

The City of San Antonio Disparity Study 2023



**ECONOMIC
DEVELOPMENT**



CH COLETTE
HOLT
& ASSOCIATES

CITY OF SAN ANTONIO DISPARITY STUDY

2023

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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, Woman 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.

aMAEzing Marketing Group (“AMG”) is a national award-winning full-service bilingual and multicultural marketing firm headquartered in San Antonio. AMG has strong connections in local, county, and state communities. AMG specializes in public relations, advocacy, community relations outreach and customer experience for local, national, and regional clients. AMG is an Emerging Small Business Enterprise (ESBE), Hispanic American Business Enterprise (HABE), and a Minority Business Enterprise (MBE).

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Table of Contents

I. Executive Summary	1
A. Summary of Strict Constitutional Standards Applicable to the City of San Antonio’s Small Business Economic Development Advocacy (SBEDA) Program	1
B. The City of San Antonio’s SBEDA Program	3
1. History and Overview of the SBEDA Program	3
2. SBEDA Program Administration	3
3. SBEDA Program Eligibility Standards and Certification	5
4. Non-Industry Specific Tools	6
5. Industry Specific Tools	6
a. Aspirational Goals	6
b. Emerging Small Business Enterprise Prime Contract Program	7
c. Prime Contract Program	7
d. The Joint Venture Incentive Program	7
e. The Joint Venture Incentive Program	7
f. Mentor Protégé Program	8
g. Minority Distributorship Development Program	8
h. HUBZone Program	8
i. Subcontracting Goal Programs	8
6. SBEDA Business Support Programs	8
a. Mentor-Protégé Program	8
b. Capacity Building & Bonding Assistance Program	9
7. Contract Solicitation Process	9
a. Goal and Incentive Selection Process	9
b. API Waivers	9
c. Vendor Solicitation and Bidding Requirements	9
d. Vendor Subcontracting Goal Waivers and Exceptions	9
i. Waivers	9
ii. Exceptions	10
8. Post-Contract Award Procedures	10
a. Contract Monitoring	10
b. Post-Award Utilization Plan Changes	11
c. Procedures for Non-Compliance	11
i. Non-Compliance by the Originating Department	11
ii. Non-Compliance by a Prime Contractor or Subcontractor	11
d. Penalties and Sanctions	12
9. Outreach and Business Support Services	12
10. Staff Training	14
11. Experiences with the SBEDA Program	14
a. Experiences with the SBEDA Program’s Policies and Procedures: Business Owner Interviews	15
b. Experiences with the SBEDA Program: Business Owner Survey Comments	16

C. Utilization, Availability and Disparity Analyses of the City of San Antonio’s Contracts	17
D. Analysis of Disparities in the San Antonio Area Economy	26
E. Qualitative Evidence of Race and Gender Barriers in the City of San Antonio’s Market	28
1. Business Owner Interviews	28
2. Electronic Business Owner Survey	28
F. Recommendations for Enhancements to The City of San Antonio’s SBEDA Program	29
1. Review Race- and Gender-Neutral Measures	30
a. Revise the Program’s Structure	30
b. Enhance Contract Data Collection and Reporting	30
2. Continue to Implement a Narrowly Tailored SBEDA Program	31
a. Use the Study to Set the Overall, Annual Aspirational Goals.	31
b. Use the Study to Set M/WBE Contract Goals	31
c. Adopt a Personal Net Worth Standard for Program Eligibility.	32
d. Update Program Administration Policies and Procedures.	33
3. Develop Performance Measures for Program Success	34
4. Continue to Conduct Regular Program Reviews	34
II. Legal Standards for the City of San Antonio’s SBEDA Program	35
A. Summary of Constitutional Equal Protection Standards.	35
B. Elements of Strict Constitutional Scrutiny	38
C. Establishing a “Strong Basis in Evidence” for the City of San Antonio’s Program for Minority- and Woman-Owned Businesses	43
1. Define the City of San Antonio’s Market Area	44
2. Determine the City of San Antonio’s Utilization of MBEs and WBEs	45
3. Determine the Availability of MBEs and WBEs in the City of San Antonio’s Market Area.	46
4. Examine Disparities between the City’ of San Antonio’s Utilization of MBEs and WBEs and MBE and WBE Availability	51
5. Analyze Economy-Wide Evidence of Race- and Gender-Based Disparities in the City of San Antonio’s Market	53
6. Evaluate Anecdotal Evidence of Race- and Gender-Based Barriers to Equal Opportunities in the City of San Antonio’s Market	55
D. Narrowly Tailoring a Race- and Gender- Conscious Program for the City of San Antonio . . .	56
E. Consider Race- and Gender-Neutral Remedies	56
1. Set Targeted M/WBE Goals	57
2. Ensure Flexibility of Goals and Requirements	59
3. Review Program Eligibility Over-Inclusiveness and Under-Inclusiveness	59
4. Evaluate the Burden on Third Parties	60
5. Examine the Duration and Review of the Program	62
III. City of San Antonio’s SBEDA Program	63
A. History and Overview of the SBEDA Program	63
B. SBEDA Program Administration	64

C. SBEDA Program Eligibility	69
1. Certification	69
2. Graduation and Suspension	70
D. Non-Industry Specific Tools	71
E. Industry Specific Tools	71
1. Aspirational Goals	71
2. Emerging Small Business Enterprise Prime Contract Program	72
3. Prime Contract Program	72
4. Joint Venture Program	72
5. Joint Venture Incentive Program	72
6. Mentor-Protégé Program	72
7. Minority Distributorship Development Program	72
8. HUBZone Program	73
9. Subcontracting Goal Programs	73
a. Subcontracting Program	73
b. M/WBE Subcontracting Program - Segmented Goals	73
10. SBEDA Business Support Programs	74
a. Mentor-Protégé Program	74
b. Capacity Building & Bonding Assistance Program	74
F. Contract Solicitation Process	74
1. Goal and Incentive Selection Process	74
2. API Waivers	75
3. Vendor Solicitation and Bidding Requirements	76
4. Vendor Subcontracting Goal Waivers and Exceptions	76
a. Waivers	76
b. Exceptions	77
G. Post-Contract Award Procedures	78
1. Contract Monitoring	78
2. Post-Award Utilization Plan Changes	78
3. Procedures for Non-Compliance	79
a. Non-Compliance by the Originating Department	79
b. Non-Compliance by a Prime Contractor or Subcontractor	79
c. Penalties and Sanctions	80
H. Outreach and Business Support Services	81
I. Staff Training	84
J. Experiences with the SBEDA Program	84
1. Business Owner and Stakeholder Interviews	84
a. Contract Compliance Monitoring	85
b. Supportive Services	85
c. Mentor-Protégé Program	86
d. M/WBE Certification Standards	88
e. Contract Size	88
f. Insurance Requirements	89
2. Experience Criteria	89
3. Meeting Contract Goals	90

4. Electronic Survey Responses	93
a. Overall Perceptions of the Program’s Effectiveness.	93
b. Experiences with the S/M/WBE Certification Process	95
c. Access to City Contracting Opportunities	97
d. SBEDA Program Compliance.	100
e. SBEDA Program Outreach and Access to Information	102
f. Experiences with Joint Ventures and Mentor-Protégé Programs	103
g. Experiences with Business Support Services.	104
K. Conclusion	107
 IV. Contract Data Analysis for the City of San Antonio	 109
A. Contract Data Overview.	109
B. The City of San Antonio’s Contract Markets	110
1. Product Market for the City of San Antonio’s Contracts.	111
2. Geographic Market for the City of San Antonio’s Contracts	118
C. The City of San Antonio’s Utilization of M/WBEs in its Product and Geographic Market . .	118
D. The Availability of M/WBEs for City of San Antonio Contracts	135
1. The Methodological Framework	135
2. The Availability Data and Results	137
3. Analysis of the Concentration of Contract Dollars among Firms	148
E. Disparity Analysis for City of San Antonio Contracts	153
F. Conclusion	155
 V. Analysis of Disparities in the City of San Antonio’s Marketplace	 157
A. Introduction	157
B. Disparate Treatment in the City of San Antonio Marketplace: Evidence from the Census Bureau’s 2016 - 2020 American Community Survey.	 161
1. All Industries Combined in the San Antonio Metropolitan Area	163
2. The Construction Industry in the San Antonio Metropolitan Area	166
3. The Construction-Related Services Industry in the San Antonio Metropolitan Area	168
4. The Goods Industry in San Antonio Metropolitan Area	170
5. The Services Industry in San Antonio Metropolitan Area	172
6. The Information Technology Industry in the San Antonio Metropolitan Area	174
7. Conclusion.	176
C. Disparate Treatment in the City of San Antonio Area Marketplace: Evidence from the Census Bureau’s 2017 Annual Business Survey	 176
1. All Industries	178
2. Construction	181
3. Professional, Scientific and Technical Services	182
4. Goods.	182
5. Services	183
6. Conclusion.	184

D. Evidence of Disparities in Access to Business Capital	184
1. Federal Reserve Board Small Business Credit Surveys	185
a. Small Business Credit Survey 2022 Report on Firms Owned by People of Color	185
b. 2022 Small Business Credit Survey	186
c. 2021 Report on Firms Owned by People of Color	187
i. Overview	187
ii. Performance and Challenges	188
iii. Emergency Funding	188
iv. Debt and Financing	189
v. Findings for Non-employer Firms	190
d. 2021 Small Business Credit Survey	190
e. 2018 Small Business Credit Survey	191
i. Employer firms	191
ii. Non-employer firms	192
f. 2016 Small Business Credit Survey	193
i. The 2016 Small Business Credit Survey: Report on Minority-Owned Firms	193
ii. The 2016 Small Business Credit Survey: Report on Woman-Owned Firms	196
2. Small Business Administration Loans to African American Businesses (2020)	198
3. 2010 Minority Business Development Agency Report	199
4. Federal Reserve Board Surveys of Small Business Finances	201
5. Other Reports	201
E. Evidence of Disparities in Access to Human Capital	202
F. Conclusion	202

VI. Qualitative Evidence of Race and Gender Barriers in the City of San Antonio's Market 205

A. Business Owner Interviews	206
1. Biased Assumptions and Negative Perceptions of Competency	207
2. Impact of the City's Programs	208
3. Obtaining Prime Contracts	210
B. Anecdotal Survey of the City of San Antonio's Market Area Firms	211
1. Respondents' Profiles	211
2. Quantitative Responses	214
a. Discriminatory Barriers and Perceptions	214
b. Access to Formal/Informal Business and Professional Networks	217
c. Access to Financial Supports	219
d. Obtaining Work on an Equal Basis	221
e. Capacity for Growth	222
f. Prompt Payment	224
g. Capacity Development and Participation Incentives	226
3. Written Survey Responses	226
a. Systemic Racial Exclusion	226
b. Discriminatory Attitudes and Behaviors	229
c. Negative Perceptions of Competency and Professionalism	229
d. Gender Bias and Barriers	231

e. Access to Networks	235
f. Access to Contract Opportunities	238
g. Financial Barriers to Opportunities	239
C. Conclusion	245
VII. Recommendations for the City of San Antonio’s SBEDA Program	247
A. Review Race- and Gender-Neutral Measures	247
1. Revise the Program’s Structure.	248
2. Enhance Contract Data Collection and Reporting	248
B. Continue to Implement a Narrowly Tailored SBEDA Program	249
1. Use the Study to Set the Overall, Annual Aspirational Goals	249
2. Use the Study to Set M/WBE Contract Goals.	250
3. Adopt a Personal Net Worth Standard for Program Eligibility	251
4. Update Program Administration Policies and Procedures	252
5. Develop Performance Measures for Program Success	254
C. Continue to Conduct Regular Program Reviews	254
Appendix A:	
Further Explanation of the Multiple Regression Analysis	255
Appendix B:	
Further Explanation of the Probit Regression Analysis	257
Appendix C:	
Significance Levels.	259
Appendix D:	
Unweighted and Weighted Availability	261
Appendix E:	
Qualitative Evidence from Texas Disparity Studies.	265
Appendix F:	
Disparity Analyses for Major Industry Groups	289

List of Tables

Table 1-1: Industry Percentage Distribution of City of San Antonio Contracts by Dollars	17
Table 1-2: Utilization of Firms by Contract Dollars by Race and Gender	25
(share of total dollars)	
Table 1-3: Aggregated Weighted Availability for City of San Antonio's Contracts.	25
Table 1-4: Disparity Ratios by Demographic Group	26
Table 3-1: M/WBE Aspirational Goals as of Q1 2023	71
Table 4-1: Final Contract Data File	109
Number of Contracts	
Table 4-2: Final Contract Data File	110
Net Dollar Value of Contracts	
Table 4-3: Industry Percentage Distribution of City of San Antonio Contracts by Dollars	111
Table 4-4: NAICS Code Distribution of Contract Dollars in the Constrained Product Market. . .	119
Table 4-5: Distribution of Contract Dollars by Race and Gender.	125
(total dollars)	
Table 4-6: Percentage Distribution of Contract Dollars by Race and Gender	131
(share of total dollars)	
Table 4-7: Unweighted M/WBE Availability for City of San Antonio Contracts	138
Table 4-8: Distribution of the City of San Antonio's Spending by NAICS Code.	143
(the Weights)	
Table 4-9: Aggregated Weighted Availability for City of San Antonio Contracts	148
Table 4-10: Comparison of the Share of the City of San Antonio Spending.	149
Captured by the Top Three NAICS Codes for Each Demographic Group	
Table 4-11: The Top Three City of San Antonio Spending NAICS Codes.	150
for Each Demographic Group	
Table 4-12: Three NAICS Codes where Black Firms Received the Most Spending.	151
Table 4-13: Three NAICS Codes where Hispanic Firms Received the Most Spending.	152
Table 4-14: Three NAICS Codes where Asian Firms Received the Most Spending	152
Table 4-15: Three NAICS Codes where White Woman Firms Received the Most Spending. . . .	153
Table 4-16: Disparity Ratios by Demographic Group	154
Table 4-17: Comparing Utilization and Unweighted Availability in the Four NAICS Codes.	155
Where the City of San Antonio Spends 52.1% of Its Funds	
Table 5-1: Business Formation Rates	165
All Industries, 2016 - 2020	
Table 5-2: Business Formation Probabilities	165
Relative to White Males, All Industries, 2016 - 2020	
Table 5-3: Wage Differentials for Selected Groups	166
Relative to White Men, All Industries, 2016 - 2020	
Table 5-4: Business Earnings Differentials for Selected Groups	166
Relative to White Men, All Industries	

