used to create the overall Final Contract Data File (“FCDF”) and one FCDF for each funding source.

B. Summary of Findings

Table 4-1 presents the distribution of the FCDF across the two funding sources.

**Table 4-1: Summary of Findings:
Distribution of the FCDF Across Funding Sources**

Funding Source	Share of FCDF
Locally funded	96.4%
FTA	3.6%
TOTAL	100.0%

Source: CHA analysis of City of Seattle data

The City’s geographic market area for locally funded contracts was found to consist of the three counties that make up the Seattle metropolitan area: King County, Pierce County and Snohomish County. For the remainder of this Chapter, we will refer to the geographic market as the Seattle Metropolitan Statistical Area (“MSA”). For FTA funded contracts, the geographic market was determined to be King County. Table 4-2 presents data on the share of FCDF contracts contained in each funding sources’ geographic market.

**Table 4-2: Summary of Findings:
The Geographic Market Share of Final Contract Data File
(by funding source)**

Funding Source	Seattle MSA Share of FCDF
Locally funded	71.7%
FTA	89.6%

Source: CHA analysis of City of Seattle data

Tables 4-3 and 4-4 present data on utilization and weighted availability for each funding source. In addition, the tables present data on disparity ratios for locally funded and FTA funded contracts.

**Table 4-3: Summary of Findings: Locally Funded Contracts
(1,705 Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE
Utilization	8.3%	1.9%	7.8%	2.5%	8.6%	29.2%	70.8%
Weighted Availability	1.5%	1.0%	2.1%	1.1%	5.0%	10.6%	89.4%
Disparity Ratio	573.1%***	191.2%***	369.2%***	226.2%***	173.4%***	274.2%***	79.3%‡***

Source: CHA analysis of City of Seattle data

‡ Indicates substantive significance

*** Statistically significant at the 0.001 level

**Table 4-4: Summary of Findings: FTA Funded Contracts
(43 Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE
Utilization	0.2%	2.8%	2.1%	0.9%	6.9%	12.9%	87.1%
Weighted Availability	1.2%	0.7%	2.7%	0.6%	4.9%	10.1%	89.9%
Disparity Ratio	19.2%‡	388.8%	77.5%‡	167.6%	139.9%	128.2%	96.9%

Source: CHA analysis of City of Seattle data

‡ Indicates substantive significance

The analysis presents the following results for each funding source:

- Contract Data Overview.
- The Geographic and Product Market for City Contracts.
- Utilization of Firms in the City’s Geographic and Product Market.
- The Availability of WMDBEs for City Contracts in its Geographic and Product Markets.
- Disparity Analysis of Locally Funded and FTA Funded Contracts.

Because the methodology for the data analysis is identical across both funding source, we detail the methodology for the locally funded contracts; in order to avoid repetition, we present only the tables for FTA funded contracts. At the conclusion of the section on locally funded contracts, we present data on utilization, availability, and disparity ratios for those contracts disaggregated into three industry groups: construction, services, and goods.

Results disaggregated into the broad industry categories of construction, services and goods are presented in Appendix D.

C. Locally Funded Contracts: Contract Data Overview

Tables 4-5 and 4-6 provide data on the FCDF for locally funded contracts.

**Table 4-5: Final Contract Data File
Number of Contracts
(Locally Funded)**

Contract Type	Total Contracts	Share of Total Contracts
Prime Contracts	524	30.7%
Subcontractor	1,181	69.3%
TOTAL	1,705	100.0%

Source: CHA analysis of City of Seattle data

**Table 4-6: Final Contract Data File
Net Dollar Value of Contracts
(Locally Funded)**

Business Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contracts	\$852,453,860	81.7%
Subcontractor	\$190,910,426	18.3%
TOTAL	\$1,043,364,286	100.0%

Source: CHA analysis of City of Seattle data

The following sections present our analysis, which consisted of five steps:

1. The determination of the geographic and product markets for the analysis.
2. The estimation of the utilization of WMBEs by the City.
3. The calculation of the unweighted and weighted availability of WMBEs in the City’s marketplace.
4. The examination of concentration of contract dollars among WMBEs and non-WMBEs.
5. The presentation of the disparity analysis.

1. Locally Funded Contracts: The Geographic and Product Market for the City of Seattle Contracts

As discussed in Chapter II, the federal courts²¹¹ (and the U.S. Department of Transportation DBE regulations²¹² and Guidance²¹³ for the DBE program for FTA funded contracts) require that an agency narrowly tailor any race- and gender-conscious program to its geographic market area. This element of the analysis must be empirically established.²¹⁴ The accepted approach is to analyze those detailed industries, as defined by six-digit NAICS codes,²¹⁵ that

211. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 508 (1989) (Richmond was specifically faulted for including minority contractors from across the country in its program based on the national evidence that supported the USDOT DBE program); see 49 C.F.R. §26.45(c); <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise> (“D. Explain How You Determined Your Local Market Area... your local market area is the area in which the substantial majority of the contractors and subcontractors with which you do business are located and the area in which you spend the substantial majority of your contracting dollars.”).

212. 49 C.F.R. §26.45(c).

213. <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

214. *Concrete Works of Colorado, Inc. v. the City and County of Denver*, 36 F.3d 1513, 1520 (10th Cir. 1994) (to confine data to strict geographic boundaries would ignore “economic reality”).

215. www.census.gov/eos/www/naics.

make up approximately 75% of the prime contract and subcontract payments for the study period.²¹⁶ The determination of the City’s geographic and product market required three steps:

1. The development of the FCDF to determine the product market. Table 4-7 presents these results.
2. The identification of the geographic market.
3. The determination of the product market constrained by the geographic parameters. Table 4-8 presents these results.

2. Final Contract Data File for the City of Seattle’s Locally Funded Contracts

The FCDF for the City’s locally funded contracts, which establishes the City’s product market, consisted of 120 NAICS codes, with a total contract dollar value of \$1,043,364,286. Table 4-7 presents each NAICS code with its share of the total contract dollar value. The NAICS codes are presented in the order of the code with the largest share to the code with the smallest share.

Table 4-7: Industry Percentage Distribution of City of Seattle Contracts by Dollars (Locally Funded)

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
237310	Highway, Street, and Bridge Construction	9.9%	9.9%
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	8.8%	18.7%
238210	Electrical Contractors and Other Wiring Installation Contractors	8.1%	26.8%
238990	All Other Specialty Trade Contractors	5.3%	32.1%
236210	Industrial Building Construction	5.3%	37.4%
541519	Other Computer Related Services	5.3%	42.7%
238220	Plumbing, Heating, and Air-Conditioning Contractors	3.3%	46.0%
237110	Water and Sewer Line and Related Structures Construction	3.1%	49.1%
541511	Custom Computer Programming Services	3.1%	52.2%
237990	Other Heavy and Civil Engineering Construction	2.9%	55.1%

216. J. Wainwright and C. Holt, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*, National Academies of Sciences, Engineering, and Medicine, 2010 (“*National Disparity Study Guidelines*”).

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
238910	Site Preparation Contractors	2.6%	57.7%
541330	Engineering Services	2.5%	60.3%
511210	Software Publishers	2.3%	62.6%
561720	Janitorial Services	2.2%	64.8%
484220	Specialized Freight (except Used Goods) Trucking, Local	2.0%	66.8%
238110	Poured Concrete Foundation and Structure Contractors	1.7%	68.5%
238120	Structural Steel and Precast Concrete Contractors	1.6%	70.1%
423690	Other Electronic Parts and Equipment Merchant Wholesalers	1.5%	71.7%
922120	Police Protection	1.5%	73.1%
423210	Furniture Merchant Wholesalers	1.4%	74.5%
541512	Computer Systems Design Services	1.3%	75.8%
236220	Commercial and Institutional Building Construction	1.2%	77.0%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	1.2%	78.2%
541690	Other Scientific and Technical Consulting Services	1.1%	79.3%
562910	Remediation Services	1.0%	80.3%
561612	Security Guards and Patrol Services	0.9%	81.2%
561990	All Other Support Services	0.9%	82.1%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.9%	83.0%
238160	Roofing Contractors	0.8%	83.8%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.8%	84.7%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.8%	85.5%
518210	Data Processing, Hosting, and Related Services	0.8%	86.2%
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	0.7%	86.9%
561621	Security Systems Services (except Locksmiths)	0.7%	87.6%
541380	Testing Laboratories	0.7%	88.3%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.7%	88.9%
485113	Bus and Other Motor Vehicle Transit Systems	0.7%	89.6%
532412	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing	0.6%	90.2%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	0.6%	90.9%
541990	All Other Professional, Scientific, and Technical Services	0.6%	91.5%
238290	Other Building Equipment Contractors	0.6%	92.0%
561730	Landscaping Services	0.5%	92.5%
441110	New Car Dealers	0.5%	93.0%
541611	Administrative Management and General Management Consulting Services	0.5%	93.5%
541620	Environmental Consulting Services	0.5%	93.9%
238390	Other Building Finishing Contractors	0.4%	94.4%
238310	Drywall and Insulation Contractors	0.4%	94.8%
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	0.4%	95.2%
444190	Other Building Material Dealers	0.4%	95.5%
811198	All Other Automotive Repair and Maintenance	0.3%	95.9%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.3%	96.2%
541310	Architectural Services	0.3%	96.5%
541370	Surveying and Mapping (except Geophysical) Services	0.3%	96.8%
238150	Glass and Glazing Contractors	0.3%	97.1%
424120	Stationery and Office Supplies Merchant Wholesalers	0.2%	97.3%
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	0.2%	97.5%
621493	Freestanding Ambulatory Surgical and Emergency Centers	0.2%	97.7%
238140	Masonry Contractors	0.2%	97.8%
561431	Private Mail Centers	0.1%	98.0%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541211	Offices of Certified Public Accountants	0.1%	98.1%
488490	Other Support Activities for Road Transportation	0.1%	98.2%
541430	Graphic Design Services	0.1%	98.4%
238350	Finish Carpentry Contractors	0.1%	98.5%
238330	Flooring Contractors	0.1%	98.6%
541320	Landscape Architectural Services	0.1%	98.7%
238130	Framing Contractors	0.1%	98.8%
238320	Painting and Wall Covering Contractors	0.1%	98.9%
424690	Other Chemical and Allied Products Merchant Wholesalers	0.1%	99.0%
236116	New Multifamily Housing Construction (except For-Sale Builders)	0.1%	99.1%
323111	Commercial Printing (except Screen and Books)	0.1%	99.2%
811111	General Automotive Repair	0.1%	99.2%
562119	Other Waste Collection	0.1%	99.3%
541618	Other Management Consulting Services	0.1%	99.4%
541820	Public Relations Agencies	0.1%	99.4%
562920	Materials Recovery Facilities	0.1%	99.5%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	0.1%	99.5%
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	0.04%	99.6%
517919	All Other Telecommunications	0.03%	99.6%
449210	Electronics and Appliance Retailers	0.03%	99.6%
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	0.03%	99.7%
541110	Offices of Lawyers	0.03%	99.7%
541612	Human Resources Consulting Services	0.02%	99.7%
541614	Process, Physical Distribution, and Logistics Consulting Services	0.02%	99.8%
561320	Temporary Help Services	0.02%	99.8%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology)	0.02%	99.8%
512110	Motion Picture and Video Production	0.02%	99.8%
562212	Solid Waste Landfill	0.02%	99.8%
541720	Research and Development in the Social Sciences and Humanities	0.01%	99.8%
485991	Special Needs Transportation	0.01%	99.9%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	0.01%	99.9%
333921	Elevator and Moving Stairway Manufacturing	0.01%	99.9%
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	0.01%	99.9%
339950	Sign Manufacturing	0.01%	99.9%
561440	Collection Agencies	0.01%	99.9%
541910	Marketing Research and Public Opinion Polling	0.01%	99.9%
541420	Industrial Design Services	0.01%	99.9%
812930	Parking Lots and Garages	0.01%	99.9%
424480	Fresh Fruit and Vegetable Merchant Wholesalers	0.01%	99.9%
611430	Professional and Management Development Training	0.01%	99.9%
481211	Nonscheduled Chartered Passenger Air Transportation	0.01%	100.0%
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	0.01%	100.0%
332721	Precision Turned Product Manufacturing	0.01%	100.0%
423220	Home Furnishing Merchant Wholesalers	0.01%	100.0%
562111	Solid Waste Collection	0.005%	100.0%
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	0.004%	100.0%
447190	Other Gasoline Stations	0.003%	100.0%
541490	Other Specialized Design Services	0.003%	100.0%
221122	Electric Power Distribution	0.003%	100.0%
332312	Fabricated Structural Metal Manufacturing	0.002%	100.0%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
562998	All Other Miscellaneous Waste Management Services	0.002%	100.0%
561410	Document Preparation Services	0.002%	100.0%
611110	Elementary and Secondary Schools	0.002%	100.0%
221310	Water Supply and Irrigation Systems	0.001%	100.0%
532420	Office Machinery and Equipment Rental and Leasing	0.001%	100.0%
423490	Other Professional Equipment and Supplies Merchant Wholesalers	0.001%	100.0%
541410	Interior Design Services	0.001%	100.0%
562991	Septic Tank and Related Services	0.0004%	100.0%
213112	Support Activities for Oil and Gas Operations	0.0003%	100.0%
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers	0.0002%	100.0%
561421	Telephone Answering Services	0.00005%	100.0%
Total			100.0%

Source: CHA analysis of City of Seattle data

3. Geographic Market for Locally Funded Contracts

To determine the geographic market area, we applied the standard of identifying the firm locations that account for close to 75% of contract and subcontract dollar payments in the FCDF.²¹⁷ Firm location was determined by zip code and aggregated into counties as the geographic unit. The Seattle MSA (King, Pierce, and Snohomish Counties) captured 71.7% of the FCDF. Therefore, we used the Seattle MSA as the geographic market.

4. Locally Funded Contracts: Utilization of Firms in the City of Seattle’s Geographic and Product Market

Having determined the City’s geographic market area, the next step was to determine the dollar value of its utilization of WMBE firms²¹⁸ as measured by

217. “National Disparity Study Guidelines”, at p. 29.

218. For our analysis, the term “W/MBE” or “DBE” includes firms that are certified by government agencies and minority- and woman-owned firms that are not certified. The inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts and that supports the remedial nature of these programs. See *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 723 (7th Cir. 2007) (The “remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net.”).

net payments to prime firms and subcontractors and disaggregated by race and gender. There were 99 NAICS codes after constraining the FCDF by the geographic market; the dollar value of the contracts in these codes was \$747,706,680.

Table 4-8 presents these data. We note that the contract dollar shares in Table 4-8 are equivalent to the weight of spending in each NAICS code. These data were used to calculate weighted availability²¹⁹ from unweighted availability, as discussed below.

Table 4-8: NAICS Code Distribution of Contract Dollars in City of Seattle’s Constrained Product Market (Locally Funded)

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	\$91,838,728	12.3%
237310	Highway, Street, and Bridge Construction	\$76,854,688	10.3%
236210	Industrial Building Construction	\$55,354,268	7.4%
541519	Other Computer Related Services	\$54,349,880	7.3%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$47,956,144	6.4%
238990	All Other Specialty Trade Contractors	\$41,938,600	5.6%
541511	Custom Computer Programming Services	\$28,773,434	3.8%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$25,122,754	3.4%
237990	Other Heavy and Civil Engineering Construction	\$24,301,266	3.3%
541330	Engineering Services	\$23,383,894	3.1%
238910	Site Preparation Contractors	\$23,263,002	3.1%
561720	Janitorial Services	\$22,891,662	3.1%
237110	Water and Sewer Line and Related Structures Construction	\$17,911,306	2.4%

219. See “Tips for Goal Setting in the Disadvantaged Business Enterprise Program” (“F. Wherever Possible, Use Weighting. Weighting can help ensure that your Step One Base Figure is as accurate as possible. While weighting is not required by the rule, it will make your goal calculation more accurate. For instance, if 90% of your contract dollars will be spent on heavy construction and 10% on trucking, you should weight your calculation of the relative availability of firms by the same percentages.”) (emphasis in the original), <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
238110	Poured Concrete Foundation and Structure Contractors	\$16,423,656	2.2%
423690	Other Electronic Parts and Equipment Merchant Wholesalers	\$15,943,167	2.1%
238120	Structural Steel and Precast Concrete Contractors	\$12,407,817	1.7%
423210	Furniture Merchant Wholesalers	\$12,123,277	1.6%
236220	Commercial and Institutional Building Construction	\$11,251,958	1.5%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$9,920,484	1.3%
562910	Remediation Services	\$9,582,574	1.3%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	\$8,731,543	1.2%
561990	All Other Support Services	\$7,515,368	1.0%
485113	Bus and Other Motor Vehicle Transit Systems	\$6,833,238	0.9%
532412	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing	\$6,739,785	0.9%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	\$6,448,313	0.9%
561621	Security Systems Services (except Locksmiths)	\$6,381,519	0.9%
238160	Roofing Contractors	\$6,039,375	0.8%
238290	Other Building Equipment Contractors	\$5,685,615	0.8%
238190	Other Foundation, Structure, and Building Exterior Contractors	\$5,021,628	0.7%
561730	Landscaping Services	\$4,349,132	0.6%
541620	Environmental Consulting Services	\$4,316,672	0.6%
238310	Drywall and Insulation Contractors	\$4,173,824	0.6%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	\$4,120,151	0.6%
541990	All Other Professional, Scientific, and Technical Services	\$4,098,895	0.5%
238390	Other Building Finishing Contractors	\$3,914,224	0.5%
811198	All Other Automotive Repair and Maintenance	\$3,580,511	0.5%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
541310	Architectural Services	\$3,226,986	0.4%
541611	Administrative Management and General Management Consulting Services	\$2,790,766	0.4%
541370	Surveying and Mapping (except Geophysical) Services	\$2,670,692	0.4%
424120	Stationery and Office Supplies Merchant Wholesalers	\$2,485,572	0.3%
621493	Freestanding Ambulatory Surgical and Emergency Centers	\$1,804,385	0.2%
444190	Other Building Material Dealers	\$1,715,291	0.2%
561431	Private Mail Centers	\$1,486,637	0.2%
238140	Masonry Contractors	\$1,396,935	0.2%
541430	Graphic Design Services	\$1,349,094	0.2%
541211	Offices of Certified Public Accountants	\$1,245,000	0.2%
488490	Other Support Activities for Road Transportation	\$1,216,149	0.2%
238130	Framing Contractors	\$1,076,226	0.1%
238150	Glass and Glazing Contractors	\$1,062,784	0.1%
238330	Flooring Contractors	\$1,028,669	0.1%
238320	Painting and Wall Covering Contractors	\$951,242	0.1%
424690	Other Chemical and Allied Products Merchant Wholesalers	\$931,133	0.1%
236116	New Multifamily Housing Construction (except For-Sale Builders)	\$917,190	0.1%
323111	Commercial Printing (except Screen and Books)	\$896,380	0.1%
238350	Finish Carpentry Contractors	\$831,191	0.1%
811111	General Automotive Repair	\$704,891	0.1%
562119	Other Waste Collection	\$694,805	0.1%
541512	Computer Systems Design Services	\$635,342	0.1%
423830	Industrial Machinery and Equipment Merchant Wholesalers	\$605,072	0.1%
541320	Landscape Architectural Services	\$587,261	0.1%
562920	Materials Recovery Facilities	\$561,648	0.1%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	\$555,105	0.1%
541618	Other Management Consulting Services	\$541,214	0.1%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	\$429,121	0.1%
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	\$417,621	0.1%
541820	Public Relations Agencies	\$362,620	0.05%
517919	All Other Telecommunications	\$358,518	0.05%
541690	Other Scientific and Technical Consulting Services	\$335,211	0.04%
541380	Testing Laboratories	\$321,499	0.04%
541110	Offices of Lawyers	\$294,626	0.04%
541612	Human Resources Consulting Services	\$240,370	0.03%
561612	Security Guards and Patrol Services	\$179,913	0.02%
562212	Solid Waste Landfill	\$159,496	0.02%
485991	Special Needs Transportation	\$129,096	0.02%
541910	Marketing Research and Public Opinion Polling	\$99,750	0.01%
541420	Industrial Design Services	\$94,570	0.01%
812930	Parking Lots and Garages	\$88,796	0.01%
424480	Fresh Fruit and Vegetable Merchant Wholesalers	\$85,620	0.01%
541720	Research and Development in the Social Sciences and Humanities	\$73,474	0.01%
561320	Temporary Help Services	\$67,165	0.01%
332721	Precision Turned Product Manufacturing	\$61,455	0.01%
512110	Motion Picture and Video Production	\$58,736	0.01%
562111	Solid Waste Collection	\$47,423	0.01%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	\$42,055	0.01%
423220	Home Furnishing Merchant Wholesalers	\$39,772	0.01%
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	\$37,937	0.01%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
447190	Other Gasoline Stations	\$31,937	0.004%
541490	Other Specialized Design Services	\$30,028	0.004%
221122	Electric Power Distribution	\$29,595	0.004%
562998	All Other Miscellaneous Waste Management Services	\$21,776	0.003%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	\$12,614	0.002%
221310	Water Supply and Irrigation Systems	\$12,565	0.002%
532420	Office Machinery and Equipment Rental and Leasing	\$9,645	0.001%
423490	Other Professional Equipment and Supplies Merchant Wholesalers	\$8,060	0.001%
541410	Interior Design Services	\$5,885	0.001%
562991	Septic Tank and Related Services	\$4,092	0.001%
213112	Support Activities for Oil and Gas Operations	\$2,788	0.0004%
561410	Document Preparation Services	\$2,365	0.0003%
561421	Telephone Answering Services	\$480	0.0001%
TOTAL		\$747,706,680	100.0%

Source: CHA analysis of City of Seattle data

Tables 4-9 and 4-10 present data on the City’s WMBE utilization, measured in contract dollars and percentage of contract dollars.

**Table 4-9: Distribution of City of Seattle Contract Dollars by Race and Gender
(Locally Funded)
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
213112	\$0	\$0	\$0	\$0	\$2,788	\$2,788	\$0	\$2,788
221122	\$0	\$0	\$0	\$0	\$29,595	\$29,595	\$0	\$29,595
221310	\$0	\$0	\$0	\$0	\$0	\$0	\$12,565	\$12,565
236116	\$0	\$0	\$0	\$0	\$0	\$0	\$917,190	\$917,190
236210	\$0	\$0	\$0	\$0	\$0	\$0	\$55,354,267	\$55,354,267
236220	\$277,927	\$0	\$521,877	\$0	\$3,713,922	\$4,513,727	\$6,738,231	\$11,251,958
237110	\$0	\$0	\$0	\$0	\$835,046	\$835,046	\$17,076,260	\$17,911,306
237310	\$9,810	\$3,592,130	\$192,190	\$2,624,348	\$5,968,652	\$12,387,131	\$64,467,557	\$76,854,688
237990	\$0	\$0	\$402,896	\$0	\$5,085,209	\$5,488,105	\$18,813,161	\$24,301,266
238110	\$119,670	\$582,683	\$0	\$0	\$178,567	\$880,920	\$15,542,736	\$16,423,656
238120	\$0	\$217,714	\$703,966	\$6,800	\$1,249,318	\$2,177,798	\$10,230,019	\$12,407,817
238130	\$0	\$0	\$0	\$0	\$0	\$0	\$1,076,226	\$1,076,226
238140	\$0	\$0	\$0	\$0	\$107,106	\$107,106	\$1,289,829	\$1,396,935
238150	\$0	\$0	\$0	\$0	\$379,627	\$379,627	\$683,157	\$1,062,784
238160	\$0	\$145,000	\$645,128	\$0	\$334,305	\$1,124,433	\$4,914,942	\$6,039,375
238190	\$0	\$715,988	\$1,087,787	\$0	\$1,263,625	\$3,067,400	\$1,954,228	\$5,021,627
238210	\$3,901,654	\$5,002,801	\$1,267,842	\$12,641,506	\$6,233,979	\$29,047,781	\$18,908,361	\$47,956,143
238220	\$0	\$758,846	\$217,107	\$0	\$10,674,956	\$11,650,909	\$13,471,846	\$25,122,755
238290	\$0	\$0	\$4,603,933	\$0	\$0	\$4,603,933	\$1,081,682	\$5,685,615
238310	\$34,928	\$254,073	\$0	\$0	\$212,678	\$501,679	\$3,672,145	\$4,173,824

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
238320	\$89,331	\$111,033	\$16,064	\$0	\$217,625	\$434,054	\$517,188	\$951,242
238330	\$177,782	\$0	\$0	\$0	\$397,311	\$575,093	\$453,576	\$1,028,669
238350	\$13,687	\$27,293	\$0	\$0	\$0	\$40,980	\$790,211	\$831,191
238390	\$9,900	\$705,745	\$15,555	\$0	\$67,926	\$799,126	\$3,115,098	\$3,914,224
238910	\$37,000	\$490,255	\$1,163,945	\$57,651	\$1,386,732	\$3,135,583	\$20,127,420	\$23,263,003
238990	\$0	\$499,596	\$0	\$711,450	\$4,410,159	\$5,621,205	\$36,317,395	\$41,938,600
323111	\$0	\$0	\$0	\$0	\$738,920	\$738,920	\$157,460	\$896,380
332721	\$0	\$0	\$0	\$0	\$0	\$0	\$61,455	\$61,455
423110	\$0	\$0	\$0	\$0	\$0	\$0	\$8,731,543	\$8,731,543
423210	\$0	\$0	\$0	\$0	\$796,007	\$796,007	\$11,327,270	\$12,123,277
423220	\$0	\$0	\$0	\$22,273	\$17,499	\$39,772	\$0	\$39,772
423310	\$0	\$0	\$0	\$0	\$12,614	\$12,614	\$0	\$12,614
423320	\$0	\$0	\$0	\$177,834	\$14,000	\$191,834	\$3,928,317	\$4,120,151
423430	\$0	\$0	\$0	\$0	\$0	\$0	\$91,838,728	\$91,838,728
423490	\$0	\$0	\$0	\$0	\$0	\$0	\$8,060	\$8,060
423510	\$0	\$0	\$390,225	\$0	\$4,500	\$394,725	\$34,396	\$429,121
423610	\$0	\$0	\$0	\$0	\$349,655	\$349,655	\$205,450	\$555,105
423620	\$0	\$0	\$0	\$0	\$0	\$0	\$37,937	\$37,937
423690	\$0	\$0	\$0	\$0	\$0	\$0	\$15,943,167	\$15,943,167
423830	\$0	\$0	\$0	\$0	\$0	\$0	\$605,072	\$605,072
423850	\$0	\$0	\$1,298,573	\$0	\$3,576,606	\$4,875,179	\$1,573,134	\$6,448,313
424120	\$0	\$0	\$0	\$0	\$2,485,572	\$2,485,572	\$0	\$2,485,572
424480	\$0	\$0	\$0	\$0	\$0	\$0	\$85,620	\$85,620

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
424690	\$0	\$0	\$0	\$0	\$0	\$0	\$931,133	\$931,133
424930	\$0	\$0	\$0	\$0	\$0	\$0	\$417,621	\$417,621
444190	\$0	\$0	\$50,828	\$0	\$908,241	\$959,069	\$756,222	\$1,715,291
447190	\$0	\$0	\$0	\$0	\$0	\$0	\$31,937	\$31,937
484220	\$144,257	\$12,843	\$7,181,136	\$96,371	\$797,776	\$8,232,383	\$1,688,100	\$9,920,484
485113	\$0	\$0	\$0	\$0	\$0	\$0	\$6,833,238	\$6,833,238
485991	\$0	\$0	\$0	\$0	\$0	\$0	\$129,096	\$129,096
488490	\$382,790	\$0	\$82,215	\$0	\$24,652	\$489,657	\$726,492	\$1,216,149
512110	\$0	\$0	\$0	\$0	\$44,561	\$44,561	\$14,175	\$58,736
517919	\$0	\$0	\$0	\$38,833	\$0	\$38,833	\$319,685	\$358,517
532412	\$0	\$0	\$0	\$0	\$0	\$0	\$6,739,785	\$6,739,785
532420	\$0	\$0	\$0	\$0	\$0	\$0	\$9,645	\$9,645
541110	\$0	\$0	\$0	\$0	\$22,175	\$22,175	\$272,451	\$294,626
541211	\$0	\$0	\$0	\$0	\$98,044	\$98,044	\$1,146,956	\$1,245,000
541310	\$0	\$55,954	\$461,606	\$0	\$520,380	\$1,037,939	\$2,189,046	\$3,226,986
541320	\$109,606	\$0	\$0	\$0	\$86,241	\$195,847	\$391,414	\$587,261
541330	\$327,692	\$220,987	\$2,534,294	\$173,993	\$685,416	\$3,942,382	\$19,441,511	\$23,383,893
541370	\$638,412	\$0	\$835,894	\$0	\$309,211	\$1,783,517	\$887,175	\$2,670,692
541380	\$0	\$0	\$46,218	\$0	\$28,515	\$74,733	\$246,766	\$321,499
541410	\$0	\$0	\$0	\$0	\$0	\$0	\$5,885	\$5,885
541420	\$0	\$0	\$0	\$0	\$4,600	\$4,600	\$89,970	\$94,570
541430	\$0	\$0	\$0	\$1,349,094	\$0	\$1,349,094	\$0	\$1,349,094
541490	\$0	\$0	\$0	\$0	\$0	\$0	\$30,028	\$30,028

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
541511	\$0	\$0	\$26,975,972	\$0	\$1,733,462	\$28,709,434	\$64,000	\$28,773,434
541512	\$24,310	\$0	\$197,770	\$0	\$368,542	\$590,622	\$44,720	\$635,342
541519	\$54,349,881	\$0	\$0	\$0	\$0	\$54,349,881	\$0	\$54,349,881
541611	\$222,560	\$0	\$542,628	\$0	\$1,815,554	\$2,580,742	\$210,024	\$2,790,765
541612	\$0	\$0	\$0	\$0	\$3,410	\$3,410	\$236,960	\$240,370
541618	\$0	\$0	\$286,880	\$0	\$173,190	\$460,070	\$81,144	\$541,214
541620	\$193,510	\$0	\$0	\$534,225	\$1,808,566	\$2,536,301	\$1,780,371	\$4,316,672
541690	\$0	\$0	\$0	\$0	\$275,976	\$275,976	\$59,235	\$335,211
541720	\$0	\$0	\$0	\$0	\$10,114	\$10,114	\$63,361	\$73,474
541820	\$62,739	\$0	\$0	\$0	\$38,101	\$100,840	\$261,781	\$362,620
541910	\$0	\$0	\$0	\$0	\$0	\$0	\$99,750	\$99,750
541990	\$199,848	\$0	\$75,169	\$157,180	\$859,952	\$1,292,149	\$2,806,745	\$4,098,895
561320	\$0	\$0	\$67,165	\$0	\$0	\$67,165	\$0	\$67,165
561410	\$0	\$0	\$0	\$0	\$2,365	\$2,365	\$0	\$2,365
561421	\$0	\$0	\$0	\$0	\$0	\$0	\$480	\$480
561431	\$0	\$0	\$1,486,637	\$0	\$0	\$1,486,637	\$0	\$1,486,637
561612	\$0	\$0	\$0	\$0	\$0	\$0	\$179,913	\$179,913
561621	\$0	\$0	\$3,733,627	\$0	\$0	\$3,733,627	\$2,647,892	\$6,381,519
561720	\$12,360	\$126,364	\$318,255	\$0	\$2,955	\$459,934	\$22,431,728	\$22,891,661
561730	\$705,095	\$103,721	\$764,462	\$0	\$1,949,479	\$3,522,757	\$826,375	\$4,349,132
561990	\$349,325	\$799,923	\$174,948	\$0	\$83,615	\$1,407,811	\$6,107,557	\$7,515,368
562111	\$0	\$0	\$0	\$0	\$47,423	\$47,423	\$0	\$47,423
562119	\$0	\$0	\$0	\$0	\$694,805	\$694,805	\$0	\$694,805

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
562212	\$0	\$0	\$0	\$0	\$159,496	\$159,496	\$0	\$159,496
562910	\$26,520	\$0	\$0	\$0	\$0	\$26,520	\$9,556,053	\$9,582,574
562920	\$0	\$0	\$0	\$0	\$0	\$0	\$561,648	\$561,648
562991	\$0	\$0	\$4,092	\$0	\$0	\$4,092	\$0	\$4,092
562998	\$0	\$0	\$0	\$0	\$0	\$0	\$21,776	\$21,776
621493	\$0	\$0	\$0	\$0	\$0	\$0	\$1,804,385	\$1,804,385
811111	\$0	\$0	\$0	\$0	\$0	\$0	\$704,891	\$704,891
811198	\$0	\$0	\$0	\$0	\$0	\$0	\$3,580,511	\$3,580,511
811310	\$0	\$0	\$0	\$0	\$0	\$0	\$42,055	\$42,055
812930	\$0	\$0	\$0	\$0	\$0	\$0	\$88,796	\$88,796
Total	\$62,420,594	\$14,422,948	\$58,346,884	\$18,591,558	\$64,301,316	\$218,083,301	\$529,623,379	\$747,706,680

Source: CHA analysis of City of Seattle data

**Table 4-10: Percentage Distribution of City of Seattle Contract Dollars by Race and Gender
(Locally Funded)
(share of total dollars)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
213112	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
221122	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
221310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236116	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236220	2.5%	0.0%	4.6%	0.0%	33.0%	40.1%	59.9%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
237110	0.0%	0.0%	0.0%	0.0%	4.7%	4.7%	95.3%	100.0%
237310	0.0%	4.7%	0.3%	3.4%	7.8%	16.1%	83.9%	100.0%
237990	0.0%	0.0%	1.7%	0.0%	20.9%	22.6%	77.4%	100.0%
238110	0.7%	3.5%	0.0%	0.0%	1.1%	5.4%	94.6%	100.0%
238120	0.0%	1.8%	5.7%	0.1%	10.1%	17.6%	82.4%	100.0%
238130	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238140	0.0%	0.0%	0.0%	0.0%	7.7%	7.7%	92.3%	100.0%
238150	0.0%	0.0%	0.0%	0.0%	35.7%	35.7%	64.3%	100.0%
238160	0.0%	2.4%	10.7%	0.0%	5.5%	18.6%	81.4%	100.0%
238190	0.0%	14.3%	21.7%	0.0%	25.2%	61.1%	38.9%	100.0%
238210	8.1%	10.4%	2.6%	26.4%	13.0%	60.6%	39.4%	100.0%
238220	0.0%	3.0%	0.9%	0.0%	42.5%	46.4%	53.6%	100.0%
238290	0.0%	0.0%	81.0%	0.0%	0.0%	81.0%	19.0%	100.0%
238310	0.8%	6.1%	0.0%	0.0%	5.1%	12.0%	88.0%	100.0%
238320	9.4%	11.7%	1.7%	0.0%	22.9%	45.6%	54.4%	100.0%
238330	17.3%	0.0%	0.0%	0.0%	38.6%	55.9%	44.1%	100.0%
238350	1.6%	3.3%	0.0%	0.0%	0.0%	4.9%	95.1%	100.0%
238390	0.3%	18.0%	0.4%	0.0%	1.7%	20.4%	79.6%	100.0%
238910	0.2%	2.1%	5.0%	0.2%	6.0%	13.5%	86.5%	100.0%
238990	0.0%	1.2%	0.0%	1.7%	10.5%	13.4%	86.6%	100.0%
323111	0.0%	0.0%	0.0%	0.0%	82.4%	82.4%	17.6%	100.0%
332721	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423210	0.0%	0.0%	0.0%	0.0%	6.6%	6.6%	93.4%	100.0%
423220	0.0%	0.0%	0.0%	56.0%	44.0%	100.0%	0.0%	100.0%
423310	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
423320	0.0%	0.0%	0.0%	4.3%	0.3%	4.7%	95.3%	100.0%
423430	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423490	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423510	0.0%	0.0%	90.9%	0.0%	1.0%	92.0%	8.0%	100.0%

City of Seattle Disparity Study 2025

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
423610	0.0%	0.0%	0.0%	0.0%	63.0%	63.0%	37.0%	100.0%
423620	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423690	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423830	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423850	0.0%	0.0%	20.1%	0.0%	55.5%	75.6%	24.4%	100.0%
424120	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
424480	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424690	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424930	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
444190	0.0%	0.0%	3.0%	0.0%	52.9%	55.9%	44.1%	100.0%
447190	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484220	1.5%	0.1%	72.4%	1.0%	8.0%	83.0%	17.0%	100.0%
485113	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
485991	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
488490	31.5%	0.0%	6.8%	0.0%	2.0%	40.3%	59.7%	100.0%
512110	0.0%	0.0%	0.0%	0.0%	75.9%	75.9%	24.1%	100.0%
517919	0.0%	0.0%	0.0%	10.8%	0.0%	10.8%	89.2%	100.0%
532412	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
532420	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541110	0.0%	0.0%	0.0%	0.0%	7.5%	7.5%	92.5%	100.0%
541211	0.0%	0.0%	0.0%	0.0%	7.9%	7.9%	92.1%	100.0%
541310	0.0%	1.7%	14.3%	0.0%	16.1%	32.2%	67.8%	100.0%
541320	18.7%	0.0%	0.0%	0.0%	14.7%	33.3%	66.7%	100.0%
541330	1.4%	0.9%	10.8%	0.7%	2.9%	16.9%	83.1%	100.0%
541370	23.9%	0.0%	31.3%	0.0%	11.6%	66.8%	33.2%	100.0%
541380	0.0%	0.0%	14.4%	0.0%	8.9%	23.2%	76.8%	100.0%
541410	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541420	0.0%	0.0%	0.0%	0.0%	4.9%	4.9%	95.1%	100.0%
541430	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
541490	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
541511	0.0%	0.0%	93.8%	0.0%	6.0%	99.8%	0.2%	100.0%
541512	3.8%	0.0%	31.1%	0.0%	58.0%	93.0%	7.0%	100.0%
541519	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541611	8.0%	0.0%	19.4%	0.0%	65.1%	92.5%	7.5%	100.0%
541612	0.0%	0.0%	0.0%	0.0%	1.4%	1.4%	98.6%	100.0%
541618	0.0%	0.0%	53.0%	0.0%	32.0%	85.0%	15.0%	100.0%
541620	4.5%	0.0%	0.0%	12.4%	41.9%	58.8%	41.2%	100.0%
541690	0.0%	0.0%	0.0%	0.0%	82.3%	82.3%	17.7%	100.0%
541720	0.0%	0.0%	0.0%	0.0%	13.8%	13.8%	86.2%	100.0%
541820	17.3%	0.0%	0.0%	0.0%	10.5%	27.8%	72.2%	100.0%
541910	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541990	4.9%	0.0%	1.8%	3.8%	21.0%	31.5%	68.5%	100.0%
561320	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
561410	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
561421	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561431	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
561612	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561621	0.0%	0.0%	58.5%	0.0%	0.0%	58.5%	41.5%	100.0%
561720	0.1%	0.6%	1.4%	0.0%	0.0%	2.0%	98.0%	100.0%
561730	16.2%	2.4%	17.6%	0.0%	44.8%	81.0%	19.0%	100.0%
561990	4.6%	10.6%	2.3%	0.0%	1.1%	18.7%	81.3%	100.0%
562111	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
562119	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
562212	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
562910	0.3%	0.0%	0.0%	0.0%	0.0%	0.3%	99.7%	100.0%
562920	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562991	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
562998	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
621493	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
811111	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
811198	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
811310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
812930	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
Total	8.3%	1.9%	7.8%	2.5%	8.6%	29.2%	70.8%	100.0%

Source: CHA analysis of City of Seattle data

5. Locally Funded Contracts: The Availability of WMBEs in its Geographic and Product Market

Estimates of the availability of WMBEs in the City’s geographic and product market are a critical component of the City’s compliance with its constitutional obligations under strict scrutiny and under 49 C.F.R. Part 26 for its DBE program. The availability estimates must reflect the number of “ready, willing and able” firms that can perform the specific types of work required for the City’s prime contracts and associated subcontracts.²²⁰ These availability estimates are compared to the utilization percentage of dollars received by WMBEs to determine whether minority- and woman-owned firms achieve parity. Availability estimates are also crucial for the City to set narrowly tailored DBE goals for its FTA assisted contract.

We applied the “custom census” approach, with refinements, to estimate availability. The courts and the National Model Disparity Study Guidelines²²¹ have recognized this methodology as superior to the other methods for at least four reasons:

- First, it provides an internally consistent and rigorous “apples to apples” comparison between firms in the availability numerator and those in the denominator. Other approaches often have different definitions for the firms in the numerator (*e.g.*, certified or firms that respond to a survey) and the denominator (*e.g.*, registered vendors or the Census Bureau’s County Business Patterns data).
- Second, by examining a comprehensive group of firms, it “casts a broader net” beyond those known to the agency. As recognized by the courts, this comports with the remedial nature of contracting affirmative action programs by seeking to bring in businesses that have historically been

220. 49 C.F.R. §25.45(c).

221. *National Disparity Study Guidelines*, pp.57-58. This was also the approach used in the successful defense of the Illinois Department of Transportation’s Disadvantaged Business Enterprise Program in the *Northern Contracting* case, discussed in Chapter II.

excluded. Our methodology is less likely to be tainted by the effects of past and present discrimination than other methods, such as bidders' lists, because it seeks out firms in the agency's market area that have not been able to access the agency's opportunities.

- Third, this approach is less impacted by variables affected by discrimination. Factors such as firm age, size, qualifications, and experience are all elements of business success where discrimination would be manifested. Several courts have held that the results of discrimination – which impact factors affecting capacity – should not be the benchmark for a program designed to ameliorate the effects of discrimination. They have acknowledged that minority and woman firms may be smaller, newer, and otherwise less competitive than non-WMBE firms because of the very discrimination sought to be remedied by race-conscious contracting programs. Racial and gender differences in these “capacity” factors are the outcomes of discrimination and it is therefore inappropriate as a matter of economics and statistics to use them as “control” variables in a disparity study.²²²
- Fourth, it has been upheld by every court that has reviewed it, including most recently in the successful defense of the Illinois Tollway's DBE program, for which we served as testifying experts.²²³

Using this framework, CHA utilized three databases to estimate availability:

1. The Final Contract Data File
2. The Master WMBE Directory compiled by CHA
3. Dun & Bradstreet/Hoovers Database

First, we eliminated any duplicate entries in the geographically constrained FCDF. Some firms received multiple contracts for work performed in the same NAICS codes. Without this elimination of duplicate listings, the availability database would be artificially large. This list of unique firms comprised the first component of the Study's availability determination.

To develop the Master Directory, we utilized the State of Washington's Office of Minority Women Business Enterprise certification list of WMBEs and DBEs and the FCDFs. We limited the firms we used in our analysis to those operating within the City's geographic and product market.

222. For a detailed discussion of the role of capacity in disparity studies, see the *National Disparity Study Guidelines*, Appendix B, “Understanding Capacity.”

223. *Midwest Fence, Corp. v. U.S. Department of Transportation et al.*, 840 F.3d 932 (2016); see also *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7th Cir. 2007), cert. denied, 137 S.Ct. 2292 (2017).

We next developed a custom database from Hoovers, a Dun & Bradstreet company, for minority- and woman-owned firms and non-WMBE firms. Hoovers maintains a comprehensive, extensive and regularly updated listing of all firms conducting business. The database includes a vast amount of information on each firm, including location and detailed industry codes, and is the broadest publicly available data source for firm information. We purchased the information from Hoovers for the firms in the NAICS codes located in the City's market area to form our custom Dun & Bradstreet/Hoovers Database. In the initial download, the data from Hoovers simply identified a firm as being minority owned.²²⁴ However, the company does keep detailed information on ethnicity (*i.e.*, is the minority firm owner Black, Hispanic, Asian, or Native American). We obtained this additional information from Hoovers by special request.

The Hoovers database is the most comprehensive list of minority-owned and woman-owned businesses available. It is developed from the efforts of a national firm whose business is collecting business information. Hoovers builds its database from over 250 sources, including information from government sources and various associations, and its own efforts. Hoovers conducts an audit of the preliminary database prior to the public release of the data. That audit must result in a minimum of 94% accuracy. Once published, Hoovers has an established protocol to regularly refresh its data. This protocol involves updating any third-party lists that were used and contacting a selection of firms via Hoover's own call centers.

We merged these three databases to form an accurate estimate of firms available to work on the City's contracts.

6. The Availability Data and Results

Tables 4-11 through 4-13 present data on:

- The unweighted availability percentages by race and gender and by NAICS codes for firms in the product market for the City's locally funded contracts;
- The weights used to adjust the unweighted numbers;²²⁵ and
- The final estimates of the weighted averages of the individual six-digit level NAICS availability estimates in the City's market area.