Table 5-5: Business Formation Rates	167
Construction, 2016 - 2020	
Table 5-6: Business Formation Probability Differentials for Selected Groups	167
Relative to White Men, Construction, 2016 - 2020	
Table 5-7: Table 5-7 Wage Differentials for Selected Groups	168
Relative to White Men, Construction, 2016 - 2020	
Table 5-8: Business Earnings Differentials for Selected Groups	168
Relative to White Men, Construction, 2016 - 2020	
Table 5-9: Business Formation Rates	169
Construction-Related Services, 2016 - 2020	
Table 5-10: Business Formation Probability Differentials for Selected Groups	169
Relative to White Men, Construction-related Services, 2016 - 2020	
Table 5-11: Wage Differentials for Selected Groups	170
Relative to White Men, Construction-Related Services, 2016 - 2020	
Table 5-12: Business Earnings Differentials for Selected Groups	170
Relative to White Men, Construction-related Services, 2016 - 2020	
Table 5-13: Business Formation Rates	171
Goods, 2016 - 2020	
Table 5-14: Business Formation Probabilities	171
Relative to White Males, Goods, 2016 - 2020	
Table 5-15: Wage Differentials for Selected Groups	171
Relative to White Men, Goods, 2016 - 2020	
Table 5-16: Business Earnings Differentials for Selected Groups	172
Relative to White Men, Goods, 2016 - 2020	
Table 5-17: Business Formation Rates	173
Services, 2016 - 2020	
Table 5-18: Business Formation Probability Differentials for Selected Groups	173
Relative to White Men, Services, 2016 - 2020	
Table 5-19: Wage Differentials for Selected Groups	173
Relative to White Men, Services, 2016 - 2020	
Table 5-20: Business Earnings Differentials for Selected Groups	174
Relative to White Men, Services, 2016 - 2020	
Table 5-21: Business Formation Rates	175
Information Technology, 2016 - 2020	
Table 5-22: Business Formation Probability Differentials for Selected Groups	175
Relative to White Men, Information Technology, 2016 - 2020	
Table 5-23: Wage Differentials for Selected Groups	175
Relative to White Men, Information Technology, 2016 - 2020	
Table 5-24: Business Earnings Differentials for Selected Groups	176
Relative to White Men, Information Technology, 2016 - 2020	
Table 5-25: Two-Digit NAICS Code Definition of Sector	178
Table 5-26: Demographic Distribution of Sales and Payroll Data – Aggregated Groups	180
All Industries, 2017	
Table 5-27: Disparity Ratios of Firm Utilization Measures	181
All Industries, 2017	

Table 5-28: Disparity Ratios – Aggregated Groups	181
Construction, 2017	
Table 5-29: Disparity Ratios – Aggregated Groups	182
Professional, Scientific and Technical Services, 2017	
Table 5-30: Disparity Ratios – Aggregated Groups	183
Goods, 2017	
Table 5-31: Disparity Ratios – Aggregated Groups	183
Services, 2017	
Table 6-1: Race and Gender Distribution	212

I. EXECUTIVE SUMMARY

Colette Holt & Associates (“CHA”) was retained by the City of San Antonio (“City”) to perform a disparity study examining its Small Business Economic Development Advocacy (“SBEDA”) Program. In this Study, we determined the City’s utilization of Minority-owned Business Enterprises (“MBEs”) and Woman-owned Business Enterprises (“WBEs”, collectively, “M/WBEs”) during calendar years 2014 through 2020; the availability of these firms as a percentage of all firms in the City’s geographic and industry market areas; and any disparities between the City’s utilization of M/WBEs and M/WBE availability for City contacts. We further analyzed disparities in the San Antonio Metropolitan Area and the wider Texas economy, where contracting affirmative action is rarely practiced, 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 M/WBEs in obtaining City contracts and associated subcontracts. Based on these findings, we evaluated the SBEDA Program for conformance with constitutional standards and national best practices.

The methodology for this Study embodies the constitutional principles of *City of Richmond v. J.A. Croson Co.*,¹ Fourth Circuit Court of Appeals case law, and best practices for designing race- and gender-conscious 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 designing legally defensible disparity studies.

A. Summary of Strict Constitutional Standards Applicable to the City of San Antonio’s Small Business Economic Development Advocacy (SBEDA) Program

To be effective, enforceable, and legally defensible, a race-based program for public sector contracts must meet the judicial test of constitutional “strict scrutiny”. Strict scrutiny is the highest level of judicial review. The City of San Antonio must meet this test to ensure any race- and gender-conscious program is in legal compliance.

Strict scrutiny analysis has two prongs:

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

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 M/WBEs 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 M/WBEs in the market area and in 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.

The Disadvantaged Business Enterprise (“DBE”) program for United States Department of Transportation funded contracts has been evaluated under a similar framework. The program regulations were first revised in 1999 to meet the new test imposed by the U.S. Supreme Court in *Adarand Constructors, Inc. v. Peña*.³

Most federal courts have subjected preferences for WBEs to “intermediate scrutiny”.⁴ Gender-based classifications must be supported by an “exceedingly persuasive justification” and be “substantially related to the objective”.⁵ The quantum of evidence necessary to satisfy intermediate scrutiny is less than that required to

2. 488 U.S. 469 (1989).

3. 515 U.S. 200 (1995).

4. *H.B. Rowe Co., Inc. v. W. Lyndo Tippet, North Carolina DOT, et al.*, 615 F.3d 233 (4th Cir. 2010).

5. *Cf. United States v. Virginia*, 518 U.S. 515, 532 n.6 (1996).

satisfy strict scrutiny. However, appellate courts have applied strict scrutiny to the gender-based presumption of social disadvantage in reviewing the constitutionality of the DBE program or held that the results would be the same under strict scrutiny.

Proof of the negative effects of economic factors on M/WBEs and the unequal treatment of such firms by actors critical to their success will 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. 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 M/WBEs. High quality studies also examine the elements of the agency’s program to determine whether it is sufficiently narrowly tailored.

B. The City of San Antonio’s SBEDA Program

1. History and Overview of the SBEDA Program

The City adopted a minority- and woman-owned business program in 1989 to redress the effects of past discrimination in the City’s contracts and in the City’s local marketplace. The current program was established in 1992 by the SBEDA Ordinance, which was updated in 2010 and 2016. The Ordinance seeks to encourage the full and fair utilization of M/WBEs and small businesses (“S/M/WBEs”) on City contracts for construction services, architectural and engineering services, professional services, other services and goods and supplies. To promote participation on S/M/WBEs on City contracts. The program applies to all contracts with a value of \$50,000 or more unless excluded by the SBEDA Ordinance (*e.g.*, contracts subject to U.S. Department of Transportation Disadvantaged Business Enterprise Program). The Ordinance includes “industry-specific” and “non-industry specific” initiatives that are a combination of race-neutral and race-conscious program elements. The City Council has the authority to reauthorize the program based on recommendations of the City Manager.

2. SBEDA Program Administration

Multiple City government offices and departments administer the program.

- The City Manager’s Office is responsible for the overall development of the program and non-industry-specific remedies. The City Manager’s office appoints and chairs the Goal Setting Committee(s) (“GSC”), makes the final determination on all waiver requests that are not approved by the Director or designee of Economic Development Department (“EDD”) and imposes penalties and sanctions when vendor non-compliance issues cannot be resolved.
- The Finance Department is responsible for implementation of procurement policy reform; ensuring that departmental solicitation documents and contracts contain the GSC requirements and EDD approved program compliance language; reviewing scopes and solicitation specifications of originating departments; reviewing of respondent bid submissions for completion; and reviewing exception requests.
- The EDD formulates and adopts rules and regulations to assist in the implementation, administration and enforcement of the SBEDA program.
- The EDD is the primary department responsible for the oversight and administration of the SBEDA program.
- Originating departments originate eligible contracts and work jointly with the EDD to support administration of the program by following solicitation procedures and provisions outlined in the SBEDA program.

The GSC establishes annual M/WBE aspirational goals on prime and subcontracts; segmented M/WBE annual aspirational goals for all eligible prime and subcontracts; and application of various SBEDA program tools.⁶ The GSC is appointed and chaired by the City Manager⁷ or a representative from the City’s Executive Team. Executive team members of the GSC serve as departmental designees in reviewing “high profile” solicitations.

The 11-member SBEDA Committee is made up of trade groups and members of the general business community who advise the Mayor, City Council and City Manager regarding business issues, goals and related policies concerning S/M/WBEs and the effectiveness of the SBEDA program.

6. SBEDA program “tools” are various race-neutral and race-conscious incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms.

7. The City Manager has the authority to determine the number of GSCs and the Industry Categories that are assigned, if more than one is established. As of the date of this study, only one GSC has been established that is responsible for the following Industry Categories: 1. Construction; 2. Architecture & Engineering; 3. Professional Services; 4. Other Services; and 5. Goods and Supplies.

3. SBEDA Program Eligibility Standards and Certification

The City accepts certifications by the South Central Texas Regional Certification Agency ("SCTRCA"). Certifications include business enterprises classified as Small Business Enterprise ("SBE"), African American Business Enterprise ("AABE"), Asian American Business Enterprise ("ABE"), Emerging Small Business Enterprise ("ESBE"), Hispanic American Business Enterprise ("HABE"), MBE, Native American Business Enterprise ("NABE"), and WBE.

To qualify as a small business enterprise:

- A firm must be headquartered or have a significant business presence (defined by maintaining an office for at least one year from which 20% of its total employees are regularly-based) in one of the eight counties that make up the San Antonio Metropolitan Statistical Area ("SAMSA").
- Meet the U.S. Small Business Administration ("SBA") size standard for a small business in its industry.
- Be owned by individuals who are lawfully residing in, or are citizens of, the United States or its territories.
- Be a legal entity, excluding joint ventures, that engages in for-profit transactions.
- Be ready, willing and able to sell goods or services that are purchased by the City.

MBE and WBE enterprises must also meet the additional requirement of being at least 51% independently owned, managed and controlled by one or more minority group members or a woman.

Minority group members are defined as persons legally residing in, or that are citizens of, the United States or its territories, that are:

- African Americans: Persons with origins in any of the Black racial groups of Africa.
- Hispanic Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
- Asian Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal enrollment documents.

Business enterprises automatically qualify for certification as either an ESBE or Emerging Minority Woman Business Enterprise (“EMWBE”) if their firm’s annual revenue and number of employees are no greater than 25% of the U.S. Small Business Administration’s small business size standards for its industry.

An S/M/WBE “graduates” from participation in the program once the firm’s re-certification documents show that it exceeds the applicable SBA size and revenue standards for a relevant industry category.

When an S/M/WBE or ESBE receives more than \$15M in City prime contract or subcontract payments in two consecutive calendar years, it is temporarily suspended from participation in any City Affirmative Procurement Initiatives (“APIs”) for the remainder of the year. Firms may resume participation in APIs the following calendar year as long as the firm still meets the SBA size standards and did not receive \$15M in City prime contract or subcontract payments.

4. Non-Industry Specific Tools

The SBEDA Program contains non-industry-specific, race-neutral provisions applicable to all vendors, regardless of certification status. Tools include a Commercial Non-Discrimination Policy, a Centralized Vendor Registry (“CVR”), solicitation, bid specification review and respondent debriefings.

5. Industry Specific Tools

The City employs a combination of race-neutral and race-conscious provisions that incorporate aspirational and subcontracting goals, contract incentives and support services. These vary across industries and with the type of solicitation and are applied in accordance with the Texas Local Government Code.

a. Aspirational Goals

The GSC establishes non-mandatory, industry-specific annual aspirational goals for overall M/WBE participation for each major category of City contracting. Aspirational goals are used as benchmarks in which to measure the overall effectiveness of the program and are not a substitute for setting individual contract goals. Annual aspirational goals are based on the M/WBE availability in the 2015 disparity study, availability data collected through the City’s CVR system and the City’s utilization of M/WBEs.

The City further breaks down the overall M/WBE goal based on firm availability into segmented aspirational goals for specific racial/ethnic groups and gender.

M/WBE Aspirational Goals as of Q1 2023

Segment	Total All Industries	Construction	Architectural & Engineering	Professional Services	Other Services	Goods & Supplies
M/WBE	41.2%	44.4%	30.6%	39.7%	54.8%	42.1%
AABE	2.8%	3.7%	2.3%	6.3%	4.0%	2.0%
HABE	25.2%	29.7%	15.8%	22.5%	32.3%	23.3%
ABE	2.0%	1.7%	3.1%	0.7%	1.4%	2.7%
NABE	1.1%	1.0%	2.5%	0.2%	1.1%	1.4%
WBE	10.0%	10.1%	8.0%	10.0%	15.3%	11.4%

b. Emerging Small Business Enterprise Prime Contract Program

Under the Emerging Small Business Enterprise Prime Contract Program for firms certified as ESBes or EMWBEs, firms may receive up to 20% of weighted selection criteria or evaluation points. No more than 49% of the contract value can be subcontracted to non-certified firms.

c. Prime Contract Program

Under the Prime Contract Program, SBEs or M/WBEs may receive up to 20% of weighted selection criteria or evaluation points. Respondents are not allowed to subcontract more than 49% of the contract value to non-certified firms.

d. The Joint Venture Incentive Program

Joint ventures may be awarded from 20% to 5% additional evaluation points depending on the SBE's or M/WBE's partner percentage within their joint venture agreement.

e. The Joint Venture Incentive Program

The Joint Venture Incentive program applies additional solicitation incentives to goods and supplies and other services contracts to attract eligible joint venture respondents. Incentives include extension of additional option years for any supply contracts, provided that the initial solicitation afforded possible extensions, and accelerated payment of invoices by the City, if available. To be eligible for the incentive, the S/M/WBE joint venture partner must be responsible for supplying no less than 40% of the total value of the contract that is not subcontracted.

f. Mentor Protégé Program

The Mentor-Protégé Program provides technical assistance to SBEs and M/WBEs to build their capacity by pairing them with larger mentors. It requires the prime respondent awarded a City contract to serve as a mentor in the City's Mentor-Protégé Program for a two-year period.

g. Minority Distributorship Development Program

The Minority Distributorship Development Program allows the GSC to apply special incentive terms to bid solicitations and supply contracts for commodities when a manufacturer sells through an authorized certified M/WBE distributorship or dealer to the City on a non-discriminatory basis. These incentive terms may include additional option years and accelerated payments on invoices.

h. HUBZone Program

The HUBZone Program is applied only on a race-neutral basis to construction contracts less than \$750,000. Up to 20% of the evaluation criteria points can be allocated to firms that are certified HUBZone prime respondents. No more than 49% of the contract value can be subcontracted to non-certified firms.

i. Subcontracting Goal Programs

Under the Subcontracting Goals Program, the GSC may set subcontracting goals on a contract-by-contract basis for contracts that provide subcontract opportunities. This program can be applied on a race-neutral or race-conscious basis. A predetermined percentage of up to 40% is required to be subcontracted to eligible M/WBEs or SBEs that will provide a CUF. S/M/WBE prime contractors are allowed to self-perform up to the entire S/M/WBE subcontracting goal with their own forces on contracts valued at \$10M or less.

Under the M/WBE Subcontracting Goals Program – Segmented Goals, the GSC may set goals for AABEs, ABEs, HABEs, NABEs and WBEs.

6. SBEDA Business Support Programs

a. Mentor-Protégé Program

In partnership with Alamo College, the City offers the Mentor-Protégé Program. The program combines education with a formal mentor-protégé relationship to help local S/M/WBEs build capacity.

b. Capacity Building & Bonding Assistance Program

The City recently launched a new Capacity Building & Bonding Assistance Program to help eligible S/M/WBEs bid on City construction contracts. The program was developed in partnership with the San Antonio Economic Development Corporation (SAEDC). It is administered in partnership by Alamo Surety Bonds.

7. Contract Solicitation Process

a. Goal and Incentive Selection Process

All formal expenditure and revenue solicitations with a total contract value greater than \$50,000 must be submitted to the EDD and GSC for determination of evaluation criteria points or goal assignments. Whenever a race-conscious API is selected, specific language describing the justification for such application must be included in the solicitation.