We "weighted" the availability data for two reasons. First, weighting also reflects the importance of the availability of a demographic group in a particular NAICS code, that is, how important that NAICS code is to the City's locally

224. The variable is labeled: "Is Minority Owned" and values for the variable can be either "1" (for yes) or blank.

225. These weights are equivalent to the share of contract dollars presented in the previous section.

funded contracting patterns.²²⁶ For example, in a hypothetical NAICS Code 123456, the total available firms are 100 and 60 of these firms are WMBE firms; hence, WMBE availability would be 60%. However, if the City spends only one percent of its contract dollars in this NAICS code, then this high availability would be offset by the low level of spending in that NAICS code. In contrast, if the City spent 25% of its contract dollars in NAICS Code 123456, then the same availability would carry a greater weight. For an extended explanation of how unweighted and weighted availability are calculated, please see Appendix E.

Second, this comports with national best practices, case law and USDOT Guidance. The weighted availability represents the share of total possible contractors for each demographic group, weighted by the distribution of contract dollars across the NAICS codes in which the City spends its contract dollars.

To calculate the weighted availability for each NAICS code, we first determined the unweighted availability for each demographic group in each NAICS code, presented in Table 4-11. In the previous example, the unweighted availability for WMBE firms in NAICS Code 123456 is 60%. We then multiplied the unweighted availability by the share of the City’s spending in that NAICS code, presented in Table 4-12. This share is the *weight*. Using the previous example, where the City’s spending in NAICS Code 123456 was one percent, the component of WMBE weighted availability for NAICS Code 123456 would be 0.006: 60% multiplied by one percent. We say “the component of WMBE firm weighted availability for NAICS Code 123456” because this process is repeated for each NAICS code and then the components are summed to generate an overall weighted availability estimate. The results of this calculation are presented in Table 4-13.

Table 4-11: Unweighted WMBE Availability for City of Seattle Contracts (Locally Funded)

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
213112	0.0%	0.0%	0.0%	0.0%	3.9%	3.9%	96.1%	100.0%
221122	0.0%	0.0%	0.0%	0.0%	5.1%	5.1%	94.9%	100.0%
221310	0.0%	0.0%	0.0%	0.0%	2.5%	2.5%	97.5%	100.0%
236116	0.2%	0.0%	0.5%	0.3%	1.5%	2.5%	97.5%	100.0%
236210	2.3%	0.0%	3.4%	3.4%	4.6%	13.8%	86.2%	100.0%
236220	1.2%	1.6%	1.9%	2.3%	4.2%	11.2%	88.8%	100.0%

226. <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

City of Seattle Disparity Study 2025

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
237110	2.5%	0.7%	3.2%	2.1%	7.4%	15.8%	84.2%	100.0%
237310	2.2%	3.4%	2.9%	2.7%	6.7%	17.9%	82.1%	100.0%
237990	2.8%	1.4%	6.1%	2.3%	7.0%	19.6%	80.4%	100.0%
238110	0.7%	1.0%	0.3%	0.6%	3.1%	5.7%	94.3%	100.0%
238120	3.6%	4.8%	3.6%	2.4%	9.6%	24.1%	75.9%	100.0%
238130	0.1%	0.5%	0.0%	0.2%	1.1%	1.9%	98.1%	100.0%
238140	0.2%	0.0%	0.5%	0.0%	3.2%	3.9%	96.1%	100.0%
238150	0.0%	0.8%	0.8%	0.0%	8.0%	9.6%	90.4%	100.0%
238160	0.2%	0.7%	0.3%	0.0%	2.1%	3.2%	96.8%	100.0%
238190	2.5%	6.3%	6.3%	2.5%	3.8%	21.3%	78.8%	100.0%
238210	1.1%	0.6%	0.5%	0.4%	2.9%	5.6%	94.4%	100.0%
238220	0.4%	0.2%	0.4%	0.2%	2.2%	3.4%	96.6%	100.0%
238290	4.4%	2.2%	4.4%	0.0%	2.2%	13.3%	86.7%	100.0%
238310	0.9%	1.2%	0.3%	0.0%	2.2%	4.5%	95.5%	100.0%
238320	0.3%	0.4%	0.2%	0.1%	2.6%	3.5%	96.5%	100.0%
238330	1.4%	0.7%	1.1%	0.4%	4.9%	8.5%	91.5%	100.0%
238350	0.6%	1.9%	0.3%	0.6%	1.3%	4.9%	95.1%	100.0%
238390	0.7%	1.8%	1.4%	0.7%	3.9%	8.6%	91.4%	100.0%
238910	1.5%	1.2%	1.8%	1.4%	6.2%	12.0%	88.0%	100.0%
238990	0.5%	0.6%	0.2%	0.3%	1.4%	2.9%	97.1%	100.0%
323111	0.3%	0.1%	0.7%	0.0%	7.3%	8.4%	91.6%	100.0%
332721	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423110	0.0%	0.0%	0.0%	0.0%	1.8%	1.8%	98.2%	100.0%
423210	0.0%	0.0%	1.3%	0.0%	8.5%	9.8%	90.2%	100.0%
423220	0.0%	0.0%	0.3%	0.3%	11.1%	11.7%	88.3%	100.0%
423310	0.0%	0.2%	0.6%	0.0%	2.9%	3.7%	96.3%	100.0%
423320	0.0%	0.0%	2.7%	1.1%	2.1%	5.9%	94.1%	100.0%
423430	0.9%	0.4%	1.3%	0.0%	3.0%	5.7%	94.3%	100.0%
423490	0.0%	0.0%	0.0%	0.0%	8.2%	8.2%	91.8%	100.0%
423510	0.0%	0.4%	0.9%	0.0%	5.8%	7.1%	92.9%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
423610	0.0%	0.0%	2.0%	0.6%	4.9%	7.5%	92.5%	100.0%
423620	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423690	0.0%	0.4%	0.7%	0.4%	3.0%	4.4%	95.6%	100.0%
423830	0.3%	0.3%	0.6%	0.2%	3.4%	4.8%	95.2%	100.0%
423850	0.0%	0.0%	2.3%	0.0%	7.9%	10.3%	89.7%	100.0%
424120	0.0%	0.0%	2.2%	0.0%	14.0%	16.1%	83.9%	100.0%
424480	1.1%	0.0%	1.1%	0.0%	0.0%	2.2%	97.8%	100.0%
424690	0.0%	0.8%	2.3%	0.8%	3.9%	7.8%	92.2%	100.0%
424930	0.0%	0.0%	1.1%	0.0%	9.8%	10.9%	89.1%	100.0%
444190	0.0%	0.0%	17.6%	0.0%	41.2%	58.8%	41.2%	100.0%
447190	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484220	6.7%	1.7%	5.0%	3.4%	14.7%	31.5%	68.5%	100.0%
485113	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
485991	50.0%	0.0%	0.0%	0.0%	0.0%	50.0%	50.0%	100.0%
488490	6.5%	0.0%	2.8%	0.0%	10.3%	19.6%	80.4%	100.0%
512110	0.7%	0.8%	0.8%	0.5%	7.2%	10.0%	90.0%	100.0%
517919	0.0%	0.0%	0.0%	50.0%	0.0%	50.0%	50.0%	100.0%
532412	0.0%	0.0%	2.4%	0.0%	3.6%	6.0%	94.0%	100.0%
532420	11.1%	0.0%	0.0%	0.0%	0.0%	11.1%	88.9%	100.0%
541110	0.1%	0.0%	0.1%	0.0%	3.2%	3.4%	96.6%	100.0%
541211	0.2%	0.1%	0.2%	0.0%	5.9%	6.4%	93.6%	100.0%
541310	0.4%	0.7%	1.3%	0.1%	6.8%	9.2%	90.8%	100.0%
541320	0.1%	0.0%	0.1%	0.0%	3.6%	3.9%	96.1%	100.0%
541330	0.7%	0.7%	2.6%	0.4%	4.4%	8.7%	91.3%	100.0%
541370	4.9%	1.9%	4.9%	0.0%	6.3%	18.0%	82.0%	100.0%
541380	0.1%	0.3%	2.2%	0.0%	3.5%	6.2%	93.8%	100.0%
541410	0.1%	0.1%	0.2%	0.0%	26.6%	27.1%	72.9%	100.0%
541420	0.0%	5.6%	3.7%	0.0%	11.1%	20.4%	79.6%	100.0%
541430	0.4%	0.4%	1.1%	0.1%	20.2%	22.2%	77.8%	100.0%
541490	0.1%	0.0%	0.2%	0.0%	3.7%	4.1%	95.9%	100.0%

City of Seattle Disparity Study 2025

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
541511	0.5%	0.2%	1.8%	0.1%	3.3%	5.8%	94.2%	100.0%
541512	1.0%	0.3%	2.6%	0.3%	4.3%	8.5%	91.5%	100.0%
541519	2.8%	0.9%	4.6%	0.9%	7.4%	16.7%	83.3%	100.0%
541611	2.3%	0.6%	1.1%	0.2%	7.7%	11.9%	88.1%	100.0%
541612	6.1%	0.3%	1.4%	0.3%	20.5%	28.5%	71.5%	100.0%
541618	0.3%	0.1%	0.3%	0.1%	2.7%	3.4%	96.6%	100.0%
541620	1.6%	1.0%	1.7%	1.4%	15.8%	21.5%	78.5%	100.0%
541690	1.1%	1.2%	2.0%	0.3%	10.6%	15.1%	84.9%	100.0%
541720	0.5%	0.5%	0.5%	0.0%	7.2%	8.6%	91.4%	100.0%
541820	2.2%	0.6%	0.6%	0.3%	13.9%	17.6%	82.4%	100.0%
541910	0.4%	1.1%	0.0%	0.0%	9.8%	11.3%	88.7%	100.0%
541990	0.4%	0.1%	1.0%	0.1%	8.8%	10.4%	89.6%	100.0%
561320	1.2%	0.6%	1.2%	0.9%	7.0%	11.0%	89.0%	100.0%
561410	2.6%	0.0%	0.9%	0.0%	42.7%	46.2%	53.8%	100.0%
561421	1.1%	0.0%	0.0%	0.0%	2.2%	3.3%	96.7%	100.0%
561431	0.6%	0.0%	0.6%	0.0%	4.2%	5.5%	94.5%	100.0%
561612	2.4%	1.2%	0.0%	0.0%	0.8%	4.4%	95.6%	100.0%
561621	0.8%	1.2%	0.8%	1.9%	1.5%	6.2%	93.8%	100.0%
561720	1.7%	0.6%	0.6%	0.1%	5.8%	8.9%	91.1%	100.0%
561730	0.9%	0.4%	0.9%	0.1%	4.5%	6.8%	93.2%	100.0%
561990	0.7%	0.3%	0.6%	0.1%	4.5%	6.2%	93.8%	100.0%
562111	5.0%	5.0%	5.0%	0.0%	5.0%	20.0%	80.0%	100.0%
562119	3.4%	0.0%	3.4%	1.1%	4.6%	12.6%	87.4%	100.0%
562212	0.0%	0.0%	0.0%	0.0%	20.0%	20.0%	80.0%	100.0%
562910	1.1%	2.1%	2.1%	3.2%	7.4%	16.0%	84.0%	100.0%
562920	0.7%	0.0%	0.3%	0.0%	1.4%	2.4%	97.6%	100.0%
562991	0.5%	0.0%	0.5%	0.0%	2.5%	3.6%	96.4%	100.0%
562998	0.0%	0.0%	6.3%	0.0%	12.5%	18.8%	81.3%	100.0%
621493	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
811111	0.0%	0.0%	0.1%	0.0%	1.2%	1.4%	98.6%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
811198	0.0%	0.0%	0.0%	0.0%	1.2%	1.2%	98.8%	100.0%
811310	0.2%	0.5%	0.6%	0.3%	3.2%	4.8%	95.2%	100.0%
812930	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
TOTAL	0.6%	0.4%	0.7%	0.2%	4.4%	6.3%	93.7%	100.0%

Source: CHA analysis of City of Seattle data; Hoovers; CHA Master Directory

Table 4-12: Distribution of City of Seattle’s Spending by NAICS Code (Locally Funded) (the Weights)

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
213112	Support Activities for Oil and Gas Operations	0.0004%
221122	Electric Power Distribution	0.004%
221310	Water Supply and Irrigation Systems	0.002%
236116	New Multifamily Housing Construction (except For-Sale Builders)	0.1%
236210	Industrial Building Construction	7.4%
236220	Commercial and Institutional Building Construction	1.5%
237110	Water and Sewer Line and Related Structures Construction	2.4%
237310	Highway, Street, and Bridge Construction	10.3%
237990	Other Heavy and Civil Engineering Construction	3.3%
238110	Poured Concrete Foundation and Structure Contractors	2.2%
238120	Structural Steel and Precast Concrete Contractors	1.7%
238130	Framing Contractors	0.1%
238140	Masonry Contractors	0.2%
238150	Glass and Glazing Contractors	0.1%
238160	Roofing Contractors	0.8%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.7%
238210	Electrical Contractors and Other Wiring Installation Contractors	6.4%
238220	Plumbing, Heating, and Air-Conditioning Contractors	3.4%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
238290	Other Building Equipment Contractors	0.8%
238310	Drywall and Insulation Contractors	0.6%
238320	Painting and Wall Covering Contractors	0.1%
238330	Flooring Contractors	0.1%
238350	Finish Carpentry Contractors	0.1%
238390	Other Building Finishing Contractors	0.5%
238910	Site Preparation Contractors	3.1%
238990	All Other Specialty Trade Contractors	5.6%
323111	Commercial Printing (except Screen and Books)	0.1%
332721	Precision Turned Product Manufacturing	0.01%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	1.2%
423210	Furniture Merchant Wholesalers	1.6%
423220	Home Furnishing Merchant Wholesalers	0.01%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	0.002%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.6%
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	12.3%
423490	Other Professional Equipment and Supplies Merchant Wholesalers	0.001%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.1%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.1%
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	0.01%
423690	Other Electronic Parts and Equipment Merchant Wholesalers	2.1%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.1%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	0.9%
424120	Stationery and Office Supplies Merchant Wholesalers	0.3%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
424480	Fresh Fruit and Vegetable Merchant Wholesalers	0.01%
424690	Other Chemical and Allied Products Merchant Wholesalers	0.1%
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	0.1%
444190	Other Building Material Dealers	0.2%
447190	Other Gasoline Stations	0.004%
484220	Specialized Freight (except Used Goods) Trucking, Local	1.3%
485113	Bus and Other Motor Vehicle Transit Systems	0.9%
485991	Special Needs Transportation	0.02%
488490	Other Support Activities for Road Transportation	0.2%
512110	Motion Picture and Video Production	0.01%
517919	All Other Telecommunications	0.05%
532412	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing	0.9%
532420	Office Machinery and Equipment Rental and Leasing	0.001%
541110	Offices of Lawyers	0.04%
541211	Offices of Certified Public Accountants	0.2%
541310	Architectural Services	0.4%
541320	Landscape Architectural Services	0.1%
541330	Engineering Services	3.1%
541370	Surveying and Mapping (except Geophysical) Services	0.4%
541380	Testing Laboratories	0.04%
541410	Interior Design Services	0.001%
541420	Industrial Design Services	0.01%
541430	Graphic Design Services	0.2%
541490	Other Specialized Design Services	0.004%
541511	Custom Computer Programming Services	3.8%
541512	Computer Systems Design Services	0.1%
541519	Other Computer Related Services	7.3%
541611	Administrative Management and General Management Consulting Services	0.4%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
541612	Human Resources Consulting Services	0.03%
541618	Other Management Consulting Services	0.1%
541620	Environmental Consulting Services	0.6%
541690	Other Scientific and Technical Consulting Services	0.04%
541720	Research and Development in the Social Sciences and Humanities	0.01%
541820	Public Relations Agencies	0.05%
541910	Marketing Research and Public Opinion Polling	0.01%
541990	All Other Professional, Scientific, and Technical Services	0.5%
561320	Temporary Help Services	0.01%
561410	Document Preparation Services	0.0003%
561421	Telephone Answering Services	0.0001%
561431	Private Mail Centers	0.2%
561612	Security Guards and Patrol Services	0.02%
561621	Security Systems Services (except Locksmiths)	0.9%
561720	Janitorial Services	3.1%
561730	Landscaping Services	0.6%
561990	All Other Support Services	1.0%
562111	Solid Waste Collection	0.01%
562119	Other Waste Collection	0.1%
562212	Solid Waste Landfill	0.02%
562910	Remediation Services	1.3%
562920	Materials Recovery Facilities	0.1%
562991	Septic Tank and Related Services	0.001%
562998	All Other Miscellaneous Waste Management Services	0.003%
621493	Freestanding Ambulatory Surgical and Emergency Centers	0.2%
811111	General Automotive Repair	0.1%
811198	All Other Automotive Repair and Maintenance	0.5%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	0.01%
812930	Parking Lots and Garages	0.01%
TOTAL		100.0%

Source: CHA analysis of City of Seattle data

Table 4-13 presents the weighted availability results for each of the racial and gender categories. The aggregated availability of WMBE firms, weighted by the City’s spending in its geographic and industry markets, is 10.6%.

Table 4-13: Aggregated Weighted WMBE Availability (Locally Funded)

Black	Hispanic	Asian	Native American	White Women	WMBE	Non WMBE	Total
1.5%	1.0%	2.1%	1.1%	5.0%	10.6%	89.4%	100.0%

Source: CHA analysis of City of Seattle data; Hoovers; CHA Master Directory

7. Analysis of the Concentration of Contract Dollars among Firms

In addition to examining the level of WMBE and non-WMBE contract dollar utilization, another important dimension to a disparity analysis is an examination of any asymmetries between the NAICS codes where the agency spends large shares of its funds and the NAICS codes that provide WMBEs and non-WMBEs their largest shares of earnings. This analysis is important for two reasons. First, to the extent the NAICS codes where the agency spends the largest shares of its funds align with the codes that provide the largest shares of non-WMBE firm earnings AND these NAICS codes are different from the codes that provide large shares of WMBE firms earnings, is indicative that WMBE firms do not enjoy the same position in the agency’s marketplace as non-WMBE firms. Second, if an asymmetry exists between agency spending and WMBE firms’ earnings, then the high utilization of WMBEs as a group will mask unequal opportunities at a more granular level. Consequently, a narrowly tailored race- or gender-based remedial program may still be supportable under federal law. This section presents data to examine this issue.

Three findings stand out:

1. When comparing the top three NAICS codes for the City, as measured by the share of all City spending (the weight) and the top three NAICS codes

- for each WMBE group, the share of locally funded spending going to the top three codes for WMBEs exceeded the top three codes for the City.
2. The leading codes for the City were largely different than the top three codes for WMBEs. The minimal overlap means some WMBEs are in a state of precarity whereby a small reduction in the City’s spending would have a disproportionate impact on contract dollars flowing to those WMBEs.
 3. In the vast majority of the three NAICS codes that provide the most contract dollars to each WMBE group, the code’s share of that group’s overall contract dollars exceeded that code’s share of overall contract dollars received by non-WMBEs.²²⁷ These three findings indicate that the pattern of spending received by WMBEs is markedly different from the pattern of spending by the City.

Table 4-14 presents data on the share of the City’s locally funded contract dollars received by the top three NAICS codes for each demographic group. These shares were derived from the data presented in Table 4-9. The data in this Table present evidence for the first finding. The three NAICS codes where the City spent most of its contract dollars captured 30.0% of all locally funded spending. While this figure is similar to the share for White women (35.6%), it is less than the share for Blacks (94.5%), Hispanics (65.1%), Asians (66.4%), and Native Americans (89.4%).

Table 4-14: Comparison of the Share of City of Seattle Spending Captured by the Top Three NAICS Codes for Each Demographic Group (Locally Funded)

Demographic Group	Share of All City of Seattle Spending in the Top Three NAICS Codes for Each Group
All	30.0%
Black	94.5%
Hispanic	65.1%
Asian	66.4%
Native American	89.4%
White Woman	35.6%
Non-WMBE	40.0%

Source: CHA analysis of City of Seattle data

227. Of the 15 possible codes (five WMBE groups; three NAICS codes), the WMBE share exceeded the non-WMBE share in 14 codes.

With respect to the second finding, Table 4-15 provides more detail on the data presented in Table 4-14. Table 4-15 lists the top three codes for each group and their corresponding share of the group’s total spending. Of the top three codes for the City, only one– Highway, Street, and Bridge Construction (NAICS code 237310)– was a leading code for any of the WMBEs. That code was present among the top codes for Hispanics, Native Americans, and White Women.

Table 4-15: The Top Three City of Seattle Spending NAICS Codes for Each Demographic Group (Locally Funded Contracts)

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
All			
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	12.3%	30.0%
237310	Highway, Street, and Bridge Construction	10.3%	
236210	Industrial Building Construction	7.4%	
Black			
541519	Other Computer Related Services	87.1%	94.5%
238210	Electrical Contractors and Other Wiring Installation Contractors	6.3%	
561730	Landscaping Services	1.1%	
Hispanic			
238210	Electrical Contractors and Other Wiring Installation Contractors	34.7%	65.1%
237310	Highway, Street, and Bridge Construction	24.9%	
561990	All Other Support Services	5.5%	
Asian			
541511	Custom Computer Programming Services	46.2%	66.4%
484220	Specialized Freight (except Used Goods) Trucking, Local	12.3%	
238290	Other Building Equipment Contractors	7.9%	
Native American			
238210	Electrical Contractors and Other Wiring Installation Contractors	68.0%	89.4%
237310	Highway, Street, and Bridge Construction	14.1%	
541430	Graphic Design Services	7.3%	
White Woman			

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
238220	Plumbing, Heating, and Air-Conditioning Contractors	16.6%	35.6%
238210	Electrical Contractors and Other Wiring Installation Contractors	9.7%	
237310	Highway, Street, and Bridge Construction	9.3%	
Non-WMBE Firm			
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	17.3%	40.0%
237310	Highway, Street, and Bridge Construction	12.2%	
236210	Industrial Building Construction	10.5%	

Source: CHA analysis of City of Seattle data

Tables 4-16 through 4-20 present data on the third finding: how the City’s spending varied across groups. These results illustrate the different levels of concentration of contract dollars among WMBEs compared to non-WMBEs. For each demographic group, we provide the three NAICS codes where the group received the largest share of the City’s spending (first presented in Table 4-14). Then, we present the weight for each code derived from the City’s overall spending. Finally, we present the share of all group contract dollars and compare that share to the corresponding share received by non-WMBEs.

Table 4-16 presents the three NAICS codes where Black firms received the largest share of their contract dollars. While these codes captured 94.5% of all Black contract dollars, the corresponding figure for non-WMBEs was 3.7%. While this result is due to the large share of Black contract dollars coming from NAICS code 541519 and non-WMBEs receiving zero contract dollars in this code, the pattern of a code being more important to Black contractors than non-WMBE contractors remains present in the other two codes. With respect to the second finding of precarity, just focusing on NAICS code 541519, if the City eliminated the 7.3% of spending in that code, the elimination would reduce Black contract dollars by 87.3%.

Table 4-16: Three NAICS Codes where Black Firms Received the Most Spending (Locally Funded)

NAICS Code	NAICS Code Label	Weight	Share of Total Black Dollars	Share of Total Non WMBE Dollars
541519	Other Computer Related Services	7.3%	87.1%	0.0%
238210	Electrical Contractors and Other Wiring Installation Contractors	6.4%	6.3%	3.6%
561730	Landscaping Services	0.6%	1.1%	0.2%
Total 3-code Share of Total Group Dollars			94.5%	3.7%

Source: CHA analysis of City of Seattle data

Table 4-17 presents the three NAICS codes where Hispanic firms received the largest share of their contract dollars. These codes comprised 65.1% of all Hispanic contract dollars; the corresponding figure for non-WMBEs was 16.9%. With respect to the second finding of precarity, NAICS codes 238210 and 561990 are not among the City’s leading three NAICS codes. If the City eliminated the 7.4% of spending in those codes, the elimination would reduce Hispanic contract dollars by 40.2%.

Table 4-17: Three NAICS Codes where Hispanic Firms Received the Most Spending (Locally Funded)

NAICS Code	NAICS Code Label	Weight	Share of Total Hispanic Dollars	Share of Total Non WMBE Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	6.4%	34.7%	3.6%
237310	Highway, Street, and Bridge Construction	10.3%	24.9%	12.2%
561990	All Other Support Services	1.0%	5.5%	1.2%
Total 3-code Share of Total Group Dollars			65.1%	16.9%

Source: CHA analysis of City of Seattle data

Table 4-18 presents the three NAICS codes where Asian-owned businesses received the largest share of their contract dollars. These codes comprised 66.4% of all Asian contract dollars; the corresponding figure for non-WMBEs was 0.5%. With respect to the second finding of precarity, if the City eliminated

the 5.9% of spending in these three codes, the elimination would reduce Asian contract dollars by 66.4%.

Table 4-18: Three NAICS Codes where Asian Firms Received the Most Spending (Locally Funded)

NAICS Code	NAICS Code Label	Weight	Share of Total Asian Dollars	Share of Total Non WMBE Dollars
541511	Custom Computer Programming Services	3.8%	46.2%	0.0%
484220	Specialized Freight (except Used Goods) Trucking, Local	1.3%	12.3%	0.3%
238290	Other Building Equipment Contractors	0.8%	7.9%	0.2%
Total 3-code Share of Total Group Dollars			66.4%	0.5%

Source: CHA analysis of City of Seattle data

Table 4-19 presents the three NAICS codes where Native American firms received the largest share of their contract dollars. While these codes captured 89.4% of all Native American contract dollars, the corresponding figure for non-WMBE firms was 15.7%. With respect to the second finding of precarity, NAICS codes 238210 and 541430 are not among the City’s leading three NAICS codes. If the City eliminated the 6.6% of spending in those codes, the elimination would reduce Native American contract dollars by 75.3%.

Table 4-19: Three NAICS Codes where Native American Firms Received the Most Spending (Locally Funded)

NAICS Code	NAICS Code Label	Weight	Share of Total Native American Dollars	Share of Total Non WMBE Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	6.4%	68.0%	3.6%
237310	Highway, Street, and Bridge Construction	10.3%	14.1%	12.2%
541430	Graphic Design Services	0.2%	7.3%	0.0%
Total 3-code Share of Total Group Dollars			89.4%	15.7%

Source: CHA analysis of City of Seattle data

Table 4-20 presents the three NAICS codes where White woman firms received the largest share of their contract dollars. These codes comprise 35.6% of all White woman contract dollars; the corresponding figure for non-WMBE firms was 18.3%. With respect to the second finding of precarity, NAICS codes 238220 and 238210 are not among the City’s leading three NAICS codes. If the City eliminated the 9.8% of spending in those codes, the elimination would reduce White women contract dollars by 26.3%.

Table 4-20: Three NAICS Codes where White Woman Firms Received the Most Spending (Locally Funded)

NAICS Code	NAICS Code Label	Weight	Share of Total White Woman Dollars	Share of Total Non WMBE Dollars
238220	Plumbing, Heating, and Air-Conditioning Contractors	3.4%	16.6%	2.5%
238210	Electrical Contractors and Other Wiring Installation Contractors	6.4%	9.7%	3.6%
237310	Highway, Street, and Bridge Construction	10.3%	9.3%	12.2%
Total 3-code Share of Total Group Dollars			35.6%	18.3%

Source: CHA analysis of City of Seattle data

The data presented in Tables 4-14 through 4-20 support the inference that regardless of any statistical disparities between contract utilization and weighted availability, the experiences of WMBE firms with respect to participation in City procurements were significantly different than the experiences of non-WMBE firms.

8. Locally Funded Contracts: Disparity Analysis

As required by strict constitutional scrutiny, we next calculated disparity ratios for each demographic group, comparing the group’s total utilization compared to its total weighted availability.

A *disparity ratio* is the relationship between the utilization and weighted availability (as determined in the section above). Mathematically, this is represented by:

$$DR = U/WA$$

Where DR is the disparity ratio; U is utilization rate; and WA is the weighted availability.

The courts have held that disparity results must be analyzed to determine whether the results are “significant”. There are two distinct methods to measure a result’s significance. First, a “large” or “substantively significant” disparity is commonly defined by courts as utilization that is equal to or less than 80% of the availability measure. A substantively significant disparity supports the inference that the result may be caused by the disparate impacts of discrimination.²²⁸ Second, statistically significant disparity means that an outcome is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from random chance alone.²²⁹ A more in-depth discussion of statistical significance is provided in Appendix C.

Substantive and Statistical Significance

- ‡ Connotes these values are substantively significant. Courts have ruled the disparity ratio less or equal to 80 percent represent disparities that are substantively significant. (See Footnote 228 for more information.)
- * Connotes these values are statistically significant at the 0.05 level. (See Appendix C for more information.)
- ** Connotes these values are statistically significant at the 0.01 level. (See Appendix C for more information.)
- *** Connotes these values are statistically significant at the 0.001 level. (See Appendix C for more information.)

Table 4-21 presents the disparity ratios for each demographic group. None of the disparity ratios are substantively significant. The disparity ratios for all groups except Blacks are statistically significant at the 0.001 level.

**Table 4-21: Disparity Ratios by Demographic Group
(Locally Funded)**

	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE
Disparity Ratio	573.1%***	191.2%***	369.2%***	226.2%***	173.4%***	274.2%***	79.3%‡***

Source: CHA analysis of City of Seattle data
*** Statistically significant at the 0.001 level

228. See U.S. Equal Employment Opportunity Commission regulation, 29 C.F.R. §1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).

229. A chi-square test – examining if the utilization rate was different from the weighted availability - was used to determine the statistical significance of the disparity ratio.

D. Federal Transit Administration Funded Contracts: Contract Data Overview

Because the methodology behind these calculations mirrors what was done for our analysis of locally funded contract data, we dispense with detailed explanations. For the analyses of USDOT funded contracts, we use the term “DBE” to comply with the conventions of the regulations at 49 C.F.R. Part 26.

Tables 4-22 and 4-23 provide data on the resulting FCDF for FTA funded contracts.

**Table 4-22: Final Contract Data File
Number of Contracts
(FTA Funded)**

Contract Type	Total Contracts	Share of Total Contracts
Prime Contracts	14	32.6%
Subcontractor	29	67.4%
TOTAL	43	100.0%

Source: CHA analysis of City of Seattle data

**Table 4-23: Final Contract Data File
Net Dollar Value of Contracts
(FTA Funded)**

Business Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contracts	\$30,674,312	79.3%
Subcontractor	\$8,000,758	20.7%
TOTAL	\$38,675,069	100.0%

Source: CHA analysis of City of Seattle data

1. FTA Funded Contracts: The Geographic and Product Market

a. Final Contract Data File for FTA Funded Contracts

Table 4-24 presents the FCDF for FTA funded contracts. It consisted of 16 NAICS codes, with a total contract dollar value of \$38,675,069.

**Table 4-24: Industry Percentage Distribution of City of Seattle Contracts by Dollars
(FTA Funded)**

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541330	Engineering Services	30.2%	30.2%
237110	Water and Sewer Line and Related Structures Construction	22.0%	52.2%
238210	Electrical Contractors and Other Wiring Installation Contractors	17.0%	69.2%
238220	Plumbing, Heating, and Air-Conditioning Contractors	14.1%	83.4%
237310	Highway, Street, and Bridge Construction	7.7%	91.0%
541620	Environmental Consulting Services	5.9%	96.9%
541320	Landscape Architectural Services	1.0%	97.9%
488490	Other Support Activities for Road Transportation	0.5%	98.4%
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing	0.4%	98.8%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.4%	99.2%
541370	Surveying and Mapping (except Geophysical) Services	0.2%	99.4%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.1%	99.5%
541614	Process, Physical Distribution, and Logistics Consulting Services	0.1%	99.7%
238990	All Other Specialty Trade Contractors	0.1%	99.8%
561730	Landscaping Services	0.1%	99.9%
238320	Painting and Wall Covering Contractors	0.1%	100.0%
TOTAL		100.0%	

Source: CHA analysis of City of Seattle data

b. Geographic Market for the City of Seattle Contracts

King County captured 99.1% of the FCDF. Therefore, we used King County as the geographic market.

2. FTA Funded Contracts: Utilization of Firms in the Geographic and Product Market

Similar to the analysis of locally funded contract dollars, after having determined the City’s geographic market, the next step in the analysis of FTA funded contract dollars was to determine the dollar value of its utilization of DBEs as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. There were 13 NAICS codes after constraining the FCDF by the geographic market; the dollar value of the contracts in these codes was \$34,647,235. Table 4-25 presents these data. As explained in the section on locally funded contracts, these contract dollar shares in Table 4-25 are equivalent to the weight of spending in each NAICS code and they will be used to calculate weighted availability from unweighted availability.

Table 4-25: NAICS Code Distribution of Contract Dollars in City of Seattle’s Constrained Product Market (FTA Funded)

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
541330	Engineering Services	\$11,485,363	33.1%
237110	Water and Sewer Line and Related Structures Construction	\$8,490,650	24.5%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$5,472,208	15.8%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$3,296,992	9.5%
237310	Highway, Street, and Bridge Construction	\$2,923,500	8.4%
541620	Environmental Consulting Services	\$2,262,790	6.5%
541320	Landscape Architectural Services	\$392,846	1.1%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	\$148,231	0.4%
541370	Surveying and Mapping (except Geophysical) Services	\$76,989	0.2%
561730	Landscaping Services	\$46,913	0.1%
238990	All Other Specialty Trade Contractors	\$25,030	0.1%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
238320	Painting and Wall Covering Contractors	\$22,764	0.1%
488490	Other Support Activities for Road Transportation	\$2,959	0.01%
TOTAL		\$34,647,235	100.0%

Source: CHA analysis of City of Seattle data

Tables 4-26 and 4-26 present data on the City’s DBE utilization, measured in contract dollars and percentage of contract dollars.

**Table 4-26: Distribution of City of Seattle Contract Dollars by Race and Gender
(total dollars)
(FTA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
237110	\$0	\$0	\$0	\$0	\$0	\$0	\$8,490,650	\$8,490,650
237310	\$0	\$431,874	\$0	\$320,366	\$0	\$752,240	\$2,171,260	\$2,923,500
238210	\$0	\$525,766	\$0	\$0	\$112,416	\$638,182	\$2,658,810	\$3,296,992
238220	\$0	\$0	\$0	\$0	\$0	\$0	\$5,472,208	\$5,472,208
238320	\$0	\$0	\$0	\$0	\$0	\$0	\$22,764	\$22,764
238990	\$0	\$0	\$0	\$0	\$0	\$0	\$25,030	\$25,030
423320	\$0	\$0	\$0	\$0	\$0	\$0	\$148,231	\$148,231
488490	\$0	\$0	\$0	\$0	\$2,959	\$2,959	\$0	\$2,959
541320	\$0	\$0	\$0	\$0	\$0	\$0	\$392,846	\$392,846
541330	\$19,075	\$0	\$685,561	\$0	\$0	\$704,636	\$10,780,727	\$11,485,363
541370	\$57,938	\$0	\$0	\$0	\$0	\$57,938	\$19,052	\$76,989
541620	\$0	\$0	\$0	\$0	\$2,262,790	\$2,262,790	\$0	\$2,262,790
561730	\$0	\$0	\$46,913	\$0	\$0	\$46,913	\$0	\$46,913
Total	\$77,013	\$957,640	\$732,474	\$320,366	\$2,378,165	\$4,465,657	\$30,181,578	\$34,647,235

Source: CHA analysis of City of Seattle data

**Table 4-27: Percentage Distribution of City of Seattle Contract Dollars by Race and Gender
(share of total dollars)
(FTA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
237110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237310	0.0%	14.8%	0.0%	11.0%	0.0%	25.7%	74.3%	100.0%
238210	0.0%	15.9%	0.0%	0.0%	3.4%	19.4%	80.6%	100.0%
238220	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238320	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238990	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423320	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
488490	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541320	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541330	0.2%	0.0%	6.0%	0.0%	0.0%	6.1%	93.9%	100.0%
541370	75.3%	0.0%	0.0%	0.0%	0.0%	75.3%	24.7%	100.0%
541620	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
561730	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
Total	0.2%	2.8%	2.1%	0.9%	6.9%	12.9%	87.1%	100.0%

Source: CHA analysis of City of Seattle data

3. FTA Funded Contracts: The Availability of DBEs in the Geographic and Product Market

Tables 4-28 through 4-30 present data on:

- The unweighted availability percentages by race and gender and by NAICS codes;
- The weights used to adjust the unweighted numbers;²³⁰ and
- The final estimates of the weighted averages of the individual six-digit level NAICS availability estimates in the market area.

230. These weights are equivalent to the share of contract dollars presented in the previous section.

**Table 4-28: Unweighted WMBE Availability for City of Seattle Contracts
(FTA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
237110	1.6%	0.8%	4.8%	0.8%	5.6%	13.7%	86.3%	100.0%
237310	3.2%	2.4%	4.8%	2.0%	5.2%	17.6%	82.4%	100.0%
238210	0.7%	0.6%	0.6%	0.2%	3.0%	5.0%	95.0%	100.0%
238220	0.5%	0.2%	0.5%	0.2%	1.8%	3.2%	96.8%	100.0%
238320	0.3%	0.4%	0.1%	0.1%	2.9%	3.7%	96.3%	100.0%
238990	0.4%	0.4%	0.3%	0.2%	1.4%	2.8%	97.2%	100.0%
423320	0.0%	0.0%	4.3%	0.9%	2.6%	7.8%	92.2%	100.0%
488490	11.3%	0.0%	1.9%	0.0%	7.5%	20.8%	79.2%	100.0%
541320	0.2%	0.1%	0.2%	0.0%	4.8%	5.3%	94.7%	100.0%
541330	0.7%	0.4%	2.5%	0.2%	4.2%	8.1%	91.9%	100.0%
541370	6.5%	0.9%	7.5%	0.0%	8.4%	23.4%	76.6%	100.0%
541620	1.4%	1.2%	2.1%	1.0%	15.5%	21.2%	78.8%	100.0%
561730	1.0%	0.3%	1.0%	0.0%	4.8%	7.2%	92.8%	100.0%
Total	0.7%	0.4%	1.0%	0.2%	3.7%	6.1%	93.9%	100.0%

Source: CHA analysis of City of Seattle data; Hoovers; CHA Master Directory

**Table 4-29: Distribution of City of Seattle’s Spending by NAICS Code (the Weights)
(FTA Funded)**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
237110	Water and Sewer Line and Related Structures Construction	24.5%
237310	Highway, Street, and Bridge Construction	8.4%
238210	Electrical Contractors and Other Wiring Installation Contractors	9.5%
238220	Plumbing, Heating, and Air-Conditioning Contractors	15.8%
238320	Painting and Wall Covering Contractors	0.1%
238990	All Other Specialty Trade Contractors	0.1%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.4%
488490	Other Support Activities for Road Transportation	0.01%
541320	Landscape Architectural Services	1.1%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
541330	Engineering Services	33.1%
541370	Surveying and Mapping (except Geophysical) Services	0.2%
541620	Environmental Consulting Services	6.5%
561730	Landscaping Services	0.1%
TOTAL		100.0%

Source: CHA analysis of City of Seattle data

Table 4-30 presents the weighted availability results for each of the racial and gender categories. The aggregated availability of DBEs, weighted by the City’s spending in its geographic and industry markets, is 10.1%.

Table 4-30: Aggregated Weighted Availability for City of Seattle Contracts (FTA Funded)

Black	Hispanic	Asian	Native American	White Women	DBE	Non DBE	Total
1.2%	0.7%	2.7%	0.6%	4.9%	10.1%	89.9%	100.0%

Source: CHA analysis of City of Seattle data; Hoovers; CHA Master Directory

4. Analysis of the Concentration of Contract Dollars among Firms

While we examined any asymmetries between the NAICS codes in which the City spent large shares of its the locally funded contract dollars and the NAICS codes that provide WMBEs and non-WMBEs the largest shares of their respective earnings, we do not provide that analysis here because there were only 32 contracts in the FCDF.

5. FTA Funded Contracts: Disparity Analysis

We next calculated disparity ratios for each demographic group, comparing the group’s total utilization compared to its total weighted availability. As discussed in Chapter II, this is a requirement under the case law governing the DBE program in the Ninth Circuit Court of Appeals that has jurisdiction over the State of Washington recipients.

Table 4-31 presents the disparity ratios for each demographic group. The disparity ratio for Blacks and Asians is substantively significant. None of the results are statistically significant at the 0.001 level.

**Table 4-31: Disparity Ratios by Demographic Group
(FTA Funded Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE
Disparity Ratio	19.2%‡	388.8%	77.5%‡	167.6%	139.9%	128.2%	96.9%

Source: CHA analysis of City of Seattle data

‡ Indicates substantive significance

Once again, the small number of contracts in the FCDF once constrained to King County (32) precluded additional analysis of the high disparity ratios for Hispanics, Native Americans, and White women.

E. Conclusion

This Chapter examines the City of Seattle’s utilization of minority- and woman-owned firms compared to non-WMBEs and provides estimates of the availability of WMBE firms and non-WMBE firms to perform the types of goods and services utilized by the City. CHA conducted this analysis separately for its contracts from two distinct funding sources: locally funded and FTA. With locally funded contracts, we also analyzed the contracts in three distinct subsets: construction, services, and goods.

In addition, the Chapter tested locally funded and FTA funded contracts for whether there are significant disparities in the results of utilization compared to availability. We also analyzed the locally funded and FTA funded contract data to compare the NAICS code concentration of WMBEs to non-WMBEs on City contracts. We found that, in general, WMBEs received contracting opportunities that starkly differ from non-WMBEs. The NAICS codes that provided most of the contract dollars received by minority and woman-owned businesses were different from the codes where the City spent its funds. Further, the codes that generated the most funds for non-WMBEs generated few funds for WMBEs.

These results support the conclusion that narrowly tailored race- and gender-conscious measures may still be supportable to ensure that minority and woman firms have equal opportunities to compete for all types of City contracts.

V. ANALYSIS OF DISPARITIES IN THE CITY OF SEATTLE'S MARKETPLACE

A. Introduction

The late Nobel Prize Laureate Kenneth Arrow, in his seminal paper on the economic analysis of discrimination, observed:

Racial discrimination pervades every aspect of a society in which it is found. It is found above all in attitudes of both races, but also in social relations, in intermarriage, in residential location, and frequently in legal barriers. It is also found in levels of economic accomplishment; this is income, wages, prices paid, and credit extended.²³¹

This Chapter explores the data and literature relevant to how discrimination in the City of Seattle's ("City") marketplace affects the ability of minorities and women to fairly and fully engage in the City's goods and services contract opportunities. First, we analyze the rates at which Disadvantaged Business Enterprises ("DBEs") in the three-county Seattle metropolitan area (King County; Pierce County; and Snohomish County) form firms and their earnings from those firms. Then, we analyze state-wide data to see if DBE firms' share of all firms is greater than or less than their share of all sales and receipts and their share of all annual payroll. Finally, we summarize the literature on barriers to equal access to commercial credit. These types of evidence have been found by the courts to be relevant and probative of whether a government will be a passive participant in discrimination without some type of affirmative intervention.

A key element to determine the need for the City to intervene in its market through is an analysis of disparities independent of the City's intervention through its contracting opportunity programs.

The courts have repeatedly held that analysis of disparities in the rate of at which minorities and women form businesses in the government agency's markets as compared to similar non-DBEs, disparities in DBE earnings, and barriers to access

231. Arrow, Kenneth J., "What Has Economics to say about racial discrimination?" *Journal of Economic Perspectives*, 12, 2, (1998), 91-100.

to capital markets are highly relevant to a determination of whether market outcomes are affected by race or gender ownership status.²³² Similar analyses supported the successful legal defense of Illinois' DBE program from constitutional challenge.²³³

Similarly, the Tenth Circuit Court of Appeals also upheld the U.S. Department of Transportation's DBE program, and in doing so, stated that this type of evidence

demonstrates the existence of two kinds of discriminatory barriers to minority subcontracting enterprises, both of which show a strong link between racial disparities in the federal government's disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination. The first discriminatory barriers are to the formation of qualified minority subcontracting enterprises due to private discrimination, precluding from the outset competition for public construction contracts by minority enterprises. The second discriminatory barriers are to fair competition between minority and non-minority subcontracting enterprises, again due to private discrimination, precluding existing minority firms from effectively competing for public construction contracts. The government also presents further evidence in the form of local disparity studies of minority subcontracting and studies of local subcontracting markets after the removal of affirmative action programs... The government's evidence is particularly striking in the area of the race-based denial of access to capital, without which the formation of minority subcontracting enterprises is stymied.²³⁴

Business discrimination studies and lending studies are relevant and probative because they show a strong link between the disbursement of public funds and the channeling of those funds due to private discrimination. In unanimously upholding the USDOT DBE Program, federal courts agree that disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms and the disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners are strong

232. See the discussion in Chapter II of the legal standards applicable to contracting affirmative action programs.

233. *Midwest Fence Corp. v. Illinois Department of Transportation, Illinois State Toll Highway Authority et al*, 840 F.3d 942 (7th Cir. 2016) (upholding the City's program for state funded contracts modeled after Part 26 and based on CHA's expert testimony, including about disparities in the overall Illinois construction industry); *see also Midwest Fence Corp. v. Illinois Department of Transportation, Illinois State Toll Highway Authority et al*, 2015 WL 1396376 at * 21 (N.D. Ill.) ("Colette Holt [& Associates'] updated census analysis controlled for variables such as education, age, and occupation and still found lower earnings and rates of business formation among women and minorities as compared to White men."); *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003) (holding that City of Chicago's DBE program for local construction contracts satisfied "compelling interest" standards using this framework).