SBEDA contract requirements are subject to revision by the City Council.

b. API Waivers

The originating department may request in writing a waiver or modification of a solicitation's SBEDA API requirements. The EDD Director or designee's determination to grant the waiver is based on whether the contract requirements render the API infeasible or impractical, the goods or services are excluded from the Ordinance, and there is insufficient S/M/WBE availability.

c. Vendor Solicitation and Bidding Requirements

All prime contractors awarded a City contract must register with the CVR. Except for contracts with undefined scopes such as on-call contracts, a subcontractor/supplier plan is due at the time of bid or response submission. Failure to submit an acceptable utilization plan or the utilization commitment form at bid or proposal time or with the price proposal will render the bid or proposal non-responsive.

d. Vendor Subcontracting Goal Waivers and Exceptions

i. Waivers

Prime contractors unable to meet the subcontracting goal(s) can request a partial or full waiver. Requests must include all required supporting documentation showing the contractor's Good Faith Effort.

Decisions on waivers are made by the EDD. The solicitation review process is suspended during the waiver consideration period. Waiver evaluation is based on a point system that requires respondents to achieve a total of 70 points or more to obtain a full or partial waiver (waivers contain 100 total receivable points). Waivers that are denied render the bid and proposal non-responsive.

Adverse decisions on waivers can be appealed in writing within seven calendar days of electronic receipt of the waiver denial notice. Appeals reviews are conducted by the Director of EDD. Respondents can request an informal hearing. The Director of EDD has 10 calendar days from receipt of the appeal request to make a determination.

ii. Exceptions

Prime contractors unable to meet the subcontracting goal(s) because of good cause can submit an exception request through the originating department at the time specified in the solicitation. Exception requests are considered by the EDD.

If the exception request is approved, it is referred back to the originating department. The originating department then may cancel the current process and reissue the solicitation without the application of the policy. Adverse decisions on exception requests renders the bid or proposal non-responsive and cannot be appealed.

8. Post-Contract Award Procedures

The subcontractor/supplier utilization plan becomes a binding part of the contract. Monitoring compliance with the SBEDA provisions is a joint effort between the EDD and the originating department.

a. Contract Monitoring

Prime contractors are required to report payments to all subcontractors in the Contract Compliance Monitoring System ("CCMS"), an automated contract management system powered by B2Gnow[®]. Subcontractors are required to review and confirm/dispute the accuracy of the payment amount. This system streamlines and automates the City's program data gathering, tracking, reporting and vendor management.

The EDD may conduct field compliance that includes, but is not limited to, interviewing subcontractors and work product and inspections of correspondence, records and documents.

b. Post-Award Utilization Plan Changes

Any changes to the subcontractor/supplier utilization plan must be made in writing and in advance. Changes can include the percentage of the prime vendor's self-performance; additions; substitutions; terminations and unavailability of subcontractors. The request is submitted to the originating department which then notifies the EDD. The EDD will approve, deny or provide an action plan for resolution five business days from the submission of the request by the originating department. Changes must be approved by the Director or designee of EDD and may require a contract amendment. Change orders that result in contract amendment values require City Council approval.

Prime contractors that cannot meet the contracted goals can submit a request for a full or partial waiver to the originating department that clearly document the prime contractor's GFE to meet the goal. The waiver must be approved by the EDD Director or designee within five business days of receipt from the originating department. If the prime contractor is found to have not performed GFE, the City may impose penalties and sanctions.

c. Procedures for Non-Compliance

i. Non-Compliance by the Originating Department

If the EDD determines that an originating department has failed to comply with the provisions of the SBEDA Program or the contract provisions pertaining to S/M/WBE utilization, the EDD can transmit a written finding to the originating department's director. When all attempts to rectify non-compliance through conference and conciliation are exhausted, the EDD can escalate the matter to the City Manager for resolution.

ii. Non-Compliance by a Prime Contractor or Subcontractor

The non-compliance process does not begin until the contract has been paid out 25% in CCMS. The EDD will notify the originating department within 15 calendar days after noticing possible non-compliance, and request documentation from the vendor/department to determine non-compliance. The EDD, through the originating department director or designee, will attempt to resolve the non-compliance within 15 calendar days from the date of receipt of submission of any documentary materials.

If the non-compliance is not resolved within 30-days of the originating department being notified, the vendor is notified of the initial determination of non-compliance via mail or email. The vendor may request a formal hearing with the Director or designee of EDD, originating

department and, if they are not the originating departments, the Finance Department. If the formal hearing results in a determination of non-compliance or if a hearing is not requested by the vendor, the initial determination of non-compliance becomes final, and penalties and sanctions are applied. The City Manager makes the decision to impose sanctions and penalties recommended by the EDD.

d. Penalties and Sanctions

The City Manager or designee may impose penalties and sanctions on contractors that do not comply with the SBEDA Ordinance. These penalties include suspension of contract, withholding funds, rescission of contract, refusal to accept a response to a proposal and disqualification from eligibility for providing goods and services to the City.

9. Outreach and Business Support Services

Outreach for solicitations is conducted by the originating departments. The City and originating departments regularly hold pre-bid conferences providing an opportunity for networking with other potential respondents and obtaining more information regarding the project. City staff and EDD provide online access to a collection of written responses to questions from prospective respondents. Respondents are encouraged to contact the EDD office for assistance.

EDD staff distribute a bi-monthly newsletter to registered vendors about upcoming solicitations with SBEDA Program APIs.

The City's website⁸ provides access to information and many resources to assist small firms. The website offers information about doing business with the City, including a dedicated vendor registration page with a guide on how to easily register. A video with registration instructions is also available. The website provides access to current bidding, tabulations and awards and high-profile procurements. The Annual Procurement Guide provides a detailed list of projects and future solicitation opportunities for the upcoming year. Targeted resources on the website⁹ include a searchable database of City of San Antonio and SBEDA eligible vendors and a library of SBEDA compliance forms. Links are provided to the SCTRCA for firms needing assistance with certification.

EDD has compiled a comprehensive small business resource guide that lists organizations, agencies and City departments offering resources to assist small

8. <https://www.sanantonio.gov/purchasing/biddingcontract>

9. <https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement>; see also <https://www.sanantonio.gov/edd>

businesses. Firms can contact a City Business Outreach Specialist for assistance in connecting with an organization to provide needed information and services. An email option on the website allows firms to directly request information about the program and support options. Booklets and inserts published on the website provide detailed information about program eligibility and the affirmative action initiative available for each industry category.

In 2013, the City adopted a Diversity Action Plan (“DAP”) to assist new firms take advantage of the SBEDA program. The plan establishes initiatives to promote equitable utilization of minority and woman-owned businesses on City contracts through outreach, certification, solicitation planning, capacity building programs, and access to capital.

The EDD hosts orientation sessions to provide registered vendors with information to maximize their bidding opportunities on City contracts. Sessions cover topics such as proposal development, managing a firm’s San Antonio Electronic Procurement System Profile, and SBEDA Program requirements. The EDD offers vendor training on B2Gnow®. When vendors are non-responsive to solicitations due to SBEDA Program requirements, EDD is available to meet with the vendors to instruct them on how to improve. EDD provides prime contractors and subcontractors trainings on an on-call basis.

EDD staff conducts multiple public presentations to the business community, chambers of commerce, trade organizations, and advocacy organizations regarding program benefits and requirements for prospective respondents.

The City sponsors a wide variety of programs to assist S/M/WBEs. These include:

- The Loan Interest Buydown Program to help S/M/WBEs that experience difficulty accessing capital through traditional lending mechanisms obtain capital with zero interest.
- Launch SA, offered in partnership with LiftFund, provides resources for prospective entrepreneurs and businesses at all levels of development to provide direction, education, mentorship and technical assistance
- The Small Business Development Fee Waiver Program provides small businesses waivers up to \$50,000 for City and SAWS Sewer and Water Impact fees.
- The License & Permitting Navigation Program provides resources to businesses needing support in navigating local licensing and permitting rules and regulations.
- Mentor Protégé Program to assist small businesses expand capacity through personalized mentorship.

- Capacity Building & Bonding Assistance Program designed to establish, enhance, and increase the program participant's bonding capabilities and capacity.
- Corridor Program offers development and funding support over two years to encourage investment and revitalization of commercial corridors.
- Covid/Construction Impact Grant Program offers grants to small businesses impacted by Covid-19 and construction revenue loss tied to City-initiated construction zones.

The City has also partnered with various organizations to offer direct outreach, training, and supportive services, capacity development and financial assistance for small businesses. Partnerships, the Maestro Entrepreneur Center, San Antonio Economic Development Corporation, Prosper West San Antonio, San Antonio for Growth on the Eastside and Southside First.

In 2022, the City offered a program to provide relief to small businesses impacted by both COVID-19 and the prolonged construction-related loss of revenues tied to specific City-initiated projects. Qualifying businesses received up to \$35,000 in grant funding to help offset demonstrated losses in 2022 compared to 2021.

10. Staff Training

EDD encourages professional development for department staff. Staff attend the annual B2Gnow® User Training Conference and the American Contract Compliance Association's annual National Training Institute. Staff also attend conflict management and supervisor academy training.

The EDD office has developed a YouTube training video on the SBEDA process for City staff.¹⁰

11. Experiences with the SBEDA Program

To explore the experiences of businesses seeking opportunities on City contracts, we solicited input from 101 business owners (including both M/WBEs and non-M/WBE firms) and sought their suggestions for changes. We also collected written comments from 233 businesses about their experiences with San Antonio's program through an electronic survey. The following are summaries of the issues discussed during the interviews and in the survey comments.

10. <https://youtu.be/ZcL2FcleeEs>

**a. Experiences with the SBEDA Program's Policies and Procedures:
Business Owner Interviews**

Contract compliance monitoring: Some certified firms stated that the City does not sufficiently monitor the prime contractor's adherence to its contractual commitments to the M/WBEs listed in the Utilization Plan.

Supportive services: In addition to the current array of services, some M/WBEs requested additional assistance with understanding the City's procurement processes and developing winning bids and proposals. Some participants suggested more education about what the programs can accomplish. One approach would be to add descriptions of certified firms to the database so that everyone would have a better understanding of a firm's capabilities.

Mentor-Protégé Program: There was widespread support for the concept of mentor-protégé relationships. Several praised the City's current program. However, there were some deficiencies.

M/WBE certification standards: Some minority owners felt that White woman-owned firms were "fronts" for White men.

Contract size: Several interviewees reported the size of the City's contracts to be impediments to bids or proposals from smaller firms.

Insurance requirements: Many firms, including non-M/WBEs, reported that the City's insurance requirements were often unnecessarily high or restrictive. This impacts their ability to get work as prime vendors.

Experience requirements: Similarly, the experience criteria in many requests for proposals were seen as more than needed to perform the work, to the detriment of smaller firms. One small firm felt that overall, the City's process was too burdensome for small firms working on small projects.

Meeting contract goals: Most prime vendors reported they have been able to meet contract goals. One participant lauded the City for counting certified firms' participation towards contract goals. Several prime vendors reported challenges in meeting goals, including that the contract goals often did not seem to be tailored to the specifics of the project. One prime consultant felt that it should not have to compete with firms it uses to meet the goals. Another issue for prime bidders is the difficulty of submitting full utilization plans with the bids. An unintended consequence of this approach is that bidders tend to use subs with which have already worked.

b. Experiences with the SBEDA Program: Business Owner Survey Comments

Overall perceptions of the program's effectiveness: Minority- and woman-owned firms widely supported the program. Many stated the program was essential to obtaining business. Some consider the program essential for networking. A few firms did not receive much benefit from the program.

Experiences with the S/M/WBEs certification process: A few firms found the certification process burdensome. Some suggested that the City accept the DBE certification. A Native American firm felt the City's certification requirements were more onerous than those imposed by other certification agencies. Some respondents urged greater scrutiny of certified firms to identify "front" companies. Better enforcement of the local preference requirement was also requested by several M/WBE firms.

Access to City Contracting Opportunities: Some M/WBEs requested more opportunities to perform as prime contractors. Many suggested "unbundling" projects into small contracts to open more prime opportunities and allow smaller firms to take on more work. This was supported by a prime contractor respondent. Set-asides for M/WBEs and small firms was another recommendation. Several M/WBEs felt the same firms are repeatedly used. The solicitation process was seen by some respondents as burdensome and costly for small firms.

SBEDA Program Compliance: Almost all non-M/WBE respondents were able to meet M/WBE contract goals. A few questioned the commitment of City departments to adhere to program objectives and goal requirements. Some M/WBEs requested more oversight to ensure prime contractors comply with goal requirements. One M/WBE complimented the City's effort to enforce SBEDA guidelines.

SBEDA program outreach and access to information: Some small firms requested more notification and information about upcoming projects. Several M/WBE respondents requested more targeted outreach for their industry. Additional support to facilitate relationship building between subcontractors and prime contractors was a common request.

Experiences with joint ventures and mentor-protégé programs: Many reported positive experiences with joint ventures and suggested they are an important approach for small firms to build capacity. Mentor-protégé arrangements was another approach to help M/WBEs. However, not all M/WBEs respondents found the mentor-protégé approach to be helpful.

Experiences with business support services: Most M/WBEs who had participated in supportive services and training classes found them useful. Some

firms reported that services had not led to business opportunities. One suggestion was to offer more comprehensive instruction and training to help develop concrete skills, techniques and strategies. Many need assistance with accessing capital to expand their capacity.

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

The study examined data from City of San Antonio's contracts for the calendar years 2014 through 2020. The Initial Contract Data File contained 4,219 contracts. Because of the large number of contracts, we developed a stratified random sample.¹¹ To conduct the analysis, we constructed all the fields necessary where they were missing in the contract records (*e.g.*, industry type; zip codes; six-digit North American Industry Classification System ("NAICS") codes of prime contractors and subcontractors; and firm information, including payments, race, gender; etc.). Missing NAICS codes of prime contractors and subcontractors were assigned by CHA. The Final Contract Data File ("FCDF") contained 549 prime contracts and 1,124 subcontracts. The net dollar value of contracts to prime contractors and subcontractors was \$887,172,764.

Table 1-1 presents data on the 152 NAICS codes contained in the FCDF. The third column represents the share of all contracts to firms performing work in a particular NAICS code. The fourth column presents the cumulative share of spending from the NAICS code with the largest share to the NAICS code with the smallest share.

Table 1-1: Industry Percentage Distribution of City of San Antonio Contracts by Dollars

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
237310	Highway, Street, and Bridge Construction	25.8%	25.8%
236220	Commercial and Institutional Building Construction	9.2%	35.0%
541330	Engineering Services	4.2%	39.2%
441110	New Car Dealers	4.0%	43.2%

11. The sample was constructed by first stratifying the contract universes into its five industries components: Construction, Goods & Supplies, Professional Services, Architecture & Engineering, and Services. With each component, we derived a random sample where distribution of contract dollars within that component approximated the distribution of contract dollars within the component universe.

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
238220	Plumbing, Heating, and Air-Conditioning Contractors	3.2%	46.4%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	3.1%	49.5%
238210	Electrical Contractors and Other Wiring Installation Contractors	3.0%	52.5%
238110	Poured Concrete Foundation and Structure Contractors	2.7%	55.3%
237110	Water and Sewer Line and Related Structures Construction	2.7%	58.0%
541611	Administrative Management and General Management Consulting Services	2.6%	60.6%
238910	Site Preparation Contractors	2.4%	62.9%
562111	Solid Waste Collection	2.3%	65.2%
561320	Temporary Help Services	2.2%	67.4%
238990	All Other Specialty Trade Contractors	2.0%	69.4%
541511	Custom Computer Programming Services	2.0%	71.4%
722320	Caterers	1.6%	72.9%
561720	Janitorial Services	1.5%	74.5%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	1.4%	75.9%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	1.2%	77.0%
238290	Other Building Equipment Contractors	1.1%	78.1%
238390	Other Building Finishing Contractors	1.0%	79.1%
561730	Landscaping Services	1.0%	80.1%
238310	Drywall and Insulation Contractors	1.0%	81.1%
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	0.9%	82.0%
237990	Other Heavy and Civil Engineering Construction	0.9%	82.9%
561612	Security Guards and Patrol Services	0.9%	83.8%
541990	All Other Professional, Scientific, and Technical Services	0.8%	84.6%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	0.7%	85.3%
238120	Structural Steel and Precast Concrete Contractors	0.7%	86.0%
562119	Other Waste Collection	0.7%	86.7%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.6%	87.3%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.5%	87.8%
236118	Residential Remodelers	0.5%	88.3%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.5%	88.8%
541620	Environmental Consulting Services	0.5%	89.3%
541211	Offices of Certified Public Accountants	0.5%	89.7%
238140	Masonry Contractors	0.5%	90.2%
238160	Roofing Contractors	0.4%	90.6%
541810	Advertising Agencies	0.4%	91.0%
561990	All Other Support Services	0.4%	91.4%
621111	Offices of Physicians (except Mental Health Specialists)	0.4%	91.8%
541310	Architectural Services	0.4%	92.2%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.4%	92.6%
562991	Septic Tank and Related Services	0.3%	92.9%
237120	Oil and Gas Pipeline and Related Structures Construction	0.3%	93.2%
541519	Other Computer Related Services	0.3%	93.4%
541320	Landscape Architectural Services	0.3%	93.7%
488410	Motor Vehicle Towing	0.3%	94.0%
238150	Glass and Glazing Contractors	0.2%	94.2%
236116	New Multifamily Housing Construction (except For-Sale Builders)	0.2%	94.5%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	0.2%	94.7%
541370	Surveying and Mapping (except Geophysical) Services	0.2%	94.9%
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	0.2%	95.2%
238350	Finish Carpentry Contractors	0.2%	95.4%
561110	Office Administrative Services	0.2%	95.6%
541380	Testing Laboratories	0.2%	95.8%
541219	Other Accounting Services	0.2%	96.0%
524298	All Other Insurance Related Activities	0.2%	96.2%
238320	Painting and Wall Covering Contractors	0.2%	96.4%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	0.2%	96.5%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	0.2%	96.7%
424410	General Line Grocery Merchant Wholesalers	0.2%	96.9%
541910	Marketing Research and Public Opinion Polling	0.2%	97.0%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	0.2%	97.2%
238330	Flooring Contractors	0.1%	97.3%
423220	Home Furnishing Merchant Wholesalers	0.1%	97.5%
511130	Book Publishers	0.1%	97.6%
561312	Executive Search Services	0.1%	97.7%
541820	Public Relations Agencies	0.1%	97.8%
441227	Motorcycle, ATV, and All Other Motor Vehicle Dealers	0.1%	97.9%
811111	General Automotive Repair	0.1%	98.0%
541350	Building Inspection Services	0.1%	98.1%
541420	Industrial Design Services	0.1%	98.2%
423440	Other Commercial Equipment Merchant Wholesalers	0.1%	98.3%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541613	Marketing Consulting Services	0.1%	98.4%
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	0.1%	98.4%
423210	Furniture Merchant Wholesalers	0.1%	98.5%
561613	Armored Car Services	0.1%	98.6%
423420	Office Equipment Merchant Wholesalers	0.1%	98.7%
722511	Full-Service Restaurants	0.1%	98.7%
531210	Offices of Real Estate Agents and Brokers	0.1%	98.8%
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	0.1%	98.8%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.1%	98.9%
423490	Other Professional Equipment and Supplies Merchant Wholesalers	0.1%	99.0%
236115	New Single-Family Housing Construction (except For-Sale Builders)	0.04%	99.0%
541690	Other Scientific and Technical Consulting Services	0.04%	99.0%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	0.04%	99.1%
562910	Remediation Services	0.04%	99.1%
424210	Drugs and Druggists' Sundries Merchant Wholesalers	0.04%	99.2%
424480	Fresh Fruit and Vegetable Merchant Wholesalers	0.04%	99.2%
611430	Professional and Management Development Training	0.04%	99.2%
518210	Data Processing, Hosting, and Related Services	0.04%	99.3%
485999	All Other Transit and Ground Passenger Transportation	0.04%	99.3%
541860	Direct Mail Advertising	0.04%	99.3%
541110	Offices of Lawyers	0.03%	99.4%
238340	Tile and Terrazzo Contractors	0.03%	99.4%
541930	Translation and Interpretation Services	0.03%	99.4%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
423390	Other Construction Material Merchant Wholesalers	0.03%	99.5%
621511	Medical Laboratories	0.03%	99.5%
561311	Employment Placement Agencies	0.03%	99.5%
488490	Other Support Activities for Road Transportation	0.03%	99.6%
541720	Research and Development in the Social Sciences and Humanities	0.03%	99.6%
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	0.02%	99.6%
621910	Ambulance Services	0.02%	99.6%
541490	Other Specialized Design Services	0.02%	99.7%
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	0.02%	99.7%
541618	Other Management Consulting Services	0.02%	99.7%
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	0.02%	99.7%
424690	Other Chemical and Allied Products Merchant Wholesalers	0.02%	99.7%
722330	Mobile Food Services	0.02%	99.7%
551112	Offices of Other Holding Companies	0.02%	99.8%
323111	Commercial Printing (except Screen and Books)	0.02%	99.8%
621399	Offices of All Other Miscellaneous Health Practitioners	0.02%	99.8%
541940	Veterinary Services	0.01%	99.8%
237130	Power and Communication Line and Related Structures Construction	0.01%	99.8%
212319	Other Crushed and Broken Stone Mining and Quarrying	0.01%	99.8%
811198	All Other Automotive Repair and Maintenance	0.01%	99.8%
523930	Investment Advice	0.01%	99.9%
524127	Direct Title Insurance Carriers	0.01%	99.9%
524126	Direct Property and Casualty Insurance Carriers	0.01%	99.9%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541614	Process, Physical Distribution, and Logistics Consulting Services	0.01%	99.9%
115112	Soil Preparation, Planting, and Cultivating	0.01%	99.9%
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	0.01%	99.9%
621999	All Other Miscellaneous Ambulatory Health Care Services	0.01%	99.9%
236210	Industrial Building Construction	0.01%	99.9%
621493	Freestanding Ambulatory Surgical and Emergency Centers	0.01%	99.9%
423840	Industrial Supplies Merchant Wholesalers	0.01%	99.95%
423690	Other Electronic Parts and Equipment Merchant Wholesalers	0.01%	99.96%
424110	Printing and Writing Paper Merchant Wholesalers	0.01%	99.96%
541922	Commercial Photography	0.01%	99.97%
812990	All Other Personal Services	0.004%	99.97%
813312	Environment, Conservation and Wildlife Organizations	0.004%	99.98%
424590	Other Farm Product Raw Material Merchant Wholesalers	0.003%	99.98%
541430	Graphic Design Services	0.003%	99.98%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	0.003%	99.99%
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	0.002%	99.99%
561439	Other Business Service Centers (including Copy Shops)	0.002%	99.99%
423710	Hardware Merchant Wholesalers	0.002%	99.99%
541410	Interior Design Services	0.001%	99.99%
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	0.001%	99.99%
445110	Supermarkets and Other Grocery (except Convenience) Stores	0.001%	99.996%
424810	Beer and Ale Merchant Wholesalers	0.001%	99.997%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	0.001%	99.998%
221310	Water Supply and Irrigation Systems	0.001%	99.998%
812320	Drycleaning and Laundry Services (except Coin-Operated)	0.0004%	99.999%
237210	Land Subdivision	0.0004%	99.999%
924110	Administration of Air and Water Resource and Solid Waste Management Programs	0.0004%	99.9996%
493110	General Warehousing and Storage	0.0002%	99.9998%
492110	Couriers and Express Delivery Services	0.0001%	99.9999%
522110	Commercial Banking	0.0001%	99.99996%
424950	Paint, Varnish, and Supplies Merchant Wholesalers	0.00003%	99.99999%
532111	Passenger Car Rental	0.00001%	100.0%
TOTAL		100.0%	

Source: CHA analysis of City of San Antonio data

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.¹² Firm location was determined by zip code and aggregated into counties as the geographic unit. The state of Texas captured 90.6% of the FCDF and eight counties in the San Antonio Metropolitan Statistical Area – Bexar, Kendall, Guadalupe, Medina, Comal, Wilson, Atascosa, and Bandera – captured 74.8% of the FCDF and therefore, we used those eight counties as the geographic market.

We next determined the dollar value of the City’s utilization of M/WBEs, as measured by payments to prime firms and subcontractors and disaggregated by race and gender.¹³

Table 1-2 presents the summary of distribution of contract dollars. Chapter IV provides detailed breakdowns of these results.

12. 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*”), at p. 29.

13. For our analysis, the term “M/WBE” includes firms that are certified by government agencies and minority- and woman-owned firms that are not certified.

Table 1-2: Utilization of Firms by Contract Dollars by Race and Gender
(share of total dollars)

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
2.7%	35.5%	0.1%	0.0%	14.6%	53.0%	47.0%	100.0%

Source: CHA analysis of City of San Antonio data

Using the modified “custom census”¹⁴ approach to estimating availability and the further assignment of race and gender using the FCDF, the Master M/WBE Directory and other sources, we determined the unweighted availability of M/WBEs in the City’s market area. For further explanation of the role of unweighted and weighted availability and how these are calculated, please see Appendix D.¹⁵

We next determined the aggregated unweighted availability of M/WBEs, and then the availability of M/WBEs weighted by the City’s spending in its geographic and industry markets. Table 1-3 presents these results.

Table 1-3: Aggregated Weighted Availability for City of San Antonio’s Contracts

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
3.1%	14.8%	0.6%	0.5%	5.9%	24.9%	75.1%	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

We next calculated disparity ratios for total M/WBE utilization compared to the total weighted availability of M/WBEs, measured in dollars paid.

A *disparity ratio* is the relationship between the utilization and weighted availability, determined 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

14. For an explanation of the custom census, please see Section II.C.3.

15. The USDOT “Tips for Goal Setting” urges recipients to weight their headcount of firms by dollars spent. See Tips for Goal Setting in the Disadvantaged Business Enterprise Program, <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

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.

Table 1-5 presents the calculated disparity ratios for each demographic group. The disparity ratios for Blacks, Asians, Native Americans, and non-M/WBEs were substantively significant. The disparity ratios for all groups except Native Americans are statistically significant at the 0.001 level.

Table 1-4: Disparity Ratios by Demographic Group

	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE
Disparity Ratio	88.5%***	239.9%***	22.1%†***	0.0%†	246.6%***	212.8%***	62.6%†***

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

† Indicates substantive significance

*** Statistically significant at the 0.001 level

In order to get a better understanding of the high disparity ratios for Hispanic- and White Woman-owned firms and M/WBEs overall, we examined more closely the distribution of the City's contract dollars across NAICS codes and M/WBEs with a particular emphasis on the four NAICS codes where the City spent 52.1% of its contract dollars. Overall, we found that, compared to non-M/WBEs, minority- and woman-owned firms, apart from Hispanic firms, were concentrated in a different subset of industries. Chapter IV provides more detail on this analysis.

D. Analysis of Disparities in the San Antonio Area Economy

Evidence of the experiences of minority- and woman-owned firms outside of the City of San Antonio's M/WBE Program is relevant and probative of the likely results of the City adopting a race-neutral program, because contracting diversity programs are rarely imposed outside of specific government agencies. To examine the

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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.

outcomes throughout the San Antonio area economy, 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 minorities and women to fairly and fully engage in the City's prime contract and subcontract opportunities.

We analyzed the following data and literature:

- San Antonio Metropolitan Area data from the Census Bureau's *American Community Survey* from 2016 through 2020. 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. 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. These analyses support the conclusion that barriers to business success do affect non-Whites and White women entrepreneurs.
- State of Texas Industry Data from the Census Bureau's 2017 Annual Business Survey, 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's contract data that M/WBEs face obstacles to achieving success on contracts outside of M/WBE programs.

All three types of evidence have been found by the courts, including the Seventh Circuit Court of Appeals, 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-conscious contract goals to ensure a level playing field for all firms.

E. Qualitative Evidence of Race and Gender Barriers in the City of San Antonio's Market

In addition to quantitative data, anecdotal evidence of firms' marketplace experiences is relevant to evaluating whether the effects of current or past discrimination continue to impede opportunities for M/WBEs such that race-conscious contract goals are needed to ensure equal opportunities to compete for City prime contracts. To explore this type of anecdotal evidence, we received input from 101 participants in small group business owner interviews. We also obtained written comments from 233 businesses that participated in an electronic survey.

1. Business Owner Interviews

- Many M/WBEs reported that while some progress has been made in integrating their firms into public and private sector contracting activities through race- and gender-conscious contracting programs, significant barriers remain. They continue to face biased assumptions about their capabilities and qualifications. There is often a stigma to being a certified M/WBE. One Latina-owned firm reported outright racial harassment. Native American owned firms faced special barriers.
- The City's APIs were crucial to the success or even survival of many M/WBEs.
- Without the goals, several firms reported they would not receive work. A few certified firms reported the programs had not assisted them.
- Even with the implementation of the City's initiatives, obtaining prime contracts remains especially difficult.
- Providing mobilization funds was one suggestion to support M/WBEs moving into the prime role. Another recommendation was to support joint ventures between certified and non-certified firms. A third idea was to "unbundle" contracts into smaller portions or less complex scopes.
- One White male-owned firm requested that service-disabled veteran-owned firms be counted towards M/WBE goals.

2. Electronic Business Owner Survey

- Many minorities reported that fair opportunities to compete for contracts were not available because of systemic racial barriers. Racial and gender barriers created significant challenges in obtaining work. There were reported instances of overt racism and demeaning comments.

- Many minority respondents experienced stereotypical assumptions and attitudes on the basis of race.
- Several reported their credentials and competency are routinely questioned. However, a Black firm saw improvement over time.
- Some respondents noted that it can be difficult, if not impossible, to know whether they had been subjected to discrimination.
- Many women, especially in construction, reported experiencing sexist attitudes about their competency and professional skills.
- Several women reported being overlooked for contract work because of their gender. One woman reported being overlooked based on her sexual orientation. Some women reported encountering sexist behaviors and stereotypical attitudes about their role and authority.
- Many M/WBEs felt excluded from networks that offer information and relationships necessary for success.
- Several reported a “good ole boys” network that was impossible to penetrate. Establishing relationships with prime contractors was problematic for some subcontractors.
- Several minority and woman respondents felt that prime bidders often use them only to meet affirmative action goals.
- The most common barriers were obtaining financing, bonding and insurance.
- Lack of access and the high rates impede growth and the ability to compete on an equal basis. Small and new firms faced particularly large challenges. Bonding was a particular challenge for some M/WBE firms. Obtaining the required insurance coverage was another obstacle.