234. *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1169 (10th Cir. 2000), *cert. granted then dismissed as improvidently granted*, 532 U.S. 941 (2001).

evidence of the continuing effects of discrimination.²³⁵ As recognized by a federal court of appeals, “[e]vidence that private discrimination results in barriers to business formation is relevant because it demonstrates that DBEs are precluded *at the outset* from competing for public Goods contracts. Evidence of barriers to fair competition is also relevant because it again demonstrates that *existing* DBEs are precluded from competing for public contracts.”²³⁶

To explore the question of whether firms owned by non-Whites and White women face disparate treatment in the City’s marketplace outside of agency contracts, we examined two data sets. The first data set was the U.S. Bureau of the Census’ *American Community Survey* (“ACS”), which provided data to analyze disparities using individual entrepreneurs as the basic unit of analysis. We analyzed the ACS data from the years 2018 through 2022 which was the most recent data available. With the ACS, we will address four basic questions:

1. What are the business formation rates for the different demographic groups? We ask this question to establish a basic baseline of business formation outcomes in the private sector.
2. What is the probability of a group forming a business once the analysis considers education, age, industry, and occupation? We want to explore the issue of demographic business formation difference once we statistically tease out possible non-demographic explanations for these differences.
3. Do business earnings vary by demographic group once the analysis considers education, age, industry, and occupation? This question explores the issue of demographic differences in the central business outcome (earnings) once we statistically tease out possible non-demographic explanations for these differences.
4. Do wages vary by demographic group once the analysis considers education, age, industry, and occupation? This question is similar to the third in examining wages instead of business earnings. It is important because economic research indicates that wage levels can impact the future business formation behavior of individual.

As we did in Chapter IV, we used the Seattle metropolitan area as the geographic unit of analysis. We found disparities in wages, business earnings and business formation rates for minorities and women in all industry sectors in the City’s marketplace.²³⁷

The second data set was the U.S. Bureau’s Annual Business Survey (“ABS”). The ABS supersedes the more well-known Survey of Business Owners (“SBO”). The SBO was last conducted in 2012 and historically had been reported every five years. In

235. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868, at *64 (Sept. 8, 2005).

236. *Id.*

contrast, the ABS was first conducted in 2017 and it is the Census Bureau's goal to release results annually. This study utilizes the 2018 ABS which contains 2017 data.²³⁸ With the ABS data, six key variables are used in this analysis:

1. The number of all firms
2. The sales and receipts of all firms
3. The number of firms with employees (employer firms)
4. The sales and receipts of all employer firms
5. The number of paid employees
6. The annual payroll of employer firms

CHA examined these data in two ways: First, we calculated the minority- and woman-owned business share of each variable. Second, we calculated three disparity ratios for each grouping of minority- and woman-owned businesses and for the grouping of firms that are not non-White- or White woman-owned:

1. Ratio of sales and receipts share for all firms over the share of total number of all firms.
2. Ratio of sales and receipts share for employer firms over the share of total number of employer firms.
3. Ratio of annual payroll share over the share of total number of employer firms.

We explored the data to see if a DBE's share of sales/receipts and payroll approximates its share of firms. For example, Black firms might represent 10% of all firms but the sales for Black firms might capture just 2% of the sales of all firms. The ratio of Black share of sales over Black share of firms would be .2% (2% divided by 10%), indicating that the sales levels for Black firms in the industry is less than one would expect given the number of Black firms in the industry. As this ratio approaches one, we interpret that as a sign of approaching parity.

Results of the analysis of the ABS data indicate that non-Whites and White women's share of all employer firms is greater than their share of sales, payrolls, and employees. This supports the conclusion that barriers to business success disproportionately affect non-Whites and White women.

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237. Possible disparities in wages are important to explore because of the relationship between wages and business formation. Research by Alicia Robb and others indicate non-White firms rely on their own financing to start businesses compared to White firms who rely more heavily on financing provided by financial institutions. To the extent non-Whites face discrimination in the labor market, they would have reduced capacity to self-finance their entrepreneurial efforts and, hence, impact business formation. *See, for example*, Robb's "Access to Capital among Young Firms, Minority-owned Firms, Woman-owned Firms, and High-tech Firms" (2013), [https://www.sba.gov/sites/default/files/files/rs403tot\(2\).pdf](https://www.sba.gov/sites/default/files/files/rs403tot(2).pdf).
 238. While there are more recent surveys, much of the data needed for this analysis were not present. CHA reached out to the Census Bureau via e-mail and its response (dated November 11, 2022) was that the 2018 ABS sampled approximately 850,000 firms, which allowed a more complete set of data to be released. In the ABS conducted in 2019-2022, the sample was reduced to 300,000 firms; consequently, the detailed statistics presented in the 2018 ABS could not be reproduced. The 2023 ABS will return to the 2018 sample size of 850,000.

B. Disparate Treatment in the City’s Marketplace: Evidence from the Census Bureau’s 2018 - 2022 American Community Survey

As discussed in the beginning of this Chapter, the key objective is to investigate whether firms owned by non-Whites and White women face disparate treatment in the marketplace without the intervention of the City’s contracting equity programs (discussed in Chapter III). In this section, we used the Census Bureau’s ACS data to explore this and other aspects of this analysis. One element asks if demographic differences exist in the wage and salary income received by private sector workers. Beyond the issue of bias in the incomes generated in the private sector, this exploration is important for the issue of possible variations in the rate of business formation by different demographic groups. One of the determinants of business formation is the pool of financial capital at the disposal of the prospective entrepreneur. The size of this pool is related to the income level of the individual either because the income level impacts the amount of personal savings that can be used for start-up capital, or the income level affects one’s ability to borrow funds. Consequently, if particular demographic groups receive lower wages and salaries then they would have access to a smaller pool of financial capital, and thus reduce the likelihood of business formation.

The *American Community Survey Public Use Microdata Sample* (“PUMS”) is useful in addressing these issues. The ACS is an annual survey of one percent of the population and the PUMS provides detailed information at the individual level. To obtain robust results from our analysis, we used the file that combines the most recent data available for years 2018 through 2022.²³⁹ With this rich data set, our analysis can establish with greater certainty any causal links between race, gender and economic outcomes.

The Census Bureau classifies Whites, Blacks, Native Americans, and Asians as racial groupings. CHA developed a fifth grouping, “Other”, to capture individuals who are not a member of the above four racial categories. In addition, Hispanics are an ethnic category whose members could be of any race, *e.g.*, Hispanics could be White or Black. To avoid double counting – *i.e.*, an individual could be counted once as Hispanic and once as White – CHA developed non-Hispanic subset racial categories: non-Hispanic Whites; non-Hispanic Blacks; non-Hispanic Native Americans; non-Hispanic Asians; and non-Hispanic Others. When those five groups are added to the Hispanic group, the entire population is counted and there is no double-counting. When Whites are disaggregated into White men and White women,

239. Initially, the Census Bureau contacted approximately 3.5M households. For the analysis reported in this Chapter, we examined over 290,000 observations. For more information about the ACS PUMS, see <https://www.census.gov/programs-surveys/acs/>.

those groupings are non-Hispanic White men and non-Hispanic White women. For ease of exposition, the groups in this report are referred to as Black, Native American, Asian, Other, White women, and White men, while the actual content is the non-Hispanic subset of these racial groups.

Often, the general public sees clear associations between race, gender, and economic outcomes and assumes this association reflects a tight causal connection. However, economic outcomes are determined by a broad set of factors including, and extending beyond, race and gender. To provide a simple example, two people who differ by race or gender may receive different wages. This difference may simply reflect that the individuals work in different industries. If this underlying difference is not known, one might assert the wage differential is the result of race or gender difference. To better understand the impact of race or gender on wages, it is important to compare individuals of different races or genders who work in the same industry. Of course, wages are determined by a broad set of factors beyond race, gender, and industry. With the ACS PUMS, we have the ability to include a wide range of additional variables such as age, education, occupation, and residence in the analysis.

We employed a multiple regression statistical technique to process these data. This methodology allows us to perform two analyses: an estimation of how variations in certain characteristics (called independent variables) will impact the level of some particular outcome (called a dependent variable), and a determination of how confident we are that the estimated variation is statistically different from zero. We have provided a more detailed explanation of this technique in Appendix A.

With respect to the first result of regression analysis, we examined how variations in the race, gender, and industry of individuals impact the wages and other economic outcomes received by individuals. The technique allows us to determine the effect of changes in one variable, assuming that the other determining variables are the same. That is, we compare individuals of different races, but of the same gender and in the same industry; or we compare individuals of different genders, but of the same race and the same industry; or we compare individuals in different industries, but of the same race and gender. We determine the impact of changes in one variable (*e.g.*, race, gender or industry) on another variable (wages), “controlling for” the movement of any other independent variables.

With respect to the second result of regression analysis, we determine the statistical significance of the relationship between the dependent variable and independent variable. For example, the relationship between gender and wages might exist (*e.g.*, holding all other factors constant, women earn less than men), but we find that it is not statistically different from zero. In this case, we are not confident that there is not any relationship between the two variables. If the relationship is not statistically different from zero, then a variation in the independent variable

has no impact on the dependent variable. The regression analysis allows us to say with varying degrees of statistical confidence that a relationship is different from zero. If the estimated relationship is statistically significant at the 0.05 level, that indicates that we are 95% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.01 level, that indicates that we are 99% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.001 level, that indicates that we are 99.9% confident that the relationship is different from zero.²⁴⁰ If a result is non-zero but the result is not statistically significant, then we cannot rule out zero being the true result. Note: this does not mean the result is wrong, only that there is not a statistically significant level of confidence in the result.

In the following presentation of results, each sub-section first reports data on the share of a demographic group that forms a business (business formation rates); the probabilities that a demographic group will form a business relative to White men (business formation probabilities); the differences in wages received by a demographic group relative to White men (wage differentials); and the differences in business earnings received by a demographic group relative to White men (business earnings differentials). Because the ACS contained limited observations for certain groups in particular industries, we were unable to provide reliable estimates for business outcomes for these groups. However, there were always sufficient observations in the sample of wage earners in each group in each industry to permit us to develop reliable estimates. We developed these results using data from the U.S. Bureau of the Census' ACS for the Seattle metropolitan area.

1. All Industries Combined in the Seattle Metropolitan Area

One method of exploring differences in economic outcomes is to examine the rate at which different demographic groups form businesses. Table 5-1 presents these results. As stated above, the business formation rate represents the share of a population that forms businesses. When developing industry-specific rates, we examine the population that works in that particular industry and identify what share of that sub-population form businesses. For example, Table 5-1 indicates that 3.4% of Blacks across all industries form businesses; this is less than the 5.3% business formation rate for White men. There were low numbers of Native American firms in the ACS sample; consequently, reliable estimates of firm outcomes could not be made for this group. In Table 5-1, this is indicated by the symbol “-----”.²⁴¹ Overall, this table indicates that White men have higher business formation rates compared to Blacks, Hispanics, Asians, Others, and White women. Table 5-2 utilizes probit regression anal-

240. Most social scientists do not endorse utilizing a confidence level of less than 95%. Appendix C explains more about statistical significance.

241. This symbol was used through the chapter when there were insufficient observations to establish reliable estimates.

ysis to examine the probability of forming a business after controlling for important factors beyond race and gender.²⁴² This table indicates that Blacks, Hispanics, Asians, Others, and White women are less likely to form businesses compared to similarly situated White men. The reduced probabilities of business formation ranged from 1.4% to 0.2%. The coefficient for Hispanics and White women were statistically significant at the 0.01 level. The coefficient for Asians was statistically significant at the 0.5 level. Another way to measure equity is to examine how the wage and salary incomes and business earnings of particular demographic groups compare to White men. Multiple regression statistical techniques allowed us to examine the impact of race and gender on economic outcomes while controlling for other factors, such as education and age.²⁴³ Tables 5-3 and 5-4 present these data on wage and salary incomes and business earnings respectively. Table 5-3 indicates that all DBE groups earned less than White men with the range of coefficients from -26.6% to 11.7%. All coefficients were statistically significant at the 0.001 level. Table 5-4 indicates business earnings for DBEs were less than those for White men. The coefficients for Blacks and White women were statistically significant at the 0.001 level; the coefficient for Hispanics was statistically significant at the 0.01 level; and the coefficient for Others was statistically significant at the 0.05 level.

**Table 5-1: Business Formation Rates
All Industries, 2018 - 2022**

Demographic Group	Business Formation Rates
Black	3.4%
Hispanic	3.2%
Native American	-----
Asian/Pacific Islander	4.0%
Other	3.4%
White Women	4.4%
DBE	4.0%
White Male	5.3%

Source: CHA calculations from the American Community Survey

242. Appendix B provides a “Further Explanation of Probit Regression Analysis.”

243. See Appendix A for more information on multiple regression statistical analysis.

Table 5-2: Business Formation Probability Differentials for Selected Groups Relative to White Men, All Industries, 2018 - 2022

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-1.2%
Hispanic	-1.4%**
Native American	-----
Asian/Pacific Islander	-0.7%*
Other	-0.2%
White Women	-0.9%**

Source: CHA calculations from the American Community Survey

** Indicates statistical significance at the 0.01 level

* Indicates statistical significance at the 0.05 level

Table 5-3: Wage Differentials for Selected Groups Relative to White Men All Industries, 2018 - 2022

Demographic Group	Wages Relative to White Men (% Change)
Black	-26.6%***
Hispanic	-11.7%***
Native American	-23.0%***
Asian/Pacific Islander	-19.8%***
Other	-25.1%***
White Women	-25.4%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

Table 5-4: Business Earnings Differentials for Selected Groups Relative to White Men All Industries, 2018 - 2022

Demographic Group	Earnings Relative to White Men (% Change)
Black	-115.0%*** ^a
Hispanic	-58.2%**
Native American	-----

Demographic Group	Earnings Relative to White Men (% Change)
Asian/Pacific Islander	-4.3%
Other	-115.0%*
White Women	-54.2%***

a. The proper way to interpret a coefficient that is less than negative 100% (e.g., the value of the coefficient for Black in Table 5-4), is the percentage amount non-M/WBEs earn that is more than the group in question. In this case, White men earn 115% more than Black.

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

** Indicates statistical significance at the 0.01 level

* Indicates statistical significance at the 0.05 level

2. The Construction Industry in the Seattle Metropolitan Area

Tables 5-5 through 5-8 present the results from an analysis of data in the Construction Industry. In this industry, there were insufficient observations of Blacks, Native Americans, and Others to allow for proper analysis. Table 5-5 indicates that Hispanics, Asians, and White women formed businesses at a lower rate (3.8%; 8.7%; 9.2% respectively) than White men (10.3%). Examining the business formation probabilities (Table 5-6) – once again controlling for age education and gender – Hispanics, Asians, and White women were less likely to form businesses compared to White men; only the coefficient for Hispanics was statistically significant. Table 5-7 present data on wage differentials: DBEs earned less than White men with the coefficients ranging from -48.7% to -11.3%. The coefficients for the wages for Blacks, Hispanics, Asians, and White women were statistically significant at the 0.001 level. Business earnings – presented in Table 5-8 – indicate that only the coefficient for Hispanics and White women were negative and neither were statistically significant.

**Table 5-5: Business Formation Rates
Construction, 2018 - 2022**

Demographic Group	Business Formation Rates
Black	-----
Hispanic	3.8%
Native American	-----
Asian/Pacific Islander	8.7%

Demographic Group	Business Formation Rates
Other	-----
White Women	9.2%
DBE	5.9%
White Male	10.3%

Source: CHA calculations from the American Community Survey

Table 5-6: Business Formation Probability Differentials for Selected Groups Relative to White Men, Construction, 2018 - 2022

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-----
Hispanic	-4.5%*
Native American	-----
Asian/Pacific Islander	-0.3%
Other	-----
White Women	-0.6%

Source: CHA calculations from the American Community Survey

* Indicates statistical significance at the 0.05 level

Table 5-7: Wage Differentials for Selected Groups Relative to White Men Construction, 2018 - 2022

Demographic Group	Wages Relative to White Men (% Change)
Black	-48.7%***
Hispanic	-21.2%***
Native American	-26.5%
Asian/Pacific Islander	-21.0%***
Other	-11.3%
White Women	-29.2%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

**Table 5-8: Business Earnings Differentials for Selected Groups Relative to White Men
Construction, 2018 - 2022**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-----
Hispanic	-101.0%
Native American	-----
Asian/Pacific Islander	7.7%
Other	-----
White Women	-92.0%

Source: CHA calculations from the American Community Survey

3. The Construction-Related Services Industry in the Seattle Metropolitan Area

Tables 5-9 through 5-12 present the analysis of data in the Construction-Related Services Industries. In these industries, there were insufficient observations of certain groups to allow for proper analysis of any individual DBE groups. Table 5-9 does indicate that DBEs as an aggregated category had lower business formation rates (3.5%) than White men (8.0%). Because of the sample size problem, no analysis could be made of business formation probabilities (Table 5-10) or business earnings (Table 5-12). We were able to examine wage differentials and Table 5-11 presents these data: Blacks, Hispanics, Asians, and White women earned less than White men. However, only the coefficients for the wages for Asians and White women were statistically significant. The level of statistical significance was at the 0.001 level.

**Table 5-9: Business Formation Rates
Construction-Related Services, 2018 - 2022**

Demographic Group	Business Formation Rates
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-----
Other	-----

Demographic Group	Business Formation Rates
White Women	-----
DBE	3.5%
White Male	8.0%

Source: CHA calculations from the American Community Survey

Table 5-10: Business Formation Probability Differentials for Selected Groups Relative to White Men, Construction-Related Services, 2018 - 2022

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-----

Source: CHA calculations from the American Community Survey

Table 5-11: Wage Differentials for Selected Groups Relative to White Men Construction-Related Services, 2018 - 2022

Demographic Group	Wages Relative to White Men (% Change)
Black	-3.5%
Hispanic	-0.7%
Native American	-----
Asian/Pacific Islander	-27.0%***
Other	-12.6%
White Women	-22.5%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

**Table 5-12: Business Earnings Differentials for Selected Groups Relative to White Men
Construction-Related Services, 2018 - 2022**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-----

Source: CHA calculations from the American Community Survey

4. The Goods Industry in the Seattle Metropolitan Area

Tables 5-13 through 5-16 present the analysis of data in the Goods Industry. There were insufficient observations of Blacks, Hispanics, Native Americans, and Others to allow for proper analysis. Table 5-13 indicates that Asians (4.4%) and White women (5.0%) formed businesses at approximately the same rate as White men (4.7%). Examining the business formation probabilities (Table 5-14) the coefficients for Asians and White women were not statistically significant. Table 5-15 present data on wage differentials: DBEs earned less than White men and the coefficients for the wages for Blacks, Hispanics, Asians, Others and White women were statistically significant at the 0.001 level. Examining business earnings, the data presented in Table 5-16 indicate that neither the coefficient for Asians nor White women was statistically significant.

Table 5-13: Business Formation Rates, Goods, 2018 - 2022

Demographic Group	Business Formation Rates
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	4.4%
Other	-----
White Women	5.0%
DBE	3.8%
White Male	4.7%

Source: CHA calculations from the American Community Survey

Table 5-14: Business Formation Probability Differentials for Selected Groups Relative to White Men, Goods, 2018 - 2022

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	0.4%
Other	-----
White Women	-0.5%

Source: CHA calculations from the American Community Survey

Table 5-15: Wage Differentials for Selected Groups Relative to White Men Goods, 2018 - 2022

Demographic Group	Wages Relative to White Men (% Change)
Black	-42.4%***
Hispanic	-20.7%***
Native American	-79.6%***
Asian/Pacific Islander	-29.6%***
Other	-29.0%*
White Women	-28.6%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

* Indicates statistical significance at the 0.05 level

Table 5-16: Business Earnings Differentials for Selected Groups Relative to White Men Goods, 2018 - 2022

Demographic Group	Earnings Relative to White Men (% Change)
Black	-----
Hispanic	-----
Native American	-----

Demographic Group	Earnings Relative to White Men (% Change)
Asian/Pacific Islander	55.3%
Other	-----
White Women	84.9%

Source: CHA calculations from the American Community Survey

5. The Services Industry in the Seattle Metropolitan Area

Tables 5-17 through 5-20 present the analysis of data in the Services Industry. Table 5-17 indicates that DBEs formed businesses at a lower rate than White men. Examining the business formation probabilities (Table 5-18) Blacks, Hispanics, Asians, and White women were less likely to form businesses compared to White men, but these results were only statistically significant for Asians and White women. As presented in Table 5-19, DBEs earned lower wages than White men and except for Native Americans, the coefficients for the wages for were statistically significant at the 0.001 level. Business earnings – presented in Table 5-20 – for DBEs were less than business earnings for White men. The coefficients for Blacks, Others, and White women were statistically significant.

**Table 5-17: Business Formation Rates
Services, 2018 - 2022**

Demographic Group	Business Formation Rates
Black	4.1%
Hispanic	3.4%
Native American	-----
Asian/Pacific Islander	4.2%
Other	4.0%
White Women	5.4%
DBE	4.6%
White Male	6.7%

Source: CHA calculations from the American Community Survey

Table 5-18: Business Formation Probability Differentials for Selected Groups Relative to White Men, Services, 2018 - 2022

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-0.8%
Hispanic	-1.3%
Native American	-----
Asian/Pacific Islander	-1.4%**
Other	0.5%
White Women	-1.0%*

Source: CHA calculations from the American Community Survey

** Indicates statistical significance at the 0.01 level

* Indicates statistical significance at the 0.05 level

Table 5-19: Wage Differentials for Selected Groups Relative to White Men Services, 2018 - 2022

Demographic Group	Wages Relative to White Men (% Change)
Black	-22.7%***
Hispanic	-6.5%***
Native American	-17.2%*
Asian/Pacific Islander	-15.5%***
Other	-24.0%***
White Women	-22.4%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

* Indicates statistical significance at the 0.05 level

Table 5-20: Business Earnings Differentials for Selected Groups Relative to White Men Services, 2018 - 2022

Demographic Group	Earnings Relative to White Men (% Change)
Black	-80.5%**
Hispanic	-46.4%
Native American	-----

Demographic Group	Earnings Relative to White Men (% Change)
Asian/Pacific Islander	-12.0%
Other	-162.0%*
White Women	-48.9%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

** Indicates statistical significance at the 0.01 level

* Indicates statistical significance at the 0.05 level

6. The Information Technology Industry in the Seattle Metropolitan Area

Tables 5-21 through 5-24 present the analysis of data in the Information Technology Industry. There were not enough observations of Blacks, Hispanics, Native Americans and Others to allow for proper analysis. Table 5-21 indicates that Asians and White women formed businesses at a lower rate than White men. Examining the business formation probabilities (Table 5-22), Asians and White women were less likely to form businesses compared to White men, but these results was not statistically significant. Table 5-23 present data on wage differentials: here we find that Blacks, Hispanics, Asians, Others and White women earned less than White men and the coefficients for Blacks, Asians, Others and White women were statistically significant at the 0.001 level. Business earnings – presented in Table 5-24 – indicate that the coefficients for Asians and White women was not statistically significant.

**Table 5-21: Business Formation Rates
Information Technology, 2018 - 2022**

Demographic Group	Business Formation Rates
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	1.4%
Other	-----
White Women	2.4%
DBE	1.9%
White Male	3.1%

Source: CHA calculations from the American Community Survey

Table 5-22: Business Formation Probability Differentials for Selected Groups Relative to White Men, Information Technology, 2018 - 2022

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-0.8%
Other	-----
White Women	-0.7%

Source: CHA calculations from the American Community Survey

Table 5-23: Wage Differentials for Selected Groups Relative to White Men Information Technology, 2018 - 2022

Demographic Group	Wages Relative to White Men (% Change)
Black	-18.4%***
Hispanic	-7.2%
Native American	7.4%
Asian/Pacific Islander	-13.2%***
Other	-57.5%***
White Women	-22.6%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

**Table 5-24: Business Earnings Differentials for Selected Groups Relative to White Men
Information Technology, 2018 - 2022**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-117.0%
Other	-----
White Women	-233.0%

Source: CHA calculations from the American Community Survey

Where there are sufficient observations to draw accurate inferences, the data presented in the above Tables indicate that non-Whites and White women form businesses less than White men and their wage and business earnings are less than those of White men. These analyses support the conclusion that barriers to business success do affect non-Whites and White women.

C. Disparate Treatment in the City’s Marketplace: Evidence from the Census Bureau’s 2017 Annual Business Survey

We further examined whether non-Whites and White women have disparate outcomes when they are active in the State of Washington – the geographic market for the City. This analysis was operationalized by exploring if the share of business receipts, number of firms, and payroll for firms owned by non-Whites and White women is greater than, less than, or equal to the share of all firms owned by non-Whites and White women, using the ABS data.

The ABS surveyed about 850,000 employer firms and collected data on a variety of variables documenting ownership characteristics including race, ethnicity, and gender. It also collected data on the firms’ business activity with variables marking the firms’ number of employees, payroll size, sales, and industry.²⁴⁴ For this analysis, we examined firms in the State of Washington. The State was the geographic unit of analysis because the ABS does not present data at the sub-state level.

244. For more information on the Annual Business Survey see <https://www.census.gov/programs-surveys/abs/about.html>.

With these data, we grouped the firms into the following ownership categories.^{245,246}

- Hispanics
- Non-Hispanic Blacks
- Non-Hispanic Native Americans
- Non-Hispanic Asians
- Non-Hispanic White women
- Non-Hispanic White men
- Firms equally owned by non-Whites and Whites
- Firms equally owned by men and women
- Firms that were either publicly owned or where the ownership could not be classified

For this analysis, the first four groups were aggregated to form a non-White category. Since our interest is the treatment of non-White-owned firms and White woman-owned firms, the last four groups were aggregated to form one category. To ensure this aggregated group is described accurately, we label this group “not non-White/non-White women”. While this label is cumbersome, it is important to be clear that this group includes firms whose ownership extends beyond White men, such as firms that are not classifiable or that are publicly traded and thus have no racial ownership. In addition to the ownership demographic data, the Survey also gathers information on the sales, number of paid employees, and payroll for each reporting firm.

We analyzed the ABS data on the following sectors:

- All Industries
- Construction
- Professional, Scientific and Technical Services
- Goods
- Other services

The ABS data – a sample of all businesses, not the entire universe of all businesses – required some adjustments. We had to define the sectors at the two-digit North

245. Race and gender labels reflect the categories used by the Census Bureau.

246. For expository purposes, the adjective “non-Hispanic” will not be used in this Chapter; the reader should assume that any racial group referenced does not include members of that group who identify ethnically as Hispanic.

American Industry Classification System (“NAICS”) code level, and therefore our sector definitions do not exactly correspond to the definitions used to analyze the Department’s contract data in Chapter IV, where we are able to determine sectors at the six-digit NAICS code level. At a more detailed level, the number of firms sampled in particular demographic and sector cells may be so small that the Census Bureau does not report the information, either to avoid disclosing data on businesses that can be identified or because the small sample size generates unreliable estimates of the universe. We therefore report two-digit data.

The Professional, Scientific, and Technical Services Industry is broader than Construction-Related Services (which was examined in the previous section), but It is impossible to narrow this category to Construction-Related Services without losing the capacity to conduct race and gender specific analyses. Table 5-25 presents information on which NAICS codes were used to define each sector.

Table 5-25: Two-Digit NAICS Code Definition of Sector

ABS Sector Label	Two Digit NAICS Codes
Construction	23
Professional, Scientific, and Technical Services	54
Goods	31,42, 44
Other Services	48, 52, 53, 56, 61, 62, 71, 72, 81

The balance of this Chapter reports the findings of the ABS analysis.

1. All Industries

Table 5-10 presents data on the percentage share that each group has of the total of each of the following four business outcomes:

1. The number of firms with employees (employer firms)
2. The sales and receipts of all employer firms
3. The number of paid employees
4. The annual payroll of employer firms

Panel A of Table 5-26 presents data for the four basic non-White racial groups:

1. Black
2. Hispanic
3. Asian
4. Native American

Panel B of Table 5-26 presents data for the following types of firm ownership:

- Non-White
- White women
- Not non-White/non-White women²⁴⁷

Categories in the second panel are mutually exclusive. Hence, firms that are non-White and equally owned by men and women are classified as non-White and firms that are equally owned by non-Whites and Whites and equally owned by men and women are classified as equally owned by non-Whites and Whites.

Since the central issue is the possible disparate treatment of non-White firms and White woman firms, we calculate three disparity ratios each for Black, Hispanic, Asian, Native American, non-White, and White woman firms respectively (a total of 18 ratios), presented in Table 5-27.

- Ratio of sales and receipts share for all employer firms over the share of total number of all employer firms.
- Ratio of sales and receipts share for employer firms over the share of total number of employer firms.
- Ratio of annual payroll share over the share of total number of employer firms.

For example, the disparity ratio of sales and receipts share for all firms over the share of total number of all employer firms for Black firms is 17.2% (as shown in Table 5-27). This is derived by taking the Black share of sales and receipts for all employer firms (0.1%) and dividing it by the Black share of total number of all employer firms (0.9%) that are presented in Table 5-26.²⁴⁸ If Black-owned firms earned a share of sales equal to their share of total firms, the disparity index would have been 100%. An index less than 100% indicates that a given group is being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission's "80% rule" that a ratio less than 80% presents a *prima facie* case of discrimination.²⁴⁹ All of the 18 disparity ratios for non-White firms and White woman firms (presented in Table 5-27) are below this threshold.²⁵⁰

247. Again, while a cumbersome nomenclature, it is important to remain clear that this category includes firms other than those identified as owned by White men.

248. Please note that while the numbers presented in Table 5-26 are rounded to the first decimal place, the calculations resulting in the numbers presented in Table 5-27 are based on the actual (non-rounded) figures. Therefore, the Black ratio presented in Table 5-27 of 17.2% is not the same figure as that which would be derived when you divided 0.1 by 0.9 (the numbers presented in Table 5-26).

**Table 5-26: Demographic Distribution of Sales and Payroll Data – Aggregated Groups
All Industries, 2017**

	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
Panel A: Distribution of Non White Firms				
Black	0.9%	0.1%	0.4%	0.2%
Hispanic	3.9%	0.6%	1.5%	0.9%
Asian	10.5%	2.3%	4.7%	2.6%
Native American	0.5%	0.2%	0.2%	0.2%
Panel B: Distribution of All Firms				
Non-White	15.8%	3.2%	6.8%	3.9%
White Women	15.9%	3.1%	6.8%	4.3%
Not Non-White/Not White Women	68.3%	93.7%	86.4%	91.8%
All Firms	100.0%	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

**Table 5-27: Disparity Ratios – Aggregated Groups
All Industries, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non White Firms			
Black	17.2%	46.4%	26.3%
Hispanic	15.4%	37.8%	22.5%
Asian	22.1%	44.3%	24.8%
Native American	34.0%	46.3%	45.5%

249. 29 C.F.R. §1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or 80%) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).

250. Because the data in the subsequent tables are presented for descriptive purposes, significance tests on these results are not conducted.

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel B: Disparity Ratios for All Firms			
Non-White	20.5%	42.9%	24.9%
White Women	19.4%	42.9%	26.8%
Not Non-White/Not White Women	137.2%	126.5%	134.4%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

2. Construction

Table 5-28 presents the same analysis for the Construction Industry. Twelve of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-28 fall under the 80% threshold.

**Table 5-28: Disparity Ratios – Aggregated Groups
Construction, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non White Firms			
Black	54.8%	79.3%	81.3%
Hispanic	35.9%	60.6%	44.0%
Asian	57.3%	55.9%	46.5%
Native American	143.1%	159.0%	195.2%
Panel B: Disparity Ratios for All Firms			
Non-White	51.1%	69.7%	60.5%
White Women	66.4%	92.7%	85.6%
Not Non-White/Not White Women	108.7%	104.4%	106.1%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

3. Professional, Scientific, and Technical Services Industry

Table 5-29 presents the same analysis for the Professional, Scientific, and Technical Services Industry. All of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-29 fall under the 80% threshold.

**Table 5-29: Disparity Ratios – Aggregated Groups
Professional, Scientific, and Technical Services, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non White Firms			
Black	32.8%	51.6%	33.6%
Hispanic	72.5%	75.2%	70.4%
Asian	73.3%	72.9%	69.0%
Native American	54.2%	46.6%	36.3%
Panel B: Disparity Ratios for All Firms			
Non-White	67.9%	69.9%	64.1%
White Women	30.9%	37.7%	27.4%
Not Non-White/Not White Women	127.1%	124.6%	128.7%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

4. Goods Industry

Table 5-30 presents the same analysis for the Goods Industry. All of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-30 fall under the 80% threshold.

**Table 5-30: Disparity Ratios – Aggregated Groups
Goods, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non White Firms			
Black	11.0%	26.9%	16.2%
Hispanic	12.0%	25.4%	18.1%

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Asian	16.8%	28.5%	17.0%
Native American	17.1%	35.9%	26.4%
Panel B: Disparity Ratios for All Firms			
Non-White	15.8%	28.1%	17.4%
White Women	17.8%	36.0%	26.3%
Not Non-White/Not White Women	132.7%	126.9%	130.9%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

5. Other Services Industry

Table 5-31 presents the same analysis for the Other Services Industry. All of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-31 fall under the 80% threshold.

Table 5-31: Disparity Ratios – Aggregated Groups Services, 2017

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non White Firms			
Black	29.5%	59.9%	34.9%
Hispanic	22.6%	41.1%	24.7%
Asian	27.3%	48.1%	28.3%
Native American	28.8%	23.8%	25.3%
Panel B: Disparity Ratios for All Firms			
Non-White	26.4%	47.0%	27.9%
White Women	28.5%	47.1%	32.4%
Not Non-White/Not White Women	143.8%	132.0%	142.2%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

6. Conclusion

Overall, the analysis of the ABS data presented in the above tables indicate that the non-White share and White woman share of all employer firms is greater than their share of sales, payrolls, and employees. This supports the conclusion that barriers to business success disproportionately affect non-Whites and White women.

D. Evidence of Disparities in Access to Business Capital

Capital is the lifeblood of any business. Participants in the anecdotal data collection universally agreed to this fundamental fact. The interviews with business owners conducted as part of this Study confirmed that small firms, especially minority- and woman-owned firms, had difficulties obtaining needed working capital to perform on City contracts and subcontracts, as well as expand the capacities of their firms. As demonstrated by the analyses of Census Bureau data, above, discrimination may even prevent firms from forming in the first place.

There are extensive federal agency reports and much scholarly work on the relationship between personal wealth and successful entrepreneurship. There is a consensus that disparities in personal wealth translate into disparities in business creation and ownership.²⁵¹

1. Federal Reserve Board Small Business Credit Surveys²⁵²

The Development Office of the 12 Reserve Banks of the Federal Reserve System has conducted Small Business Credit Surveys (“SBCS”) to develop data on small business performance and financing needs, decisions, and outcomes.

a. 2023 Small Business Credit Survey

The most recent 2024 Report on Employer Firms: Findings from the 2023 Small Business Credit Survey²⁵³, was fielded from September through November 2023 and reached more than 8,000 small employer firms, collecting information about the performance, challenges, and credit seeking experiences of businesses across the United States. The Survey yielded 6,131 responses from a nationwide convenience sample of small employer firms with 1–499 full- or part-time employees across all 50 states and the

251. See, e.g., Evans, David S. and Jovanovic, Boyan, “An Estimated Model of Entrepreneurial Choice under Liquidity Constraints,” *Journal of Political Economy*, Vol. 97, No. 4, 1989, pp. 808-827; David S. Evans and Linda S. Leighton, “Some empirical aspects of entrepreneurship,” *The American Economic Review*, Vol. 79, No. 3, 1989, pp. 519-535.

252. This survey offers baseline data on the financing and credit positions of small firms before the onset of the pandemic. See [fedsmallbusiness.org](https://www.fedsmallbusiness.org).

253. <https://www.fedsmallbusiness.org/reports/survey/2024/2024-report-on-employer-firms>.

District of Columbia. The findings suggest a further waning of effects from the COVID-19 pandemic and a modest improvement in small-business conditions. Measures of firm performance held steady and remain well above pandemic-era lows, and the share of firms reporting challenges with supply chains declined markedly between 2022 and 2023.

Older, larger, and white-owned firms were more likely than their counterparts to be fully approved for a loan, line of credit, or merchant cash advance in the 12 months prior to the survey. While White-owned applicants were fully approved 56% of the time, only 32% of Black and Hispanic applicants and only 34% of Asian-owned applicants were fully approved.

b. 2022 Report on Firms Owned by People of Color

This Report constitutes a follow-up to the *Small Business Credit Survey 2021 Report on Firms Owned by People of Color*,²⁵⁴ which found that businesses owned by people of color often face more financial and operational challenges than their White counterparts and were frequently less successful at obtaining the funding necessary to weather the effects of the global COVID-19 pandemic. It finds that these disparities continue to persist. The Report contains results for employer firms with 1 to 499 employees other than the owners by four race/ethnicity categories: Asian or Pacific Islanders; Black or African American; Hispanic or Latino; and White.²⁵⁵

The Report found that while revenues and employment improved for some businesses, most firms, particularly those owned by people of color, had not yet recovered from the effects of the pandemic. Firms owned by people of color were more likely than White-owned firms to report declines in revenue and employment in the prior twelve months. Both Asian- and Black-owned firms were more than twice as likely as White-owned firms to be in poor financial condition at the time of the survey. Asian-owned firms were more likely than other firms to report weak sales as a financial challenge, while Black-owned firms were more likely than others to say that credit availability was a concern.

The Report also found that firms owned by people of color were more likely to seek pandemic-related financial assistance than White-owned firms. Firms were less likely to apply for the Paycheck Protection Program (“PPP”) in 2021 than in 2020; however, when they did apply, firms owned by people of color were less likely than White-owned firms to report receiving the

254. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

255. Findings for Native American-owned firms were omitted from the report because sample sizes were too small to make precise estimates for most measures.

full amount of funding for which they applied in the prior twelve months.²⁵⁶

While firms owned by people of color were more likely to apply for traditional financing than White-owned firms (excluding pandemic-related assistance programs in the prior twelve months), they were less likely to receive the funding sought. Compared to White-owned businesses, firms owned by people of color sought smaller amounts of financing. Among low-credit-risk applicants, firms owned by people of color were less likely than White-owned firms to receive all the financing they sought.

Applicant firms were more likely to seek loans, lines of credit, and cash advances at large or small banks than at nonbank lenders. However, firms owned by people of color were less likely than White-owned firms to be approved for financing. Regardless of the type of lender they applied to, firms owned by people of color were less likely than White-owned firms to be approved for the full amount of funding sought. Firms owned by people of color were half as likely as White-owned firms to be fully approved for a loan or line of credit at a small bank and almost a third as likely to be fully approved at a nonbank finance company.

c. 2022 Small Business Credit Survey

The 2022 Small Business Credit Survey (“2022 Survey”)²⁵⁷ gathered insights about the COVID-19 pandemic’s continuing impact on small businesses, including workforce challenges, business performance, and credit conditions. The 2022 Survey yielded 10,914 responses from a nationwide convenience sample of small business firms with 1-499 full- or part-time employees across all 50 states and the District of Columbia. The 2022 Survey was fielded during September through November of 2021 and was the second survey conducted during the global pandemic.

The 2022 Survey found that the pandemic significantly impacted firms, with 77% reporting negative effects. While pandemic-related financial assistance programs, including the PPP, were widely used in 2020 and 2021, the 2022 Survey found a decline in their use in the 12 months prior to the Survey. Personal funds and cash reserves remained an important source of financial stability for small businesses, while financing approval rates continued to decline relative to pre-pandemic levels. Although two-thirds of employer firms received pandemic-related financial assistance in the prior 12 months, firms were less likely to seek financial assistance than

256. The Report finds that in 2021, firms continued to rely on pandemic-related financial assistance, including the PPP, Economic Injury Disaster Loans (“EIDL”) and other federal, state, and local funding programs. EIDL and PPP loans were the most common.

257. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/2022-sbcs-employer-firms-report>.

they were earlier in the pandemic. Approval rates on loans, lines of credit and cash advance applications declined for the second consecutive year. Other key findings include:

- More than half of firms were in fair or poor financial condition at the time of the Survey, and nearly all firms faced at least one operational or financial challenge in the prior 12 months.
- Firms owned by people of color, smaller firms, and leisure and hospitality firms were most likely to be in fair or poor financial condition.

Application rates for traditional financing were lower in 2021 than in prior years, and those who applied were less likely to receive the financing they sought. Firms owned by people of color, firms with fewer employees, and leisure and hospitality firms were least likely to receive the full amount of financing sought.

d. **2021 Report on Firms Owned by People of Color**

i. **Overview**

The *2021 Report on Firms Owned by People of Color*²⁵⁸ compiles results from the 2020 SBCS. The SBCS provides data on small business performance, financing needs, and decisions and borrowing outcomes.^{259,260} The Report provides results by four race/ethnicity categories: White, Black or African American, Hispanic or Latino, and Asian or Pacific Islander. For select key statistics, it also includes results for 4,531 non-employer firms, which are firms with no employees on payroll other than the owner(s) of the business.

Patterns of geographic concentration emerged in small business ownership by race and ethnicity. This was important given the progressive geographic spread of the novel coronavirus throughout 2020 and variations in state government responses to limit its spread. The Report found that 40% of Asian-owned small employer firms are in the Pacific census division, and another 28% are in the Middle Atlantic. Early and aggressive efforts by the impacted states may have affected the revenue performance of Asian-owned firms in the aggregate given their geographic concentration. Black-owned and Hispanic-owned small employer firms are more concentrated in the South Atlantic region,

258. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

259. The SBCS is an annual survey of firms with fewer than 500 employees.

260. The 2020 SBCS was fielded in September and October 2020 and yielded 9,693 responses from small employer firms in all 50 states and the District of Columbia.

which includes states with a mix of pandemic responses. For example, while Florida lifted COVID-19 restrictions relatively quickly, the South Atlantic, including North Carolina, maintained more strict guidelines.

The Report found that firms owned by people of color continued to face structural barriers in acquiring the capital, business acumen, and market access needed for growth. At the time of the 2020 SBCS – six months after the onset of the global pandemic – the U.S. economy had undergone a significant contraction of economic activity. As a result, firms owned by people of color reported more significant negative effects on business revenue, employment, and operations. These firms anticipated revenue, employment, and operational challenges to persist into 2021 and beyond. Specific findings are as follows:

ii. Performance and Challenges

Overall, firms owned by people of color were more likely than White-owned firms to report that they reduced their operations in response to the pandemic. Asian-owned firms were more likely than others to have temporarily closed and to have experienced declines in revenues and employment in the 12 months prior to the survey. In terms of sales and the supply chain, 93% of Asian-owned firms and 86% of Black-owned firms reported sales declines as a result of the pandemic. Relative to financial challenges for the prior 12 months, firms owned by people of color were more likely than White-owned firms to report financial challenges, including paying operating expenses, paying rent, making payments on debt, and credit availability. Black-owned business owners were most likely to have used personal funds in response to their firms' financial challenges. Nearly half of Black-owned firms reported concerns about personal credit scores or the loss of personal assets. By contrast, one in five White-owned firms reported no impact on the owners' personal finances. Asian-owned firms were approximately twice as likely as White-owned firms to report that their firms were in poor financial condition.

iii. Emergency Funding

The *Report* finds that PPP loans were the most common form of emergency assistance funding that firms sought during the period. Black-owned and Hispanic-owned firms were less likely to apply for a PPP loan. Only six in ten Black-owned firms actually applied. Firms owned by people of color were more likely than White-owned firms to report that they missed the deadline or were unaware of the program. Firms owned by people of color were less likely than White-owned firms to use a bank as a financial services provider. Regardless of the sources at which they applied for PPP loans, firms that used banks were more

likely to apply for PPP loans than firms that did not have a relationship with a bank. While firms across race and ethnicity were similarly likely to apply for PPP loans at large banks, White- and Asian-owned firms more often applied at small banks than did Black- and Hispanic-owned firms. Black-owned firms were nearly half as likely as White-owned firms to receive all of the PPP funding they sought and were approximately five times as likely to receive none of the funding they sought.

iv. Debt and Financing

Black-owned firms had smaller amounts of debt than other firms. About one in ten firms owned by people of color did not use financial services.

On average, Black-owned firms completed more financing applications than other applicant firms. Firms owned by people of color turned more often to large banks for financing. By contrast, White-owned firms turned more often to small banks. Black-owned applicant firms were half as likely as White-owned applicant firms to be fully approved for loans, lines of credit, and cash advances.

Firms owned by people of color were less satisfied than White-owned firms with the support from their primary financial services provider during the pandemic. Regardless of the owner's race or ethnicity, firms were less satisfied with online lenders than with banks and credit unions.

In the aggregate, 63% of all employer firms were non-applicants – they did not apply for non-emergency financing in the prior 12 months. Black-owned firms were more likely than other firms to apply for non-emergency funding in the 12 months prior to the survey. One-quarter of Black- and Hispanic-owned firms that applied for financing sought \$25,000 or less. In 2020, firms owned by people of color were more likely than White-owned firms to apply for financing to meet operating expenses. The majority of non-applicant firms owned by people of color needed funds but chose not to apply, compared to 44% of White-owned firms. Financing shortfalls were most common among Black-owned firms and least common among White-owned firms.

Firms of color, and particularly Asian-owned firms, were more likely than White-owned firms to have unmet funding needs. Just 13% of Black-owned firms received all of the non-emergency financing they sought in the 12 months prior to the survey, compared to 40% of White-owned firms. Black-owned firms with high credit scores were half as likely as their White counterparts to receive all of the non-emergency funding they sought.

v. Findings for Non-employer Firms

Non-employer firms, those that have no paid employees other than the owner, represent the overwhelming majority of small businesses across the nation. In all, 96% of Black-owned and 91% of Hispanic-owned firms are non-employer firms, compared to 78% of White-owned and 75% of Asian-owned firms.²⁶¹

Compared to other non-employer firms, Asian-owned firms reported the most significant impact on sales as a result of the pandemic. They were most likely to report that their firm was in poor financial condition at the time of the survey.

Compared to other non-employer firms that applied for financing, Black-owned firms were less likely to receive all of the financing they sought. Black-owned non-employer firms that applied for PPP loans were less likely than other firms to apply at banks and more often turned to online lenders. Among PPP applicants, White-owned non-employer firms were twice as likely as Black-owned firms to receive all of the PPP funding they sought.

e. 2021 Small Business Credit Survey

The 2021 SBCS²⁶² reached more than 15,000 small businesses, gathering insights about the COVID-19 pandemic's impact on small businesses, as well as business performance and credit conditions. The 2021 Survey yielded 9,693 responses from a nationwide convenience sample of small employer firms with between one and 499 full- or part-time employees across all 50 states and the District of Columbia. The 2021 Survey was fielded in September and October 2020, approximately six months after the onset of the pandemic. The timing of the 2021 Survey is important to the interpretation of the results. At the time of the 2021 survey, the PPP authorized by the Coronavirus Relief and Economic Security Act had recently closed applications, and prospects for additional stimulus funding were uncertain. Additionally, many government-mandated business closures had been lifted as the number of new COVID-19 cases plateaued in advance of a significant increase in cases by the year's end.

The 2021 Survey findings highlight the magnitude of the pandemic's impact on small businesses and the challenges they anticipate as they navigate changes in the business environment. Few firms avoided the negative impacts of the pandemic. Furthermore, the findings reveal disparities in

261. The Report notes that a future report will describe findings from the 2020 SBCS for non-employers in greater detail.

262. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/2021-sbcs-employer-firms-report>.

experiences and outcomes across firm and owner demographics, including race and ethnicity, industry, and firm size.

Overall, firms' financial conditions declined sharply and those owned by people of color reported greater challenges. The most important anticipated financial challenge differed by race and ethnicity of the owners. Among the findings for employer firms relevant to discriminatory barriers were the following:

- For Black-owned firms, credit availability was the top expected challenge, while Asian-owned firms disproportionately cited weak demand.
- The share of firms in fair or poor financial conditions varied by race: 79% of Asian-owned firms, 77% of Black-owned firms, 66% of Hispanic-owned firms and 54% of White-owned firms reported this result.
- The share of firms that received all the financing sought to address the impacts of the pandemic varied by race: 40% of White-owned firms received all the funding sought, but only 31% of Asian-owned firms, 20% of Hispanic-owned firms and 13% of Black-owned firms achieved this outcome.

f. 2018 Small Business Credit Survey

The 2018 SBCS²⁶³ focused on minority-owned firms. The analysis was divided into two types: employer firms and non-employer firms.

i. Employer firms

Queries were submitted to businesses with fewer than 500 employees in the third and fourth quarters of 2018. Of the 7,656 firms in the unweighted sample, five percent were Asian, ten percent were Black, six percent were Hispanic, and 79% were White. Data were then weighted by number of employees, age, industry, geographic location (census division and urban or rural location), and minority status to ensure that the data is representative of the nation's small employer firm demographics.²⁶⁴

Among the findings for employer firms relevant to discriminatory barriers were the following:

263. Small Business Credit Survey, <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

264. *Id* at 22. Samples for SBCS are not selected randomly. To control for potential biases, the sample data are weighted so that the weighted distribution of firms in the SBCS matches the distribution of the small firm population in the United States by number of employees, age industry, geographic location, gender of owner, and race or ethnicity of owners.

- Not controlling for other firm characteristics, fewer minority-owned firms were profitable compared to non-minority-owned firms during the past two years.²⁶⁵ On average, minority-owned firms and non-minority-owned firms were about as likely to be growing in terms of number of employees and revenues.²⁶⁶
- Black-owned firms reported more credit availability challenges or difficulties obtaining funds for expansion—even among firms with revenues of more than \$1M. For example, 62% of Black-owned firms reported that obtaining funds for expansion was a challenge, compared to 31% of White-owned firms.²⁶⁷
- Black-owned firms were more likely to report relying on personal funds of owner(s) when they experienced financial challenges to fund their business. At the same time, White- and Asian-owned firms reported higher debt levels than Black- and Hispanic-owned firms.²⁶⁸
- Black-owned firms reported more attempts to access credit than White-owned firms but sought lower amounts of financing. Forty percent of Black-owned firms did not apply because they were discouraged, compared to 14% of White-owned firms.²⁶⁹
- Low credit score and lack of collateral were the top reported reasons for denial of applications by Black- and Hispanic-owned firms.²⁷⁰

ii. Non-employer firms²⁷¹

Queries were submitted to non-employer firms in the third and fourth quarters of 2018. Of the 4,365 firms in the unweighted sample, five percent were Asian, 24% were Black, seven percent were Hispanic, and 64% were White. Data were then weighted by age, industry, geographic location (census division and urban or rural location), and minority status.²⁷²

Among the findings for non-employer firms relevant to discriminatory barriers were the following:

265. *Id.* at 3.

266. *Id.* at 4.

267. *Id.* at 5.

268. *Id.* at 6.

269. *Id.* at 9.

270. *Id.* at 15.

271. *Id.* at 18.

272. *Id.* at 18.

- Black-owned firms were more likely to operate at a loss than other firms.²⁷³
- Black-owned firms reported greater financial challenges, such as obtaining funds for expansion, accessing credit and paying operating expenses than other businesses.²⁷⁴
- Black- and Hispanic-owned firms submitted more credit applications than White-owned firms.²⁷⁵

g. 2016 Small Business Credit Survey

The 2016 Small Business Credit Survey²⁷⁶ obtained 7,916 responses from employer firms with race/ethnicity information and 4,365 non-employer firms in the 50 states and the District of Columbia. Results were reported with four race/ethnicity categories: White, Black or African American, Hispanic, and Asian or Pacific Islander.²⁷⁷ It also reported results from woman-owned small employer firms, defined as firms where 51% or more of the business is owned by women, and compared their experiences with male-owned small employer firms.

i. The 2016 Small Business Credit Survey: Report on Minority-Owned Firms²⁷⁸

The 2016 SBCS Report on Minority-Owned Firms provided results for White-, Black- or African American-, Hispanic-, and Asian- or Pacific Islander-owned firms.

Demographics²⁷⁹

The Report found that Black-, Asian-, and Hispanic-owned firms tended to be younger and smaller in terms of revenue size, and they were concentrated in different industries. Black-owned firms were concentrated in the healthcare and education industry sectors (24%). Asian-owned firms were concentrated in professional services and real estate (28%). Hispanic-owned firms were concentrated in non-manufacturing goods production and associated services industry, including building trades and Goods (27%). White-owned firms were more evenly distributed

273. *Id.*

274. *Id.* at 19.

275. *Id.* at 20.

276. <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

277. When the respondent sample size by race for a survey proved to be too small, results were communicated in terms of minority vis-à-vis non-minority firms.

278. <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

279. 2016 SBCS, at 2.

across several industries but operated most commonly in the professional services industry and real estate industries (19%), and non-manufacturing goods production and associated services industry (18%).²⁸⁰

Profitability Performance Index²⁸¹

After controlling for other firm characteristics, the Report found that fewer minority-owned firms were profitable compared to non-minority-owned firms during the prior two years. This gap proved most pronounced between White-owned (57%) and Black-owned firms (42%). On average, however, minority-owned firms and non-minority-owned firms were nearly as likely to be growing in terms of number of employees and revenues.

Financial and Debt Challenges/Demands²⁸²

The number one reason for financing was to expand the business or pursue a new opportunity. Eighty-five percent of applicants sought a loan or line of credit. Black-owned firms reported more attempts to access credit than White-owned firms but sought lower amounts of financing.

Black-, Hispanic-, and Asian-owned firms applied to large banks for financing more than they applied to any other sources of funds. Having an existing relationship with a lender was deemed more important to White-owned firms when choosing where to apply compared to Black-, Hispanic- and Asian-owned firms.

The Report also found that small Black-owned firms reported more credit availability challenges or difficulties for expansion than White-owned firms, even among firms with revenues in excess of \$1M. Black-owned firm application rates for new funding were ten percentage points higher than White-owned firms; however, their approval rates were 19 percentage points lower. A similar but less pronounced gap existed between Hispanic- and Asian-owned firms compared with White-owned firms. Of those approved for financing, only 40% of minority-owned firms received the entire amount sought compared to 68% of non-minority-owned firms, even among firms with comparably good credit scores.

280. *Id.* Forty-two percent of Black-owned firms, 21% of Asian-owned firms, and 24% of Hispanic-owned firms were smaller than \$100K in revenue size compared with 17% of White-owned firms.

281. *Id.* at 3-4.

282. *Id.* at 8-9; 11-12; 13; 15.

Relative to financing approval, the Report found stark differences in loan approvals between minority-owned and White-owned firms. When controlling for other firm characteristics, approval rates from 2015 to 2016 increased for minority-owned firms and stayed roughly the same for non-minority-owned firms. Hispanic- and Black-owned firms reported the highest approval rates at online lenders.²⁸³

Low credit score and lack of collateral were the top reported reasons for denial of Black- and Hispanic-owned firms' applications. Satisfaction levels were lowest at online lenders for both minority- and non-minority-owned firms. A lack of transparency was cited as one of the top reasons for dissatisfaction for minority applicants and borrowers.

Forty percent of non-applicant Black-owned firms reported not applying for financing because they were discouraged (expected not to be approved), compared with 14% of White-owned firms. The use of personal funds was the most common action taken in response to financial challenges, with 86% of Black-owned firms, 77% of Asian-owned firms, 76% of White-owned firms, and 74% of Hispanic-owned firms using this as its source.

A greater share of black-owned firms (36%) and of Hispanic-owned firms (33%) reported existing debt in the past 12 months of less than \$100,000, compared with 21% of White-owned firms and 14% of Asian-owned firms. Black-owned firms applied for credit at a higher rate and tended to submit more applications, compared with White-owned firms. Black-, Hispanic-, and Asian-owned firms applied for higher-cost products and were more likely to apply to online lenders compared to White-owned firms.

Business Location Impact²⁸⁴

Controlling for other firm characteristics, minority-owned firms located in low-income minority zip codes reported better credit outcomes at large banks, compared with minority-owned firms in other zip codes. By contrast, at small banks, minority-owned firms located in low- and moderate-income minority zip codes experienced lower approval rates than minority-owned firms located in other zip codes.

283. The share of minority-owned firms receiving at least some financing was lower across all financing products, compared with non-minority firms.

284. *Id.* at 17.

Non-employer Firms²⁸⁵

Non-employer firms reported seeking financing at lower rates and experienced lower approval rates than employer firms, with Black-owned non-employer firms and Hispanic-owned non-employer firms experiencing the most difficulty. White-owned non-employer firms experienced the highest approval rates for new financing, while Black-owned non-employer firms experienced the lowest approval rates for new financing.

ii. **The 2016 Small Business Credit Survey: Report on Woman-Owned Firms**²⁸⁶

The 2016 SBCS Report on Woman-Owned Firms provides results from woman-owned small employer firms where 51% or more of the business is owned by women. These data compared the experience of these firms compared with male-owned small employer firms.

Firm Characteristics: Woman-Owned Firms Start Small and Remain Small and Concentrate in Less Capital-Intensive Industries²⁸⁷

The Report found that 20% of small employer firms were woman-owned, compared to 65% male-owned and 15% equally owned. Woman-owned firms generally had smaller revenues and fewer employees than male-owned small employer firms. These firms tended to be younger than male-owned firms.

Woman-owned firms were concentrated in less capital-intensive industries. Two out of five woman-owned firms operated in the healthcare and education or professional services and real estate industries. Male-owned firms were concentrated in professional services, real estate, and non-manufacturing goods production and associated services.²⁸⁸

Profitability Challenges and Credit Risk Disparities²⁸⁹

Woman-owned firms were less likely to be profitable than male-owned firms. These firms were more likely to report being medium or high credit risk compared to male-owned firms. Notably, gender differences by credit risk were driven by woman-owned startups. Among firms

285. *Id.* at 21.

286. <https://www.newyorkfed.org/medialibrary/media/smallbusiness/2016/SBCS-Report-WomenOwnedFirms-2016.pdf>.

287. 2016 SBCS, at 1-5.

288. Non-manufacturing goods production and associated services refers to firms engaged in Agriculture, Forestry, Fishing, and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Goods; Wholesale Trade; Transportation and Warehousing (NAICS codes: 11, 21, 22, 23, 42, 48-49).

289. *Id.* at 6-7.

older than five years, credit risk was indistinguishable by the owner's gender.

Financial Challenges During the Prior Twelve Months²⁹⁰

Woman-owned firms were more likely to report experiencing financial challenges in the prior twelve months: 64% compared to 58% of male-owned firms. They most frequently used personal funds to fill gaps and make up deficiencies. Similar to male-owned firms, woman-owned firms frequently funded operations through retained earnings. Ninety percent of woman-owned firms relied upon the owner's personal credit score to obtain financing.

Debt Differences²⁹¹

Sixty-eight percent of woman-owned firms had outstanding debt, similar to that of male-owned firms. However, woman-owned firms tended to have smaller amounts of debt, even when controlled for the revenue size of the firm.

Demands for Financing²⁹²

Forty-three percent of woman-owned firms applied for financing. Woman-owned applicants tended to seek smaller amounts of financing even when their revenue size was comparable.

Overall, woman-owned firms were less likely to receive all financing applied for compared to male-owned firms. Woman-owned firms received a higher approval rate for U.S. Small Business Administration loans compared to male-owned firms. Low-credit, woman-owned firms were less likely to be approved for business loans than their male counterparts with similar credit (68% compared to 78%).

Firms That Did Not Apply for Financing²⁹³

Woman-owned firms reported being discouraged from applying for financing for fear of being turned down at a greater rate: 22% compared to 15% for male-owned firms. Woman-owned firms cited low credit scores more frequently than male-owned firms as their chief obstacle in securing credit. By contrast, male-owned businesses were more likely to cite performance issues.

290. *Id.* at 8.
291. *Id.* at 10.
292. *Id.* at 16.
293. *Id.* at 14.

*Lender Satisfaction*²⁹⁴

Woman-owned firms were most consistently dissatisfied by lenders' lack of transparency and by long waits for credit decisions. However, they were notably more satisfied with their borrowing experiences at small banks rather than large ones.

2. Small Business Administration Loans to African American Businesses (2020)

As detailed in a 2021 article published in the *San Francisco Business Times*,²⁹⁵ the number of loans to Black businesses through the SBA's 7(a) program²⁹⁶ decreased 35% in 2020.²⁹⁷ This was the largest drop in lending to any race or ethnic group tracked by the SBA. The 7(a) program is the SBA's primary program for financial assistance to small businesses. Terms and conditions, like the guaranty percentage and loan amount, vary by the type of loan. Lenders and borrowers can negotiate the interest rate, but it may not exceed the SBA maximum.²⁹⁸

Bankers, lobbyists, and other financial professionals attributed the 2020 decline to the impact of the PPP pandemic relief effort.²⁹⁹ The PPP loan program provided the source of relief to underserved borrowers through a direct incentive for small businesses to keep their workers on payroll.³⁰⁰ Approximately 5.2M PPP loans were made in 2020, as compared with roughly 43,000 loans made through the 7(a) program.

In a published statement to the *Portland Business Journal*, the American Bankers Association, an industry trade group, noted that the 2020 decline in SBA 7(a) loans to Black-owned businesses is not a one-year anomaly; it has been declining for years at a much faster rate than 7(a) loans to other borrowers. The 2020 data³⁰¹ reveal that the number of SBA loans made annually to Black

294. *Id.* at 26.

295. SBA Loans to African American Businesses Decrease 35%, *San Francisco Business Times* (August 11, 2021) at: <https://www.bizjournals.com/sanfrancisco/news/2021/08/11/sba-loans-to-african-american-businesses-decrease.html>. Data were obtained through a Freedom of Information Act request.

296. Section 7(a) of the Small Business Act of 1953 (P.L. 83-163, as amended).

297. The total number of 7(a) loans declined 24%.

298. The SBA caps the maximum spread lenders can charge based on the size and maturity of the loan. Rates range from prime plus 4.5% to prime plus 6.5%, depending on how much is borrowed.

299. The Coronavirus Act, Relief, and Economic Security Act ("CARES Act"), required the SBA to issue guidance to PPP lenders to prioritize loans to small businesses owned by socially and economically disadvantaged individuals including Black-owned businesses. See 116-136, §1, March 27, 2020, 134 Stat. 281.

300. PPP loans were used to help fund payroll costs, including benefits, and to pay for mortgage interest, rent, utilities, workers protection costs related to COVID-19, uninsured property damage costs caused by looting or vandalism during 2020 as well as certain supplier costs and operational expenses.

businesses has declined 90% since a 2007 peak, more than any other group tracked by the SBA. In that interval, the overall number of loans decreased by 65%.

The nation's four largest banks (JP Morgan Chase, Bank of America, Citigroup, and Wells Fargo), which hold roughly 35% of national deposits, made 41% fewer SBA 7(a) loans to Blacks in 2020.³⁰²

PPP loans served as a lifeline during the pandemic for millions of businesses. However, industry experts maintained that PPP loans detracted from more conventional SBA lending efforts that year. Wells Fargo provided more than 282,000 PPP loans to small businesses nationwide in 2020, with an average loan size of \$50,000. Wells Fargo, the most active lender for Black businesses nationwide in 2020, saw its SBA loans to Blacks drop from 263 in 2019 to 162 in 2020. Bank of America, Chase, and Citigroup also reported fewer SBA loans to African American businesses in 2020.

While PPPs have been heralded for providing needed monies to distressed small and mid-size businesses, data reveals disparities in how loans were distributed.³⁰³ An analysis in 2020 by the *Portland Business Journal*, found that of all 5.2M PPP loans, businesses in neighborhoods of color received fewer loans and delayed access to the program during the early critical days of the pandemic.³⁰⁴ More recent analysis released by the Associated Press indicates that access for borrowers of color improved exponentially during the later rounds of PPP funding, following steps designed to make the program more accessible to underserved borrowers.

E. Conclusion

The economy-wide data, taken as a whole, paint a picture of systemic and endemic inequalities in the ability of firms owned by minorities and women to have full and fair access to City of Seattle contracts and associated subcontracts. This evidence supports the conclusion that absent the use of narrowly tailored contract goals, these inequities will create disparate impacts on minorities and women.

301. The SBA denied the original request for information; however, the publication prevailed on appeal.

302. Data obtained by the *Business Journal* does not include information from lenders who made less than ten loans in 2020.

303. While PPP loans are administered by the SBA, they are disbursed primarily through banks.

304. Many industry experts have observed that businesses that already had strong relationships with lenders were the most successful in accessing PPP loans. The nation's long history of systemic racism in banking fostered disparities in PPP loan distribution. See Alicia Plerhoples, *Correcting Past Mistakes: PPP Loans and Black-Owned Small Businesses*, at <https://www.acslaw.org/expertforum/correcting-past-mistakes-ppp-loans-and-black-owned-small-businesses/>.

VI. QUALITATIVE EVIDENCE OF RACE AND GENDER BARRIERS IN CITY OF SEATTLE'S MARKET AREA

In addition to quantitative data, a disparity study should further explore anecdotal evidence of experiences with discrimination in contracting opportunities. This evidence is relevant to the question of whether despite the operations of the City's contracting equity programs, Women- and Minority-owned Business Enterprises ("W/MBEs") and Disadvantaged Business Enterprises ("DBEs") face discriminatory barriers to their full and fair participation in City of Seattle opportunities. Anecdotal evidence also sheds light on the likely efficacy of only race- and gender-neutral remedies designed to benefit all small contractors. As discussed in Chapter II, this type of anecdotal data has been held by the courts to be relevant and probative of whether an agency has a need to use narrowly tailored W/M/DBE contract goals to remedy the effects of past and current discrimination and to create a level playing field for contract opportunities for all firms.

The Supreme Court has held that anecdotal evidence can be persuasive because it brings "the cold [statistics] convincingly to life."³⁰⁵ Evidence about discriminatory practices engaged in by prime contractors, agency personnel, and other actors relevant to business opportunities has been found relevant regarding barriers both to minority firms' business formation and to their success on governmental projects.³⁰⁶ The courts have held that while anecdotal evidence is insufficient standing alone, "[p]ersonal accounts of actual discrimination or the effects of discriminatory practices may, however, vividly complement empirical evidence. Moreover, anecdotal evidence of a [government's] institutional practices that exacerbate discriminatory market conditions are [sic] often particularly probative."³⁰⁷ "[W]e do not set out a categorical rule that every case must rise or fall entirely on the sufficiency of the numbers. To the contrary, anecdotal evidence might make the pivotal difference in some cases; indeed, in an exceptional case, we do not rule out the possibility that evidence not reinforced by statistical evidence, as such, will be enough."³⁰⁸

305. *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 399 (1977).

306. *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1172 (10th Cir. 2000), *cert. granted*, 532 U.S. 941, *then dismissed as improvidently granted*, 534 U.S. 103 (2001).

307. *Concrete Works of Colorado, Inc. v. City and City of Denver*, 36 F.3d 1513, 1120, 1530 (10th Cir. 1994).

There is no requirement that anecdotal testimony be “verified” or corroborated, as befits the role of evidence in legislative decision-making, as opposed to judicial proceedings. In finding the State of North Carolina’s Historically Underutilized Business program to be constitutional, the Fourth Circuit Court of Appeals opined that “[p]laintiff offers no rationale as to why a fact finder could not rely on the State’s ‘unverified’ anecdotal data. Indeed, a fact finder could very well conclude that anecdotal evidence need not—indeed cannot—be verified because it is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perception.”³⁰⁹ Likewise, the Tenth Circuit held that “Denver was not required to present corroborating evidence and [plaintiff] was free to present its own witnesses to either refute the incidents described by Denver’s witnesses or to relate their own perceptions on discrimination in the Denver construction industry.”³¹⁰

To explore this type of anecdotal evidence of possible discrimination against minorities and women in the City’s geographic and industry markets and the effectiveness of its current race-and gender-neutral measures, we conducted seven small group and individual interviews with businesses and stakeholder organization representatives totaling 91 participants. We also explored whether veteran owned business enterprises (“VBEs”) and non-minority, non-female LGBT individuals³¹¹ had experienced discrimination in contracting opportunities. We received written comments throughout the study term.

We met with a broad cross section of business owners in the City’s geographic market. Firms ranged in size from large, long established prime contracting and consulting firms to new market entrants. We sought to explore their experiences in seeking and performing public sector prime contracts and subcontracts with the City and other government agencies, as well as in the private sector. We also elicited recommendations for improvements to the City’s W/MBE and DBE program for FTA contracts, discussed in Chapter III.

In addition to exploring discrimination against minorities, the City asked us to examine the possible economic dislocation experienced by W/M/DBEs caused by the COVID-19 pandemic. The results of this qualitative examination indicate that the pandemic negatively affected some firms’ revenues and costs, abilities to retain employees and customer base. Many owners have fully recovered; some even benefited. Some, however, are still trying to fully overcome the impact of the pandemic.

In addition to the group interviews, we conducted an electronic survey of firms in the City’s market area about W/MBEs’ experiences in obtaining work, City marketplace

308. *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade City*, 122 F.3d 895, 926 (11th Cir. 1997).

309. *H.B. Rowe Co., Inc. v. Tippett*, 615 F.3d 233, 249 (4th Cir. 2010).

310. *Concrete Works of Colorado, Inc. v. City and City of Denver*, 321 F.3d 950, 989 (10th Cir. 2003), cert. denied, 540 U.S. 1027 (2003).

311. Gay, bisexual and transgender individuals of color were included with their respective racial or ethnic groups and White lesbians, bisexual and transgender individuals who identified as female were included with White women.

conditions, impact of the pandemic and the City's W/MBE program for locally funded contracts and DBE Program for FTA funded contracts. One hundred and sixty-three net responses were received to the survey. Among W/MBEs, 42.3% reported that they still experience barriers to equal contracting opportunities; 36.5% said their competency was questioned because of their race or gender; and 24.8% indicated that they had experienced job-related sexual or racial harassment or stereotyping.

A. Business Owner Interviews

The following are summaries of the issues discussed. Quotations are indented and may have been shortened for readability. The statements are representative of the views expressed by numerous participants.

We have also appended a summary of the anecdotal results from several disparity studies we have conducted in Washington State. These studies are directly relevant and probative of the barriers to success that minority and woman entrepreneurs continue to face in the Washington market.³¹²

1. Experiences with discriminatory attitudes and negative assumptions about competency

Several W/MBEs, especially those owned by woman, suffered from negative stereotypes and demeaning attitudes and behaviors.

I have had the clients and people that they asked me to double check with someone else at the office if that's what we are going to do, or those are the terms of the agreement, or they want to talk with someone else, especially when you are trying to make an appointment or you are trying to get into someone's schedule and they never have time for you. But if a guy collaborator is calling them, they have time available in their schedule. So, there is a lot of that in the construction industry.

There are a lot of very aggressive people towards us. And then you send in my brother or somebody else within the company and they're like, oh yeah, I'm so happy to talk to you about this and let me discuss this with you. And their tone is completely different than when I had just called 10 minutes ago and you decided to yell at me about my singular question that was actually, I didn't say it sassy or anything like that. I was very, it was purely curiosity and it was met with huge aggression and

312. Appendix F: Qualitative Evidence from Washington Disparity Studies.

then when a man calls you, it's completely different. So, it's stuff like that. Getting passed over, getting completely walked by on a job site. When I'm going over to talk to somebody or give them a check even, they'll just walk right by me. I'm like, I thought you wanted to get paid. Apparently not. Even my office admin, she gets a lot of aggressive phone calls to her and then they'll talk to our estimator and they'll just be super happy and friendly. And it's very difficult because if I go to job sites, I am extremely uncomfortable because nobody cares to chat with me. But if I go to networking meetings, depending on the location, the AGC is still a little iffy. But the DBIA, they are very friendly and they're very used to talking to women and other designers and all of that side. So, depending on who you're talking with will be different levels of aggression or just interest in talking. I've even had it from inside my company where people over-talk me or over-explain or takeover and I'm like, guys, this is my meeting. I called this meeting, what are you doing? So, there's a lot of it and it takes a lot of patience and I don't even know. It's a lot that happens and sometimes it's just like I want to be out there, but am I improving things by being out there or do I just need to find somebody who fits the mold that the other side wants to talk to? That's been my experience.

We don't really have any specific examples where someone says, "Because you are South Asian and you're not native, we didn't hire you." A conversation doesn't actually happen like that. But what has been happening is because we are a network of minority A&E businesses, we just know that our members are falling off and they're getting less work from the region. And most of them are surviving from other regions or private sector work. So that's the only benchmark we have to say that minority companies are not getting work, is that we just know that people on our team are not getting work. But I also know that I fare well if the selection committee is majority diverse. So, the tokenism of having one person of color usually shows up in the scoring sheet when I do get a scoring sheet, because I'll have one firm that lists me 95, 90 and the others are 60, 30, 25. The disparity in the scores is just a joke. That's the kind of bias we're dealing with, and it's not very overt that can be tracked.

I have experienced harassment on job sites with the city of Seattle. I had a guy, in fact, even yesterday, just told me that he thinks it's ridiculous that he has to use me. And I'm like, I don't understand. Do I not do just as good a job as the next guy? And

he goes, well the whole process is just a waste of time. And I said, well, I don't feel that way and we appreciate the work, but I don't understand how you could feel that way when we do just as good a job as anybody else.

The race as well as the gender matters.

A man agreed that women suffer from sexism in the construction industry.

Women experiencing discrimination or being talked down to, I definitely experience it with our CEO. She's very strong in business, knows the industry really well, is accredited in several different ways, and she gets treated pretty poorly by contractors. Not all of them of course, but some of them. And definitely gets talked past, gets mansplained, gets passed over, and they're always looking at me for the answer.

Some firms reported that being an MBE can make it more difficult to hire good staff because there can be a stigma to being associated with a minority firm.

It is hard to find quality workers. First of all, they don't, people inherently don't like to work for minority companies because of the stigma that they think goes with that.

A WBE consultant had not experienced disrespect or unfair treatment because of gender.

Absolutely treated with respect.

2. Unequal access to networks and information

Preexisting networks and information channels were reported to often exclude W/MBEs.

Not being involved in the early stages of project and program formulation [hurts W/MBEs]. Examples being, the City works with the AGC and other large contracting associations in the planning and development of programs and projects. So, they know five, 10, 15 years in advance of projects that are coming down the pipe. We hear about those program 30 days before the bid is due or two weeks before the bid is due.... Our firms are usually not even included to the extent that they're able to successfully compete for planning and engineering and architectural work. It's usually not until they get to the construction stage that they think, "Oh, we've got a requirement," and we make an effort to try to involve firms.

[Not holding pre-vid conferences is detrimental] because you can't see who is who, and who is going to be priming this, and who you want to buddy up with if you don't already know.

Regular occasions to interact with prime contractors and City staff were repeatedly mentioned as a way to increase opportunities. Some consultants suggested there needs to be a vehicle for smaller firms to introduce themselves to the City's project managers and key large firm staff before solicitations are issued.

If you had not met with the PM prior to the solicitation hitting the street about that project and that PM for the City or whoever had not met your PM, we were not going after that. So, figuring out a way that we can get in front and network with both the PMs and then the primes prior to the solicitation coming out, because that's when the relationship is made, and getting that done then will help you get in front of it.

What else could be helpful is I guess having more access to the project managers who are the ones that are making decisions.... People who knew the project managers or had some type of relationship and they would actually get the contracts even without bidding for it.

That's the relationship-based work, so it's who you know....With the City ... there's a lot of turnover. So, the relationships I've built over the years, there's turnover. So those relationships disappear and it's a matter of re-making new connections and then those connections that you're trying to make, that person's already had the opportunity to make other connections. So, they're already filling in the positions that they want for those contracts. So, you're still trying to play catch up.

I want to know who that person is than waiting until after the RFP's been published and then it's already too late to even try to connect with you.

Working with local W/MBE contracting groups was helpful to some owners.

The problem is getting in front of decision makers.... The City, Tabor 100 [have] been very, very helpful.

Another suggested approach was to require interested bidders provide their information as a condition of being able to submit a bid or proposal. The system used by the Port of Seattle was lauded as a model.

For the Port of Seattle, you are able to see who else is bidding. You are able to reach out to the primes that are bidding. With the City of Seattle, you are not able to see that.... You can be able to reach out to the primes yourself, have that interview process, and therefore they will be able to learn where you have great expertise on and therefore include you.... With the Port of Seattle, you're able to click, there's emails, you just send them an email that you are interested in this and then you say, "Can we partner in this area? These are my expertise." Then you can have that partnership or relationship going forward. This is not the case with the City of Seattle.

3. Barriers to obtaining and performing work

Some small firms and W/MBEs found it difficult to receive fair treatment.

[Prime contractors] like to take advantage of how small we are. So, I don't know if this is necessarily a sexist thing, it's more of a size disadvantage thing. They're taking advantage of our DBE/WBE status, of our DBE, WBE, Service-Disabled Veteran Owned, they're taking advantage of that, and really just trying to run us under. And I've noticed that with several large companies, they really just try to bulldoze you and strong arm you into doing things that weren't on your scope or what you bid.

General contractors asking us to do scope of work that's outside of our scope [and then don't pay for it], and that happens all the time.

We don't really feel a strong partnership from our general contractors. Some of our general contractors we do.... do feel like it's because we're MBE and also because we're small. I think that they can see that we have some weak spots that they can take advantage of us with.

Many WBEs felt that prime contractors only use them to meet inclusion requirements.

[Larger prime consultants that use us to meet the city's inclusion requirements, don't use us on non-goals projects has] been my experience.

In a private sector [project], it's fifty-fifty. And the public sector, I say 95%, almost 90-95%, they do say that, yeah, we have the goals, and we want you to meet the goals.... Some GCs are really, really *bona fide* GCs. They go all the way; they make all

the effort. Some play games, they use your name, and then take advantage of your name. So, this is a public sector, it's much better than the private sector.

A minority-owned firm reported that once it was no longer certified, business dropped dramatically.

[No longer being a certified minority-owned firm] has [had] a huge impact on our business. Because a lot of companies use you and because we're a niche company, we're not a company that is widely, everybody does. It did impact us quite a bit. But it's because people think that they need to get their, what we call brownie points business. You got to get your low points to get all your MBE goals or DBE goals or whatever goals they're called, whatever flavor. So, a lot of companies just used us primarily as their go-to for those niche business or niche services.... Because a lot of firms will, and I used to do this when I was a prime, to go through a list and just to look for MBEs, DBEs or whatever, to fill the holes that I needed on my team.

A few interviewees reported that they had more opportunities in the private sector than on public projects.

We've lost quite a bit of money pursuing government and we even feel more blessed pursuing private contracting opportunities than government contracts.

The City's use of Community Workforce Agreements and Project Labor Agreements was a major issue for many W/MBEs.

CWAs and PLAs. We have fought those from the beginning. They are totally unfair to small businesses and specifically to minority-owned and women-owned, minority-owned businesses.

This will be one of the biggest hurdle and obstacle for the minorities.

I'm super concerned about the CWA requirements and what that's going to do to our work in Seattle because it does force us to pretty much sub out 40% of our scope of work.

When you go out to the union halls, there's not union people in the hall. And if they are in the hall, they're usually the ones that other people rejected. So, now you got to take your family members or key people because you can only have three working with them. And you have to then take your family

members and put them into the union setting.... But those that are not signatory to the union, when we start signing these agreements and letting the unions come into the non-signatory companies, you now have a new set of problems.

One common proposal was to exempt W/MBEs from these requirements or to set a threshold for their application.

What I recommend is if City of Seattle will be kind enough to exempt the minorities from CWAs. That will be very, very beneficial.... We cannot use our workers. We have to use the workers from the union. And they are not minority workers, and we are a minority company. So, what we want to do is, we want to use our own workforce, if we can, which is comprised of women, people of color, and all those.... If I'm going to use 1, 2, 3 workers, and then use all the workers from the union, then unfortunately, I have to lay off all of my own workers. So that's very, very detrimental to the minority cause.

If they just [set a high threshold for applicability of the CWAs] that, that would exclude the majority of our firms.

4. Impact of the COVID-19 pandemic

The City asked us to explore the impact of the COVID-19 pandemic on W/MBEs. The results were mixed. Some participants reported significant negative impacts. These ranged from the loss of employees to the loss of networking opportunities.

We were severely impacted by COVID. We were considered an essential business so we didn't go down like many did. But we are still understaffed. We've not been able to get people back in.... I lost some employees that didn't want to get vaccinated.... We did participate in the PPP, which was a great bridge for us because of the tremendous loss in revenue.

I've missed two and a half, almost three years of that [small group] networking.

Others stated the firms had not been affected.

Pandemic stuff, we were fine. I think we missed seeing city staff more often in person, because there was a lot you could learn just from being around them.

B. Anecdotal Survey of City of Seattle Firms

To supplement the interviews, we conducted an anecdotal electronic survey of firms on our Master W/M/DBE Directory; prime firms on the City’s contract data file; and non-minority, non-woman-owned veteran firms and other firms identified through our outreach efforts. The survey was comprised of up to 60 closed- and open-ended questions and replicated the topics discussed in the business owner interviews. Questions focused on doing business in the City’s market area, specifically barriers and negative perceptions, access to networks, information and experiences in obtaining work, firm capacity and capacity development, the impact of the COVID-19 pandemic, as well as the City’s W/MBE program and DBE program for FTA funded contracts.

Two hundred and twenty-six gross responses were received. After accounting for incomplete and non-relevant responses, there were 163 usable responses. Percentage results have been rounded to one decimal place to increase readability. We received only two useable responses from VBEs and zero usable responses from LGBT-owned firms. Information presented for VBE firms is limited to the Race and Gender Distribution table.

1. Respondents’ Profiles

Table 6-1: The race and gender distribution of the 163 respondents is listed below. Minority and woman respondents accounted for 84.1% of respondents; non-minority, non-female veterans for 1.2% of the respondents; and publicly held, non-minority, non-female respondents accounted for the remaining 14.7%.

Table 6-32: Race and Gender Distribution

Firm Ownership	#	%
Black or African American	38	23.3%
Hispanic	20	12.3%
Native Hawaiian or Pacific Islander American	4	2.5%
East, Southeast, Subcontinent Asian American	12	7.4%
Native American/Alaska Native	5	3.1%
Non-Minority Women	58	35.6%
W/M/DBE Total	137	84.1%
Non-Minority, Non-Female Veterans ^a	2	1.2%

Firm Ownership	#	%
Non-Minority, Non-Female LGBT	0	0.0%
Publicly Held, Non-W/M/DBEs	24	14.7%
Total Firms	163	100%

a. Only two non-minority, non-female veterans responded to the survey. This is an insufficient number to include in the charts and graphs. Written comments from the two veterans are included in the survey comments where applicable.

Chart 6-1: The type of work performed by the 161³¹³ respondents is listed below.

Chart 6-1: Type of Work

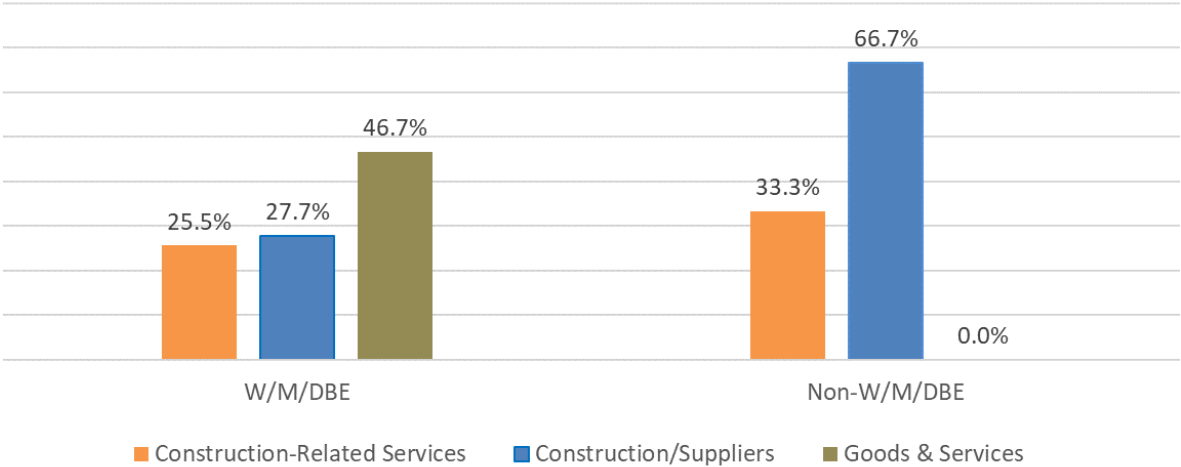


Chart 6-2: Among W/M/DBEs, construction firms and suppliers accounted for 27.7% of the respondents. Construction-related professional services firms accounted for 25.5% of the respondents. Goods & Services firms accounted for 46.7% of the respondents.

313. 161 is the total net number of W/M/DBE and non-W/M/DBE responses excluding the two from non-minority, non-female veteran firms. 137 is the total net number of W/M/DBE responses and 24 is the total net number of non-W/M/DBE responses.

Chart 6-2: W/M/DBE Type of Work

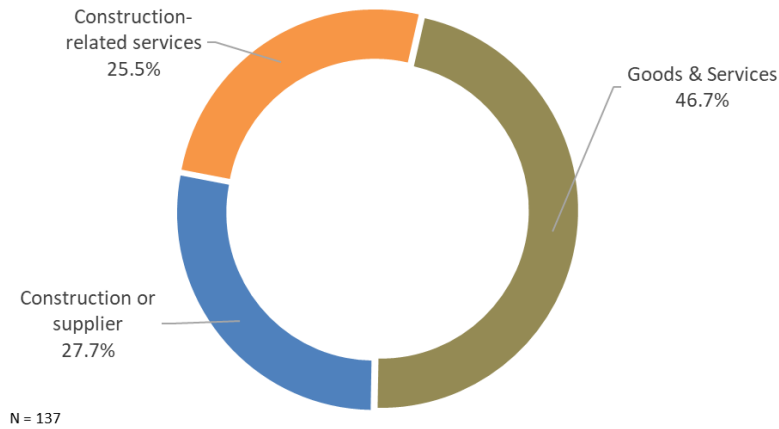


Chart 6-3: Among non-W/M/DBE respondents, construction firms accounted for 66.7% of the respondents. Construction-related professional services firms accounted for 33.3% of the respondents.³¹⁴

Chart 6-3: Non-W/M/DBE Type of Work

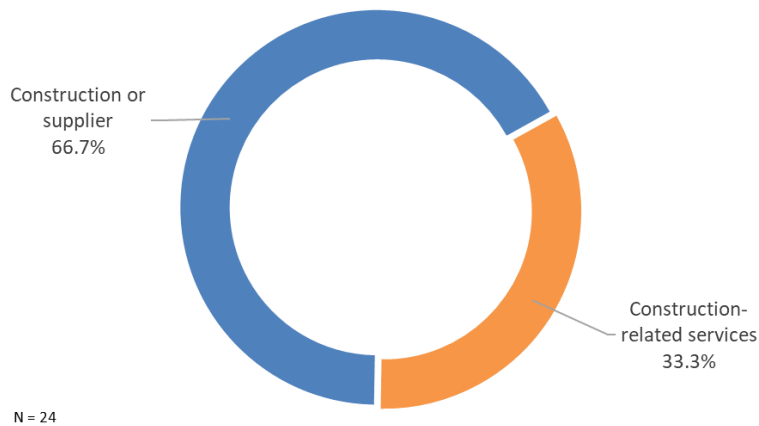
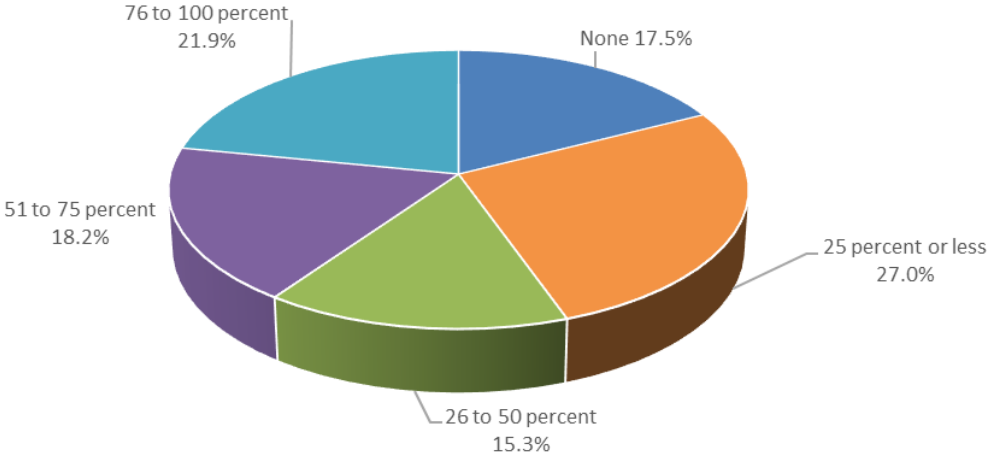


Chart 6-4: 82.5% of W/M/DBE respondents reported that some of their revenues were derived from government work: 27% reported up to twenty-five percent; 15.3% reported between twenty-five and fifty percent; 18.2% reported between fifty-one and seventy-five percent; and 21.9% reported

314. We received zero responses to the survey from non-W/M/DBE goods and services firms.

between seventy-six and one hundred percent. Government work did not contribute to the gross revenues of 17.5% of the firms.