F. Recommendations for Enhancements to The City of San Antonio’s SBEDA Program

The quantitative and qualitative data in this Study provide a thorough examination of the evidence regarding the experiences of M/WBEs in the City of San Antonio’s geographic and industry markets. The SBEDA program is generally in compliance with strict constitutional scrutiny and national best practices. The following suggestions are directed towards additional enhancements to support current efforts and activities to provide even greater opportunities for all firms to compete on a level playing field for City contracts and subcontracts.

1. Review Race- and Gender-Neutral Measures

a. Revise the Program's Structure

Rather than describing various program elements by "Industry" and designating all program elements as "Affirmative Procurement Initiatives," group the program's race- and gender-neutral elements together and the race- and gender-conscious elements together under those descriptions. This will make it clear to a court and to the public what remedies are available to all small firms, including those owned by White males, and what remedies are limited to certified M/WBEs. The current program documents lump race- and gender-neutral and race- and gender-conscious programs together, which is somewhat confusing and masks all the race-neutral elements included in the SBEDA program. This is also important because several of the remedies can only be applied on a race- and gender-neutral basis. Evaluation points or bid credits available only to M/WBEs or to firms that contract with M/WBEs will likely be held by a court to violate the narrow tailoring principles.

b. Enhance Contract Data Collection and Reporting

- Collect full information on all contracts regardless of size, procurement method or certification status for all firms, both prime contractors and subcontractors. This should include email addresses, six-digit NAICS codes for the work performed or the goods/services provided on the contract, race and gender ownership, and M/WBE certification status disaggregated by race and gender. This will facilitate creating full and complete data, as well as guard against double counting of participation, which are necessary for any future disparity study.
- Conduct ongoing and follow-up training on how to use the B2Gnow® system for City personnel, prime contractors and subcontractors.
- Provide training to City staff on how to assign NAICS codes for contract goal setting.
- Create tighter communication between systems and standardize contract record creation in those systems. The data were not always consistent between two systems. Additionally, "master contracts" were not always consistently handled. A standard protocol should be developed for these contracts.

2. Continue to Implement a Narrowly Tailored SBEDA Program

a. Use the Study to Set the Overall, Annual Aspirational Goals

The City's SBEDA program has been very successful in opening opportunities for minority and woman firms on its contracts. As reported in Chapter IV, overall, M/WBEs have reached parity or beyond with non-M/WBEs in receiving City dollars. We note, however, that these benefits have not accrued to each group in the same measure. In addition, Census data establish that M/WBEs do not yet enjoy full and fair access to opportunities in the wider economy. The results of numerous small business credit surveys reveal that M/WBEs, especially Black-owned firms, suffer significant barriers to business financing. There are also race-based barriers to the development of the human capital necessary for entrepreneurial success.

Our interviews with individual business owners and stakeholders and the results of our other studies for San Antonio and Texas governments further buttress the conclusion that race and sex discrimination remain persistent barriers to equal 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 recommend that the City continue to implement narrowly tailored race- and gender-based measures. The weighted availability estimates can be used to set the overall, annual aspirational goal.

b. Use the Study to Set M/WBE Contract Goals

The City should use the study's detailed unweighted availability estimates as the starting point for contract specific goals. This methodology involves four steps to develop goals that are transparent, replicable and legally defensible¹⁸.

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 M/WBEs 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.

18. See www.contractgoalsetting.com, for instructions on correct contract goal setting. Our firm, in conjunction with B2Gnow®, developed this free site to provide the methodology and forms for contract goal setting.

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.

This constitutionally mandated approach may result in no goals where there are insufficient subcontracting opportunities (as is often the case with supply contracts) or an insufficient number of available firms. It will also clarify that contract goals are not “subcontract” goals but rather apply to all the dollars and scopes of the project. It has the further advantage of reducing the complexity of the current process. Only contracts that are subject to the program are included, so there is no need for waivers for solicitations that are exempt (*e.g.*, sole source contracts, emergency procurements, contracts with other governments, etc.). The originating department is part of the process from the beginning, so there is no need for waivers or exemptions later. Goals will not be set on contracts without subcontracting opportunities. The use of a defined and defensible data set will reduce arbitrariness, voting by the GSC and the need to reevaluate goals if the solicitation process takes longer than originally expected.

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.

We further urge the City to bid some contracts without goals that it determines have significant opportunities for M/WBE participation. These control contracts can illuminate whether certified firms are used, or even solicited, in the absence of goals. The legal standard is that an agency must use race-neutral methods to the “maximum feasible extent” and the outcomes of “no goals” contracts will illuminate how effective race-neutral measures are in achieving non-discriminatory outcomes.

The courts are clear that there must be limits on the personal net worth of the owner of the firm seeking certification to ensure that the Program is narrowly tailored to assist only economically disadvantaged individuals. We suggest that the City adopt the PNW limit of the USDOT DBE program, currently \$1.32M.¹⁹

c. Adopt a Personal Net Worth Standard for Program Eligibility

The courts are clear that there must be limits on the personal net worth of the owner of the firm seeking certification to ensure that the Program is

19. 49 C.F.R. §26.67(a)(2).

narrowly tailored to assist only economically disadvantaged individuals. We suggest that the City adopt the PNW limit of the USDOT DBE program, currently \$1.32M.²⁰

d. Update Program Administration Policies and Procedures

- Increase monitoring of program compliance, including meeting the M/WBE commitments in the bid submission and the contractual documents and evaluating contractors' GFE throughout the life of the contract. Electronic processing and review of utilization plans would further support monitoring. The City recently added an additional SBEDA Compliance staff member and a SBEDA coordinator to assist with outreach, but more staff may be needed.
- Focus on "unbundling" contracts into less complex scopes or limiting the number of units or the breadth of services required. For example, construction projects or services contracts with multiple locations could be disaggregated into single locations.
- Clarify and simplify the standards for counting the participation of certified firms in joint venture agreements. The current Joint Venture Programs are confusing, and in any event, points or other credits can only be awarded on a fully race- and gender-neutral basis. Further, it appears that the City does not count prime level participation of the certified firm joint venture partner towards meeting the contract goals unless the joint venture tool is applied. This is highly unusual and deprives M/WBEs of an avenue to pursue prime contracts in concert with a larger firm.
- Revise the standards for evaluating a bidder's GFE to meet contract goals. Adopt a holistic approach to evaluating GFE submissions, rather than the current system of awarding points for meeting some of the elements, with only a 70 percent score required to pass muster. This "good enough" approach rewards bidders who do the bare minimum, even when additional participation could have been achieved with additional efforts, thereby shortchanging M/WBEs. Further, a rigid point system may not meet the strict scrutiny test for flexibility. Follow the DBE program regulations²¹ as a model.
- Permit more time for bid/proposal submission compliance paperwork submission. This will help to address the complaint that prime vendors use tried and true subcontractors to reduce their risk and the burdens

20. 49 C.F.R. § 26.67(a)(2).

21. 49 C.F.R. §26.53 and Appendix A, *Guidance Concerning Good Faith Efforts* ("Determinations should not be made using quantitative formulas.")

of program compliance at bid time. The City should consider streamlining the paperwork due at submission and permit a very short window between the submission of the initial compliance statement and the backup paperwork to establish either that the bidder will meet the contract goals or has made GFE to do so. A longer lead time to submit the paperwork will help to open opportunities for new firms or firms with whom the prime bidder is unfamiliar, by providing some time to explore whether a new firm can perform the scope at the quoted price.

3. Develop Performance Measures for Program Success

The City should develop quantitative performance measures for the overall success of the SBEDA program. In addition to meeting the overall, annual goal, possible benchmarks might be:

- The number of bids or proposals, the industry and the dollar amount of the awards and the goal shortfall, where the bidder was unable to meet the goals and submitted good faith efforts to do so.
- The number, dollar amount and the industry code of bids or proposals rejected as non-responsive for failure to make GFE to meet the goal.
- The number, industry and dollar amount of MBE and WBE substitutions during contract performance.
- Increased bidding by certified firms as prime vendors.
- Increased prime contract awards to certified firms.
- Increased M/WBE bonding limits, size of jobs, profitability, complexity of work, etc.
- Increased variety in the industries in which minority- and woman-owned firms are awarded prime contracts and subcontracts.

4. Continue to Conduct Regular Program Reviews

The federal courts require a race-conscious program to have a sunset date. Data should continue to be reviewed approximately every five to six years, to evaluate whether race- and gender-based barriers have been reduced such that affirmative efforts are no longer needed. If such measures are necessary, the City must ensure that they remain narrowly tailored.

II. LEGAL STANDARDS FOR THE CITY OF SAN ANTONIO'S SBEDA PROGRAM

A. Summary of Constitutional Equal Protection Standards

To be effective, enforceable, and legally defensible, a race-based affirmative action program designed to promote equity in public sector contracting, regardless of funding source, must meet the judicial test of constitutional “strict scrutiny”.²² Strict scrutiny constitutes the highest level of judicial review.²³ 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.²⁴

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

1. Quantitative or statistical evidence of the underutilization of minority- or woman-owned firms by the agency and/or throughout the agency’s geographic and industry market area compared to their availability in the market area.
2. Qualitative or 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.²⁵ Anecdotal data can consist of

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

23. Strict scrutiny 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 UCLA Law Review 1267, 1273 (2007).

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

25. *Id.* at 509.

interviews, surveys, public hearings, academic literature, judicial decisions, legislative reports, and other information.

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

1. The necessity of relief;²⁶
2. The efficacy of race-neutral remedies at overcoming identified discrimination;²⁷
3. The flexibility and duration of the relief, including the availability of waiver provisions;²⁸
4. The relationship of numerical goals to the relevant labor market;²⁹ and
5. The impact of the relief on the rights of third parties.³⁰

In *Adarand v. Peña*,³¹ the United States Supreme Court extended the analysis of strict scrutiny, the most exacting standard of review, to race-based federal enactments such as the United States Department of Transportation (“USDOT”) Disadvantaged Business Enterprise (“DBE”) program for federally assisted transportation contracts. Similar to 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.^{32,33}

Most federal courts, including the Fifth Circuit,³⁴ have subjected preferences for Woman-Owned Business Enterprises (“WBEs”) to “intermediate scrutiny”.³⁵ Gender-based classifications must be supported by an “exceedingly persuasive justifi-

26. *Id.* at 507.

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

28. *Id.*

29. *Id.*

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

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

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

33. Programs that fail to satisfy the constitutional strict scrutiny standard generally fail to meet the compelling government interest requirement, the narrow tailoring requirement, or both. Affirmative action programs are among the most heavily litigated issues involving race and the United States Constitution. Nonetheless, many of these programs meet both prongs, particularly those based upon solid statistical and anecdotal data. See, Mary J. Reyburn, *Strict Scrutiny Across the Board: The Effect of Adarand Constructors, Inc. v. Peña on Race-Based Affirmative Action Programs*, 45 Catholic University L. Rev. 1405, 1452 (1996).

34. *W.H. Scott Construction Co., Inc. v. City of Jackson, Mississippi*, 199 F.3d 206, 215 n.9 (5th Cir. 1999).

35. See, e.g., *Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore and Maryland Minority Contractors Ass’n*, 83 F. Supp. 2d 613, 620 (D. Md. 2000) (“*Baltimore I*”); *W.H. Scott Construction*, 199 F.3d at 206, 215; *Engineering Contractors Ass’n of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 907-911 (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 Ass’n 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).

cation” and be “substantially related to the objective”.³⁶ The quantum of evidence necessary to satisfy intermediate scrutiny is less than that required to satisfy strict scrutiny. However, appellate courts have applied strict scrutiny to the gender-based presumption of social disadvantage in reviewing the constitutionality of the DBE program³⁷ or have 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 referred to as “rational basis” scrutiny.^{39,40} 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.⁴¹ 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.⁴² Thus, preferences for persons with disabilities or veteran status may be enacted with vastly less evidence than that required for race- or gender-based measures to combat historic discrimination.⁴³

Unlike most legal challenges, the defendant bears the initial burden of producing “strong evidence” in support of its race-conscious program.⁴⁴ As held by the Fifth Circuit, 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.⁴⁵ “[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.”⁴⁶

A plaintiff “cannot meet its burden of proof through conjecture and unsupported criticism of [the government’s] evidence.”⁴⁷ To successfully rebut the govern-

36. Cf. *United States v. Virginia*, 518 U.S. 515, 532 n.6 (1996).

37. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 720 (7th Cir. 2007) (“*Northern Contracting III*”).

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

39. *Coral Construction*, 941 F. 2d at 921; see generally *Equality Foundation v. City of Cincinnati*, 128 F. 3d 289 (6th Cir. 1997).

40. The Supreme Court first introduced this level of scrutiny in *Nebbia v. New York*, 291 U.S. 502, 537 (1934). The Court held that if laws passed have a reasonable relationship to a proper legislative purpose and are neither arbitrary nor discriminatory, the requirements of due process are satisfied.

41. See, generally, *United States v. Carolene Products Co.*, 304 U.S. 144 (1938).

42. *Heller v. Doe*, 509 U.S. 312, 320 (1993).

43. The standard applicable to status based on sexual orientation of gender identity has not yet been clarified by the courts.

44. *Aiken v. City of Memphis*, 37 F.3d 1155, 1162 (6th Cir. 1994).

45. *W. H. Scott Construction*, 199 F.3d at 219; *Adarand Constructors, Inc. v. Slater, Colorado DOT*, 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*”).

46. *Engineering Contractors II*, 122 F.3d at 916.

ment's evidence, a plaintiff must introduce "credible, particularized evidence" that rebuts the government's showing of a strong basis in evidence.⁴⁸ 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 minority-owned small businesses enjoy non-discriminatory access to, and participation in, federally assisted highway contracts. Therefore, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground."⁴⁹ When the statistical information is sufficient to support the inference of discrimination, the plaintiff must prove that the statistics are flawed.⁵⁰ 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.⁵¹

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. More rigorous 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 legally defensible programs.

B. Elements of Strict Constitutional Scrutiny

In its seminal 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,⁵² the Court, for the first time, extended the highest level of judicial examination from measures designed to limit the rights and opportunities of minorities

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47. *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 (10th Cir. 2003) ("Concrete Works IV").
48. *H.B. Rowe Co., Inc. v. W. Lyndo Tippet, North Carolina DOT, et al.*, 615 F.3d 233, 241-242(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), *aff'd* 840 F.3d 932 (7th Cir. 2016) ("Midwest Fence II").
49. *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d. 964, 970 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004).
50. *Coral Construction*, 941 F. 2d at 921; *Engineering Contractors II*, 122 F.3d at 916.
51. *Adarand VII*, 228 F.3d at 1166; *Engineering Contractors II*, 122 F.3d at 916; *Concrete Works II*, 36 F.3d at 1513, 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).
52. U.S. Const. Amend. XIV, §1.

to legislation that inures to the benefit of these victims of historic, invidious discrimination. Strict scrutiny requires that a government entity prove both its “compelling governmental interest” in remediating identified discrimination based upon “strong evidence”⁵³ 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 “set-aside” Plan required prime contractors awarded City construction contracts to subcontract at least 30% of the dollar amount of contracts to one or more Minority-Owned Business Enterprises (“MBEs”).⁵⁴ 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.⁵⁵

53. There is no precise mathematical formula to assess what rises to the level of “strong evidence”.

54. The City described its Plan as remedial. It was enacted to promote greater participation by minority business enterprises in public construction projects.