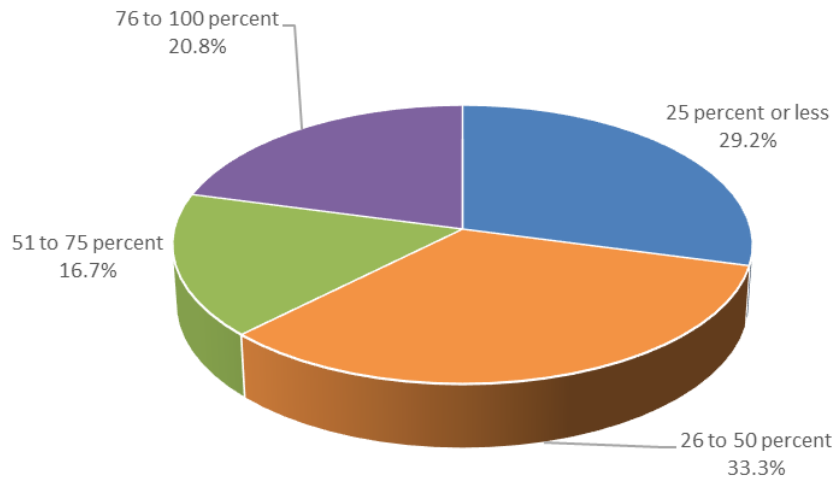
Chart 6-4: Percent of Gross Revenue from Government Work – W/M/DBE Firms



N = 137

Chart 6-5: All of the non-W/M/DBE respondents reported that some of their revenues were derived from government work: 29.2% reported twenty-five percent or less; 33.3% reported between twenty-five and fifty percent; 16.7% reported between fifty-one and seventy-five percent; and 20.8% reported between seventy-six and one hundred percent.

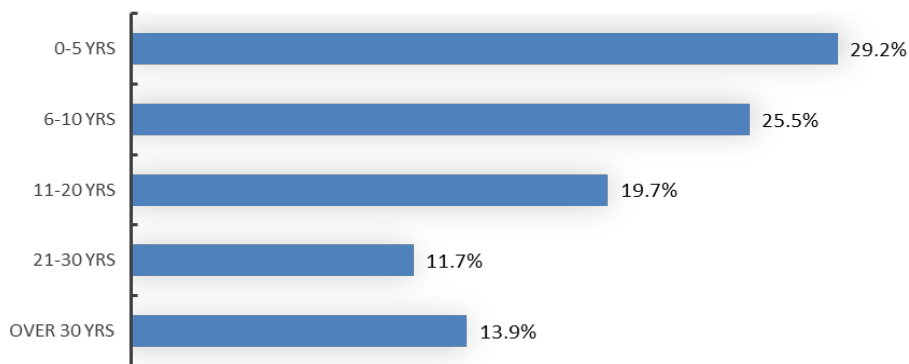
Chart 6-5: Percent of Gross Revenue from Government Work – Non-W/M/DBE Firms



N = 24

Chart 6-6: Almost thirty percent (29.2%) of W/M/DBE firms reported being in business for five years or less; 25.5% for six to ten years; 19.7% for 11 to 20 years; 11.7% for 21 to 30 years; and 13.9% for over 30 years.

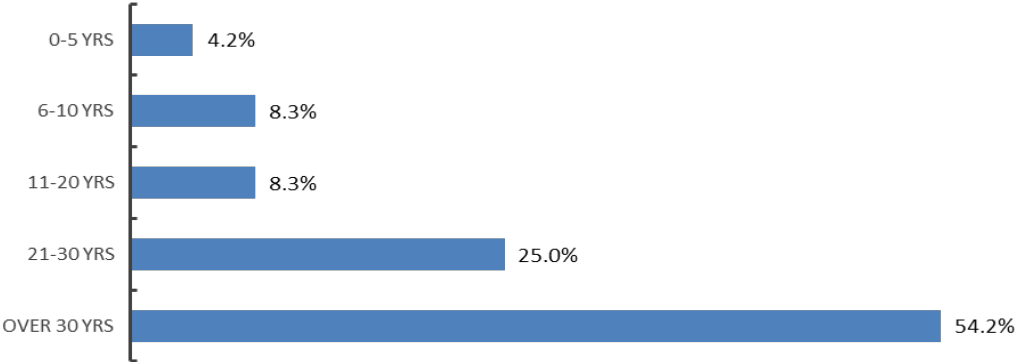
Chart 6-6: Years in Business – W/M/DBE Firms



N = 137

Chart 6-7: Only 4.2% of non-W/M/DBE firms reported being in business for five years or less; 8.3% for six to ten years; 8.3% for 11 to 25 years; 25.0% for 21 to 30 years. The majority— 54.2%— reported being in business for over 30 years.

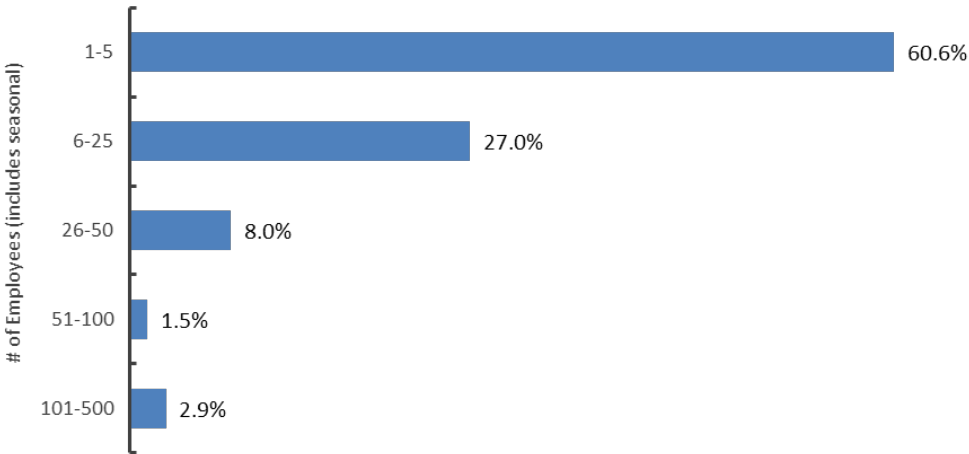
Chart 6-7: Years in Business – Non-W/M/DBE Firms



N = 24

Chart 6-8: Three fifths (60.6%) of W/M/DBE firms reported having one to five employees; 27.0% reported 6 to 25 employees; 8.0% reported 26 to 50 employees; 1.5% reported 51 to 100; and 2.9% reported 101 to over 500 employees.

Chart 6-8: Size of Workforce – W/M/DBE Firms



N = 137

Chart 6-9: Less than ten percent (8.3%) of non-W/M/DBE firms reported having one to five employees; 25.0% reported 6 to 25 employees; 8.3% reported 26 to 50 employees; 20.8% reported 51 to 100 employees; 25.0% reported 101 to 500 employees; and 12.5% reported over 500 employees.

Chart 6-9: Size of Workforce – Non-W/M/DBE Firms

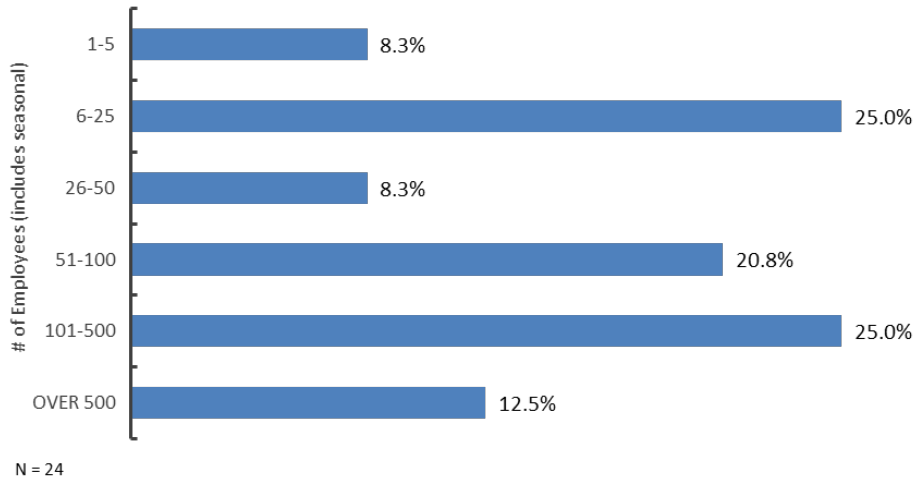


Chart 6-10: A little over ten percent (11.7%) of W/M/DBE respondents indicated their firm was a union signatory.

Chart 6-10: Union Signatory Status – W/M/DBE Firms

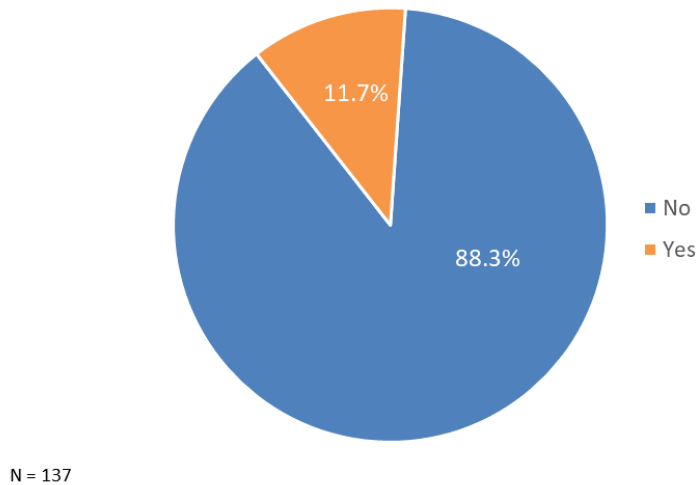
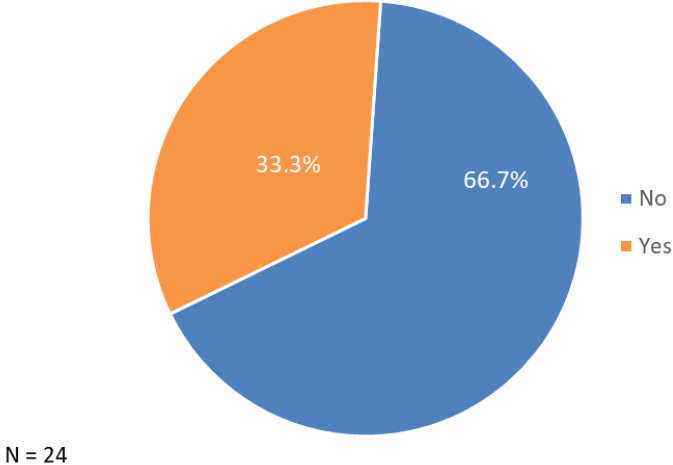


Chart 6-11: A third (33.3%) of non-WM/DBEs were union signatories.

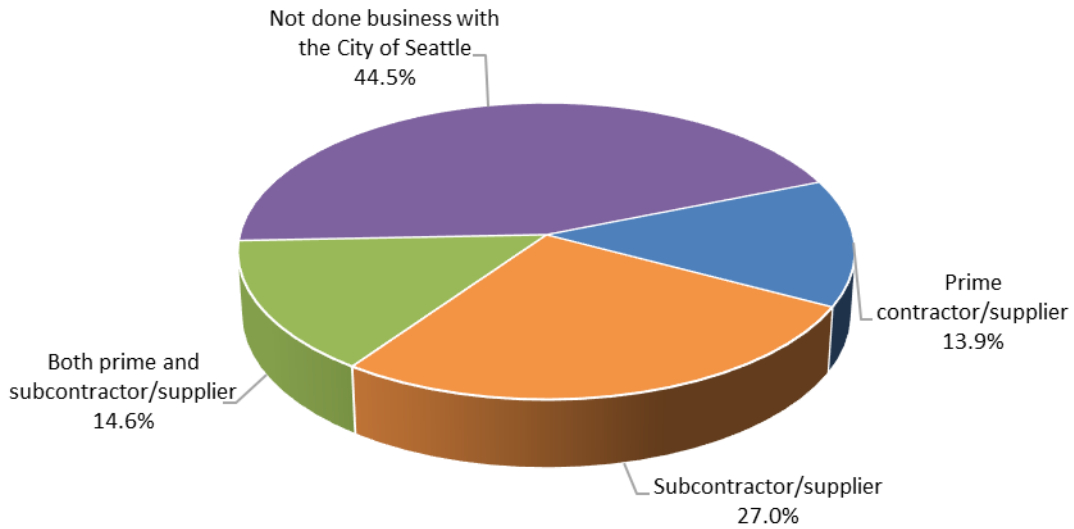
Chart 6-11: Union Signatory Status – Non-W/M/DBE Firms



2. City Contract and Bidding Profile

Chart 6-12: Among W/M/DBEs, 13.9% of the firms had worked on City projects only as a prime contractor or supplier; 27.0% had worked only as a subcontractor or supplier; 14.6% had worked as both a prime contractor or supplier and as a subcontractor; and 44.5% had not done business with the City.

Chart 6-12: Respondent Contractor Status – W/M/DBE Firms



N = 137

Chart 6-13: Among non-W/M/DBE respondents, 29.2% of the firms had worked on City projects only as a prime contractor or supplier; 25.0% had worked only as a subcontractor or supplier; 41.7% had worked as both a prime contractor or supplier and as a subcontractor; and 4.2% had not done business with the City.

Chart 6-13: Respondent Contractor Status with the City – Non-W/M/DBE Firms

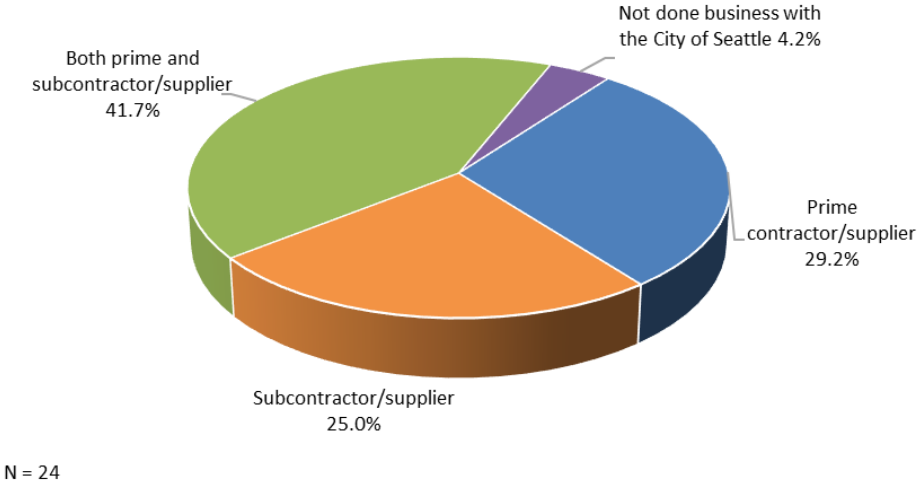
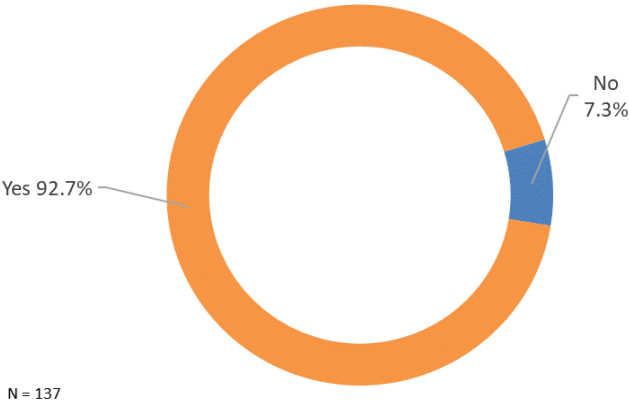


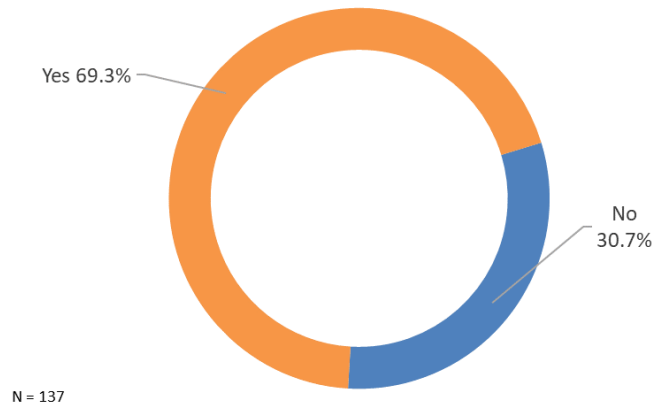
Chart 6-14: More than ninety percent (92.7%) of the W/M/DBE respondents indicated they were certified as an MBE or WBE.

Chart 6-14: WBE and MBE Certification Status Among W/M/DBE Respondents



Charts 6-15: Almost seventy percent (69.3%) of the W/M/DBE respondents were certified as a DBE with OMWBE.

Chart 6-15: DBE Certification Status Among W/M/DBE Respondents



3. Experiences in City of Seattle’s Market Area and Obtaining City Work

a. Discriminatory Barriers and Perceptions on the basis of Race or Gender

Chart 6-16: Over two-fifths (42.3%) percent of W/M/DBEs reported that they had experienced race or gender-based barriers to contracting opportunities.

Chart 6-16: W/M/DBE Barriers to Contracting Opportunities Based on Race and Gender

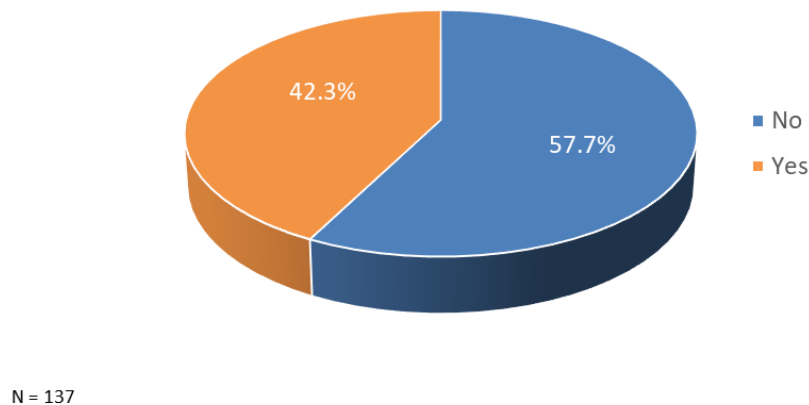
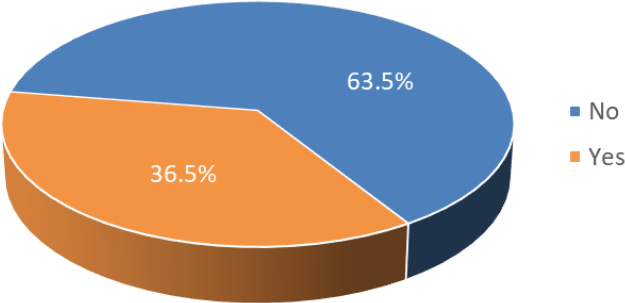


Chart 6-17: Over a third (36.5%) of W/M/DBEs answered “Yes” to the question, “Is your competency questioned based on your race and/or gender?”

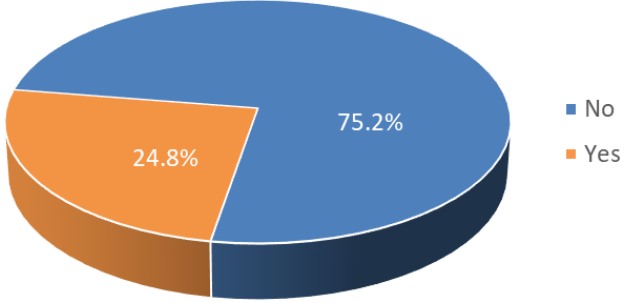
Chart 6-17: W/M/DBE Negative Perception of Competency Based on Race or Gender



N = 137

Chart 6-18: Almost a quarter (24.8%) of W/M/DBEs had experienced job-related sexual or racial harassment or stereotyping.

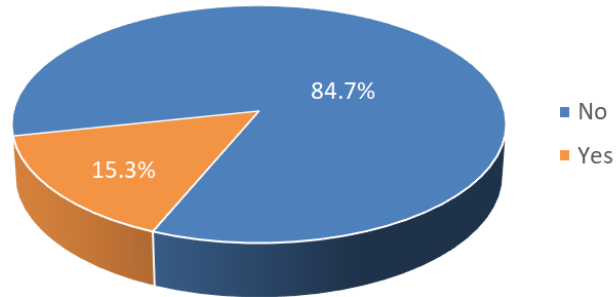
Chart 6-18: W/M/DBE Industry-Related Sexual or Racial Harassment or Stereotyping



N = 137

Chart 6-19: Discrimination from suppliers or subcontractors because of their race and/or gender was experienced by 15.3% of W/M/DBEs.

Chart 6-19: W/M/DBE Supplier Pricing and Terms Discrimination Based on Race and Gender

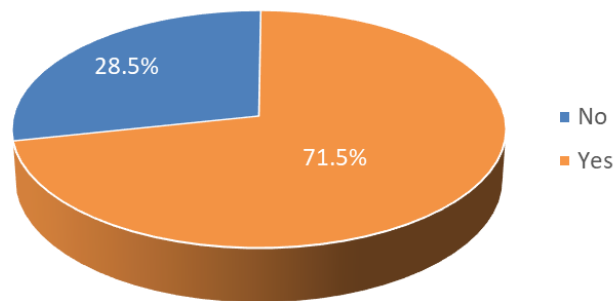


N = 137

b. Access to Formal/Informal Business and Professional Networks

Chart 6-20: Over a quarter (28.5%) of W/M/DBEs reported not having equal access to the same information as non-certified firms in their industry.

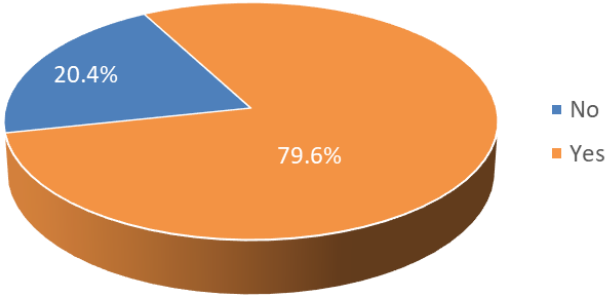
Chart 6-20: W/M/DBE Access to the Same Information as non-Certified Firms



N = 137

Chart 6-21: Limited access to informal and formal networking information was reported by 20.4% of W/M/DBEs.

Chart 6-21: W/M/DBE Access to Informal and Formal Networking Information



N = 137

c. Access to Financial Supports

Chart 6-22: A little over ten percent (10.9%) of W/M/DBEs indicated they faced challenges in obtaining surety insurance. None of the non-W/M/DBEs reported difficulties.

Chart 6-22: W/M/DBE Reported Barriers to Obtaining Insurance

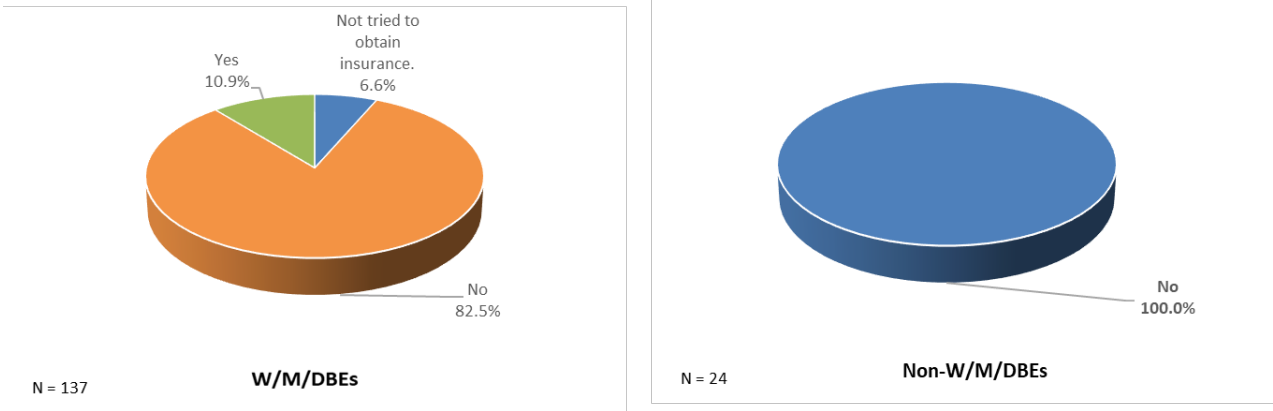


Chart 6-23: Less than ten percent (7.3%) of W/M/DBEs who tried to obtain bonding reported barriers in their efforts. Less than five percent (4.2%) of non-W/M/DBE reported such difficulties.

Chart 6-23: W/M/DBE Reported Barriers to Obtaining Bonding

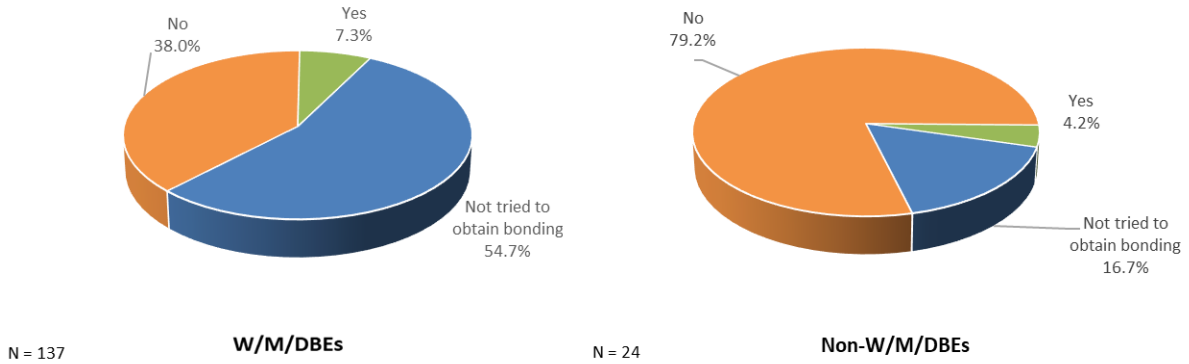
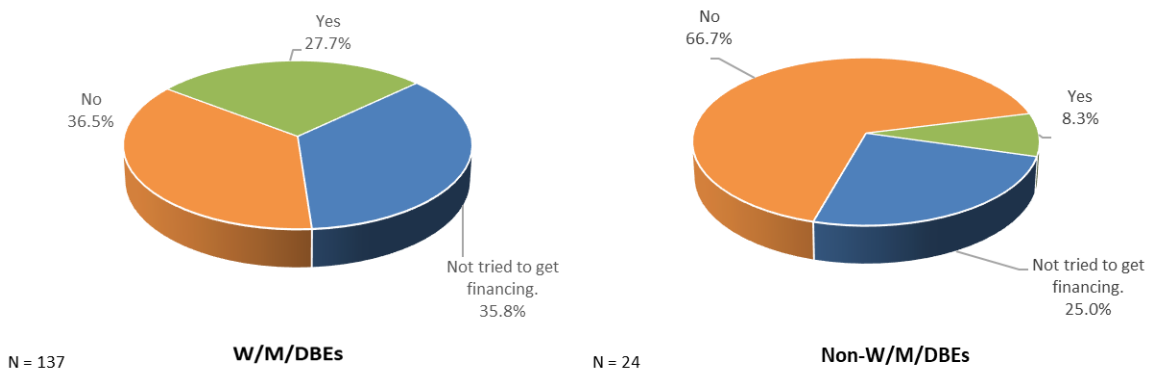


Chart 6-24: Among W/M/DBEs, almost thirty percent (27.7%) reported experiencing barriers to obtaining loans and financing. Among non-minority firms, only 8.3% reported such difficulties.

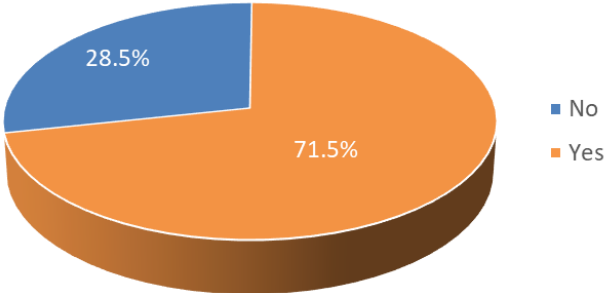
Chart 6-24: W/M/DBE Reported Barriers to Obtaining Financing and Loans



d. Obtaining Work on an Equal Basis

Chart 6-25: Almost three-quarters (71.5%) of W/M/DBEs reported that they are solicited for City or government projects with W/M/DBE goals.

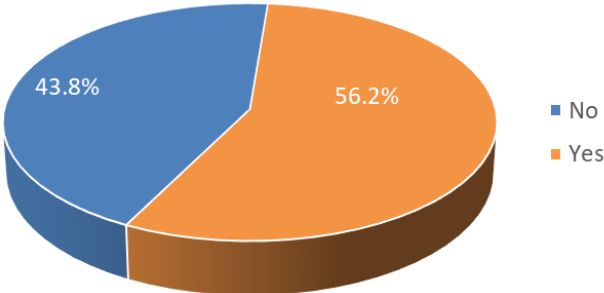
Chart 6-25: W/M/DBE Solicitation for City or Government Projects with W/M/DBE Goals



N = 137

Chart 6-26: Over half (56.2%) of W/M/DBE respondents reported that they are solicited for private projects or projects without goals.

Chart 6-26: W/M/DBE Solicitation for Private Projects or Projects Without Goals



N = 137

e. Prompt Payment

Chart 6-27: Of the W/M/DBE contractors who reported doing work for the City, almost three quarters (73.9%) said that the City paid them promptly. Prime contractors were reported to pay less promptly, with a little less than

half (49.4%) of W/M/DBE respondents reporting that prime contractors paid within 30 days.

Chart 6-27: W/M/DBE Experience with Prompt Payment within 30 Days by City and Primes

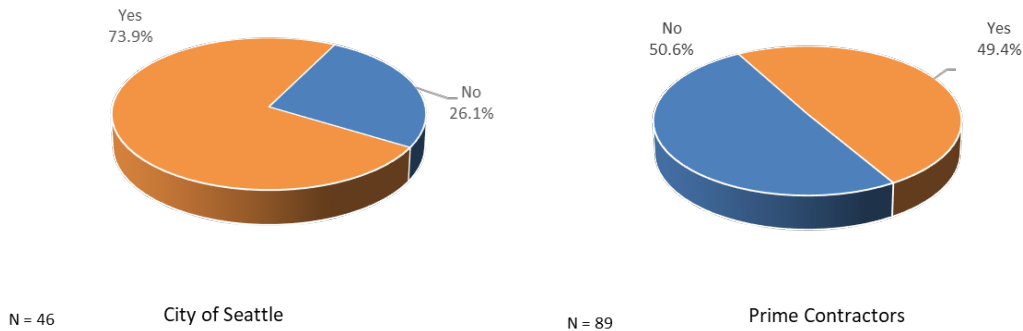
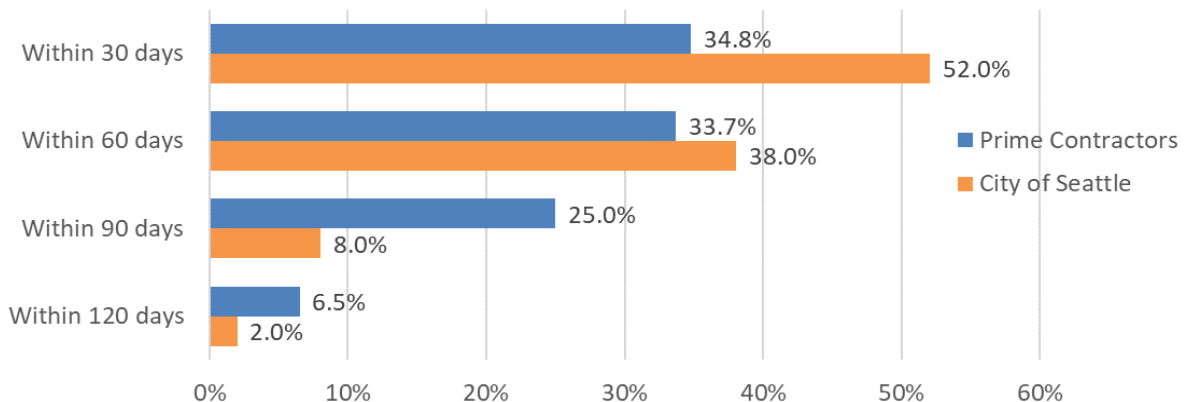


Chart 6-28: Of W/M/DBE contractors performing work for the City, 90.0% reported receiving payment within 60 days; 8.0% were paid within 90 days; and 2.0% were paid in 120 days or later. Prime vendors were reported to pay on a slower schedule: 68.5% said prime vendors paid within 60 days; 25.0% reported they were paid within 90 days; and 6.5% reported they were paid within 120 days or later.

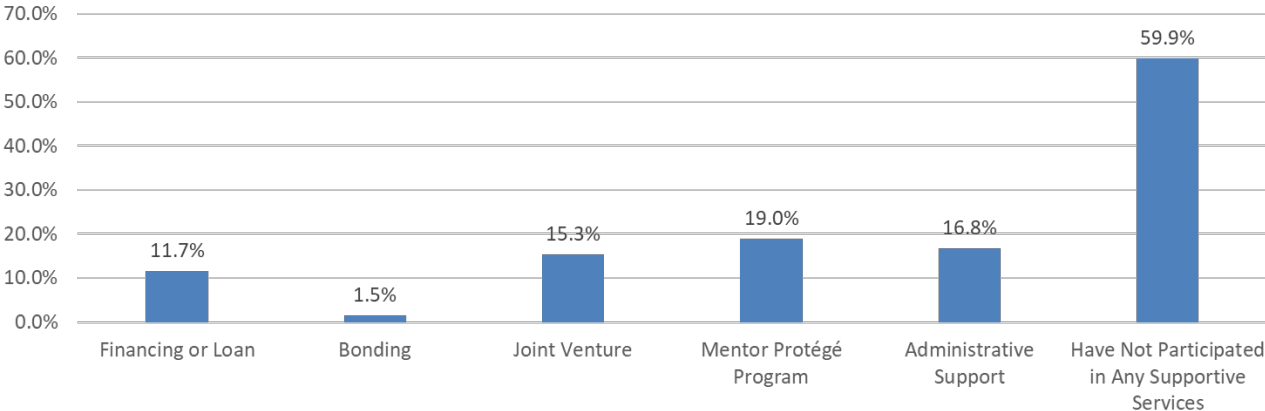
Chart 6-28: W/M/DBE Experience with Amount of Time to Receive Payment by City and Primes



f. Participation in Supportive Services or Capacity Development Programs

Chart 6-29: Two-fifths (40.1%) of the W/M/DBE respondents reported they had participated in a business support program. Over ten percent (11.7%) had participated in financing or loan programs. A very small number (1.5%) had accessed bonding support programs. A little over fifteen percent (15.3%) had joint ventured with another firm; almost one fifth (19.0%) had participated in a mentor-protégé program. Over fifteen percent (16.8%) had received support services such as assistance with marketing, estimating, information technology. Almost 60% (59.3%) had not participated in any capacity development programs.

Chart 6-29: W/M/DBE Firm Participation in Supportive Services



N = 137

g. W/M/DBEs' Capacity to Perform on City Contracts

Chart 6-30: Less than six percent (5.8%) of W/M/DBE respondents indicated their firm was not ready, willing and able to perform work on City contracts. Over ten percent (11.7%) indicated they were ready, willing and able as a prime contractor or supplier; 54.7% indicated that they were ready, willing and able as both a prime contractor or supplier and as a sub-contractor; 27.7% indicated they were ready, willing and able to perform work only as a subcontractor or supplier.

Chart 6-30: W/M/DBE Readiness to Perform on City Contracts

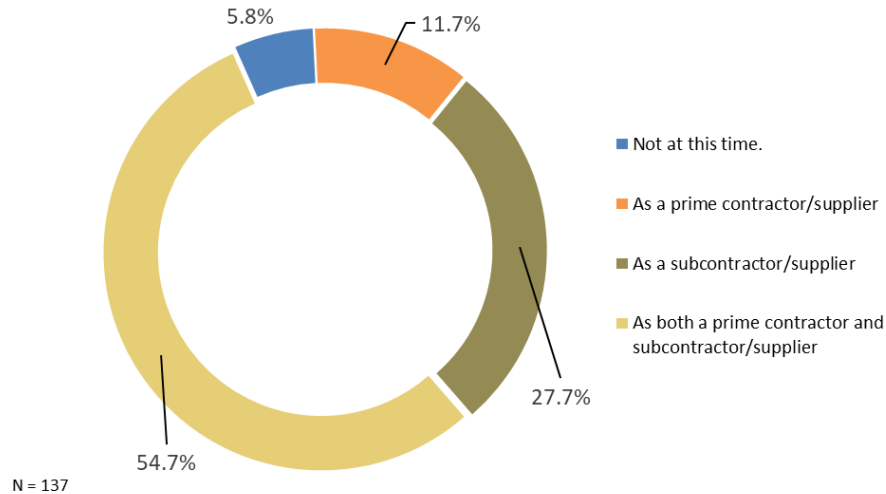


Chart 6-31: A little over ten percent (10.2%) of W/M/DBEs indicated they did not have all the necessary licensing for City contracts. For prime contractor and supplier work, 12.4% reported having all the required professional licensing; for prime, subcontracting, supplier work, 24.8% reported having all the required professional licensing for only subcontractor and supplier work; and 52.6% reported having all the required professional licensing for both prime contractor, supplier and subcontracting work.

Chart 6-31: W/M/DBE Professional Licensing Status

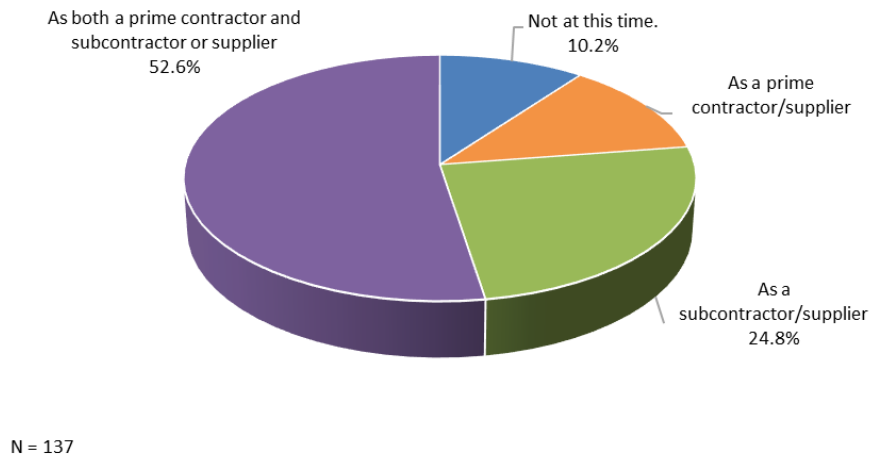


Chart 6-32: Three fifths of the W/M/DBEs (62.0%) reported contract sizes either well or slightly below the amount they are qualified to perform.

Chart 6-32: W/M/DBE Contract Size vs. Contract Amounts Qualified to Perform

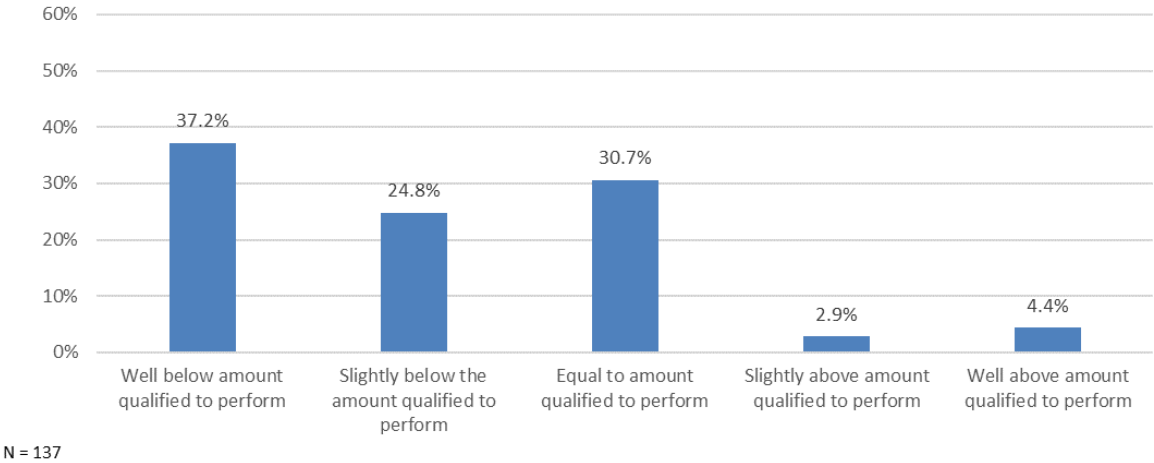
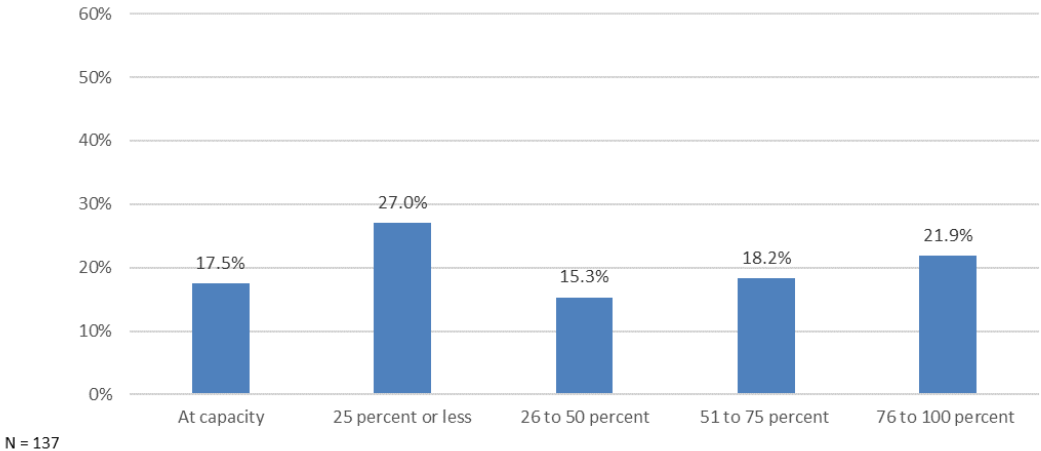


Chart 6-33: Over half (55.4%) of W/M/DBE respondents reported that they could take on between 26% and 100% more work if it were offered; 27.0% said they could take on up to twenty-five percent more work; 17.5% were working at full capacity.