55. 488 U.S. at 491-92.

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.⁵⁶ 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.⁵⁷ The City could not rely upon the disparity between its utilization of MBE prime contractors and 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. 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.”⁵⁸

56. 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.”).

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

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

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.”⁵⁹

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.⁶⁰ The Court noted that the City “does not even know how many MBEs in the relevant market are qualified to undertake prime or subcontracting work in public construction projects.”⁶¹

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.⁶²

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

59. *Id.*

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

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

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

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.⁶³ 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 be considered in determining whether discrimination against Black businesses infects the local economy.⁶⁴

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 Minority- and Woman-Owned Business Enterprise ("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*.⁶⁵

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

63. *Id.* at 502.

64. *See, for example, Northern Contracting III*, 473 F.3d at 723.

65. *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").

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".

C. Establishing a "Strong Basis in Evidence" for the City of San Antonio's Program for Minority- and Woman-Owned Businesses

The case law on the DBE program should guide the City of San Antonio's ("City") Program for locally funded contracts. Whether the program is called an MBE/WBE program or a DBE program or any other moniker, the strict scrutiny test applies. As discussed, 49 C.F.R. Part 26 has been upheld by every court, and local programs for M/WBEs will be judged against this legal framework.⁶⁶ 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 M/WBEs 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 M/WBEs and the disparate treatment of such firms by actors critical to their success will meet strict scrutiny. Discrimination must be shown using statistics and economic 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.⁶⁷ 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 M/WBEs.⁶⁸

Croson's admonition that "mere societal" discrimination is not enough to meet strict scrutiny is met where the government presents evidence of discrimination in

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

67. *Adarand VII*, 228 F.3d at 1166 ("statistical and anecdotal evidence are appropriate").

68. *Id.*

the specific 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.”⁶⁹

The agency 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.”⁷⁰ Denver further linked its award of public dollars to discriminatory conduct through the testimony of M/WBEs 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 necessary disparity study elements to determine the constitutional validity of race- and gender-conscious local programs.

1. Define the City of San Antonio’s Market Area

The first step is to determine the market area in which the agency 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.⁷¹ 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.⁷² This study employs long established economic principles to empirically establish the agency’s geographic and product market area to ensure that any program based on the study satisfies strict scrutiny.

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.⁷³ Likewise, the accepted approach is to analyze

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

70. *Id.* at 977.

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

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

those detailed industries that make up at least 75% of the prime contract and associated subcontract payments for the study period.⁷⁴ This produces the utilization results within the geographic market area.

2. Determine the City of San Antonio's Utilization of MBEs and WBEs

The study should next determine the agency's utilization of M/WBEs 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, regardless of funding source:

1. Develop the Initial Contract Data File. This involves first gathering the City's records of its payments to prime contractors, and if available, associated subcontractors.
2. Develop the Sample Contract Data File, if necessary. If the Initial Contract Data File is too large to complete all the missing contract records, a sample should be drawn. Standard statistical procedures should be utilized that result in a sample whose basic parameters (distribution of the number of contracts and the value of contract dollars) mirror the broad industry sectors (*i.e.*, construction; construction related services; goods; and services) in the Initial Contract Data File. In addition, the total number of contracts must allow for a statistically representative sample at the 95% confidence level and a 5% confidence interval. These parameters are the norm in statistical sample procedures.
3. 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 agency) must be fully reconstructed by the consultant. While painstaking and labor intensive, this step cannot be skipped. Using surveys is unlikely to yield sufficient data, and so each contract must be examined, and the record completed to ensure a full and accurate picture of the agency's activities. It is also important to research whether a firm that has an address outside the market area has a location in the 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 agency's contracting and procurement activities.

73. 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*").

74. *Id.*

4. Determining the Geographic Market. The federal courts require that a government agency narrowly tailor its race- and gender-conscious contracting program elements to its geographic market area.⁷⁵ This element of the analysis must be empirically established⁷⁶ and the accepted approach is to analyze those detailed industries, as defined by 6-digit North American Industry Classification System (“NAICS”) codes, that make up at least 75% of the prime contract and subcontract payments for the study period.⁷⁷

3. Determine the Availability of MBEs and WBEs in the City of San Antonio’s Market Area

Next, the study must estimate the availability of minorities and women in the City’s market area to participate in its contracts as prime contractors and associated subcontractors. Based on the product and geographic utilization data, the study should calculate unweighted and weighted M/WBE availability estimates of ready, willing and able firms in the 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 M/W/DBE Master Directory. This methodology includes both certified firms and non-certified firms owned by minorities or women.⁷⁸ The Master Directory consists of all available government and private D/M/WBE directories, limited to firms within the agency’s geographic and product market.
 - The firms contained in the agency’s contract data files.

75. *Crosen*, 488 U.S. at 508 (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.”).

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

77. See *National Disparity Study Guidelines*, at 29-30.

78. *Id.* at 33-34.

- 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.⁷⁹ This will produce estimates of minority and woman business availability in the agency'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 agency's spending in each NAICS code. The unweighted availability determination will be weighted by the share of dollars the agency spends in each NAICS code, derived from the utilization analysis. These resulting weighted availability estimates will be used in the calculation of disparity indices for the City's locally funded contracts.

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

79. 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.

reasons. As recognized by the courts and the *National Disparity Study Guidelines*,⁸⁰ this methodology in general is superior to 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 M/WBEs 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 D/M/W/SBE availability calculation that casts a broader net” than merely using bidders lists or other agency or government directories. A broad methodology is also recommended by the USDOT for the federal DBE program, which has been upheld by every court.⁸¹ 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 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-M/WBEs 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.⁸²
- 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

80. *National Disparity Study Guidelines*, at 57-58.

81. *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.

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

program⁸³ and most recently in the successful defense of the Illinois State Toll Highway’s DBE program, for which we served as testifying experts.⁸⁴

Other methodologies relying only on vendor or bidder lists may overstate or understate availability as a proportion of the agency’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 or are unavailable, even when the firm is working on agency contracts.

Many plaintiffs have argued that studies must somehow control for “capacity” of M/WBEs 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 defendant. As recognized by the courts and the *National Disparity 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 M/WBEs 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.”⁸⁵

83. *Northern Contracting III*, 473 F.3d at 721.

84. *See generally Midwest Fence II*, 840 F.3d 932; *Northern Contracting III*, 473 F.3d 715.

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

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.⁸⁶ Significantly, *Croson* does not “require disparity studies that measure whether construction firms are able to perform a *particular contract*.”⁸⁷

There are also practical reasons not to 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. 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 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 (M/WBEs) must also be made to the denominator (all firms), as a researcher cannot assume that all White male-owned firms have adequate capacity but that M/WBEs do not.

Capacity variables 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 M/WBEs’ availability and the upward bias enjoyed by non-M/WBEs. These factors should also be explored during anecdotal data collection, discussed in Chapter VI. They are 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

86. 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 942 (upholding the Illinois Tollway’s program for state funded contracts modeled after Part 26 and based on CHA’s expert testimony).

87. *Croson*, 488 U.S. at 508 (emphasis in the original).

on current market conditions and current firm availability, discussed in Chapter IV.

4. **Examine Disparities between the City’ of San Antonio’s Utilization of MBEs and WBEs and MBE and WBE Availability**

A disparity study for a local government must analyze whether there are statistically significant disparities between the availability of M/WBEs 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.⁸⁸

This is known as the “disparity ratio” or “disparity index”. 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.⁸⁹ An index less than 100 percent 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 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. This is based on the Equal Employment Opportunity Commission’s “80 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.⁹⁰ 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,

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

89. *W. H. Scott Construction*, 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).

90. 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.

the smaller the probability that it resulted from random chance alone.⁹¹ A more in-depth discussion of statistical significance is provided in Appendix C.

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.⁹²

The City need not prove that the statistical inferences of discrimination are “correct”. In upholding Denver’s M/WBE Program, the Tenth Circuit 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.⁹³

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.⁹⁴

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.⁹⁵

91. 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.

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

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

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

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.⁹⁶

5. **Analyze Economy-Wide Evidence of Race- and Gender-Based Disparities in the City of San Antonio’s Market**

The courts have repeatedly held that analysis of disparities in the rates at which minorities and women in the government’s markets form businesses compared to similar non-M/WBEs, 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 Chicago’s construction program. 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.⁹⁷

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. “Evi-

95. *Id.* at 971.

96. *Id.* at 973.

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

dence 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 again demonstrates that *existing* M/WBEs are precluded from competing for public contracts.”⁹⁸ 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”.⁹⁹

For example, in unanimously upholding the DBE Program for federal-aid transportation contracts, 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.¹⁰⁰ 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.¹⁰¹

98. *Id.*

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

100. *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*”).

101. *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 San Antonio’s Market

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.”¹⁰² 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.¹⁰³ 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 probat¹⁰⁴ive.” “[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.”¹⁰⁵

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 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.”¹⁰⁶ 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.”¹⁰⁷

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

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

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

105. *Engineering Contractors of South Florida v. Metropolitan Dade County*, 943 F. Supp. 1546 (S.D. Fla. 1996) (“*Engineering Contractors I*”). This case is one of the leading lower court cases on the sufficiency of anecdotal evidence to meet the compelling interest requirement. The record contained anecdotal complaints of discrimination by M/WBEs which described incidents in which suppliers quoted higher prices to M/WBEs than to their non-M/WBE competitors, and in which non-M/WBE prime contractors unjustifiably replaced the M/WBE subcontractor with a non-MWBE subcontractor.

106. *Id.* at 1579-1580.

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

D. Narrowly Tailoring a Race- and Gender- Conscious Program for the City of San Antonio

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. As discussed above, programs that closely mirror those of the USDOT DBE Program¹⁰⁸ have been upheld using that framework.¹⁰⁹ 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;¹¹⁰
- The efficacy of race- and gender-neutral remedies at overcoming identified discrimination;¹¹¹
- The relationship of numerical benchmarks for government spending to the availability of minority- and woman-owned firms and to subcontracting goal setting procedures;¹¹²
- The flexibility of the program requirements, including the provision for good faith efforts to meet goals and contract specific goal setting procedures;¹¹³
- The relationship of numerical goals to the relevant market;¹¹⁴
- The impact of the relief on third parties;¹¹⁵ and
- The overinclusiveness of racial classifications.¹¹⁶

E. Consider Race- and Gender-Neutral Remedies

Race- and gender-neutral approaches are necessary components of a defensible and effective M/WBE program.¹¹⁷ The failure to seriously consider such remedies has proven fatal to several programs.¹¹⁸ Difficulty in accessing procurement opportunities, restrictive bid specifications, excessive experience requirements,

108. 49 C.F.R. Part 26.

109. *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).

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

111. *Paradise* at 171.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Paradise*, 480 U.S. at 171; *see also, Sherbrooke*, 345 F.3d at 971-972.

116. *Croson* at 506.

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.¹¹⁹ Further, governments have a duty to ferret out and punish discrimination against minorities and women by their contractors, staff, lenders, bonding companies or others.¹²⁰

The requirement that the agency must meet the maximum feasible portion of the 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 regulations meet narrow tailoring.¹²¹ 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.¹²² While an entity must give good faith consideration to 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.”¹²³

1. Set Targeted M/WBE Goals

Numerical goals or benchmarks for MBE and WBE participation must be substantially related to their availability in the relevant market.¹²⁴ For example, the DBE program rule requires that the overall goal must be based upon demonstrable evidence of the number of DBEs ready, willing, and able to par-

117. *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).

118. 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.

119. See 49 C.F.R. §26.51.0.

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

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

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

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

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

ticipate on the recipient's federally assisted contracts.¹²⁵ "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*."¹²⁶

Goals can be set at various levels of particularity and participation. The agency may set an overall, aspirational goal for its annual, aggregate spending. Annual goals can be further disaggregated by race and gender. Approaches range from a single MBE/WBE goal that includes all racial and ethnic minorities and non-minority women,¹²⁷ to separate goals for each minority group and women.¹²⁸

Goal setting is not an absolute science. In holding the DBE regulations to be narrowly tailored, the Eighth Circuit Court of Appeals noted that "[t]hough 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."¹²⁹ However, sheer speculation cannot form the basis for an enforceable measure.¹³⁰

It is settled case law that goals for a particular solicitation should reflect the particulars of the contract, not reiterate annual aggregate targets; goals must be contract specific. "Standard" goals are not defensible, nor should the annual aspirational goals function as a predetermined floor. 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. Not only is this legally mandated,¹³¹ 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 or standard goals, there is no option to avoid meeting the narrow tailoring standard.

125. 49 C.F.R. §26.45 (b).

126. *Id.*

127. See 49 C.F.R. §26.45(h) (overall goal must not be subdivided into group-specific goals).

128. See *Engineering Contractors II*, 122 F.3d at 900 (separate goals for Blacks, Hispanics and women).

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

130. *Builders Ass'n of Greater Chicago v. City of Chicago*, 298 F. Supp.2d 725 (N.D. Ill. 2003) (City's MBE and WBE goals were "formulistic" percentages not related to the availability of firms).

131. See *Sherbrooke*, 345 F.3d at 972; *Coral Construction*, 941 F.2d at 924.

2. Ensure Flexibility of Goals and Requirements

It is imperative that remedies not operate as fixed quotas.¹³² An M/WBE program must provide for contract awards to firms who fail to meet the contract goals but make good faith efforts to do so.¹³³ In *Croson*, the Court refers approvingly to the contract-by-contract waivers used in the USDOT's DBE program.¹³⁴ This feature has been central to the holding that the DBE program meets the narrow tailoring requirement.¹³⁵ Further, firms that meet the goals cannot be favored over those who made good faith efforts and firms that exceed the goals cannot be favored over those that did not exceed the goals.

3. 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. The "fit" between the problem and the remedy manifests in three ways: which groups to include, how to define those groups, and which persons will be eligible to be included within those groups.

The groups to include must be based upon the evidence.¹³⁶ 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".¹³⁷ In striking down the 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."¹³⁸ 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.¹³⁹ 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.¹⁴⁰

132. 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").

133. See, e.g., *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.").

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

135. See, e.g., *Sherbrooke*, 345 F.3d. at 972; *Webster*, 51 F. Supp. 2d at 1354, 1380.

136. *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).

137. *Webster*, 51 F. Supp.2d at 1380-1381.

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

139. *Concrete Works IV*, 321 F.3d at 971 (Denver introduced evidence of bias against each group; that is sufficient).

Next, the firm's owner(s) must be socially and economically disadvantaged. The DBE Program's rebuttable presumption 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.¹⁴¹ "[W]ealthy minority owners and wealthy minority-owned firms are 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."¹⁴² Further, anyone must be able to challenge the disadvantaged status of any firm.¹⁴³

4. Evaluate the Burden on Third Parties

Failure to make "neutral" changes to contracting and procurement policies and procedures that disadvantage MBEs/WBEs and other small businesses may result in a finding that the program unduly burdens non-MBEs/WBEs.¹⁴⁴ However, "innocent" parties can be made to share some of the burden of the remedy for eradicating racial discrimination.¹⁴⁵ The burden of compliance need not be placed only upon those firms directly responsible for the discrimination. The proper focus is whether the burden on third parties is "too intrusive" or "unacceptable". As described by the court in upholding the Illinois Tollway's program for non-federally assisted contracts,

[t]he 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

140. *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.").

141. *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).

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

143. 49 C.F.R. §26.87.

144. *See Engineering Contractors I*, 943 F.Supp. at 1581-1582. (County chose not to change its procurement system).

145. *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.").

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.¹⁴⁶

Burdens must be proven and cannot constitute mere speculation by a plaintiff.¹⁴⁷ "Implementation of the race-conscious contracting goals for which [the 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."¹⁴⁸

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 and there is no requirement that a program be limited only to the subcontracting portions of contracts. The DBE program regulations provide this remedy for discrimination against DBEs seeking prime work,¹⁴⁹ and the regulations do not limit the application of the program to only subcontracts.¹⁵⁰ 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

146. *Midwest Fence I*, 2015 WL 1396376 at *22.

147. *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).

148. *Western States*, 407 F.3d at 995.

149. 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.").

150. 49 C.F.R. §26.45(a)(1).

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.¹⁵¹

5. 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.”¹⁵² The unlimited duration and lack of review were factors in the court’s holding that the City of Chicago’s M/WBE construction 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 2004.¹⁵³ How old is too old is not definitively answered,¹⁵⁴ but governments would be wise to analyze data at least once every five or six years.

In contrast, the USDOT DBE program’s periodic review by Congress has been repeatedly held to provide adequate durational limits.^{155, 156} 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.”¹⁵⁷

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

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

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

154. *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 “too remote to support a compelling governmental interest.”).

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

156. *See* FAST Act.

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

III. CITY OF SAN ANTONIO'S SBEDA PROGRAM

A. History and Overview of the SBEDA Program

The City of San Antonio ("City" or "San Antonio") adopted a minority and woman-owned business Program in 1989 to redress the effects of past discrimination in the City's contracts and in the City's local marketplace. The current program was established in 1992 by the SBEDA Ordinance, which was updated in 2010 and 2016.¹⁵⁸ The Ordinance seeks to encourage the full and fair utilization of minority- and woman-owned business enterprises and small businesses¹⁵⁹ ("S/M/WBEs") on City contracts for construction services, architectural and engineering services, professional services, other services and goods and supplies. The Ordinance includes industry specific and non-industry specific initiatives that are a combination of race-neutral and race-conscious program elements to promote participation on S/M/WBEs on City contracts.

The SBEDA Program¹⁶⁰ was amended in 2010 and in 2016 based on study data and public hearings. Disparity studies were conducted in 1992, 2010 and 2015. All studies found continuing disparities for M/WBEs across most industry segments in City contracting. Based on the results of the 2015 study, the program was modified to align with the City's commitment to promoting full utilization of all segments of its business community to maximize the economic vitality and development of the San Antonio Region.

The program applies to all contracts¹⁶¹ with a value of \$50,000 or more for the purchase of services, goods or supplies awarded by, or on behalf of, the City except for the following:

- Contracts that are subject to the U.S. Department of Transportation Disadvantaged Business Enterprise Program and Airport Concessions Disadvantaged Business Enterprise Program.

158. No. 2016-05-19-0367.

159. In 2013, the City has adopted a Veterans Contracting Preference Program that applies five evaluation points out of 100 to solicitation respondents that are veteran-owned small businesses.

160. Also referred to as the S/M/WBE program.

161. Contracts include contracts or other agreements between the City and any governmental agency, quasi-governmental agency, corporation, developer or contractor, under which the agency, corporation, developer or contractor receives any fiscal assistance (including, but not limited to Tax Increment Financing for economic development projects) from or through the City for the purpose of contracting with businesses to perform real estate development, renovation, maintenance or other services.

- Expenditures or revenue contracts with a value that is less than the amount that is required to be bid pursuant to state law.¹⁶²
- Contracts for the purchase of goods or supplies of a unique nature for which there is only a sole source of supply.
- Contracts for electricity or water and sewage services from a municipal utility district or governmental agency.
- Emergency contracts for goods or supplies.
- Contracts for the City's lease or purchase of real property.
- Agreements for Tax Abatements and Chapter 380 Grant Agreements.
- Personal Services involving the unique abilities or style of a particular individual.

The City Council has the authority to reauthorize the program based on recommendations of the City Manager or representative according to the sunset provisions that have been established in the SBEDA Ordinance.

B. SBEDA Program Administration

Multiple City of San Antonio government offices and departments administer the program. The City has adopted many tools to increase contracting diversity.

The City Manager's Office is responsible for the overall development of the SBEDA Program and non-industry-specific remedies. The City Manager's office appoints and chairs the GSC(s), makes the final determination on all waiver requests that are not approved by the Director or designee of Economic Development Department ("EDD") and imposes penalties and sanctions when vendor non-compliance issues cannot be resolved.

The City Attorney's Office ensures that all applicable City contracts and solicitations include SBEDA Program policy, compliance language and Affirmative Procurement Initiatives¹⁶³ ("APIs") requirement language. The Office provides support to the EDD and other departments in the legal interpretation of contracting documents and requirements pertaining to the SBEDA Program.

The Finance Department ("Finance") is responsible for implementation of procurement policy reform; ensuring that departmental solicitation documents and con-

162. Chapter 252, Texas Local Government Code.

163. Affirmative Procurement Initiatives are various S/M/WBE program tools and solicitation Incentives that are applied to City contracts to encourage greater prime and subcontract participation by S/M/WBE firms. Initiatives include bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives.

tracts contain the GSC requirements and EDD approved program compliance language; reviewing scopes and solicitation specifications of originating departments; reviewing of respondent bid submissions for completion, review; and reviewing exception requests. The Finance Department is responsible for coordinating all procurement activity for the City.

The EDD formulates and adopts rules and regulations to assist in the implementation, administration and enforcement of the program. The Director of EDD or designee's duties and responsibilities include the following:

- Attend all City Council agenda meetings to report on the program's progress or to report any program issues.
- Determine Subcontractor/Supplier Utilization Plans, Subcontractor Utilization Commitments, modifications to Utilization Plans, pre- and post-award subcontracting waiver requests, exceptions to SBEDA Program requirements.
- Determine waiver requests from originating departments.
- Resolve non-compliance with the requirements of the SBEDA Program, or the contract provisions pertaining to S/M/WBE utilization, in conjunction with the originating department.
- Report annually to the SBEDA Committee and City Council on the progress toward achieving the goals and objectives of the S/M/WBE program.

The EDD is the primary department responsible for the oversight and administration of the SBEDA Program. The EDD currently has ten staff positions that oversee the SBEDA Program. Specific responsibilities of the EDD include:

- Implement the City's Commercial Nondiscrimination Policy as outlined in the SBEDA Ordinance.
- Formulate and implement additional forms, rules and procedures for Program waivers, improvements and adjustments to the goal-setting methodologies and other Program features.
- Review and participate in the contract specification review process to ensure that contract solicitation specifications are not unnecessarily restrictive and unduly burdensome to S/M/WBEs. This includes review of solicitation specifications and scopes of work drafted by the originating department.
- Receive and analyze external and internal information, including statistical data and anecdotal testimony regarding the barriers encountered by S/M/WBEs in attempting to obtain contract opportunities at the City, and the relative effectiveness of various APIs in addressing those barriers.

- Monitor and support the implementation of the S/M/WBE program and propose modifications to appropriate City officials as necessary to fully achieve the purpose and objectives of the SBEDA policy.
- Provide public education and advocacy internally and externally regarding the purposes and objectives of the S/M/WBE program.
- Develop, maintain and distribute directories of certified SBEs, ESBEs and M/WBEs.
- Provide seminars and technical assistance to S/M/WBEs to enhance their ability to effectively compete for City contracts.
- Investigate alleged violations of the Ordinance and provide written recommendations to appropriate authorities for remedial action and imposition of sanctions and penalties necessary.
- Determine prime contractor compliance with S/M/WBE program requirements prior to contract award presentation to City Council and prior to originating department release of final retainage.
- Oversee the maintenance of an accurate contract performance reporting system.
- Provide staff support for the SBEDA Committee and the GSC.

The GSC is responsible for applying SBEDA APIs and their designated percentages and points under the program. The GSC establishes annual M/WBE aspirational goals on prime and subcontracts, and segmented M/WBE annual aspirational goals¹⁶⁴ and application of various SBEDA program tools¹⁶⁵ on City contracts for all eligible prime and subcontracts. The GSC is appointed and chaired by the City Manager¹⁶⁶ or a representative from the City's Executive Team. Members of the GSC include the EDD Director or designee, the Director or designee of Finance, the Director or designee of the originating department, if the issuing department is not the Finance Department, and two citizens appointed by the City Council. Members serve for a minimum of one year. Citizen appointees are eligible to vote on contracts valued at \$3M and above. Two ex-officio members of the SBEDA Committee may also be appointed by the City Manager to serve in an advisory capacity.

164. Segmented goals mean the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract, wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals.

165. SBEDA program tools are various race-neutral and race-conscious incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms.

166. The City Manager has the authority to determine the number of GSCs and the Industry Categories that are assigned to them, if more than one is established. As of the date of this study, only one GSC has been established that is responsible for the following Industry Categories: 1. Construction; 2. Architecture & Engineering; 3. Professional Services; 4. Other Services; 5. Goods and Supplies.

The GSC is responsible for the following:

- Establishing non-mandatory Annual Aspirational Goals (percentage) for overall combined prime contract and subcontract M/WBE participation, as well as segmented M/WBE aspirational goals for construction, architecture and engineering, professional services, other services and goods and supplies.
- Establishing whether WBEs or certain Minority Group Members (*e.g.*, African Americans or Hispanic-Americans) are eligible for segmented subcontracting goals annually for each industry based on disparity analysis.
- Reviewing solicitations to determine application of APIs and goals.
- Monitoring and supporting the implementation of the SBEDA Program.

Executive team members of the GSC must serve as departmental designees in reviewing “high profile” solicitations. High profile solicitations are defined as solicitations with values of over \$1M, that have a high level of community interest or other exceptional interest, and those that are highly complex or technical or contain contract terms and conditions that are non-standard or complex.

The SBEDA Committee is an 11-member advisory citizens’ committee.¹⁶⁷ The committee is made up of trade groups and members of the general business community to advise the Mayor, City Council and City Manager regarding business issues, goals and related policies concerning S/M/WBEs and the effectiveness of the City’s SBEDA Program. Members must be residents of the City and serve two-year terms that concur with the term of office of the appointing City Council member.

The SBEDA Committee serves in the following advisory capacity:

- Assists the Director of EDD or designee, the City Manager or designee, Mayor and City Council in reviewing and continuing programs for contractors and subcontractors that promote small, minority and women business enterprise participation.
- Coordinates activities and actions with the City Council Economic and Workforce Development Committee or corresponding board/committee designated by the Mayor and/or City Council.
- Makes recommendations to the Director of EDD or designee, the City Manager or designee, and City Council concerning modifications of such programs and procedures established pursuant to the SBEDA Ordinance.

167. The committee was renamed in 2021 from the Small Business Advocacy Committee (“SBAC”), Ordinance 2021-02-18-0119. A Small Business Advisory Commission was established by the Ordinance at the same time. This Small Business Advisory Commission addresses policy and concerns that may affect small businesses but are unrelated to the SBEDA Program and committee.

Originating departments originate eligible contracts and support administration of the program by following solicitation procedures and provisions outlined in the Ordinance. The originating departments are responsible for the following:

- The originating Department Director or designee assumes primary responsibility for achieving the objectives of the S/M/WBE program within the originating department and reviews, on a continuing basis, all aspects of the program's operations to assure that the purpose is being achieved.
- Must maintain accurate records for each contract awarded, including unsuccessful respondents, dollar value, the nature of the goods or services to be provided, the name of the contractor awarded the contract, the efforts it employed to solicit responses from S/M/WBEs, and all subcontracts awarded by the prime contractor identifying for each its dollar value, the nature of the goods or services provided and the name of the subcontractor(s).
- The originating department shall take the following actions to ensure that S/M/WBEs have the maximum practicable opportunity to participate on City contracts:
 - Advertise formal solicitations in minority-targeted media.
 - Post all formal solicitations on the City website and direct targeted e-mail alerts to all respondents that have registered with the appropriate commodity/industry codes on the City's Central Vendor Record's ("CVR") system.
 - Encourage all prospective prime contractor respondents to post their subcontract opportunities on the City's solicitation webpage.
 - Send notifications before solicitations are due to minority and women trade associations and contractor's associations.
 - Include the Commercial Non-Discrimination Policy statement, compliance language and any materials required by this Ordinance in all contracts and solicitation documents.
 - Preview and evaluate all contracting opportunities in an effort to de-bundle the total requirements of a contract into smaller units to promote maximum and reasonable opportunities for S/M/WBE participation, without making separate, sequential or component purchases in violation of state purchasing laws.
 - Establish procedures to ensure that all contractors submitting correct invoices are paid within thirty (30) days and that subcontractors are paid within ten days after the City pays the prime contractor.

- Ensure that a City contract is not executed and a Notice to Proceed is not issued until binding agreements between the prime and subcontractor S/MIWBEs have been executed by all parties and submitted to the originating department.
- Ensure that all required statistics and documentation are submitted to the EDD, as requested.
- If circumstances prevent the originating department from meeting these notification requirements, the originating department shall engage in direct and extensive outreach to S/M/WBE associations or other relevant organizations to inform them of the contracting opportunity, unless the circumstances are exigent and an emergency exists that requires immediate action.
- Notify the EDD Director or designee of all change orders and amendments to contracts that are subject to the Ordinance and take necessary steps to ensure that APIs applied to the contract by the GSC are also extended and enforced, to the maximum practical extent, with regard to any modified scope of work under the terms of such change orders and contract amendments.

C. SBEDA Program Eligibility

1. Certification

The City accepts certifications by the South Central Texas Regional Certification Agency (“SCTRCA”). Certifications include business enterprises classified as SBE, AABE, ABE, ESBE, HABE, MBE, NABE, and WBE.

To qualify as an SBE:

- A firm must be headquartered or have a significant business presence (defined by maintaining an office for at least one year from which 20% of its total employees are regularly based) in one of the eight counties that make up the SAMSA.
- Meet the U.S. SBA size standard for a small business in its particular industry.
- Be owned by individuals who are lawfully residing in, or are citizens of, the United States or its territories.
- Be a legal entity, excluding joint ventures, that engages in for-profit transactions.

- Be ready, willing and able to sell goods or services that are purchased by the City.

MBE and WBE enterprises must also meet the additional requirement of being at least 51% independently owned, managed and controlled by one or more minority group members or a woman.

Minority Group Members are defined as persons legally residing in, or that are citizens of, the United States or its territories, that are:

- African Americans: Persons with origins in any of the Black racial groups of Africa.
- Hispanic Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
- Asian Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal enrollment documents.

Business enterprises automatically qualify for certification as either an ESBE or EMWBE if their firm's annual revenue and number of employees are no greater than 25% of the U.S. SBA's small business size standards for its industry.