Chart 6-33: W/M/DBE Capacity for More Work

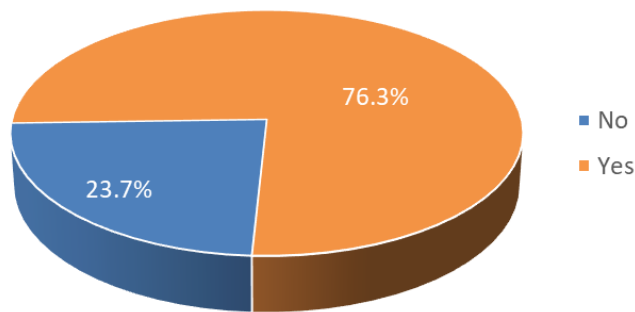


h. Bonding Capacity

We also surveyed W/M/DBEs' bonding capacity relative to non-W/M/DBEs. The availability of surety bonding is another important factor in assessing whether firms could perform more work if they had the opportunities.

Chart 6-34: Over three-quarters (76.3%) of W/M/DBE construction contractors reported being surety bonded.

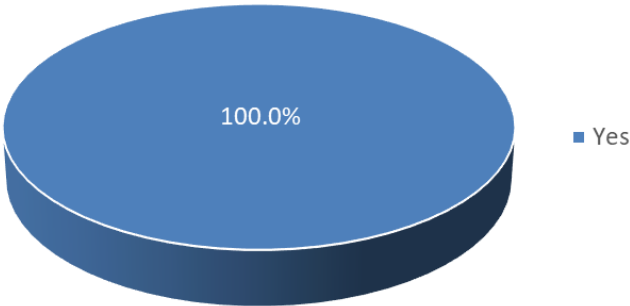
Chart 6-34: Construction Firm Surety Bonding Status – W/M/DBE Firms



N = 38

Chart 6-35: All (100%) of the non-W/M/DBE construction contractors reported being surety bonded.

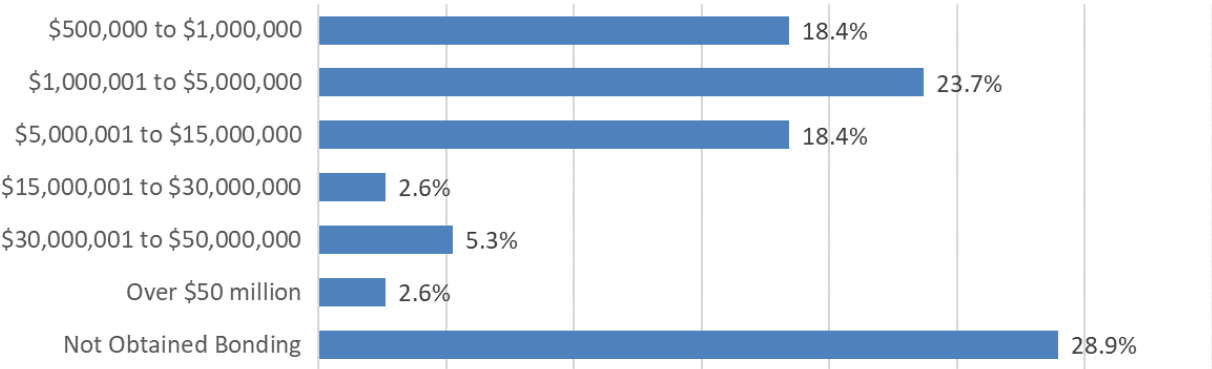
Chart 6-35: Construction Firm Surety Bonding Status – Non-W/M/DBE Firms



N = 16

Chart 6-36: Among W/M/DBE construction respondents, two fifths, 42.1%, had obtained an aggregate bonding limit between \$500,000 and \$5M; 18.4% had obtained bonding up to \$15M; 2.6% had obtained between \$15M and \$30M; 5.3% had obtained \$30M to \$50M; and 2.6% had obtained over \$50M in aggregate surety bonding.

Chart 6-36: Maximum Aggregate Bonding Limit for W/M/DBE Construction Firms

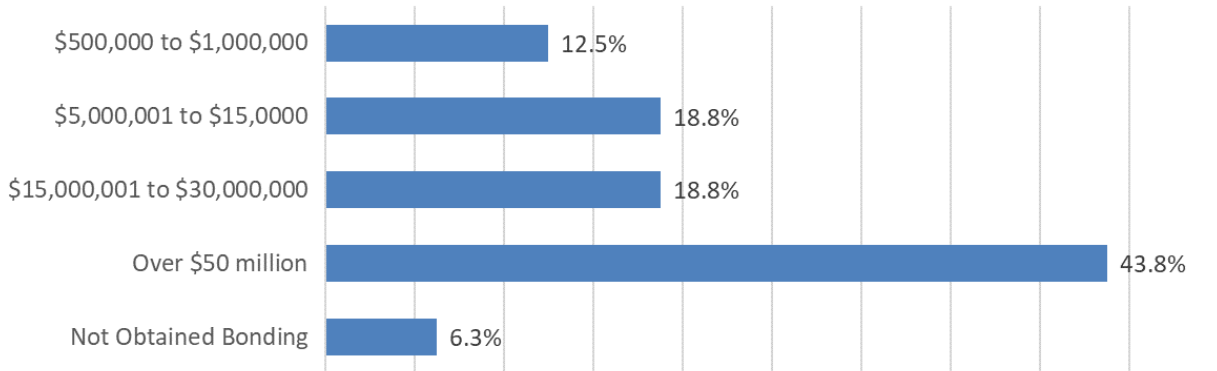


N = 38

Chart 6-37: Among non-W/M/DBE construction respondents, more than two fifths (43.8%) had obtained an aggregate bonding limit of over \$50M. 12.5% had an aggregate bonding limit between \$500,000 and \$1M; 18.8%

had limit between \$5M and \$15M; and 18.8% had a limit between \$15M to \$30M.

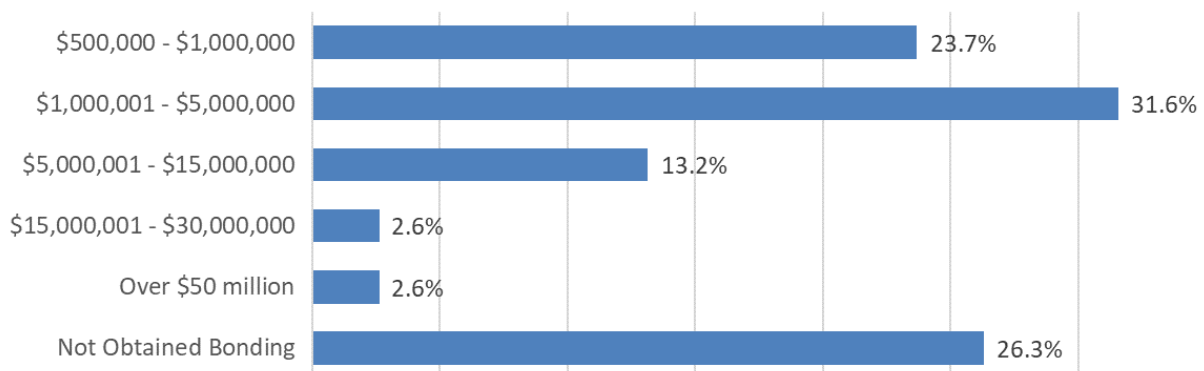
Chart 6-37: Maximum Aggregate Bonding Limit for Non-W/M/DBE Construction Firms



N = 16

Chart 6-38: Among W/M/DBE construction respondents, a majority (55.3%) had obtained an individual contract bonding limit between \$500,000 and \$5M; 13.2% had an individual contract limit between \$5M and \$15M; 2.6% had obtained an individual contract limit between \$15M and \$30M; and 2.6% had a contract limit over \$50M.

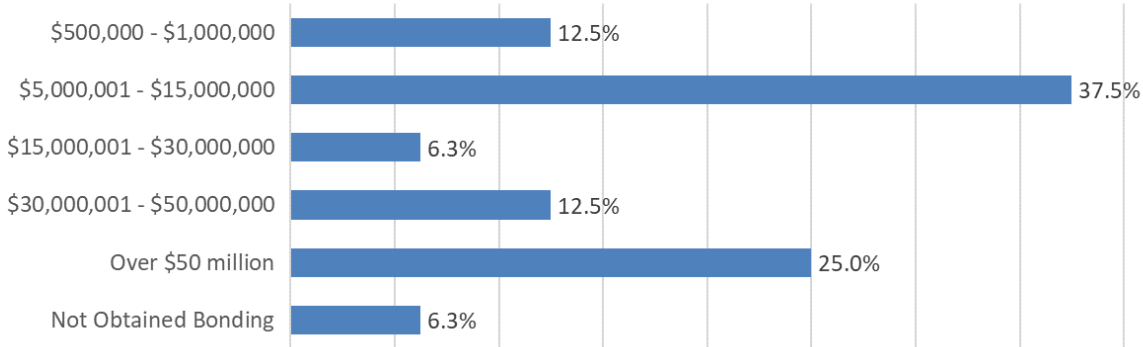
Chart 6-38: Individual Contract Bonding Limit for W/M/DBE Construction Firms



N = 38

Chart 6-39: Among non-M//WDBE construction respondents, 12.5% had had obtained an individual contract bonding limit between \$500,000 and \$1M; 37.5% had obtained a contract limit between \$5M and \$15M; 6.3% had obtained a limit between \$15M to \$30M; 12.5% had an individual contract limit between \$30M and \$50M; and 25% had a contract limit over \$50M.

Chart 6-39: Individual Contract Bonding Limit for Non-W/M/DBE Construction Firms



N = 16

4. Anecdotal Marketplace Disequilibria Examination

For this Report, the City of Seattle specifically directed us to examine marketplace changes caused by the COVID-19 pandemic.

Chart 6-40: Three-fifths (63.6%) of W/M/DBE firms surveyed experienced a disruption in revenues during the pandemic.

Chart 6-40: Disruption of W/M/DBE Firm Revenues during the COVID-19 Pandemic

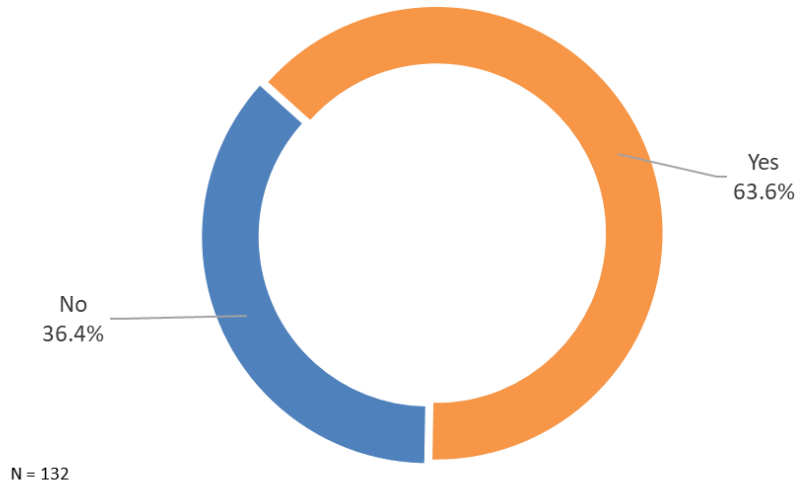


Chart 6-41: Two fifths (43.2%) of W/M/DBE firms indicated a loss of their customer base during the pandemic.

Chart 6-41: W/M/DBE Customer Base Loss during the COVID-19 Pandemic

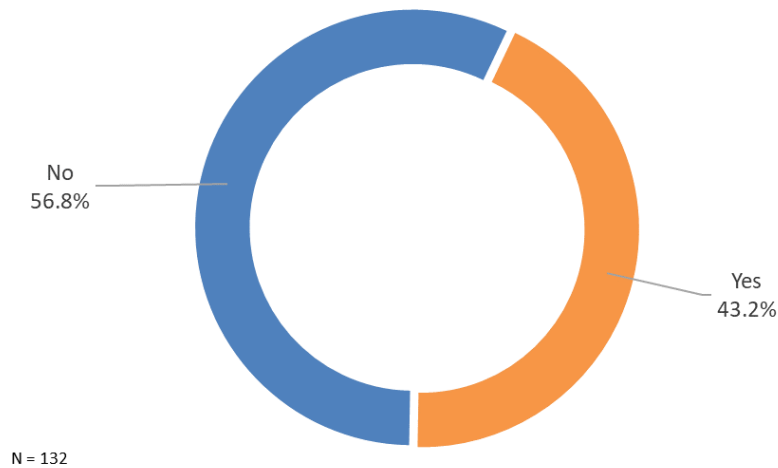


Chart 6-42: Almost a third (31.8%) of W/M/DBE firm respondents experienced workforce shortages during the pandemic.

Chart 6-42: Workforce Shortages Experienced by W/M/DBE Firms during the COVID-19 Pandemic

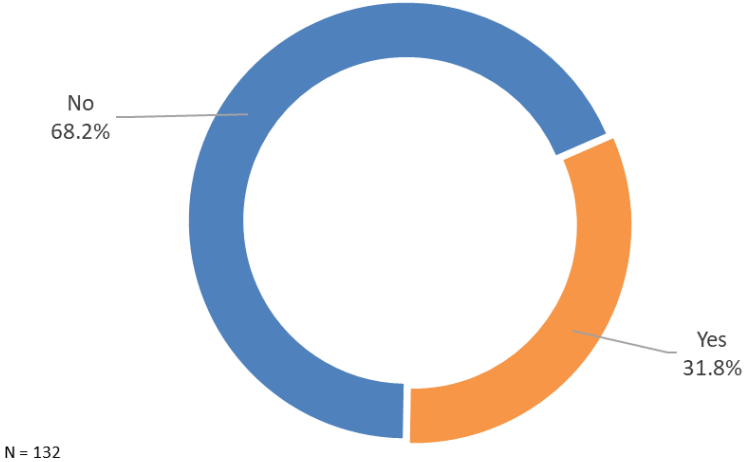


Chart 6-43: Negative effects on costs during the pandemic were experienced by 40.9% of W/M/DBE firm respondents.

Chart 6-43: Negative Effects on W/M/DBE Firms' Costs during the COVID-19 Pandemic

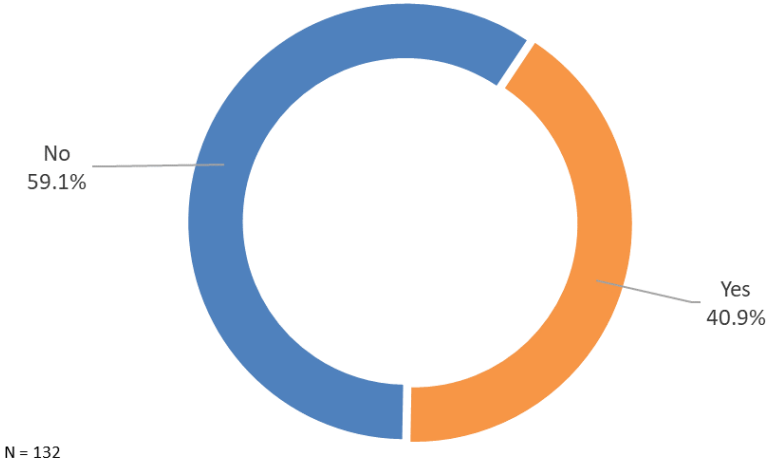


Chart 6-44: Almost three quarters (74.2%) of W/M/DBE firms reported experiencing lower revenue, higher costs, a loss of customer base or workforce shortages during the pandemic.

Chart 6-44: W/M/DBE Firms Reporting Negative Effects During the Covid-19 Pandemic

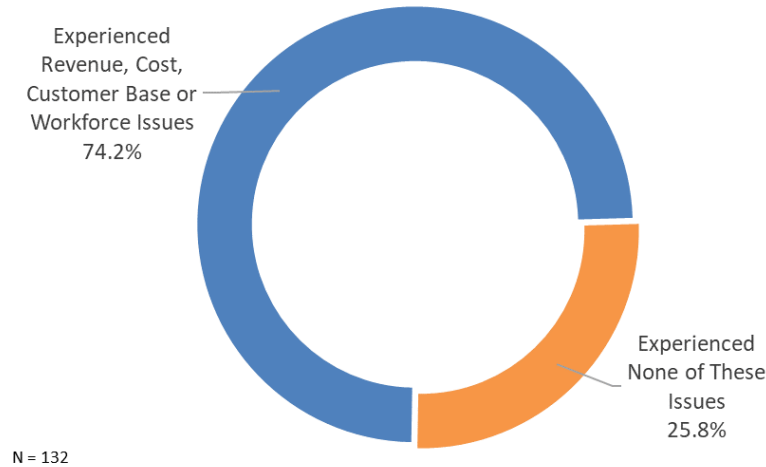


Chart 6-45: Most W/M/DBE firms have fully or partially recovered from the negative effects of the COVID-19 pandemic; 24.2% indicated their business has fully recovered; 39.4% indicate their business has partially recovered; and 9.1% indicate their business has not recovered at all.

Chart 6-45: W/M/DBE Firm Recovery after the COVID-19 Pandemic

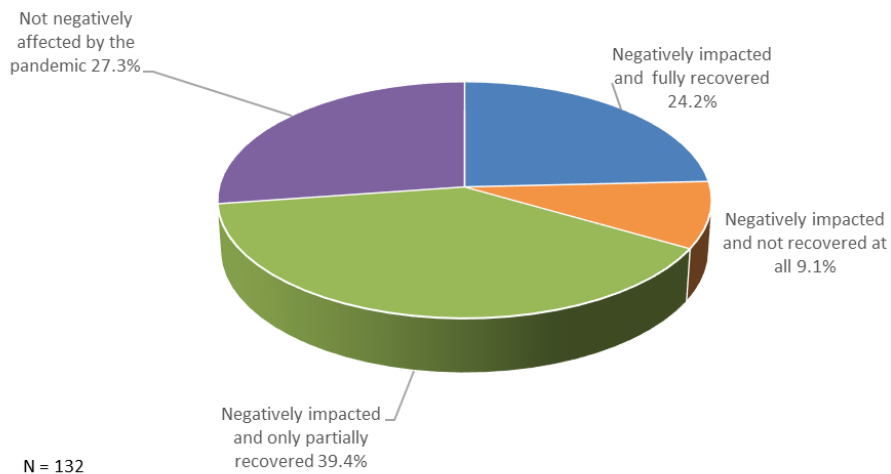
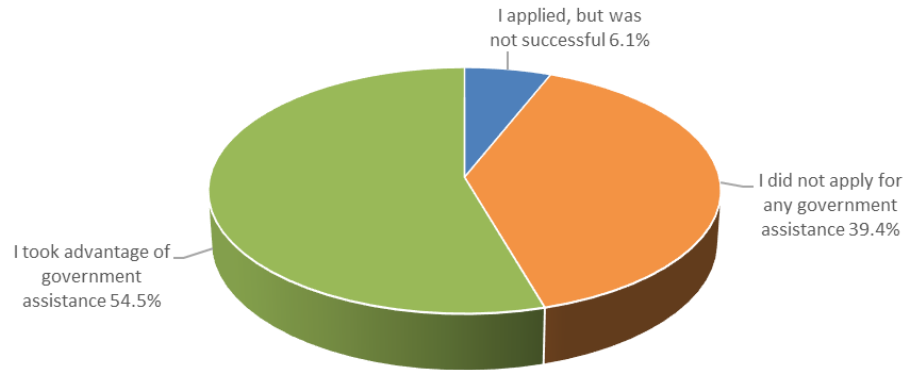


Chart 6-46: Over half of the W/M/DBE firms, 54.5%, reported being able to take advantage of government assistance. A little less than seven percent (6.1%) applied but were not successful in receiving assistance.

Chart 6-46: W/M/DBE Firms Accessing COVID-19 Pandemic Government Assistance



N = 132

5. Written Survey Responses from Minority and Woman Respondents

The survey also included open-ended response questions. These responses were consistent with the responses received to the survey’s closed-ended questions.³¹⁵ Responses from minority and woman respondents to these questions have been categorized and are presented below.

a. Systemic Racial Barriers

Minority firms reported experiencing discriminatory barriers that limit opportunities to fairly compete for contracts.

I guess if I changed my last name to Smith most likely I will be getting the contract.

I believe that contracting with the City of Seattle or any city in Washington is more problematic for Black Women who are in areas that don't have minority black women in place. Each City has different values, and that has been a barrier.

Prejudice assumptions, primes not wanting to do business with an MWBE.

315. Closed-ended questions are questions that ask respondents to choose from a distinct set of pre-defined responses.

Race and gender [has been a barrier].

Others don't want to give you a chance or they devalue you and then try to work you to death.

Don't receive contracts because female owned, and race.

Over 10 years we have NOT obtained any contracts as there is an institutional race [bias] ingrained on most of the procurement people who we have dealt with.

If this question goes beyond experiences with City of Seattle contracting: I've experienced managers putting the kibosh on executing a DEI leadership coaching contract with me and instead hiring a white coach. There still are some organizational leaders who don't want to hire Black expertise.

It appears/looks like this is the case for the most part to obtain the opportunity of all kinds.

It has happened at multiple prior workplaces. Discriminated against due to my Latino heritage.

I own a company now but I recently received unjust treatment based on my race. I have experienced a multitude of incidents throughout my entire life, let alone as an employee or business owner.

Race discrimination was reported to often be subtle.

No one comes out and says you can't do this work because you are Black. But there is always an unwritten, unspoken knowledge that we have to prove our value, that we enter on the negative side of zero.

Race and gender discrimination aren't overt. I am curious about how many staff who review proposals or work in contracting have ongoing implicit and explicit bias training, cultural humility training, or training in community engagement.

Really hard to point to or prove (microaggression etc...).

The usual excuse used by potential clients is capacity. Large firms have lots of resumes even though only a handful or less of the people would actually work on projects my firm would bid on.

Lots of agencies say they “really want” diverse business but in the end, they always revert back to the business they are most familiar and comfortable using a low bid excuse.

Several minority firms reported experiencing demeaning remarks and harassment.

Had my firm called “the Mexicans” in reference to doing work the contractor does not want to self -perform. Been told my firms name is confusing because “we all sound the same.”

I am also Hispanic/Latina. I experience a lot of off comments about my racial ambiguity.

Native American comments/negative.

That is why I opened the company for people of color to enter the construction industry and be treated with dignity and professional courtesy.

Too many daily racial micro aggressions to list, other than to say that belittling, condescending comments, overt put-downs, end-runs and sabotage are a constant -- and why I left the job market to start my own business. Now, I control who I work with.

Many minority firms reported experiencing stereotyping and negative assumptions about their competency and capabilities.

Hispanics do only cleaning services, yards, or picking after others or perhaps working on the fields. Unable to negotiate contracts as there is a clickish [sic] sentiment among decision making to give contracts to known business.

I believe that I am beginning to be stereotyped due to my race.

If decision makers detect an accent, then we are right off the bat under a disadvantage. From there we are under a battle to "prove" we can do the work.

There is a bias/assumption from all the WA government public sector entities that we have worked with and/or solicited) that DBE/MBE firms are all small construction firms, focused on traffic control and site clean-up, employing blue collar labor and staffing. We have even

been told by more than one stakeholder with these entities that "we don't use consultants", which is obviously not true. We have been working for years to get into [WA agencies] in particular as a CONSULTING FIRM, of the same nature as EY, Deloitte and others (who I am confident these entities do business with). Even with some individuals working on our behalf to provide support, the barriers are huge because they all assume that DBE - MBE companies can only provide construction/blue collar type services. It is at best frustrating and implies systemic prejudice.

Our competency questioned because of race/language and that's why we are only awarded subcontracts.

I have been underestimated frequently based on my race and appearance - with people assuming I am young, inexperienced, or unqualified.

My approach is different and more community-focused than what large, established, white-led firms may propose, and this leads to great scrutiny of my work by leadership in government staff, who are primarily older white men.

[We have encountered] increased scrutiny to explain/justify costs.

Stereotyping, yes, frequently: my business is a CPA and financial management consulting firm. We are generally not focused on as potential primary service provider for these types of services in RFPs by governments.

Stereotyping of the equipment we own, our construction capabilities, our contract sophistication.

[We receive] requests for credentials, etc.

That would require more space than this box provides and more time than I have.

We have had non-city clients question the legitimacy of our team's work as a majority Black, Indigenous, and People of Color ("BIPOC") group.

It's [competency] typically not questioned directly but we get subtle undertones.

Usually when I work virtually, phone or email there's no sense of what I might look like. Then when someone meets

me there's a shock for a while and there seems to be a reproofing trial period after that.

When we fight for change orders or claims they assume we don't know how to document things. When we question design flaws we are assumed to just be complaining.

Presumptions of what they think I don't know and surprised revelations.

Some minority firms did not experience discriminatory barriers.

Honestly, I haven't ran into racism or prejudice while operating my business.

I see zero barriers and all of these questions seem like fishing.

I don't feel [I] have been discriminate [sic].

My competency was frequently questioned when I was in the job market. Since starting my own business, my competency as an expert consultant is immediately assumed, acknowledged, and compensated.

Fortunately, I have not experienced this [discriminatory behavior].

b. Gender Bias and Barriers

Many women reported sexist attitudes and negative biases about their competency, skill and professionalism that limits access to business opportunities.

I live in an area where men do not see women as equals, it's fine to have us on the project but do not take me seriously as the owner.

In the county our home office is in, it's the good Ole boys club and my company is excluded.

I'm in a technical field there are often mansplainers, or gatekeepers.

[As a Hispanic/Latina woman-owned firm], we are routinely passed over for contracts, in spite of our tremendous qualifications and extensive experience in all aspects of architecture.

Smaller rural communities run by older men who discount, undermine and fail to listen to women and minorities internally and as consultants.

Likely, however I don't have any solid proof. I have removed barriers for myself and my employees for the last 15 years as I come upon them. I feel a good old boys club still exists and it is harder for women and minorities to enter into the arena. It feels like we have to fight for the scraps if we don't have someone in leadership helping us enter into businesses.

Male consultants seem to be preferred over females in unspoken terms when there are former alliances between the hiring manager and consultant firm.

Often based on gender - many times in my career when I've not been given a shot.

Being a woman in the industry it has been hard to break thru and obtain a contract.

As a woman I am not taken seriously and the work I perform is more than 2 men yet I can do the work of 4 yet only pay of 1 and when they replace me with 4. It is very hard in the professional sector [in the construction industry] as a Black woman.

[I have experienced] gender-based discrimination.

I am a female landscape contractor. There is no question that my competency is questioned in my line of work, but it is also questioned as a woman in general as evidenced by the wages of men and wages of women in business.

As a woman in the [construction] industry, I am treated unfairly and there are different rules for me than others.

[After completing our part of the project] a separate engineering firm placed fill material over the top of the subsurface drainage outfall, destroyed the surface water outfall structure, then denied the system was there. It was apparently my lack of competency that led to them doing that [even though they had the plans]. When they were faced with repairs, they claimed we were uncooperative and unwilling to share files. Yet, they had the construction

plans showing what we had constructed. But that was more than they wanted to spend, therefore I was stupid.

Yes, this [questioning of my competency] has absolutely happened throughout my career. I will not now work with any clients any longer who would. I just wouldn't take those clients on.

Being female in a male dominated industry [is a barrier].

I am a Black Woman this field and generally speaking Construction is male dominated field. As a new business owner who has great expertise in project management and trying to establish a new niche is very challenging.

I have to be almost aggressive to get our needs met by some contractors and they do not believe my expertise. I have had to walk off jobs and quit working for some contractors.

Landscaping is a man's world. It's difficult to be taken seriously as a small attractive female and especially as a contractor.

Sexual harassment and sexist remarks reportedly remain a challenge for many women.

As a professional I have experienced blatant and direct sexism and stereotyping working in a male dominated field. With mayors flirting and touching me to other mayors yelling and screaming at me.

Being called nicknames i.e. Hun, sweetheart, darlin' instead of by my first name by superintendents on the job in front of my team or other contractors.

Not currently, but I have experienced this in my career. I was told at a manager roundtable meeting that I could be a stripper/pole dancer if engineering didn't work out.

I have been asked if I would "get pregnant and bail" after I was married. I often get asked, in an exaggerated manner, how I could possibly own a business and have children.

Spoken down to, told that I can't possibly be right because I'm female therefore stupid, told that I need to "have dinner" to get the work, dealt with men doing the pec flex for the entirety of a meeting, had men walk into my office

with their pants unzipped, inappropriate phone calls that include being asked what I'm wearing.

Physical and verbal harassment. Often, men on the project says the motoring public does not harass or disrespect them, unlike how they disrespect the women.

Suggestive language and joking by male colleagues demeaning to women.

I definitely have experienced this [sexual harassment] throughout my career in multiple ways, from clients, employers (when I worked for people as an employee) and representatives or board members of organizations.

This [sexual harassment] was VERY true over the course of our work, but not so much now. Aggressive conversation styles. I am very careful who we work with and projects we take on.

Aggressive conversation styles.

Tuesday, I have a large business owner talk to me in a very aggressive and loud voice about bidding as a subcontractor. I help [sic] my own by being louder and firm and they said they used my company's numbers but he really used the tit for tat, and talked down to me. I am still not sure that he respected my answers but I did not back down.

Was sexually harassed and the prime tried to remove me from the job.

Yes, as described above, certain communities are prone to listen to & take men more seriously than women - regardless of job title & experience level.

Many women reported sexist behaviors and stereotypical attitudes about their role and authority.

When my male cohort is with me on a project they always look and talk to him instead of me. He always says [first name] is the owner of the company you need to talk to her." I am standing there right next to him.

Many people keep asking who is the real owner, and assume that male staff are secretly the owner instead of the CEO, etc.

Our company is 100% woman owned, but everyone assumes our CEO is married and some man actually does the work or is a secret investor, etc. It is very often that people refuse to deal with our CEO and want to deal with men from the company that are her employees or direct reports because they don't believe she is really the one making decisions.

Many people assume that one of my employees is the business owner simply because I'm female.

Because I am a woman, they do not think I know what is going on jobsites. Most are receptive, but I have to explain a lot when getting involved.

There is a lot of small discrepancies that I deal with on the daily basis that are likely not intended to be discriminatory, such as trying to lift things for me or attempts to be chivalrous in ways that are not necessary or warranted. I often am hired by men in the residential landscaping community who are trying to "get a deal" because they think they can get one over on me. I am hesitant to say these things, but this is the reality I face as a woman contractor and a woman in general.

Being too "feely" for the community needs and desires. Worrying too much about the environment during site plan development.

Sometimes people listen to men assuming they know more.

The area where I live there is political and social pressure for women to have a traditional family role, to be a stay-at-home mom. There are few women in leadership positions within consulting firms, agencies. As a woman trying to build business, there are few other women to negotiate with at the decision maker level. In my negotiation/business development efforts with male peers I have been declined lunch meetings because their spouse is not comfortable with them taking lunch with a woman.

People assume because I am a woman that I don't know anything about technology or video even though I am a media producer. When people have questions related to anything about technology or video, they look to my counterpart who is a man for advice. I'm afraid that because

people's assumptions about my capabilities are so ingrained that I am not taken seriously and it takes so much more energy to prove myself.

People are asking more questions of me and asking me to prove that I actually know what I'm talking about. Sometimes I'll say something and nobody acknowledges it, but with my counterpart, he'll say something and then it's the best idea ever. I feel like people look at me like I am just a secretary, meant to manage emails and calendar appointments. It chips away at your morale.

I am talked over, or people dance around questions, I am overlooked and superintendents have gone to my male team members instead.

I get treated like a secretary not a business owner.

Often thought of as less knowledgeable.

New clients typically assume my husband is the owner of the company - not myself - I assume primarily because of gender.

On many occasions, I have been asked to speak with the "Mr. [last name]" of [last name] CC...I am the owner. There is no Mr. [last name]. As well, if a contractor speaks with one of my male employees, I have often been told that they have "already spoke with my boss" (aka the male employee) so they do not need to speak with me.

Sometimes owner's reps want to speak to the male Superintendents I have working for me, usually this behavior stops after an initial meeting.

As a black woman in a white male dominated industry, not believing I'm the owner or I'm a laborer. Looks as to why am I here, etc.

I get talked down to a lot at first.

Women are always treated differently. Always. My female crew is always treated differently. Always.

Being a woman in leadership has its challenges. It takes longer to build trust and establish relationships.

c. Access to Contract Opportunities

Minority and woman owners often felt that prime bidders often use them only as window dressing or to check a box.

I wonder if my firm is only sought after to fill the OMWBE requirement of many RFPs.

We have often been asked to propose along with Primes, and once the contract is awarded, we have been told that we were not going to be included in the final team configuration because either the function would be managed internally or directly by the public agency.

I have noticed that firms may want me on their teams because I fit the mold of the W/MBE as both a mixed black person and a woman to win work but don't often follow through once they win the project. It's almost as if I'm a token for them to show that they work with DBE firms when I have the experience and credentials to perform the work.

When potential customers learn of my WBE cert, some act interested. But very little action is taken. I wonder if they act interested just to "check a box".

Many reported not having access to information and networks that are available to larger, non-minority or woman-owned firms.

No access to informal networking.

Through our own channels only.

Not sure how I would know this or prove this but I see bigger firms able to stay in the loop better.

Larger, non-certified firms typically have insider information (former or future to be employees, or full-time marketing specialists or principals to seek out future opportunities.)

Generally, as a female, the subcontract and networking opportunities are reduced.

You want me to describe all the information about networking I DON'T have? How big is this box? I don't even really understand what 'networking' means. Is it like, just jaw jacking, smiling and exchanging business cards over a round of golf?

As we have developed working relationships and partnership with multibillion dollar firms, we have been ASTOUNDED at the level of access to key decision makers they have. We have been told - directly and plainly - that these firm know about opportunities and know who to solicit for information that will help them build winning proposals WELL before RFPs are made public (and firms like ours even learn about side opportunities). We have been told that these large firms have already made pursuit go/no-go decisions regarding opportunities before RFPs are released. This was a gob smacking revelation...

I don't know all of the access they have but I have seen instances where owners of larger corps have let slip that they had access to things that would have been very helpful.

In many industries, including technology, the incumbent firms keep information secret from the smaller firms looking to get into the industry. On bids posted to WEBS state agencies refuse to publicize their budgets or expected budgets so only the non-certified prime vendors who already have contracts with the state can bid with that knowledge.

In our county I am not notified of small works projects so I cannot reach out to the primes to advertise or solicit projects.

It's who you know in this industry!

The biggest barrier I've faced to government contracting is the amount of technical expertise it seems that you need to have to specifically navigate the process and bureaucracy surrounding them. This feels like a racial barrier based on the networks and connections I may be lacking because of my race.

I don't know who to talk to. I feel almost alone.

No, in our county because I am a sub, they will not reach out to notify my company that a [contract] is available. So frustrating.

Lack of connections [is a barrier].

I have some access but not fully.

d. Financial Barriers to Opportunities

Many W/M/DBEs experienced barriers in trying to obtain financing. Lack of access to capital and high rates when loans are obtained impedes growth and the ability to compete. Small and new firms faced particularly large challenges.

We've have been denied for lines of credit and larger credit amounts on our credit cards. We have also been denied credit accounts with the material suppliers in our industry. Government agencies take much longer to pay than private builders, This makes it virtually impossible to compete in the government contracting space without access to capital or the ability to be paid faster.

Limited longevity in this market, which correlates to not having the capital/funding to own the primary equipment and tools being used to provide the product to the customer. Results in a temporary entry in this market landscape instead of [becoming] a permanent fixture.

I haven't tried for this business, but I had great difficulty for my first and was never able to obtain any.

Lack of bank connections to see what is needed to make us more "bankable".

By being a small business with limited awards and limited income, it is difficult to get funding for projects and the primes doing the net 30 for payment make it difficult to keep the business running.

Financial disadvantage, being unable to get working capital [would help my business grow].

Hard to obtain working capital [to help my business grow].

Because we rate above the micro-revenue mark (over\$1.5M in revenue) and below the established mid-size business mark (over \$10M in revenue) we have found that financing options are predatory we have paid as much as .33 cents for every dollar borrowed making it very expensive, this is magnified when we have to carry public sector contracts for extended periods and wait for reimbursement on our invoices.

Difficult to secure the amount needed. But have been able secure financing.

Credit decisions were not always apparent and some participants believed they were based on minority or gender status.

I feel because of my race, and female owned [I have been unable to get financing].

Approved for less than requested with a credit score over 800.

We were thrown out of banking relationship with Bank of America because of lack of confidence even though we were profitable.

Our business seems to not have any credit history whenever we've applied for loans/financing.

Some W/M/DBEs found alternatives to large banks or found that restrictions eased over time.

However, I am now with Washington Trust Bank and I feel more valued and supported than the previous bank.

It took years of effort to secure our first line of credit. Now we have a few with different financial entities we do business with, but for our first several years we operated without them.

Oh my gosh, yes. I had to use my own personal funding last year as my bank dropped the ball. I found a healthy line of credit with a new bank, still in transition.

Until I developed a long-standing, long-term relationship with the bank, I was not able to obtain a line of credit ("LOC"). I have had to use a personal guarantee of my personal assets to secure the LOC I use for my business. If I hadn't had those personal assets, it would have been impossible to grow my business these last 10 years.

One woman did not think the lack of access to financing was based on her female status.

I don't think it had anything to do with being female.

The inability and cost to obtain bonding and insurance were barriers for many W/M/DBEs.

Bonding is very expensive. I am planning on working on contracts for my first year to get some cashflow then try again for bonding.

As a small company bonding can be an issue.

Acquiring bonding for bigger projects can be difficult if the company is still pretty new and the owner/guarantor doesn't have a credit history.

I cannot be a prime consultant on large projects with engineering firms as subs because I cannot carry the level of insurance to insure the government agency and the subs as well as my small W/DBE. I am also often unable to carry the required insurance as a sub to large Prime engineering firms & carry it for 5 years - for smaller projects that I get contacted for. Insurance requirements as a sub on large engineering projects has always been an issue for my small technical (public works financing & funding) firm.

[Our firm has had difficulty in obtaining insurance due to the] cost, time, [people not calling back, lots of barriers.

Insurance was difficult. I want to believe that it is because the specific coverage is difficult to insure rather than a discrimination issue. I was bounced around for about 2 months before someone was willing to work with me to get insurance.

Due to finances, we haven't been able to get better pricing and/or option when it comes to insurance and bonds.

How contracts are worded typically produces issues with insurance and the lack of clarity about the work needed to be informed by the contracting officer has resulted in us over-purchasing and paying hefty unnecessary insurance premiums.

As a single shingle broker, prices are high. I've gone straight to the insurance company, which has a series of issues.

Mostly the cost of insurance so prohibitive. Sooooo expensive.

The only issue I have is insurance costs have skyrocketed for 2024 across the board, and I'm not sure if I can afford the coverage I have.

Was quoted vastly overpriced policies for my specialty, like \$50,000 for a policy I was able to get for \$6,000.

My agent had to work really hard to find a company that would insure us and we are on the ball to keep current so we do not lose our insurance.

e. Barriers to Equal Contract Terms

Some minority and woman respondents reported being charged higher pricing for materials based on their race, ethnicity and gender.

I feel as if they do, however not all suppliers do.

If I think I'm getting a crappy number, I go around the quote by going directly to the owner or having my primary underground contractor pull a quote from their end.

Many reported that they were expected to charge less than their white male counterparts because of their status as a certified or minority or woman-owned firm.

Clients accept males getting higher rates per hour.

My fees are questioned while male peers are not.

I absolutely believe that clients expect me to charge less as I am a woman, or that I should be happy to give them advice without charging for my time.

I have had to "hold out" and extend negotiations for same hourly rate as male consultants performing the same work.

Many times, suppliers or contractors will low-ball the offer and expect you to take the "handout" because it can be an opportunity and you have no other choices.

Our rates have been questioned and I assume it's because of race and/or competency doubts based on race and/or gender.

People assume that Spanish should do the work for 1/3 of the cost and very difficult to move the needle on this topic and they continue pursuing this topic of finding cheap labor.

People think because we're Asian that we should lower our prices, be cheap and affordable.

They force you to accept lower rates and ignore your experience, skills, and past performance.

Male firms are able to charge more per hour.

Pressure to accept lower payment.

We are very frequently subject to rate pressures, even in circumstances where we KNOW that our rates are below those of larger firms. We have a current engagement with a government agency where the key decision maker and client engagement owner has continuously pressured us on rates, despite the fact that we have a SIGNED CONTRACT documenting our rates, and we work parallel with a multi-billion-dollar global consultancy whose rates are higher than ours.

When I started the business, I was frequently asked to take a lower rate than is acceptable to me or enough to sustain the business and payroll; however, I have reached a point of experience and success where I have enough contracts to command a rate that is sustainable.

f. Bias Against Smaller Firms

Some W/M/DBE firms reported barriers based on their size.

As a small women-owned firm, it is hard to compete against the other larger consulting firms with many resources and staff.

Consulting contracts for financial management services are typically aimed at large entities. Though the RFP will indicate minority, women and small business participation recommended, such is just lukewarm, window dressing. In addition, any requirement for small business participation as a subcontractor is often very small percentage of the contract amount.

Government agencies have more experience working with large, established, white-led firms, and this leads to the same firms receiving contracts and less opportunity for smaller, newer firms like mine.

Larger entities often overshadow our small boutique firm.

The barriers I've seen are the fact that people will pick seasoned vendors who have a longstanding relationship and not give new vendors a chance at the same bid. People assume that because we're young that we don't have the capabilities. We've seen the work that's been put out by the city and we know that we are more than capable.

Mostly it is size of firm, and potential clients have preferred contractors.

As a small company we do not have the same resources available to us as large companies. Access to upcoming contract databases or insight into future contract procurements that may be beyond 12-months into the future.

I believe it has more to do with size as larger customers are always given preference.

This is a difficult work environment. It isn't easy for anyone, but it's particularly difficult for small business owners without past experience.

g. Impact of the COVID-19 Pandemic

Many W/M/DBEs reported a contraction in their business during the pandemic. Firms suffered from multiple disruptions that included drastically reduced contracting opportunities and revenue, widespread workforce and material shortages, and higher material and labor costs. Many experienced a reduction in contracting work, lower revenues and higher costs to run their business.

Contracts ended and opportunities declined.

Contracts were put on hold or cancelled. Billable hours in existing contracts were significantly reduced for an extended period of time.

Covid mandated lock down significantly reduce a need for the product my company provides.

I had to lay off half of our workforce and we experienced significant decrease in revenue.

I had to lay off my employees due to lack of work and projects slowing down.

Loss of customers and revenue by over 75%.

Closed down for 3 months and significant impacts to costs associated with payroll - took us 6x as long [to perform job] with Covid restrictions.

Incurred extra costs and delays in work.

My business income and workload dropped more than 80% from 2020-2022 compared to average revenues before & after that timeframe.

No business opportunity.

No work. Ended up working with bad contractors. Was treated unfairly.

Primarily work in healthcare and saw long standing contracts that were not renewed. For active contracts, we saw a big decline in service revenue. Since COVID we have seen healthcare companies file Chapter 11. Some have closed their doors.

Several contracts were discontinued, as a results of COVID, and some were changed/modified. This resulted in a small loss of income.

States canceled bidding opportunities, took longer to pay primes who took longer to pay subs, etc. Massive loss in revenue.

Still very bad times due to economic ripples associated to business development and closing sales associated to Covid-19.

The business that I had generated continued, but there were not as many new contracts during that time of lock down and offset it by spending considerably less that first year.

Two of our major accounts shut down for 3 months. We lost a lot of revenue. Costs are very high and worker shortage has been very challenging.

Very turbulent. I have had to adjust my team to respond to the demands of my clients. Clients have substantially reduced (1/3) the amount they are willing to pay for the same services 18 months ago. Clients are not hiring as they were.

We are a consulting professional services company. Several of our clients stopped work or chose not to begin projects that were signed. Our revenue during COVID went down by about half.

We had 3 pending new contracts/customers in the queue and were in the process of closing the deals. — All 3 placed their contracts on hold indefinitely and we lost what would have represented \$500-750k in opportunity that we never got back.

Well, you can't really do electrical work remotely. We couldn't make any money.

Work slowed way down, employees stopped showing up, pricing on materials went up.

Lost wages, lost contracts & employees to the pandemic. Was unable to go into people's home for 8+ months which resulted in loss of wages & almost closing our doors!

The flood of health and safety requirements deployed to keep workers safe, also created massive inefficiencies that drained our accounts, and regardless of how good our employees were, the requirements put immense stress on our ability to deliver our work within the planned schedule.

The lack of in-person meetings made it challenging to do business. Several W/M/DBEs reported that it took time to adjust to new technology and processes to conduct business remotely.

Lack of in person networking opportunities at a strategic time in my industry.

We weren't able to network in-person and that lessened our customers for a 10-month period.

Clients have changed the way we interface with them and pushing work through large VMS systems there by impacting our ability to have relationships with our direct customer base.

My business as a DEI consultant in the environmental sector was significantly challenged by the inability to conduct in-person workshops, retreats and meetings. Relationship & trust-building is at the core of the interpersonal and emotional intelligence work I conduct. I also needed to invest more significantly in remote meeting tools to use in lieu of in-person meetings. Finally, I also saw contract inquiries drop off (and existing contracts narrow) with the onset of the pandemic.

Added administrative costs because of time doing stupid COVID paperwork and plans.

Some W/M/DBEs reported supply-chain disruptions and higher material costs that negatively affected their business operations.

Supplier shutdown, vendors closed, clients hesitant to spend, difficulty finding good help.

Supply chain issues.

Taking too long to receive products.

Massive changes to our customers, supplier issues, product shortages, labor shortages.

Negative effect on costs - materials price increase or unavailability. PPE costs.

Jobs postponed, site restrictions, material shortages, cost increases across the board, Covid guideline restrictions.

Cost of goods increase due to the ability to get raw materials.

Pricing skyrocketed.

Many W/M/DBEs experienced labor shortages and the loss of key employees. For some firms, staff and worker shortages persist.

Labor resource shortages has been an issue. Lost work opportunities due to COVID-19.

Finding reliable help decreased SIGNIFICANTLY.

Lack of employees mostly.

Work cancelled and staff difficult to hire and keep. I still experience difficulty hiring staff.

Lack of ability to find qualified workers.

Remote work and higher cost for labor.

We are an Emergency Response company so we had to stay open. We had and still experiencing staff shortages.

We gambled with the shutdown and continued working normal hours even though our clients put the projects on hold. We held billing until they decided to go forward, then they were ecstatic they'd gained 2-3 months by us doing so.

We had three employees who were not able to function due to working remotely or just not work for periods of time but wanted to be paid. We ended up letting them go for lack of performance and timesheet issues. Finding help was difficult and still is.

We were shut down for about 2 months, then returning to work the non-union workforce was diminished and wages have increased a lot.

After the COVID restrictions were lifted, we found it very difficult to find people that wanted to work temporary assignments. Most unemployed people were making more on unemployment than they would working a temporary assignment. Once the unemployment ended, we had issues finding people to work "in person", everyone was holding out for a "remote" position, even though their prior line of work was "in person". Additionally, there are so many professionals that left the traditional workforce during COVID. We saw a huge number of individuals retire, become stay at home parents or just quit working on government projects due to the vaccine mandate. We continue to struggle daily to fill our temporary assignments due to lack of qualified personnel able to fill the positions.

Some W/M/DBE firms lost customers during the COVID-19 pandemic. Not all have fully recovered.

COVID-19 Pandemic negatively impacted our potential customer base.

My business lost customers.

Many of my industry contacts retired, moved or changed industries. Some of my business customers closed shop or slowed down and laid off.

I have a small but loyal customer base and had no business at all during the lockdown phase of COVID. I have not fully recovered.

Some W/MDBEs were affected early on in the pandemic but found work-arounds to limit the impact.

At the beginning of the pandemic, business slowed and income was down. It didn't take long before state

government figured out how to run efficiently as a virtual workforce so our business picked back up significantly.

We had to pivot a lot and we turned to government grants to support us and newly learned skills.

I had to take out a loan to make my payroll - that was the first money I had to borrow in 16 years.

A few W/M/DBEs reported that the pandemic did not negatively affect their business operations.

My business was not negatively affected by the pandemic.

We didn't have any negative effects.

I was not impacted by Covid-19.

Several indicated their businesses benefited from the pandemic.

Revenue and opportunities increased.

Growth due to the greater acceptance of remote work.

We actually experienced our largest period of growth, as the push to remote work fit much better with our business model. We even secured consulting engagements focused training clients how to work remotely.

C. Conclusion

Evidence reported in the business owner interviews and the anecdotal survey results suggested that minorities and women continue to suffer discriminatory barriers to full and fair access to contracts and associated subcontracts in the City's market area.

Stereotyping, racial bias and sexism impede W/M/DBEs' ability to obtain work on a fair basis. W/M/DBEs continue to experience overt demeaning remarks and sexual harassment. Systematic racial and gender barriers reduced opportunities for W/M/DBEs to obtain contracts, have full access to formal and informal networks and secure necessary financial support relative to non-W/M/DBEs. The anecdotal evidence also indicated a large number of W/M/DBEs are working below their capacity. Most reported they had available labor and staffing resources to take on additional work. W/M/DBE construction firms reported securing adequate surety bonding in the aggregate and for individual projects to compete for contracts, but it was difficult to obtain and was below the limits obtained by non-W/M/DBE firms.

The business operations of many W/M/DBEs were negatively affected by reduced business opportunities, lower revenues, workforce and material shortages, and higher material and labor costs during the COVID-19 pandemic. Most have fully or nearly recovered to pre-pandemic levels of operations. A few W/M/DBE firms found that the pandemic benefited their businesses.

Anecdotal evidence may “vividly complement” statistical evidence of discrimination. While not definitive proof that the City has a sufficient evidentiary basis to implement race- and gender-conscious remedies for these impediments, the results of the qualitative data are the types of evidence that, especially when considered in conjunction with other evidence, are relevant and probative of the City’s evidentiary basis to consider the use of race- and gender-conscious measures.

VII. RECOMMENDATIONS FOR THE CITY OF SEATTLE'S CONTRACTING EQUITY PROGRAMS

The quantitative and qualitative data presented in this study provide a thorough examination of whether woman- or minority-owned and disadvantaged business enterprises (“W/M/DBEs”) operating in the City of Seattle’s (“City”) geographic and procurement markets have full and fair opportunities to compete for City prime contracts and associated subcontracts. As required by strict constitutional scrutiny, we analyzed evidence of such firms’ utilization by the City as compared to their availability in its market area and any disparities between utilization and availability for locally and Federal Transit Administration (“FTA”) funded contracts; presented an analysis of overall marketplace disparities impacting W/M/DBEs in the Puget Sound area; gathered extensive anecdotal data of possible discrimination through interviews and an electronic survey; and reviewed the City’s current contracting equity programs, including its WMBE and its DBE program for FTA assisted transportation contracts. We also developed Appendix E, which presents summaries of anecdotal evidence of discrimination against minority and woman businesses collected during our disparity studies for other Washington state agencies.

Based on these results, case law and national best practices for contracting equity programs, we make the following recommendations. We acknowledge that many of our suggestions will require additional staff and funds.

A. Enhance Electronic Contract Data Collection and Program Management

In 2012, the City started using the B2Gnow® diversity management system on all construction contracts and in 2019 on consultant contracts with an Inclusion Plan. In 2022, the City started using B2Gnow® on selected Purchasing contracts. This presents only a partial picture of City consulting and purchasing contracting, as many types of procurement do not require Plans. We suggest that the system be configured to capture spending for all formally procured contracts issued by all departments. The data points should include contract type; the contractor tier

(prime or subcontractor); race; gender; and six-digit North American Industry Classification System (“NAICS”) codes. This will permit the City to fully evaluate all its relevant spend and identify gaps in equal opportunities to compete. It will also facilitate any future research, as it was quite onerous and time consuming for us to reconstruct contract records for this Report.

Further, all departments should be mandated to report into the system, with connectivity between departments. The current B2Gnow® system is fragmented and information is siloed.

Some City staff members requested additional training on using the system for program management. While data might be entered, some were unsure how evaluate the information to assist with program implementation, including generating useful reports.

B. Centralize WMBE Program Administration

The City has a somewhat decentralized structure for administration of its business equity programs. The Purchasing and Contracting Division (“PC”) is responsible for creating program guidelines. For consulting and purchasing contracts, each department, with the assistance of PC and oversight from the Mayor’s Office, establishes its own WMBE annual plan; sets voluntary WMBE goals for consulting and purchasing contracts; executes its own consultant contracts; and monitors its own projects and contracts. The Finance and Administrative Services (“FAS”) Department meets with other departments regularly to discuss their goals and other program topics.

This structure has led to some confusion and differing approaches to implementation, as well as fragmented and often incomplete data collection and monitoring. It also created challenges in performing the contract data analysis for this Report because data were spread across multiple departments and collected and entered into multiple formats. Centralizing all program operations in PC will ensure consistent application of program elements, reduce duplication and confusion and support complete and accurate reporting.

C. Increase Communication and Outreach to W/M/DBEs and Small Firms

A common complaint from W/M/DBEs was the difficulty in accessing timely information about City opportunities. An annual contracting forecast³¹⁶ of larger con-

316. A list of upcoming construction projects is regularly posted on the City’s webpage. <https://www.seattle.gov/documents/Departments/FAS/PurchasingAndContracting/Contracting/PW-projects-pdf.pdf>

tracts will permit vendors to plan their work and form teams to facilitate opportunities for W/M/DBEs and small firms.³¹⁷ It is common that teams are formed months in advance of major solicitations and given that small firms usually do not employ large marketing staffs, they need time to contact possible partners and cement relationships.

Further, as is the case with many governments, the study revealed that W/M/DBEs are receiving few opportunities in several subindustry codes. We suggest that special outreach be conducted to firms in those sectors. Activities could include targeted emails about future contracts and how to become listed on the consultant rosters; meet the buyer sessions and matchmaking events focusing on those industries, and identification of firms that are not currently certified, but might be eligible for inclusion, to encourage applications for certification by the State of Washington's Office of Minority and Women's; Business Enterprises ("OMWBE").

Many W/M/DBEs seemed unaware of the numerous City outreach, technical assistance and supportive services offerings. This suggests that a targeted marketing campaign would be useful. A campaign might be conducted in conjunction with OMWBE during the certification process. Regular alerts through the registration system would also be helpful to educate owners about the many programs available.

D. Focus on Increasing Prime Contract Awards to W/M/DBEs and Small Firms

Many small firm owners would like to perform as prime vendors on government contracts. While the WMBE program has been successful in reducing barriers, more could be done. Enhancements could include:

- Developing a protocol to consider whether to unbundle projects into less complex scopes and lower dollar values. The Small Works program can be expanded to create smaller projects. Not only will this permit smaller firms to perform, but it will also reduce the barriers of surety bonding and financing projects. Examples could include maintenance and landscaping contracts and smaller design services contracts.
- Reviewing experience requirements with the goal of reducing them to the lowest level necessary to ensure that the bidder or proposer has adequate experience, perhaps by recognizing similar though not identical types of work, including work performed for other governments and private sector clients.

317. FAS recently spearheaded several targeted "meet and greets" where relevant City departments provide forecasts of their upcoming opportunities and access to department staff responsible for projects.

- Adopting “quick pay” schedules (*e.g.*, more frequently than every 30 days) and permitting mobilization payments to all subcontractors for construction contracts on a race- and gender-neutral basis, not just WMBEs, DBEs and Small Business Concerns. The City should also consider paying for offsite materials in hand, that is, at the time when the contractor has to buy them, rather than making the contractor absorb that cash outlay before the time for installation.

Many professional services firms expressed frustration at the difficulties in obtaining contracts. A common request was to revise the system for setting rates for design contracts. Firm owners and representatives, both from W/M/DBEs and larger consulting firms, mentioned the complexity, burdensomeness and unfairness of the current approach, which requires firms to justify their overhead, salaries and other costs. We suggest that the City review and possibly revise these standards. A task force of industry leaders and associations, including the American Council of Engineering Companies and minority and woman business organizations focused on these industries, could be appointed to make specific recommendations for improvements.

The City should consider providing additional points in best value or negotiated contracts for a prime proposer using a firm that is new to City work. We heard from many firm owners and some City staff that more needs to be done to diversify the subcontractor pool and support new relationships between large consultants and certified firms. This is one approach that will incentivize proposers to seek out new partners on City opportunities.

Another suggestion is to consider a fixed markup percentage for subcontractors (perhaps 5%) to encourage large firms to use certified and small firms as much as possible. Several large consulting firms stated that the City’s prohibition on marking up a subconsultant’s billing rates to account for the increased costs of managing another firm was a disincentive to using WMBE and DBE subconsultants to the maximum possible extent, including on contracts with no goals.

E. Consider Partnering with Other Agencies and Local Organizations to Provide a Bonding and Financing Program and Enhance Technical Assistance

We recommend that the City implement a bonding and working capital program for construction contractors that includes a surety and a lender that agree to bond and finance graduates of the training program. A successful program goes beyond information and education by providing a surety and a lender that agree to bond and finance graduates of the training program would be very helpful. There are

some excellent programs that provide this type of support to M/W/DBEs and other small firms contractors to increase their capacities.³¹⁸

Other needed support includes marketing, legal, and accounting services; assistance with regulatory compliance; and support for the other aspects of managing a business needed to work successfully on City contracts. Engineering firms could benefit from assistance with setting overhead rates and submitting winning proposals. Perhaps the City can partner with WSDOT, Sound Transit, and the Port of Seattle to increase the availability of these services and the pool of firms that can participate.

F. Narrowly Tailor the WMBE Program

The current approach has been very successful in achieving parity for minority and woman firms on locally funded, non-FTA funded contracts and associated subcontracts. We suggest the following improvements to more narrowly tailor the program to meet the requirements of strict constitutional scrutiny.

1. Revise Certification Eligibility for the WMBE Program

The City currently permits a firm to self-identify as minority- or woman-owned. There is no investigation of whether the firm is in fact owned managed and controlled by one of more minority persons or women. In marked contrast to the DBE program, there is also no limit on the personal net worth of the owner(s) or the gross receipts of the business. All that is required is the mere attestation that the firm is minority- or woman-owned.

This lack of criteria limiting the program's benefits to small firms owned by socially and economically disadvantaged owners may well be found by the federal courts to run afoul of strict constitutional scrutiny. While obviously much less burdensome than the rigorous standards and processes required for DBE certification, the provision of the program's remedial benefits solely on the basis of race or gender may not be sufficiently narrowly tailored. As discussed in Chapter II, one of the hallmarks of the DBE program is that "wealthy minority owners and wealthy minority firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage."³¹⁹

318. Examples of successful programs include those at LAX, <https://imwis.com/recent-news-second-most-recent-story>; Los Angeles Metro, https://media.metro.net/about_us/bonding_program/images/cdbp_factsheet.pdf; and the Illinois Tollway, <https://www.illinoistollway.com/technicalassistance>.

319. *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d. 964, 973 (8th Cir. 2003), *cert. denied*, 541 U.S. 1041 (2004).

We therefore recommend that the City require that to be eligible to be counted towards its overall, WMBE goal or contract goals, a firm must be certified as either an MBE, WBE or DBE by OMWBE. This will ensure that the program's eligibility criteria are narrowly tailored.

2. Revise WMBE Inclusion Plan Requirements

We suggest eliminating the requirement that a certified WMBE bidding or proposing as a prime vendor must submit an Inclusion Plan. In our experience, the City of Seattle is unique in preferring a non-WMBE firm with lots of WMBE subcontractors to a WMBE firm that has the capabilities to serve as the prime vendor. A WMBE prime bidder whose self-performance meets or exceeds the contract goal should be not required to further subcontract to another WMBE. The contract goal is the boundary of what an agency can require using a race- and gender-conscious tool. There is no basis for requiring more than goal attainment. Further, if the objective is to support and grow minority and woman businesses, requiring additional subcontracting, with its attendant costs and possible loss of profits, is counter to the objectives of the program. These small WMBEs are disadvantaged by a system that rewards large firms for working with the very firms sought to be benefited by the Plan but penalizes the WMBEs for lacking the resources or the need for DEI staffs and events and mentoring programs. WMBEs should not be marked down for not having programs to benefit themselves.

Next, the Inclusion Plan scoring cannot operate as a minimum level or quota of WMBE participation. The flexibility requirement of narrow tailoring means that a firm that makes good faith efforts ("GFE") to meet a contract goal must be evaluated the same way as one that meets or exceeds the goal. The current Plan scoring system translates into a minimum level of WMBE participation necessary to receive enough points to continue in the evaluation process. For consulting contracts, the more aggressive the Inclusion Plan, the more points will be awarded to the proposal. We urge the City to add the component that firms not setting a voluntary goal receive the same points as ones who set them, if they display sufficient evidence of GFE. As with the DBE program, a WMBE utilization commitment in the bid or proposal should become a binding element of the contract, thereby providing certainty to all parties, in contrast to the non-binding, voluntary goal proposed by the prime vendor.

We further suggest that the City not award extra evaluation points for firms that exceeded the contract goal on an earlier contract. This likewise violates the narrow tailoring requirement that the program must be flexible and treat firms that made GFEs the same as those that meet or exceed the goal. Race-neutral measures must be used to the maximum feasible extent, and providing benefits for exceeding the remedial measure of the contract goal may be con-

sidered by the federal courts to be overreach. However, past performance can be examined in determining whether a firm has made GFE on a current contract when it did not meet the contract goal in the solicitation, as evidence of its commitment to inclusion in general.

Finally, we suggest that the City consider implementing the Utilization Plan module from B2Gnow®. This will permit easier application of the new approach and support timely and accurate monitoring of compliance with equity commitments.

3. Use the Study To Set a Narrowly Tailored, Overall Annual Aspirational WMBE Goal

The City's WMBE program has been very successful in opening opportunities for minority and woman firms. As reported in Chapter IV, overall, WMBEs have substantially exceeded parity with non-WMBEs in receiving City dollars. However, when we examined whether firms were concentrated within an industry, or between industries, on the basis of race or gender, a picture emerged of unequal outcomes for WMBEs compared to non-WMBEs. In addition, as documented in Chapter V, when examining outcomes in the wider economy, it is clear that minorities and women do not yet enjoy full and fair access to opportunities to compete in the City's market area. Our interviews with individual business owners and stakeholders and the results of our other studies for Washington governments further buttress the conclusion that race and sex discrimination remain persistent barriers to equal construction and construction-related contracting opportunities. Many minority and female owners reported that they still encounter barriers based on their race and/or gender and that without affirmative intervention to increase opportunities through contract goals, they will continue to be denied full and fair chances to compete. We therefore conclude that the City has a basis under federal strict constitutional scrutiny standards to implement narrowly tailored race- and gender-based measures.

The weighted, aggregated WMBE availability detailed in Chapter IV can be used to set the overall, annual aspirational goal.

4. Use the Study to Set Narrowly Tailored WMBE Contract Goals

Given the strong results of the City's equity program, it is critical that it narrowly tailor any use of race- or gender-conscious measures going forward. As described above, the City currently does not set contract goals on construction, consulting and purchasing contracts but requests voluntary commitments from bidders and proposers.

We suggest the current approach be revised to use the study's detailed, unweighted availability estimates as the starting point for contract specific goals. As discussed in Chapter II, an agency's constitutional responsibility is to ensure that goals are narrowly tailored to the specifics of the project. Using the study's data will provide a consistent, clear and replicable approach that addresses current market conditions. As described above, while the existing process is flexible, in that a bidder makes up its own goal, it also requires a minimum commitment to using WMBEs. We believe the widely accepted approach that uses study availability data is more defensible. It would also reduce the complexity of the program and harmonize it with the implementation of the DBE program.

This methodology involves four steps to develop goals that are transparent, can be replicated and are legally defensible³²⁰:

1. Weight the estimated dollar value of the scopes of the contract by NAICS codes, as determined during the process of creating the solicitation.
2. Determine the unweighted availability of WMBEs in those scopes, as estimated in the Disparity Study.
3. Calculate a weighted goal based upon the scopes and the availability of at least three available firms in each scope.
4. Adjust the result based on geography and current market conditions (for example, the volume of work currently underway in the market, project location, the entrance of newly certified firms, specialized nature of the project, etc.), past achievement on similar projects and any other relevant factors.

Written procedures spelling out the steps should be drafted and widely disseminated. A list of the six-digit NAICS codes used to set the goal could be listed in the bid documents to provide guidance on how to meet the target for that solicitation.

There is a contract goal setting module available in the B2Gnow® system that is designed to use our study data. Implementing the module will facilitate this process, ensure consistency of application and produce up-to-date reports. Adoption of a narrowly tailored contract goal setting methodology will likely involve the need for some training for City project managers and other staff with contracting responsibilities.

320. See www.contractgoalsetting.com, for instructions on correct contract goal setting.

G. Use the Study to Implement the Disadvantaged Business Enterprise Program for Federal Transit Administration Funded Contracts

1. Use the Study to Set the Triennial DBE Goal for FTA Funded Contracts

49 C.F.R. Part 26 requires a recipient to engage in a two-step process to set a triennial goal for DBE participation.

Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT assisted contracts (hereafter, the “relative availability of DBEs”). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination.³²¹

One approved method to set the triennial goal is to use data from a disparity study. We therefore recommend that the City use the DBE aggregated weighted availability findings in Chapter IV to determine the Step One base figure for the relative availability of DBEs required by §26.45(c).³²² These results are the estimates of total DBE availability that reflect the importance of each subindustry to the City’s overall FTA funded contracting activity.

Under §26.45(d), the City must perform a Step Two analysis.³²³ It must consider whether to adjust the Step One figure to reflect the effects of the DBE program and the level of DBE availability that would be expected in the absence of discrimination. The City can use the statistical disparities in Chapter V of the rates at which DBEs form businesses as a possible marker of the availability of minority- and woman-owned businesses that would be expected “but for” discrimination. This is the type of “demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.”³²⁴ However, we note that there is no direct case law upholding this type of “but for” analysis. We therefore advise the City to proceed with caution in using the economy-wide data for an adjustment.

321. 49 C.F.R. §26.45(b).

322. Table 4-9, Aggregated Weighted Availability.

323. “Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal.” 49 C.F.R. §26.45(d).

324. 49 C.F.R. §26.45(d)(3); *see also* §23.51.

2. Continue to Employ Race-neutral Approaches to Ensure Equal Opportunities for FTA and FAA Funded Contracts

As a recipient under the jurisdiction of the Ninth Circuit Court of Appeals, the City is required to limit its use of race-conscious contract goals to those groups that have suffered discrimination in its market area. The results of the disparity analyses of the City's contracting activities on locally and FTA funded contracts suggest that DBEs have been able to achieve parity solely through race-neutral approaches. We therefore recommend that the City continue its race-neutral approaches to level the playing field for these contracts.

H. Develop Performance Measures for Program Success

The City should develop quantitative performance measures for overall success of its local WMBE and DBE programs to evaluate the effectiveness of various approaches in reducing any disparities and systemic barriers identified by the study. In addition to meeting goals, possible benchmarks might be:

- Progress towards meeting the overall, annual WMBE and DBE goals.
- The number of bids or proposals, industry and the dollar amount of the awards and the goal shortfall, where the bidder was unable to meet the goals and submitted GFE to do so.
- The number, dollar amount and the industry code of bids or proposals rejected as non-responsive for failure to make good faith efforts to meet the goal.
- The number, industry and dollar amount of W/M/DBE substitutions during contract performance.
- Increased bidding by certified firms as prime vendors.
- Increased prime contract awards to certified firms.
- Increased "capacity" of certified firms, as measured by bonding limits, size of jobs, profitability, complexity of work, etc.
- Increased variety in the subindustries in which W/M/DBEs are awarded prime contracts and subcontracts.

I. Conduct Regular Program Reviews

To meet the requirements of strict constitutional scrutiny and the DBE program regulations, as well as ensure that best practices in program administration con-

tinue to be applied, the City should conduct a full and thorough review of the evidentiary basis and the implementation of its programs approximately every five to seven years.

APPENDIX A:

FURTHER EXPLANATION OF THE MULTIPLE REGRESSION ANALYSIS

As explained in the report, multiple regression statistical techniques seek to explore the relationship between a set of independent variables and a dependent variable. The following equation is a way to visualize this relationship:

$$DV = f(D, I, O)$$

where DV is the dependent variable; D is a set of demographic variables; I is a set of industry & occupation variables; and O is a set of other independent variables.

The estimation process takes this equation and transforms it into:

$$DV = C + (\beta_1 * D) + (\beta_2 * I) + (\beta_3 * O) + \mu$$

where C is the constant term; β_1 , β_2 and β_3 are coefficients, and μ is the random error term.

The statistical technique seeks to estimate the values of the constant term and the coefficients.

In order to complete the estimation, the set of independent variables must be operationalized. For demographic variables, the estimation used race, gender and age. For industry and occupation variables, the relevant industry and occupation were utilized. For the other variables, age and education were used.

A coefficient was estimated for each independent variable. The broad idea is that a person's wage or earnings is dependent upon the person's race, gender, age, industry, occupation, and education. Since this report examined the City of Seattle, the analysis was limited to data from the Seattle MSA (King, Pierce, and Snohomish Counties) for locally funded contracts and King County for FAA funded contracts. The coefficient for the new variable showed the impact of being a member of that race or gender in the metropolitan area.

APPENDIX B:

FURTHER EXPLANATION OF THE PROBIT REGRESSION ANALYSIS

Probit regression is a special type of regression analysis. Probit regression analysis is used to explore the determinants of business formation because the question of business formation is a “yes’ or “no” question: the individual does or does not form a business. Hence, the dependent variable (business formation) is a dichotomous one with a value of “one” or “zero”. This differs from the question of the impact of race and gender of wages, for instance, because wage is a continuous variable and can have any non- negative value. Since business formation is a “yes/no” issue, the fundamental issue is: how do the dependent variables (race, gender, etc.) impact the probability that a particular group forms a business? Does the race or gender of a person raise or lower the probability he or she will form a business and by what degree does this probability change? The standard regression model does not examine probabilities; it examines if the level of a variable (*e.g.*, the wage) rises or fall because of race or gender and the magnitude of this change.

The basic probit regression model looks identical to the basic standard regression model:

$$DV = f(D, I, O)$$

where DV is the dependent variable; D is a set of demographic variables; I is a set of industry and occupation variables; and O is a set of other independent variables.

The estimation process takes this equation and transforms it into:

$$DV = C + (\beta_1 * D) + (\beta_2 * I) + (\beta_3 * O) + \mu$$

where C is the constant term; β_1 , β_2 , and β_3 are coefficients, and μ is the random error term.

As discussed above, the dependent variable in the standard regression model is continuous and can take on many values while in the probit model, the dependent variable is dichotomous and can take on only two values: zero or one. The two models also differ in the interpretation of the independent variables’ coefficients, in the standard model, the interpretation is fairly straight-

forward: the unit change in the independent variable impacts the dependent variable by the amount of the coefficient.³²⁵ However, in the probit model, because the model is examining changes in probabilities, the initial coefficients cannot be interpreted this way. One additional computation step of the initial coefficient must be undertaken in order to yield a result that indicates how the change in the independent variable affects the probability of an event (*e.g.*, business formation) occurring. For instance, with the question of the impact of gender on business formation, if the independent variable was WOMAN (with a value of 0 if the individual was male and 1 if the individual was female) and the additional computation chance of the coefficient of WOMAN yielded a value of -0.12, we would interpret this to mean that women have a 12 percent lower probability of forming a business compared to men.

325. The exact interpretation depends upon the functional form of the model.

APPENDIX C:

SIGNIFICANCE LEVELS

Many tables in this Report contain asterisks indicating that a number has statistical significance at 0.001, 0.01, or 0.05 levels (sometimes, this is presented as 99.9 percent; 99 percent and 95 percent, respectively) and the body of the report repeats these descriptions. While the use of the term seems important, it is not self-evident what the term means. This Appendix provides a general explanation of significance levels.

This Report seeks to address the question of whether or not non-Whites and White women received disparate treatment in the economy relative to White males. From a statistical viewpoint, this primary question has two sub-questions:

- What is the relationship between the independent variable and the dependent variable?
- What is the probability that the relationship between the independent variable and the dependent variable is equal to zero?

For example, an important question facing the City of Seattle as it explores whether each racial and ethnic group and White women continue to experience discrimination in its markets is do non-Whites and White women receive lower wages than White men? As discussed in Appendix A, one way to uncover the relationship between the dependent variable (e.g., wages) and the independent variable (e.g., non-Whites) is through multiple regression analysis. An example helps to explain this concept.

Let us say, for example, that this analysis determines that non-Whites receive wages that are 35 percent less than White men after controlling for other factors, such as education and industry, which might account for the differences in wages. However, this finding is only an estimate of the relationship between the independent variable (e.g., non-Whites) and the dependent variable (e.g., wages) – the first sub-question. It is still important to determine how accurate the estimation is. In other words, what is the probability that the estimated relationship is equal to zero – the second sub-question.

To resolve the second sub-question, statistical hypothesis tests are utilized. Hypothesis testing assumes that there is no relationship between belonging to a particular demographic group and the level of economic utilization relative to White men (e.g., non-Whites earn identical wages compared to White men

or non-Whites earn 0 percent less than White men). This sometimes is called the null hypothesis. We then calculate a confidence interval to find the probability that the observed relationship (e.g., -35 percent) is between 0 and minus that confidence interval.³²⁶ The confidence interval will vary depending upon the level of confidence (statistical significance) we wish to have in our conclusion. When a number is statistically significant at the 0.001 level, this indicates that we can be 99.9 percent certain that the number in question (in this example, -35 percent) lies outside of the confidence interval. When a number is statistically significant at the 0.01 level, this indicates that we can be 99.0 percent certain that the number in question lies outside of the confidence interval. When a number is statistically significant at the 0.05 level, this indicates that we can be 95.0 percent certain that the number in question lies outside of the confidence interval.

326. Because 0 can only be greater than -35 percent, we only speak of “minus the confidence level”. This is a one-tailed hypothesis test. If, in another example, the observed relationship could be above or below the hypothesized value, then we would say “plus or minus the confidence level” and this would be a two-tailed test.



APPENDIX D: LOCALLY FUNDED CONTRACTS: UTILIZATION, AVAILABILITY, AND DISPARITY RATIO ANALYSIS FOR CONSTRUCTION, SERVICES AND GOODS INDUSTRIES

We were asked by the City to provide an analysis of locally funded contracts disaggregated into three broad industry groups: Construction; Services; and Goods. This Appendix presents the results of that analysis. Because the methodology leading to these results has been detailed in Chapter IV, this Appendix only presents the relevant tables.

1. **Construction**

Tables D-1 and D-2 present data on the City's WMBE firm utilization, measured in contract dollars and percentage of contract dollars.

Table D-1: Distribution of City of Seattle Contract Dollars by Race and Gender: Construction
(total dollars)
(Locally Funded)

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
236116	\$0	\$0	\$0	\$0	\$0	\$0	\$917,190	\$917,190
236210	\$0	\$0	\$0	\$0	\$0	\$0	\$55,354,267	\$55,354,267
236220	\$277,927.0	\$0.0	\$521,877.0	\$0.0	\$3,713,922.0	\$4,513,727	\$6,738,231	\$11,251,958
237110	\$0	\$0	\$0	\$0	\$835,046	\$835,046	\$17,076,260	\$17,911,306
237310	\$9,810	\$3,592,130	\$192,190	\$2,624,348	\$5,968,652	\$12,387,131	\$64,467,557	\$76,854,688
237990	\$0	\$0	\$402,896	\$0	\$5,085,209	\$5,488,105	\$18,813,161	\$24,301,266
238110	\$119,670	\$582,683	\$0	\$0	\$178,567	\$880,920	\$15,542,736	\$16,423,656
238120	\$0	\$217,714	\$703,966	\$6,800	\$1,249,318	\$2,177,798	\$10,230,019	\$12,407,817
238130	\$0	\$0	\$0	\$0	\$0	\$0	\$1,076,226	\$1,076,226
238140	\$0	\$0	\$0	\$0	\$107,106	\$107,106	\$1,289,829	\$1,396,935
238150	\$0	\$0	\$0	\$0	\$379,627	\$379,627	\$683,157	\$1,062,784
238160	\$0	\$145,000	\$645,128	\$0	\$334,305	\$1,124,433	\$4,914,942	\$6,039,375
238190	\$0	\$715,988	\$1,087,787	\$0	\$1,263,625	\$3,067,399	\$1,954,228	\$5,021,627
238210	\$3,901,654	\$5,002,801	\$1,267,842	\$12,641,506	\$6,233,979	\$29,047,782	\$18,908,361	\$47,956,143
238220	\$0	\$758,846	\$217,107	\$0	\$10,674,956	\$11,650,909	\$13,471,846	\$25,122,755
238290	\$0	\$0	\$4,603,933	\$0	\$0	\$4,603,933	\$1,081,682	\$5,685,615
238310	\$34,928	\$254,073	\$0	\$0	\$212,678	\$501,679	\$3,672,145	\$4,173,824
238320	\$89,331	\$111,033	\$16,064	\$0	\$217,625	\$434,054	\$517,188	\$951,242
238330	\$177,782	\$0	\$0	\$0	\$397,311	\$575,093	\$453,576	\$1,028,669
238350	\$13,687	\$27,293	\$0	\$0	\$0	\$40,980	\$790,211	\$831,191

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
238390	\$9,900	\$705,745	\$15,555	\$0	\$67,926	\$799,126	\$3,115,098	\$3,914,224
238910	\$37,000	\$490,255	\$1,163,945	\$57,651	\$1,386,732	\$3,135,583	\$20,127,420	\$23,263,003
238990	\$0	\$499,596	\$0	\$711,450	\$4,410,159	\$5,621,205	\$36,317,395	\$41,938,600
Total	\$4,671,689	\$13,103,157	\$10,838,290	\$16,041,755	\$44,654,894	\$42,716,743	\$297,512,725	\$384,884,361

Source: CHA analysis of City of Seattle data

**Table D-2: Table Percentage Distribution of City of Seattle Contract Dollars
by Race and Gender: Construction
(share of total dollars)
(Locally Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
236116	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236220	2.5%	0.0%	4.6%	0.0%	33.0%	40.1%	59.9%	100.0%
237110	0.0%	0.0%	0.0%	0.0%	4.7%	4.7%	95.3%	100.0%
237310	0.0%	4.7%	0.3%	3.4%	7.8%	16.1%	83.9%	100.0%
237990	0.0%	0.0%	1.7%	0.0%	20.9%	22.6%	77.4%	100.0%
238110	0.7%	3.5%	0.0%	0.0%	1.1%	5.4%	94.6%	100.0%
238120	0.0%	1.8%	5.7%	0.1%	10.1%	17.6%	82.4%	100.0%
238130	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238140	0.0%	0.0%	0.0%	0.0%	7.7%	7.7%	92.3%	100.0%
238150	0.0%	0.0%	0.0%	0.0%	35.7%	35.7%	64.3%	100.0%
238160	0.0%	2.4%	10.7%	0.0%	5.5%	18.6%	81.4%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
238190	0.0%	14.3%	21.7%	0.0%	25.2%	61.1%	38.9%	100.0%
238210	8.1%	10.4%	2.6%	26.4%	13.0%	60.6%	39.4%	100.0%
238220	0.0%	3.0%	0.9%	0.0%	42.5%	46.4%	53.6%	100.0%
238290	0.0%	0.0%	81.0%	0.0%	0.0%	81.0%	19.0%	100.0%
238310	0.8%	6.1%	0.0%	0.0%	5.1%	12.0%	88.0%	100.0%
238320	9.4%	11.7%	1.7%	0.0%	22.9%	45.6%	54.4%	100.0%
238330	17.3%	0.0%	0.0%	0.0%	38.6%	55.9%	44.1%	100.0%
238350	1.6%	3.3%	0.0%	0.0%	0.0%	4.9%	95.1%	100.0%
238390	0.3%	18.0%	0.4%	0.0%	1.7%	20.4%	79.6%	100.0%
238910	0.2%	2.1%	5.0%	0.2%	6.0%	13.5%	86.5%	100.0%
238990	0.0%	1.2%	0.0%	1.7%	10.5%	13.4%	86.6%	100.0%
Total	1.2%	3.4%	2.8%	4.2%	11.1%	22.7%	77.3%	100.0%

Source: CHA analysis of City of Seattle data

Tables D-3 through D-5 present data on:

- The unweighted availability percentages by race and gender and by NAICS codes;
- The weights used to adjust the unweighted numbers; and
- The final estimates of the weighted averages of the individual six-digit level NAICS availability estimates in the market area.

Table D-3: Unweighted WMBE Availability for City of Seattle Contracts: Construction (Locally Funded)

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
236116	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236220	2.5%	0.0%	4.6%	0.0%	33.0%	40.1%	59.9%	100.0%
237110	0.0%	0.0%	0.0%	0.0%	4.7%	4.7%	95.3%	100.0%
237310	0.0%	4.7%	0.3%	3.4%	7.8%	16.1%	83.9%	100.0%
237990	0.0%	0.0%	1.7%	0.0%	20.9%	22.6%	77.4%	100.0%
238110	0.7%	3.5%	0.0%	0.0%	1.1%	5.4%	94.6%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
238120	0.0%	1.8%	5.7%	0.1%	10.1%	17.6%	82.4%	100.0%
238130	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238140	0.0%	0.0%	0.0%	0.0%	7.7%	7.7%	92.3%	100.0%
238150	0.0%	0.0%	0.0%	0.0%	35.7%	35.7%	64.3%	100.0%
238160	0.0%	2.4%	10.7%	0.0%	5.5%	18.6%	81.4%	100.0%
238190	0.0%	14.3%	21.7%	0.0%	25.2%	61.1%	38.9%	100.0%
238210	8.1%	10.4%	2.6%	26.4%	13.0%	60.6%	39.4%	100.0%
238220	0.0%	3.0%	0.9%	0.0%	42.5%	46.4%	53.6%	100.0%
238290	0.0%	0.0%	81.0%	0.0%	0.0%	81.0%	19.0%	100.0%
238310	0.8%	6.1%	0.0%	0.0%	5.1%	12.0%	88.0%	100.0%
238320	9.4%	11.7%	1.7%	0.0%	22.9%	45.6%	54.4%	100.0%
238330	17.3%	0.0%	0.0%	0.0%	38.6%	55.9%	44.1%	100.0%
238350	1.6%	3.3%	0.0%	0.0%	0.0%	4.9%	95.1%	100.0%
238390	0.3%	18.0%	0.4%	0.0%	1.7%	20.4%	79.6%	100.0%
238910	0.2%	2.1%	5.0%	0.2%	6.0%	13.5%	86.5%	100.0%
238990	0.0%	1.2%	0.0%	1.7%	10.5%	13.4%	86.6%	100.0%
Total	1.2%	3.4%	2.8%	4.2%	11.1%	22.7%	77.3%	100.0%

Source: CHA analysis of City of Seattle data; Hoovers; CHA Master Directory

**Table D-4: Distribution of City of Seattle’s Spending by NAICS Code (the Weights):
Construction, (Locally Funded)**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
236116	New Multifamily Housing Construction (except For-Sale Builders)	0.2%
236210	Industrial Building Construction	14.4%
236220	Commercial and Institutional Building Construction	2.9%
237110	Water and Sewer Line and Related Structures Construction	4.7%
237310	Highway, Street, and Bridge Construction	20.0%
237990	Other Heavy and Civil Engineering Construction	6.3%
238110	Poured Concrete Foundation and Structure Contractors	4.3%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
238120	Structural Steel and Precast Concrete Contractors	3.2%
238130	Framing Contractors	0.3%
238140	Masonry Contractors	0.4%
238150	Glass and Glazing Contractors	0.3%
238160	Roofing Contractors	1.6%
238190	Other Foundation, Structure, and Building Exterior Contractors	1.3%
238210	Electrical Contractors and Other Wiring Installation Contractors	12.5%
238220	Plumbing, Heating, and Air-Conditioning Contractors	6.5%
238290	Other Building Equipment Contractors	1.5%
238310	Drywall and Insulation Contractors	1.1%
238320	Painting and Wall Covering Contractors	0.2%
238330	Flooring Contractors	0.3%
238350	Finish Carpentry Contractors	0.2%
238390	Other Building Finishing Contractors	1.0%
238910	Site Preparation Contractors	6.0%
238990	All Other Specialty Trade Contractors	10.9%
TOTAL		100.0%

Source: CHA analysis of City of Seattle data

Table D-5 presents the weighted availability results for each of the racial and gender categories.

Table D-5: Aggregated Weighted Availability for City of Seattle Contracts: Construction (Locally Funded)

Black	Hispanic	Asian	Native American	White Women	WMBE	Non WMBE	Total
1.7%	1.4%	2.2%	1.7%	4.6%	11.6%	88.4%	100.0%

Source: CHA analysis of City of Seattle data; Hoovers; CHA Master Directory

Table D-6 presents the disparity ratios for each of the racial and gender categories.

**Table D-6: Disparity Ratios by Demographic Group: Construction
(Locally Funded)**

	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE
Disparity Ratio	72.6%‡	235.6%***	128.6%***	249.4%***	239.8%	195.6%***	87.4%‡***

Source: CHA analysis of City of Seattle data

‡ Indicates substantive significance

*** Statistically significant at the 0.001 level

2. Services

Tables D-7 and D-8 present data on the City’s WMBE firm utilization, measured in contract dollars and percentage of contract dollars.

Table D-7: Distribution of City of Seattle Contract Dollars by Race and Gender: Services
(total dollars)
(Locally Funded)

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
213112	\$0	\$0	\$0	\$0	\$2,788	\$2,788	\$0	\$2,788
221122	\$0	\$0	\$0	\$0	\$29,595	\$29,595	\$0	\$29,595
323111	\$0	\$0	\$0	\$0	\$738,920	\$738,920	\$157,460	\$896,380
447190	\$0	\$0	\$0	\$0	\$0	\$0	\$31,937	\$31,937
485113	\$0	\$0	\$0	\$0	\$0	\$0	\$6,833,238	\$6,833,238
485991	\$0	\$0	\$0	\$0	\$0	\$0	\$129,096	\$129,096
488490	\$382,790	\$0	\$82,215	\$0	\$24,652	\$489,657	\$726,492	\$1,216,149
512110	\$0	\$0	\$0	\$0	\$44,561	\$44,561	\$14,175	\$58,736
532420	\$0	\$0	\$0	\$0	\$0	\$0	\$9,645	\$9,645
541110	\$0	\$0	\$0	\$0	\$22,175	\$22,175	\$272,451	\$294,626
541211	\$0	\$0	\$0	\$0	\$98,044	\$98,044	\$1,146,956	\$1,245,000
541310	\$0	\$55,954	\$461,606	\$0	\$520,380	\$1,037,940	\$2,189,046	\$3,226,986
541320	\$109,606	\$0	\$0	\$0	\$86,241	\$195,847	\$391,414	\$587,261
541330	\$327,692	\$220,987	\$2,534,294	\$173,993	\$685,416	\$3,942,382	\$19,441,511	\$23,383,893
541370	\$638,412	\$0	\$835,894	\$0	\$309,211	\$1,783,517	\$887,176	\$2,670,693
541380	\$0	\$0	\$46,218	\$0	\$28,515	\$74,733	\$246,766	\$321,499
541410	\$0	\$0	\$0	\$0	\$0	\$0	\$5,885	\$5,885
541420	\$0	\$0	\$0	\$0	\$4,600	\$4,600	\$89,970	\$94,570
541430	\$0	\$0	\$0	\$1,349,094	\$0	\$1,349,094	\$0	\$1,349,094
541490	\$0	\$0	\$0	\$0	\$0	\$0	\$30,028	\$30,028

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
541511	\$0	\$0	\$26,975,972	\$0	\$1,733,462	\$28,709,434	\$64,000	\$28,773,434
541512	\$24,310	\$0	\$197,770	\$0	\$368,542	\$590,622	\$44,720	\$635,342
541519	\$54,349,881	\$0	\$0	\$0	\$0	\$54,349,881	\$0	\$54,349,881
541611	\$222,560	\$0	\$542,628	\$0	\$1,815,554	\$2,580,741	\$210,024	\$2,790,765
541612	\$0	\$0	\$0	\$0	\$3,410	\$3,410	\$236,960	\$240,370
541618	\$0	\$0	\$286,880	\$0	\$173,190	\$460,070	\$81,144	\$541,214
541620	\$193,510	\$0	\$0	\$534,225	\$1,808,566	\$2,536,301	\$1,780,371	\$4,316,672
541690	\$0	\$0	\$0	\$0	\$275,976	\$275,976	\$59,235	\$335,211
541720	\$0	\$0	\$0	\$0	\$10,114	\$10,113	\$63,361	\$73,474
541820	\$62,739	\$0	\$0	\$0	\$38,101	\$100,839	\$261,781	\$362,620
541910	\$0	\$0	\$0	\$0	\$0	\$0	\$99,750	\$99,750
541990	\$199,848	\$0	\$75,169	\$157,180	\$859,952	\$1,292,150	\$2,806,745	\$4,098,895
561320	\$0	\$0	\$67,165	\$0	\$0	\$67,165	\$0	\$67,165
561410	\$0	\$0	\$0	\$0	\$2,365	\$2,365	\$0	\$2,365
561421	\$0	\$0	\$0	\$0	\$0	\$0	\$480	\$480
561431	\$0	\$0	\$1,486,637	\$0	\$0	\$1,486,637	\$0	\$1,486,637
561612	\$0	\$0	\$0	\$0	\$0	\$0	\$179,913	\$179,913
561621	\$0	\$0	\$3,733,627	\$0	\$0	\$3,733,627	\$2,647,892	\$6,381,519
561720	\$12,360	\$126,364	\$318,255	\$0	\$2,955	\$459,933	\$22,431,728	\$22,891,661
561730	\$705,095	\$103,721	\$764,462	\$0	\$1,949,479	\$3,522,757	\$826,375	\$4,349,132
561990	\$349,325	\$799,923	\$174,948	\$0	\$83,615	\$1,407,811	\$6,107,557	\$7,515,368
562111	\$0	\$0	\$0	\$0	\$47,423	\$47,423	\$0	\$47,423
562119	\$0	\$0	\$0	\$0	\$694,805	\$694,805	\$0	\$694,805

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
562212	\$0	\$0	\$0	\$0	\$159,496	\$159,496	\$0	\$159,496
562910	\$26,520	\$0	\$0	\$0	\$0	\$26,521	\$9,556,053	\$9,582,574
562920	\$0	\$0	\$0	\$0	\$0	\$0	\$561,648	\$561,648
562991	\$0	\$0	\$4,092	\$0	\$0	\$4,092	\$0	\$4,092
562998	\$0	\$0	\$0	\$0	\$0	\$0	\$21,776	\$21,776
621493	\$0	\$0	\$0	\$0	\$0	\$0	\$1,804,385	\$1,804,385
811111	\$0	\$0	\$0	\$0	\$0	\$0	\$704,891	\$704,891
811198	\$0	\$0	\$0	\$0	\$0	\$0	\$3,580,511	\$3,580,511
811310	\$0	\$0	\$0	\$0	\$0	\$0	\$42,055	\$42,055
812930	\$0	\$0	\$0	\$0	\$0	\$0	\$88,796	\$88,796
Total	\$58,243,060	\$1,306,949	\$39,423,726	\$2,214,492	\$12,931,314	\$114,119,539	\$87,752,573	\$201,872,112

Source: CHA analysis of City of Seattle data

**Table D-8: Percentage Distribution of City of Seattle Contract Dollars by Race and Gender:
Services, (share of total dollars)
(Locally Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
213112	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
221122	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
323111	0.0%	0.0%	0.0%	0.0%	82.4%	82.4%	17.6%	100.0%
447190	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
485113	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
485991	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
488490	31.5%	0.0%	6.8%	0.0%	2.0%	40.3%	59.7%	100.0%
512110	0.0%	0.0%	0.0%	0.0%	75.9%	75.9%	24.1%	100.0%
532420	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541110	0.0%	0.0%	0.0%	0.0%	7.5%	7.5%	92.5%	100.0%
541211	0.0%	0.0%	0.0%	0.0%	7.9%	7.9%	92.1%	100.0%
541310	0.0%	1.7%	14.3%	0.0%	16.1%	32.2%	67.8%	100.0%
541320	18.7%	0.0%	0.0%	0.0%	14.7%	33.3%	66.7%	100.0%
541330	1.4%	0.9%	10.8%	0.7%	2.9%	16.9%	83.1%	100.0%
541370	23.9%	0.0%	31.3%	0.0%	11.6%	66.8%	33.2%	100.0%
541380	0.0%	0.0%	14.4%	0.0%	8.9%	23.2%	76.8%	100.0%
541410	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541420	0.0%	0.0%	0.0%	0.0%	4.9%	4.9%	95.1%	100.0%
541430	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
541490	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541511	0.0%	0.0%	93.8%	0.0%	6.0%	99.8%	0.2%	100.0%
541512	3.8%	0.0%	31.1%	0.0%	58.0%	93.0%	7.0%	100.0%
541519	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541611	8.0%	0.0%	19.4%	0.0%	65.1%	92.5%	7.5%	100.0%
541612	0.0%	0.0%	0.0%	0.0%	1.4%	1.4%	98.6%	100.0%
541618	0.0%	0.0%	53.0%	0.0%	32.0%	85.0%	15.0%	100.0%
541620	4.5%	0.0%	0.0%	12.4%	41.9%	58.8%	41.2%	100.0%
541690	0.0%	0.0%	0.0%	0.0%	82.3%	82.3%	17.7%	100.0%
541720	0.0%	0.0%	0.0%	0.0%	13.8%	13.8%	86.2%	100.0%
541820	17.3%	0.0%	0.0%	0.0%	10.5%	27.8%	72.2%	100.0%
541910	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541990	4.9%	0.0%	1.8%	3.8%	21.0%	31.5%	68.5%	100.0%
561320	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
561410	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
561421	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561431	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
561612	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561621	0.0%	0.0%	58.5%	0.0%	0.0%	58.5%	41.5%	100.0%
561720	0.1%	0.6%	1.4%	0.0%	0.0%	2.0%	98.0%	100.0%
561730	16.2%	2.4%	17.6%	0.0%	44.8%	81.0%	19.0%	100.0%
561990	4.6%	10.6%	2.3%	0.0%	1.1%	18.7%	81.3%	100.0%
562111	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
562119	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
562212	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
562910	0.3%	0.0%	0.0%	0.0%	0.0%	0.3%	99.7%	100.0%
562920	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562991	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
562998	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
621493	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
811111	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
811198	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
811310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
812930	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
Total	28.9%	0.6%	19.5%	1.1%	6.4%	56.5%	43.5%	100.0%

Source: CHA analysis of City of Seattle data

Tables D-9 through D-11 present data on:

- The unweighted availability percentages by race and gender and by NAICS codes;
- The weights used to adjust the unweighted numbers; and
- The final estimates of the weighted averages of the individual six-digit level NAICS availability estimates in the market area.

**Table D-9: Unweighted WMBE Availability for City of Seattle Contracts: Services
(Locally Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
213112	0.0%	0.0%	0.0%	0.0%	3.9%	3.9%	96.1%	100.0%
221122	0.0%	0.0%	0.0%	0.0%	5.1%	5.1%	94.9%	100.0%
323111	0.3%	0.1%	0.7%	0.0%	7.3%	8.4%	91.6%	100.0%
447190	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
485113	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
485991	50.0%	0.0%	0.0%	0.0%	0.0%	50.0%	50.0%	100.0%
488490	6.5%	0.0%	2.8%	0.0%	10.3%	19.6%	80.4%	100.0%
512110	0.7%	0.8%	0.8%	0.5%	7.2%	10.0%	90.0%	100.0%
532420	11.1%	0.0%	0.0%	0.0%	0.0%	11.1%	88.9%	100.0%
541110	0.1%	0.0%	0.1%	0.0%	3.2%	3.4%	96.6%	100.0%
541211	0.2%	0.1%	0.2%	0.0%	5.9%	6.4%	93.6%	100.0%
541310	0.4%	0.7%	1.3%	0.1%	6.8%	9.2%	90.8%	100.0%
541320	0.1%	0.0%	0.1%	0.0%	3.6%	3.9%	96.1%	100.0%
541330	0.7%	0.7%	2.6%	0.4%	4.4%	8.7%	91.3%	100.0%
541370	4.9%	1.9%	4.9%	0.0%	6.3%	18.0%	82.0%	100.0%
541380	0.1%	0.3%	2.2%	0.0%	3.5%	6.2%	93.8%	100.0%
541410	0.1%	0.1%	0.2%	0.0%	26.6%	27.1%	72.9%	100.0%
541420	0.0%	5.6%	3.7%	0.0%	11.1%	20.4%	79.6%	100.0%
541430	0.4%	0.4%	1.1%	0.1%	20.2%	22.2%	77.8%	100.0%
541490	0.1%	0.0%	0.2%	0.0%	3.7%	4.1%	95.9%	100.0%
541511	0.5%	0.2%	1.8%	0.1%	3.3%	5.8%	94.2%	100.0%
541512	1.0%	0.3%	2.6%	0.3%	4.3%	8.5%	91.5%	100.0%
541519	2.8%	0.9%	4.6%	0.9%	7.4%	16.7%	83.3%	100.0%
541611	2.3%	0.6%	1.1%	0.2%	7.7%	11.9%	88.1%	100.0%
541612	6.1%	0.3%	1.4%	0.3%	20.5%	28.5%	71.5%	100.0%
541618	0.3%	0.1%	0.3%	0.1%	2.7%	3.4%	96.6%	100.0%
541620	1.6%	1.0%	1.7%	1.4%	15.8%	21.5%	78.5%	100.0%
541690	1.1%	1.2%	2.0%	0.3%	10.6%	15.1%	84.9%	100.0%

City of Seattle Disparity Study 2025

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
541720	0.5%	0.5%	0.5%	0.0%	7.2%	8.6%	91.4%	100.0%
541820	2.2%	0.6%	0.6%	0.3%	13.9%	17.6%	82.4%	100.0%
541910	0.4%	1.1%	0.0%	0.0%	9.8%	11.3%	88.7%	100.0%
541990	0.4%	0.1%	1.0%	0.1%	8.8%	10.4%	89.6%	100.0%
561320	1.2%	0.6%	1.2%	0.9%	7.0%	11.0%	89.0%	100.0%
561410	2.6%	0.0%	0.9%	0.0%	42.7%	46.2%	53.8%	100.0%
561421	2.2%	0.0%	0.0%	0.0%	2.2%	4.4%	95.6%	100.0%
561431	0.0%	0.0%	0.6%	0.0%	4.3%	4.9%	95.1%	100.0%
561612	2.4%	1.2%	0.0%	0.0%	0.8%	4.4%	95.6%	100.0%
561621	0.8%	1.2%	0.8%	1.9%	1.5%	6.2%	93.8%	100.0%
561720	1.7%	0.6%	0.6%	0.1%	5.8%	8.9%	91.1%	100.0%
561730	0.9%	0.4%	0.9%	0.1%	4.5%	6.8%	93.2%	100.0%
561990	0.7%	0.3%	0.6%	0.1%	4.5%	6.2%	93.8%	100.0%
562111	5.0%	5.0%	5.0%	0.0%	5.0%	20.0%	80.0%	100.0%
562119	3.4%	0.0%	3.4%	1.1%	4.6%	12.6%	87.4%	100.0%
562212	0.0%	0.0%	0.0%	0.0%	20.0%	20.0%	80.0%	100.0%
562910	1.1%	2.1%	2.1%	3.2%	7.4%	16.0%	84.0%	100.0%
562920	0.7%	0.0%	0.3%	0.0%	1.4%	2.4%	97.6%	100.0%
562991	0.5%	0.0%	0.5%	0.0%	2.5%	3.6%	96.4%	100.0%
562998	0.0%	0.0%	6.3%	0.0%	12.5%	18.8%	81.3%	100.0%
621493	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
811111	0.0%	0.0%	0.1%	0.0%	1.2%	1.4%	98.6%	100.0%
811198	0.0%	0.0%	0.0%	0.0%	1.2%	1.2%	98.8%	100.0%
811310	0.2%	0.5%	0.6%	0.3%	3.2%	4.8%	95.2%	100.0%
812930	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
Total	0.6%	0.2%	0.7%	0.1%	4.8%	6.5%	93.5%	100.0%

Source: CHA analysis of City of Seattle data; Hoovers; CHA Master Directory

Table D-10: Distribution of City of Seattle’s Spending by NAICS Code (the Weights): Services (Locally Funded)

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
213112	Support Activities for Oil and Gas Operations	0.001%
221122	Electric Power Distribution	0.01%
323111	Commercial Printing (except Screen and Books)	0.4%
447190	Other Gasoline Stations	0.02%
485113	Bus and Other Motor Vehicle Transit Systems	3.4%
485991	Special Needs Transportation	0.1%
488490	Other Support Activities for Road Transportation	0.6%
512110	Motion Picture and Video Production	0.03%
532420	Office Machinery and Equipment Rental and Leasing	0.005%
541110	Offices of Lawyers	0.1%
541211	Offices of Certified Public Accountants	0.6%
541310	Architectural Services	1.6%
541320	Landscape Architectural Services	0.3%
541330	Engineering Services	11.7%
541370	Surveying and Mapping (except Geophysical) Services	1.3%
541380	Testing Laboratories	0.2%
541410	Interior Design Services	0.003%
541420	Industrial Design Services	0.05%
541430	Graphic Design Services	0.7%
541490	Other Specialized Design Services	0.02%
541511	Custom Computer Programming Services	14.4%
541512	Computer Systems Design Services	0.3%
541519	Other Computer Related Services	27.3%
541611	Administrative Management and General Management Consulting Services	1.4%
541612	Human Resources Consulting Services	0.1%
541618	Other Management Consulting Services	0.3%
541620	Environmental Consulting Services	2.2%
541690	Other Scientific and Technical Consulting Services	0.2%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
541720	Research and Development in the Social Sciences and Humanities	0.04%
541820	Public Relations Agencies	0.2%
541910	Marketing Research and Public Opinion Polling	0.1%
541990	All Other Professional, Scientific, and Technical Services	2.1%
561320	Temporary Help Services	0.03%
561410	Document Preparation Services	0.001%
561421	Telephone Answering Services	0.0002%
561431	Private Mail Centers	0.7%
561612	Security Guards and Patrol Services	0.1%
561621	Security Systems Services (except Locksmiths)	3.2%
561720	Janitorial Services	11.5%
561730	Landscaping Services	2.2%
561990	All Other Support Services	3.8%
562111	Solid Waste Collection	0.02%
562119	Other Waste Collection	0.3%
562212	Solid Waste Landfill	0.1%
562910	Remediation Services	4.8%
562920	Materials Recovery Facilities	0.3%
562991	Septic Tank and Related Services	0.002%
562998	All Other Miscellaneous Waste Management Services	0.01%
621493	Freestanding Ambulatory Surgical and Emergency Centers	0.91%
811111	General Automotive Repair	0.35%
811198	All Other Automotive Repair and Maintenance	1.80%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	0.02%
812930	Parking Lots and Garages	0.04%
TOTAL		100.0%

Source: CHA analysis of City of Seattle data

Table D-11 presents the weighted availability results for each of the racial and gender categories.

Table D-11: Aggregated Weighted Availability for City of Seattle Contracts: Services (Locally Funded)

Black	Hispanic	Asian	Native American	White Women	WMBE	Non WMBE	Total
1.5%	0.6%	1.5%	0.2%	5.6%	9.5%	90.4%	100.0%

Source: CHA analysis of City of Seattle data; Hoovers; CHA Master Directory

Table D-12 presents the disparity ratios for each of the racial and gender categories.

Table D-12: Disparity Ratios by Demographic Group: Services (Locally Funded)

	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE
Disparity Ratio	1898.9%	103.2%	1263.6%***	562.2%	112.3%***	591.7%***	48.2%‡***

Source: CHA analysis of City of Seattle data

‡ Indicates substantive significance

*** Statistically significant at the 0.001 level

3. Goods

Tables D-13 and d-14 present data on the City’s WMBE firm utilization, measured in contract dollars and percentage of contract dollars.

**Table D-13: Distribution of City of Seattle Contract Dollars by Race and Gender: Goods
(total dollars)
(Locally Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
221310	\$0	\$0	\$0	\$0	\$0	\$0	\$12,565	\$12,565
332721	\$0	\$0	\$0	\$0	\$0	\$0	\$61,455	\$61,455
423110	\$0	\$0	\$0	\$0	\$0	\$0	\$8,731,543	\$8,731,543
423210	\$0	\$0	\$0	\$0	\$796,007	\$796,007	\$11,327,270	\$12,123,277
423220	\$0	\$0	\$0	\$22,273	\$17,499	\$39,772	\$0	\$39,772
423310	\$0	\$0	\$0	\$0	\$12,614	\$12,614	\$0	\$12,614
423320	\$0	\$0	\$0	\$177,834	\$14,000	\$191,834	\$3,928,317	\$4,120,151
423430	\$0	\$0	\$0	\$0	\$0	\$0	\$91,838,728	\$91,838,728
423490	\$0	\$0	\$0	\$0	\$0	\$0	\$8,060	\$8,060
423510	\$0	\$0	\$390,225	\$0	\$4,500	\$394,725	\$34,396	\$429,121
423610	\$0	\$0	\$0	\$0	\$349,655	\$349,655	\$205,450	\$555,105
423620	\$0	\$0	\$0	\$0	\$0	\$0	\$37,937	\$37,937
423690	\$0	\$0	\$0	\$0	\$0	\$0	\$15,943,167	\$15,943,167
423830	\$0	\$0	\$0	\$0	\$0	\$0	\$605,072	\$605,072
423850	\$0	\$0	\$1,298,573	\$0	\$3,576,606	\$4,875,179	\$1,573,134	\$6,448,313
424120	\$0	\$0	\$0	\$0	\$2,485,572	\$2,485,572	\$0	\$2,485,572
424480	\$0	\$0	\$0	\$0	\$0	\$0	\$85,620	\$85,620
424690	\$0	\$0	\$0	\$0	\$0	\$0	\$931,133	\$931,133
424930	\$0	\$0	\$0	\$0	\$0	\$0	\$417,621	\$417,621

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
444190	\$0	\$0	\$50,828	\$0	\$908,241	\$959,069	\$756,222	\$1,715,291
484220	\$144,257	\$12,843	\$7,181,136	\$96,371	\$797,776	\$8,232,384	\$1,688,100	\$9,920,484
517919	\$0	\$0	\$0	\$38,833	\$0	\$38,832	\$319,685	\$358,517
532412	\$0	\$0	\$0	\$0	\$0	\$0	\$6,739,785	\$6,739,785
Total	\$144,257	\$12,843	\$8,920,762	\$335,311	\$8,962,470	\$18,375,643	\$145,245,260	\$163,620,903

Source: CHA analysis of City of Seattle data

**Table D-14: Percentage Distribution of City of Seattle Contract Dollars by Race and Gender:
Goods, (share of total dollars)
(Locally Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
221310	0.0%	0.0%	0.0%	0.0%	0.0%	0%	100.0%	100.0%
332721	0.0%	0.0%	0.0%	0.0%	0.0%	0%	100.0%	100.0%
423110	0.0%	0.0%	0.0%	0.0%	0.0%	0%	100.0%	100.0%
423210	0.0%	0.0%	0.0%	0.0%	6.6%	7%	93.4%	100.0%
423220	0.0%	0.0%	0.0%	56.0%	44.0%	100%	0.0%	100.0%
423310	0.0%	0.0%	0.0%	0.0%	100.0%	100%	0.0%	100.0%
423320	0.0%	0.0%	0.0%	4.3%	0.3%	5%	95.3%	100.0%
423430	0.0%	0.0%	0.0%	0.0%	0.0%	0%	100.0%	100.0%
423490	0.0%	0.0%	0.0%	0.0%	0.0%	0%	100.0%	100.0%
423510	0.0%	0.0%	90.9%	0.0%	1.0%	92%	8.0%	100.0%
423610	0.0%	0.0%	0.0%	0.0%	63.0%	63%	37.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
423620	0.0%	0.0%	0.0%	0.0%	0.0%	0%	100.0%	100.0%
423690	0.0%	0.0%	0.0%	0.0%	0.0%	0%	100.0%	100.0%
423830	0.0%	0.0%	0.0%	0.0%	0.0%	0%	100.0%	100.0%
423850	0.0%	0.0%	20.1%	0.0%	55.5%	76%	24.4%	100.0%
424120	0.0%	0.0%	0.0%	0.0%	100.0%	100%	0.0%	100.0%
424480	0.0%	0.0%	0.0%	0.0%	0.0%	0%	100.0%	100.0%
424690	0.0%	0.0%	0.0%	0.0%	0.0%	0%	100.0%	100.0%
424930	0.0%	0.0%	0.0%	0.0%	0.0%	0%	100.0%	100.0%
444190	0.0%	0.0%	3.0%	0.0%	52.9%	56%	44.1%	100.0%
484220	1.5%	0.1%	72.4%	1.0%	8.0%	83%	17.0%	100.0%
517919	0.0%	0.0%	0.0%	10.8%	0.0%	11%	89.2%	100.0%
532412	0.0%	0.0%	0.0%	0.0%	0.0%	0%	100.0%	100.0%
Total	0.1%	0.0%	5.5%	0.2%	5.5%	11.2%	88.8%	100.0%

Source: CHA analysis of City of Seattle data

Tables D-15 through D-17 present data on:

- The unweighted availability percentages by race and gender and by NAICS codes;
- The final estimates of the weighted averages of the individual six-digit level NAICS availability estimates in the market area.

Table D-15: Unweighted WMBE Availability for City of Seattle Contracts: Goods (Locally Funded)

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
221310	0.0%	0.0%	0.0%	0.0%	2.5%	2.5%	97.5%	100.0%
332721	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423110	0.0%	0.0%	0.0%	0.0%	1.8%	1.8%	98.2%	100.0%
423210	0.0%	0.0%	1.3%	0.0%	8.5%	9.8%	90.2%	100.0%
423220	0.0%	0.0%	0.3%	0.3%	11.1%	11.7%	88.3%	100.0%
423310	0.0%	0.2%	0.6%	0.0%	2.9%	3.7%	96.3%	100.0%
423320	0.0%	0.0%	2.7%	1.1%	2.1%	5.9%	94.1%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE	Total
423430	0.9%	0.4%	1.3%	0.0%	3.0%	5.7%	94.3%	100.0%
423490	0.0%	0.0%	0.0%	0.0%	8.2%	8.2%	91.8%	100.0%
423510	0.0%	0.4%	0.9%	0.0%	5.8%	7.1%	92.9%	100.0%
423610	0.0%	0.0%	2.0%	0.6%	4.9%	7.5%	92.5%	100.0%
423620	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423690	0.0%	0.4%	0.7%	0.4%	3.0%	4.4%	95.6%	100.0%
423830	0.3%	0.3%	0.6%	0.2%	3.4%	4.8%	95.2%	100.0%
423850	0.0%	0.0%	2.3%	0.0%	7.9%	10.3%	89.7%	100.0%
424120	0.0%	0.0%	2.2%	0.0%	14.0%	16.1%	83.9%	100.0%
424480	1.1%	0.0%	1.1%	0.0%	0.0%	2.2%	97.8%	100.0%
424690	0.0%	0.8%	2.3%	0.8%	3.9%	7.8%	92.2%	100.0%
424930	0.0%	0.0%	1.1%	0.0%	9.8%	10.9%	89.1%	100.0%
444190	0.0%	0.0%	17.6%	0.0%	41.2%	58.8%	41.2%	100.0%
484220	6.7%	1.7%	5.0%	3.4%	14.7%	31.5%	68.5%	100.0%
517919	0.0%	0.0%	0.0%	50.0%	0.0%	50.0%	50.0%	100.0%
532412	0.0%	0.0%	2.4%	0.0%	3.6%	6.0%	94.0%	100.0%
Total	0.5%	0.3%	1.4%	0.4%	5.5%	8.0%	92.0%	100.0%

Source: CHA analysis of City of Seattle data; Hoovers; CHA Master Directory

Table D-16: Distribution of City of Seattle’s Spending by NAICS Code (the Weights): Goods (Locally Funded)

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
221310	Water Supply and Irrigation Systems	0.01%
332721	Precision Turned Product Manufacturing	0.04%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	5.3%
423210	Furniture Merchant Wholesalers	7.4%
423220	Home Furnishing Merchant Wholesalers	0.02%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	0.01%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	2.5%
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	56.1%
423490	Other Professional Equipment and Supplies Merchant Wholesalers	0.005%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.3%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.3%
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	0.02%
423690	Other Electronic Parts and Equipment Merchant Wholesalers	9.7%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.4%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	3.9%
424120	Stationery and Office Supplies Merchant Wholesalers	1.5%
424480	Fresh Fruit and Vegetable Merchant Wholesalers	0.1%
424690	Other Chemical and Allied Products Merchant Wholesalers	0.6%
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	0.3%
444190	Other Building Material Dealers	1.0%
484220	Specialized Freight (except Used Goods) Trucking, Local	6.1%
517919	All Other Telecommunications	0.2%
532412	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing	4.1%
TOTAL		100.0%

Source: CHA analysis of City of Seattle data

Table D-17 presents the weighted availability results for each of the racial and gender categories.

Table D-17: Aggregated Weighted Availability for City of Seattle Contracts: Goods (Locally Funded)

Black	Hispanic	Asian	Native American	White Women	WMBE	Non WMBE	Total
0.9%	0.4%	1.7%	0.4%	4.9%	8.2%	91.8%	100.0%

Source: CHA analysis of City of Seattle data; Hoovers; CHA Master Directory

Table D-18 presents the disparity ratios for each of the racial and gender categories.

Table D-18: Disparity Ratios by Demographic Group: Goods (Locally Funded Contracts)

	Black	Hispanic	Asian	Native American	White Woman	WMBE	Non WMBE
Disparity Ratio	9.8%‡	2.0%‡	318.9%	53.5%‡	112.5%***	136.2%***	96.7%***

Source: CHA analysis of City of Seattle data

‡ Indicates substantive significance

*** Statistically significant at the 0.001 level

APPENDIX E:

UNWEIGHTED AND WEIGHTED AVAILABILITY

Central to the analysis, under strict constitutional scrutiny, of an agency's contracting activity is understanding what firms could have received contracts. Availability has two components: unweighted availability and weighted availability. Below we define these two terms; why we make the distinction; and how to convert unweighted availability into weighted availability.

Defining Unweighted and Weighted Availability

Unweighted availability measures a group's share of all firms that could receive a contract or subcontract. If 100 firms could receive a contract and 15 of these firms are minority-owned, then MBE unweighted availability is 15 percent (15/100). *Weighted availability* converts the unweighted availability through the use of a weighting factor: the share of total agency spending in a particular NAICS code. If total agency spending is \$1,000,000 and NAICS Code AAAAAA captures \$100,000 of the total spending, then the weighting factor for NAICS code AAAAAA is 10 percent ($\$100,000/\$1,000,000$).

Why Weight the Unweighted Availability

It is important to understand *why* weighted availability should be calculated. A disparity study examines the overall contracting activity of an agency by looking at the firms that *received* contracts and the firms that *could have received* contracts. A proper analysis does not allow activity in a NAICS code that is not important an agency's overall spending behavior to have a disproportionate impact on the analysis. In other words, the availability of a certain group in a specific NAICS code in which the agency spends few of its dollars should have less importance to the analysis than the availability of a certain group in another NAICS code where the agency spends a large share of its dollars.

To account for these differences, the availability in each NAICS code is weighted by the agency's spending in the code. The calculation of the weighted availability compares the firms that received contracts (utilization) and the firms that could receive contracts (availability). Utilization is a group's share of total spending by an agency; this metric is measure in dollars, *i.e.*,

MBEs received 8 percent of all dollars spent by the agency. Since utilization is measured in dollars, availability must be measured in dollars to permit an “apples-to-apples” comparison.

How to Calculate the Weighted Availability

Three steps are involved in converting unweighted availability into weighted availability:

- Determine the unweighted availability
- Determine the weights for each NAICS code
- Apply the weights to the unweighted availability to calculate weighted availability

The following is a hypothetical calculation.

Table A contains data on unweighted availability measured by the number of firms:

Table A

NAICS	Black	Hispanic	Asian	Native American	White Women	Non M/W/DBE	Total
AAAAAA	10	20	20	5	15	400	470
BBBBBB	20	15	15	4	16	410	480
CCCCCC	10	10	18	3	17	420	478
TOTAL	40	45	53	12	48	1230	1428

Unweighted availability measured as the share of firms requires us to divide the number of firms in each group by the total number of firms (the last column in Table A). For example, the Black share of total firms in NAICS code AAAAAA is 2.1 percent (10/470). Table B presents the unweighted availability measure as a group’s share of all firms.

Table B

NAICS	Black	Hispanic	Asian	Native American	White Women	Non M/W/DBE	Total
AAAAAA	2.1%	4.3%	4.3%	1.1%	3.2%	85.1%	100.0%
BBBBBB	4.2%	3.1%	3.1%	0.8%	3.3%	85.4%	100.0%
CCCCCC	2.1%	2.1%	3.8%	0.6%	3.6%	87.9%	100.0%
TOTAL	2.8%	3.2%	3.7%	0.8%	3.4%	86.1%	100.0%

Table C presents data on the agency’s spending in each NAICS code:

Table C

NAICS	Total Dollars	Share
AAAAAA	\$1,000.00	22.2%
BBBBBB	\$1,500.00	33.3%
CCCCCC	\$2,000.00	44.4%
TOTAL	\$4,500.00	100.0%

Each NAICS code’s share of total agency spending (the last column in Table C) is the weight from each NAICS code that will be used in calculating the weighted availability. To calculate the overall weighted availability for each group, we first derive the every NAICS code component of a group’s overall weighted availability. This is done by multiplying the NAICS code weight by the particular group’s unweighted availability in that NAICS code. For instance, to determine NAICS code AAAAAA’s component of the overall Black weighted availability, we would multiply 22.2 percent (the NAICS code weight) by 2.1 percent (the Black unweighted availability in NAICS code AAAAAA). The resulting number is 0.005 and this number is found in Table D under the cell which presents NAICS code AAAAAA’s share of the Black weighted availability. The procedure is repeated for each group in each NAICS code. The calculation is completed by adding up each NAICS component for a particular group to calculate that group’s overall weighted availability. Table D presents this information:

Table D

NAICS	Black	Hispanic	Asian	Native American	White Women	Non M/W/ DBE
AAAAAA	0.005	0.009	0.009	0.002	0.007	0.189
BBBBBB	0.014	0.010	0.010	0.003	0.011	0.285
CCCCCC	0.009	0.009	0.017	0.003	0.016	0.391
TOTAL	0.028	0.029	0.037	0.008	0.034	0.864

To determine the overall *weighted availability*, the last row of Table D is converted into a percentage (*e.g.*, for the Black weighted availability: $0.028 * 100 = 2.8$ percent). Table E presents these results.

Table E

Black	Hispanic	Asian	Native American	White Women	Non MWBE	Total
2.8%	2.9%	3.7%	0.8%	3.4%	86.4%	100.0%

APPENDIX F:

QUALITATIVE EVIDENCE FROM WASHINGTON DISPARITY STUDIES

In addition to the anecdotal data collected for this study and provided in the Qualitative chapter of this report, Colette Holt & Associates has conducted three disparity studies in the State of Washington over the last several years. These reports that shed light on the experiences of Minority- and Woman-owned Business Enterprises (“M/WBEs”) in the Puget Sound area and overall Washington marketplace. The results are quite consistent across agencies, time periods and industries. We interviewed minority and woman owners and non-M/WBE representatives about barriers to the full and fair participation of all firms in the procuring agency’s market area. The total number of participants for these interviews was 539 individuals. We also collected comments from 32 organizations representing M/WBE and prime, non-MWBE firms in an electronic survey.

This summary of anecdotal reports provides an overview of the following Disparity Studies: the State of Washington 2019 (“State 2019”);³²⁷ Washington State Airports 2019 (“Airports 2019”);³²⁸ and Washington State Department of Transportation 2017 (“WSDOT 2017”)³²⁹.

1. Discriminatory Attitudes and Negative Perceptions of Competency and Professionalism Continue to Impede the Success of M/WBEs

Many minority and woman owners reported being stigmatized by their race and/or gender or being a certified firm. Subtle and overt stereotyping and race and gender discrimination were commonplace. Respondents reported that they often experience negative attitudes concerning their competency, skill,

327. State 2019: <https://omwbe.wa.gov/sites/default/files/public/State%20of%20Washington%20Disparity%20Study%202019%20-%202019%2007%2030%20%281%29.pdf>

328. Airports 2019: <https://wsdot.wa.gov/sites/default/files/2022-02/Washington-State-Airports-Disparity-Study-2019.pdf>

329. WSDOT 2017: <https://wsdot.wa.gov/sites/default/files/2021-10/OEO-DisparityStudy-2017.pdf>

and professionalism. These biases impact all aspects of their attempts to obtain contracts and to be treated equally in performing contract work. The prevailing viewpoint is that M/WBEs and smaller firms are less qualified and capable.

They are very entrenched in their mindset as to because you are a person of color, you don't qualify. Period. No matter your degrees and all the certifications and everything. I have certifications as long as your arm but it does not make a difference. (State 2019, page 113)

When I show up for projects, people see an ethnic minority, therefore incompetency. (WSDOT 2017, page 119)

Just because you have that label [of MBE certification], some people have a bad view of that program.... They think that you're not as good because you are an MBE, "You're only getting work because you're an MBE." I don't know how you get rid of that notion. (State 2019, pages 113-114)

[The] majority of time, [people] will hire people who are like themselves. You put a job out for RFQ, right? And you look for the qualifications and you say, "Oh! That person looks like me, or I relate to that person." (Airports 2019, page 128)

Typically, once a contractor realizes I am black and a female, the standards for me and my firm will raise to level that seem unreachable for most businesses. (State 2019, page 129)

It's just this stigma [to being a DBE].... It's a double edge sword. There's the chip on the shoulder of the people you're interfacing with, whether it's a project manager, estimator, typically some white guy that feels like the DBE program shouldn't be in existence. (Airports 2019, page 129)

It's still a man's world and a White man's world. And I'm constantly reminded of that....[there is still a] good ole boys club. (State 2019, page 114)

Being black is often perceived as symbols of limits or a metaphor for "outsider." (State 2019, page 129)

Sexist attitudes were still prevalent.

I've been made fun of lots of times when I show up [as a woman] and I'm the engineer. (State 2019, page 114)

It's still very a man's world. It's very hard to even have a woman project manager.... The good ole boys. That definitely still has an issue, I notice in the construction industry, at least over here on this side of the mountains for eastern Washington. It is definitely a White man's world. (State 2019, page 114)

There's just a different perception when it comes to women in this industry, and I very much think that it's an issue.... The unions, they would all call other males that worked in the office ... I would just pick up that phone, and I'm like, "That is not who you deal with. You deal with me." They would automatically, and it still happens all the time, go to somebody else. Just that undertone of they need to deal with the guy, or whoever, to get something done. (WSDOT 2017, page 120)

I went to wait on a contractor on the counter and I was told "I'll wait for one of the boys." (WSDOT 2017, page 120)

The most overt discrimination that I had since taking over the company was going to a woman-owned bank and talking to a woman new account manager who looked at my VP's name and said, "Oh, are you here to sign this individual up as the new owner?" Rather than myself, who was sitting right in front of her. (State 2019, page 116).

Usually, the older school generation has a harder time working with the females. I know that, so I play off my brother. My brother takes control of that job. (WSDOT 2017, page 121).

I went on the job pre-construction meeting and I'm going to say there was probably about six contractors there. I was the woman. "Oh, who's the chick here?" (State 2019, page 117)

Most of the primes I deal with are male, most of the DOT people I deal with are males. There's no one out there for me to go to that I feel is looking out for my interest, because I'm a female. (WSDOT 2017, page 120)

I received a letter in the mail that said women did not belong in transportation and that I was taking away a job from a man who was supporting his family. It's only about four years ago. I wrote him a letter back. "Dear angry man, of course women belong in transportation. At least we stop and ask for directions." (WSDOT 2017, page 122)

Women also experienced sexual harassment and hostile work environments.

As a woman, I have personally had several encounters – some innocuous, just offensive and a few very scary ones. As a group, harassment occurs implicitly and in insidious ways. (State 2019, page 130)

I try to make contacts and sometimes as a woman it turns into being asked out on a date or hit on or touched inappropriately. (State 2019, page 118)

My first journeyman, he would just start coming up on the ladder behind me and like press himself against me or something. He cup grabbed my ass a few times, and I turned him in. And all he was given was a slap on the wrist. (State 2019, page 117)

2. Lack of Access to Business and Professional Networks and Information Limit M/WBEs' Opportunities

Many minority and woman respondents reported difficulty in accessing networks and fostering relationships necessary for professional success. These barriers extended to agency staff. Respondents were unable to gain access to and communicate with key agency decisionmakers.

I want to be able to compete legitimately with [entrenched consultants] or at least get my foot in the door so I can ask to bid on a particular project. [An agency staffer] said, "Well, I don't really know. You just have to talk to people you know." (WSDOT 2017, page 123)

Barriers are subtle and hidden behind pleasantries. They are pervasive and relentless. They are perpetuated by government employees and none are ever held accountable by managers. (State 2019, page 129)

I'm always questioning [WSDOT staff], and they are insulted that I'm questioning them. The prime contractor's insulted that I'm questioning them. (WSDOT 2017, page 120)

The barrier here is the contracting culture [with] some of the smaller airports. The agency staff just wants you to do what they're comfortable with.... They just hang out with [these consultants] at golf courses, in bars. (Airports 2019, page 130)

You need to know who to contact. Who the decision maker's going to be when it comes to putting together your team, or

putting together the ultimate proposal. You need to know who that lead is, who that project manager is, who that decisionmaker is, because if you're talking to anybody else, you're wasting your time. (WSDOT 2017, page 123)

I will not be given all the resources needed to perform the service while other firms will be given ample resources to perform the service. (State 2019, page 129)

Where I have sometimes the most gender [issues] is with WSDOT employees....If you can get your foot in the door and then keep working with [the general contractors] and showing them that you can do a good job. I think they get beyond that gender. (Airports 2019, page 128)

In some trades, minority contractors cannot get the certifications to install certain products and materials. They simply are not allowed because the supplier wants to limit competition, which results in whites having the advantage. (State 2019, page 130)

3. Obtaining Work on an Equal Basis

Respondents reported that institutional and discriminatory barriers continue to exist in the Washington State area marketplaces. They were in almost unanimous agreement that M/WBE contract goals remain necessary to level the playing field and equalize opportunities. Race- and gender-neutral approaches alone are viewed as inadequate and unlikely to ensure equal opportunity.

I'd be back at a larger firm [without the DBE program] and subordinate to White men who always want to be "the man". (Airports 2019, page 130)

Without goals there wouldn't be these businesses in the room. (WSDOT 2017, page 123)

Probably 80% of [firm] business is on contracts where primes need to meet a goal, and the same case where if there's not a goal, they don't call and when there's a goal they call. It's every major contractor that operates in this region. (WSDOT 2017, pages 123-124)

The only chance we have here in this room is if there's a goal, they'll call you. Otherwise, they never call you. (WSDOT 2017, page 124)

Unless there's a head shift and they start to see the benefit of the program, the benefit of diversity, the benefit of having different values and different backgrounds and how that can actually make their project more efficient and better, this is going to continue to be a conversation. (WSDOT 2017, page 119)

It's kind of like a license to hunt. I might not catch anything, but it gave me that license and I get to get out there and do it. (Airports 2019, page 130)

APPENDIX G:

GLOSSARY OF TERMS USED IN THE REPORT

ABS: The Census Bureau’s *Annual Business Survey* statistical data series that gathers statistical information on the nation’s minority-owned and women-owned business enterprises

ACS: The American Community Survey. The Census Bureau’s ACS is an ongoing survey covering the same type of information collected in the Decennial Census.

Anecdotal or qualitative evidence: Qualitative data regarding business owners’ accounts of experiences with disparate treatment and other barriers to business success.

Availability: The percentage of a given population of businesses owned by one or more groups of interest as a percentage of all business owners.

City of Seattle Geographic Market Area for Federal Transit Administration Funded Contracts: The counties where the City conducts at least 75 percent of its business. The Final Contract Data File established that this consist of King County, Washington.

City of Seattle Geographic Market Area for Locally Funded Contracts: The counties where the City conducts at least 75 percent of its business. The Final Contract Data File established that this consist of King County, Pierce County and Snohomish County, Washington.

Constrained Product Market: The subset of the Final Contract Data File which is limited to the City’s product market and geographic market.

Dependent variable: In a regression analysis, a variable whose value is postulated to be influenced by one or more other “independent” or “exogenous” or “explanatory” variables. For example, in business owner earnings regressions, business owner earnings is the dependent variable, and other variables, such as industry, geographic location, or age, are the explanatory variables. See also “Independent variable”.

DBE: Disadvantaged Business Enterprise, as defined in 49 C.F.R. Part 26.

Disparity ratio (or Disparity Index): A measure derived from dividing utilization by availability and multiplying the result by 100. A disparity ratio of less than 100 indicates that utilization is less than availability. A disparity ratio of 80 or less can be taken as evidence of disparate impact. See also Availability; Substantive significance; Utilization.

Econometrics, econometrically: Econometrics is the field of economics that concerns itself with the application of statistical inference to the empirical measurement of relationships postulated by economic theory. See also “Regression.”

Final Contract Data File: The data base of the City’s contracts which was used to estimate utilization and availability.

Independent variable: In a regression analysis, one or more variables that are postulated to influence or explain the value of another, “dependent” variable. For example, in business owner earnings regressions, business owner earnings is the dependent variable, and other variables, such as industry, geographic location, or age, are the independent or explanatory variables. See also “Dependent variable.”

Intermediate judicial scrutiny: The middle level of Equal Protection Clause scrutiny applied by courts to, among other types of activities, programs based on gender, or government decisions that take gender into account.

Master M/W/DBE Directory: The directory compiled by CHA of firms owned by MBEs, WBEs and DBEs.

Mean: A term of art in statistics, synonymous in this context with the arithmetic average. For example, the mean value of the series 1, 1, 2, 2, 2, 4, 5 is 2.43. This is derived by calculating the sum of all the values in the series (*i.e.*, 17) and dividing that sum by the number of elements in the series (*i.e.*, 7).

Median: A term of art in statistics, meaning the middle value of a series of numbers. For example, the median value of the series 1, 1, 2, 2, 2, 4, 5 is 2.

Microdata or micro-level data: Quantitative data rendered at the level of the individual person or business, as opposed to data rendered for groups or aggregates of individuals or businesses. For example, Dun and Bradstreet provides micro-level data on business establishments. The Census Bureau’s Annual Business Survey provides grouped or aggregated data on businesses.

Multiple regression analysis: A statistical technique that provides an analysis of how one variable (*e.g.*, wages) is impacted changes in other variables (*e.g.*, race). For further description, see Appendix A.

MBE: Minority-Owned Business Enterprise.

MSA: Metropolitan Statistical Area, as defined by the federal Office of Management and Budget. The Seattle MSA consists of King County, Pierce County and Snohomish County, Washington

M/W/DBE: Collectively, Minority-Owned Business Enterprise, Woman-Owned Business Enterprise, and Disadvantaged Business Enterprise.

NAICS: North American Industry Classification System. The standard system for classifying industry-based data in the U.S. Superseded the Standard Industrial Classification (SIC) System in 1997.

Probit analysis: A statistical technique similar to multiple regression analysis with two primary differences. First, the variable being analyzed has only two values: yes or no (*e.g.*, a business is formed or a business is not formed). This is in contrast to a variable such as wages which could have a wide variety of values. Second, the interpretation of the impact of a change in another variable (*e.g.*, race) on the variable that has a yes/no value is to see how the change impacts the probability of a *yes* value. For further description, see Appendix B.

Product Market: The set of NAICS codes describing the industries where the City does business. The product market might be constrained or unconstrained.

PUMS: Public Use Microdata Sample from and the American Community Survey.

Rational basis judicial scrutiny: The most minimal level of Equal Protection Clause scrutiny applied by courts to, among other types of activities, programs based on firm size or location or the firm owner's disability or veteran status, or government decisions that take firm size or location, disability, or veteran status into account.

Regression, multiple regression, multivariate regression: A type of statistical analysis which examines the correlation between two variables ("regression") or three or more variables ("multiple regression" or "multivariate regression") in a mathematical model by determining the line of best fit through a series of data points. Econometric research typically employs regression analysis. See also "Econometrics."

SBA: United States Small Business Administration.

SBA Size Standards: The size limits used by SBA, contained at 13 C.F.R. 121. Industry specific limits are based on either gross revenues or the number of employees.

SBE: Small Business Enterprise.

Statistical significance: A statistical outcome or result that is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from random chance alone.

Strict judicial scrutiny: The highest level of Equal Protection Clause scrutiny applied by courts to, among other types of activities, programs based on race or ethnicity, or government decisions that take race or ethnicity into account.

Substantive significance: An indication of how large or small a given disparity is. Under the U.S. Equal Employment Opportunity commission's "four-fifths" rule, a disparity ratio is substantively significant if it is 0.8 or less on a scale of 0 to 1 or 80 or less on a scale of 1 to 100.

Unconstrained Product Market: The set of industries that capture at least 75 percent of the City's payments to firms.

Utilization: The percentage of a given amount of contracting and/or procurement dollars that is awarded or paid to businesses owned by one or more groups of interest as a percentage of all dollars spent.

WBE: Woman-Owned Business Enterprise.