2. Graduation and Suspension

An S/M/WBE "graduates" from the program once the firm's re-certification documents show that it exceeds the SBA size and revenue standards for a relevant industry category. An ESBE graduates from the program when it exceeds 25% of the SBA size standard in each of two consecutive years. A graduated firm can recertify if it has fallen below the SBA standard for two consecutive years.

When an S/M/WBE or ESBE receives more than \$15M in City prime contract or subcontract payments in two consecutive calendar years, it is temporarily suspended from participation in any City APIs for the remainder of the year. Firms may resume participation in APIs the following calendar year if the firm still meets the SBA size standards and did not receive \$15M in City prime contract or subcontract payments.

D. Non-Industry Specific Tools

The SBEDA Program contains non-industry specific, race-neutral provisions applicable to all vendors, regardless of certification status. Tools include a Commercial Non-Discrimination Policy, a CVR solicitation, bid specification review and respondent debriefings.

E. Industry Specific Tools

The City employs a combination of APIs that incorporate aspirational and subcontracting goals, contract incentives and support services to encourage S/M/WBE prime and subcontracting participation in the City's contracting activities. These APIs are applicable to S/M/WBEs and include both race-neutral and race-conscious provisions. Only firms that are certified as an SBE and as an M/WBE qualify to participate in the race-conscious APIs. Firms certified as SBEs qualify to participate in race-neutral APIs. APIs vary across industries and with the type of solicitation and are applied in accordance with Texas Local Government Code.

1. Aspirational Goals

The GSC establishes non-mandatory, industry-specific annual aspirational goals for overall M/WBE participation for each major category of City contracting. Aspirational goals are used as benchmarks to measure the overall effectiveness of the program and are not a substitute for setting individual contract goals. Annual aspirational goals are based on the M/WBE availability in the 2015 disparity study, availability data collected through the City's CVR system and the City's utilization of M/WBEs.

Table 3-1: M/WBE Aspirational Goals as of Q1 2023

Segment	Total All Industries	Construction	Architectural & Engineering	Professional Services	Other Services	Goods & Supplies
M/WBE	41.2%	44.4%	30.6%	39.7%	54.8%	42.1%
AABE	2.8%	3.7%	2.3%	6.3%	4.0%	2.0%
HABE	25.2%	29.7%	15.8%	22.5%	32.3%	23.3%
ABE	2.0%	1.7%	3.1%	0.7%	1.4%	2.7%
NABE	1.1%	1.0%	2.5%	0.2%	1.1%	1.4%
WBE	10.0%	10.1%	8.0%	10.0%	15.3%	11.4%

2. Emerging Small Business Enterprise Prime Contract Program

The Emerging Small Business Enterprise Prime Contract Program for firms certified as ESBEs or EMWBEs. Firms may receive up to 20% of weighted selection criteria or evaluation points. No more than 49% of the contract value can be subcontracted to non-certified firms.

3. Prime Contract Program

The Prime Contract Program where SBEs or M/WBEs may receive up to 20% of weighted selection criteria or evaluation points. Respondents are not allowed to subcontract more than 49% of the contract value to non-certified firms.

4. Joint Venture Program

The Joint Venture Program awards from 20% to 5% additional evaluation points depending on the SBE or M/WBE's partner's percentage within their joint venture agreement. SBEs or M/WBEs performing 50% or greater of the overall contract value qualify for the full 20% award points while those performing less than 10% do not receive any points.

5. Joint Venture Incentive Program

The Joint Venture Incentive program applies additional solicitation incentives to Goods & Supplies and Other Services contracts to attract eligible joint venture respondents. Incentives include extension of additional option years for any requirements supply contract, provided that the initial solicitation afforded possible extensions and accelerated payment of invoices by the City, if available. To be eligible for the incentive, the S/M/WBE joint venture partner must be responsible for supplying no less than 40% of the total value of the contract that is not subcontracted.

6. Mentor-Protégé Program

The Mentor-Protégé Program provides technical assistance to SBEs and M/WBEs to build their capacity by pairing them with larger mentors. It requires a prime respondent awarded a City contract to serve as a mentor in the City's Mentor-Protégé Program for a two-year period.

7. Minority Distributorship Development Program

The Minority Distributorship Development Program allows the GSC to apply special incentive terms to bid solicitations and supply contracts for commodities when a manufacturer sells through an authorized certified M/WBE distribu-

torship or dealer to the City on a non-discriminatory basis. These incentive terms may include additional option years and accelerated payments on invoices.

8. HUBZone Program

The HUBZone Program is applied only on a race-neutral basis to construction contracts less than \$750,000. Up to 20% of the evaluation criteria points can be allocated to firms that are certified HUBZone prime respondents. No more than 49% of the contract value can be subcontracted to non-certified firms. In addition, the GSC can require up to 40% to be subcontracted to HUBZone firms.

9. Subcontracting Goal Programs

Subcontracting goals may be set and applied by the GSC on a contract-by-contract basis for contracts that provide subcontract opportunities.

a. Subcontracting Program

This program can be applied on a race-neutral or race-conscious basis. Under this program, a predetermined percentage of a specific contract of up to 40% is required to be subcontracted to eligible M/WBEs or SBEs that will provide a CUF. For contracts valued under \$10M, certified S/M/WBEs performing as prime contractors are allowed to self-perform up to the entire S/M/WBE subcontracting goal amount with their own forces. Prime vendors that are unable to meet the goal(s) must document their Good Faith Efforts ("GFE") to do so.

Race-conscious M/WBE goals or weighted selection criteria are established by the GSC on a contract-by-contract basis. When applying subcontracting goals, the GSC considers the relative availability of M/WBE firms to perform CUFs on the specific contract. A firm performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, staffing, managing and supervising the work involved.

b. M/WBE Subcontracting Program - Segmented Goals

This initiative sets goals for the specific categories of AABE, ABE, HABE, NABE, and WBE. For example, a particular solicitation may include subcontracting goals of 30% SBE, 20% M/WBE, and 5% AABE. Firms can be double counted. For example, if a AABE is used on the contract to meet the AABE segmented goal, the same contractor can be used to meet the M/WBE or SBE goal as long as the firm has the applicable certifications.

Segmented goals are based upon relative availability and whether significantly greater patterns of underutilization and disparity are present within an industry as compared to other MBE groups or White women. The application of segmented M/WBE goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

10. SBEDA Business Support Programs

As part of the SBEDA program, the City provides support for certified firms on a race-neutral basis through the capacity-building Mentor-Protégé Program and bonding assistance program.

a. Mentor-Protégé Program

In partnership with Alamo Colleges District, the City offers the Mentor-Protégé Program. The program combines education with formal mentor-protégé relationships to help local S/M/WBEs build capacity. The program is offered in two phases:

Phase I provides S/M/WBEs with a set curriculum called the Small Business Boot Camp that is tailored to their industry. The curriculum includes How to Write a Business Plan, Managing Your Financials, Access to Credit and Marketing, etc.

Phase II pairs S/M/WBEs with a mentor who provides business knowledge to further the protégé's growth for a two-year period.

b. Capacity Building & Bonding Assistance Program

The City recently launched a new Capacity Building & Bonding Assistance Program to help eligible S/M/WBEs bid on City construction contracts. The program was developed in partnership with the SAEDC. It is administered in partnership by Alamo Surety Bonds.

F. Contract Solicitation Process

1. Goal and Incentive Selection Process

All formal expenditure and revenue solicitations with a total contract value greater than \$50,000¹⁶⁸ must be submitted to the EDD and GSC for determi-

168. Contracts with values of less than \$50,000 are not covered by the SBEDA Program.

nation of evaluation criteria points or goal assignments. SBEDA contract requirements are subject to revision by the City Council.

The GSC reviews and analyzes all available information to determine which APIs to apply to the solicitation using the following criteria:

- Historic S/M/WBE utilization and composition on last three contracts, if any, that were similar in size and scope.
- Effectiveness of race-neutral and race-conscious mechanisms at promoting S/M/WBE utilization on the past three contracts, if any, of similar size and scope.
- S/M/WBE availability across all goods and services required by the solicitations scope.
- Degree of year-to-date S/M/WBE utilization measured against aspirational goals.
- Level of burden of APIs.

If less than 66% of the GSC supports the application of an API, then the City Manager or designee (not associated with casting that vote) will select the API. This decision is final.

Upon selection of an API, the GSC will customize any API that provides evaluation preference points or subcontracting percentage goals. There should be an inverse relationship between evaluation points and S/M/WBE availability.

EDD staff will provide the Finance Department with the appropriate SBEDA Program language and forms for inclusion in the solicitation document within three business days of the GSC's meeting. Whenever a race-conscious API is selected, specific language describing the justification for such application must be included in the solicitation.

Given fluctuations in availability data, if a solicitation is not issued within 90 calendar days of GSC review, the solicitation must be reconsidered by the GSC if availability of S/M/WBEs has changed which could result in a different API recommendation by the GSC. The Finance Department follows the original submission process for reconsideration of a solicitation by a GSC.

2. API Waivers

The originating department may request in writing a waiver or modification of a solicitation's API requirements by submitting an Originating Department SBEDA Program Waiver Request form. The EDD Director or designee reviews the request and issues a response no later than three days from the date the request was received. Review is based on whether the contract requirements

render the API infeasible or impractical, the nature of the goods or services being procured are excluded from the scope of the Ordinance, and whether there is insufficient S/M/WBE availability.

3. Vendor Solicitation and Bidding Requirements

All prime contractors awarded a City contract must register with the CVR System¹⁶⁹. Except for contracts with undefined scopes such as on-call contracts, a subcontractor/supplier plan is due at the time of bid or response submission. Two-step process contracts and those with undefined scopes require submission of the Subcontractor/Supplier Utilization Commitment Form acknowledging the subcontractor goals at the time of bid. When a fair and reasonable price must be negotiated on two-step contracts, prime contractors must also submit a utilization/supplier subcontractor plan with the price proposal. Failure to submit an acceptable utilization plan or the utilization commitment form at bid or proposal time or with the price proposal will render the bid or proposal non-responsive.

4. Vendor Subcontracting Goal Waivers and Exceptions

a. Waivers

Prime contractors unable to meet the subcontracting goal(s) can request a partial or full waiver on the Subcontracting Goal – Waiver Request Form. Requests must include all required supporting documentation showing the contractor's GFE.

Decisions on waivers are made by the EDD. The EDD has five business days from the date the request form is received from the originating department to make a determination. The solicitation review process is suspended during the waiver consideration period.

Waiver evaluation is based on a point system that requires respondents to achieve a total of 70 points or more to obtain a full or partial waiver (waivers contain 100 total receivable points).

- 25 points for sufficiently identifying CUF work on the contract. (No partial points given.)
- 20 points for satisfying initial communications to potential M/WBE subcontractors using the CVR and website posting of subcontractor solicitations. (No partial points given.)

169. The City currently uses the SAePS Procurement System.

- 35 points for follow-up communications and bid negotiations with potential subcontractors. (No partial points given.)
- 5 points for attendance at pre-bid/submittal conference. (No partial points given)
- 15 points for other criteria such as support for bonding, insurance or supplier credit assistance (Must show a minimum of three supportive services.)
- Waivers that are denied render the bid and proposal non-responsive.

Adverse decisions on waivers can be appealed in writing within seven calendar days of electronic receipt of the waiver denial notice. Appeals reviews are conducted by the Director of EDD. Respondents can request an informal hearing. The Director of EDD has 10 calendars days from receipt of the appeal request to make a determination.

b. Exceptions

In certain instances, where Prime contractors are unable to meet the subcontracting goal(s) because of good cause related to the imposition of SBEDA provisions in the solicitation, they can submit an exception request using the Exception to SBEDA Program Requirements Request Form. Exception requests are submitted through the originating department and are due at the time specified in the solicitation. Exception requests are considered by the EDD. Acceptable reasons for granting an exception include the following:

- The value of the contract is below the \$50,000 threshold for application of the SBEDA Program.
- No CUF subcontracting opportunities exist within the contract scope of work.
- The type of contract is outside of the scope of the SBEDA Ordinance.

If the exception request is approved, it is referred back to the originating department. The originating department then may cancel the current process and reissue the solicitation without the application of the policy. Adverse decisions on exception requests renders the bid or proposal non-responsive and cannot be appealed.

G. Post-Contract Award Procedures

The subcontractor/supplier utilization plan becomes a binding part of the contract. Monitoring compliance with the SBEDA provisions is a joint effort between the EDD and the originating department.

1. Contract Monitoring

Prime contractors are required to report payments to all subcontractors in the Contract Compliance Monitoring System (“CCMS”), an automated contract management system powered by B2Gnow[®]. Subcontractors are required to review and confirm/dispute the accuracy of the payment amount. This system streamlines and automates the City’s program data gathering, tracking, reporting and vendor management. The system enables close monitoring, tracking and reporting of compliance with S/M/WBE commitments.

The Ordinance authorizes the EDD to undertake field compliance that includes, but is not limited to, interviewing subcontractors and work product and inspections of correspondence, records and documents.

2. Post-Award Utilization Plan Changes

Any changes to the subcontractor/supplier utilization plan must be made in writing and in advance using the Change in Utilization Plan form. This includes vendor initiated and City initiated changes such as in the case of project scope changes. Subcontractors impacted by the change must agree to or acknowledge the change. These changes can include the percentage of the prime vendor’s self-performance; additions; substitutions; terminations and unavailability of subcontractors. The form is submitted to the originating department which then notifies the EDD. The EDD will either approve, deny or provide an action plan for resolution within five business days from the submission of the request by the originating department. Changes must be approved by the Director or designee of EDD and may require a contract amendment. Change orders that result in contract amendments for value reasons require City Council approval.

Prime contractors that cannot meet the contracted goals can request a full or partial waiver by submitting the Post-Award Subcontractor/Supplier Waiver form to the originating department. The form and supporting documentation must clearly document the prime contractor’s GFE to meet the goal. The waiver must be reviewed and approved by the EDD within five business days of receipt from the originating department. The EDD Director or designee is required to sign off on the form and decision. If the Prime Contractor is found

to have not performed GFE in attempting to meet the subcontracting goals, the City may impose penalties and sanctions.

3. Procedures for Non-Compliance

a. Non-Compliance by the Originating Department

If the EDD determines based on its investigation that an originating department has failed to comply with the provisions of the SBEDA Program or the contract provisions pertaining to S/M/WBE utilization, the EDD may:

- Transmit a written finding specifying the nature of the non-compliance to the originating department director.
- Resolve any non-compliance through conference and conciliation by the EDD.
- When all attempts to rectify non-compliance have been exhausted, bring the matter to the City Manager for action through the Director of EDD.

b. Non-Compliance by a Prime Contractor or Subcontractor

The non-compliance process does not begin until the contract has been paid out 25% in CCMS. The process consists of the following steps:

1. The EDD will notify the originating Department within 15 calendar days after noticing possible non-compliance, and request documentation from the vendor/department to determine non-compliance.
2. The EDD, through the originating Department Director or designee, will attempt to resolve the non-compliance within 15 calendar days from the date of receipt of documentary materials. If requested documentation is not received from the vendor, the initial determination of non-compliance becomes final.
3. If the non-compliance is not resolved within 30-days of the originating Department being notified, the vendor is notified of the initial determination of non-compliance via mail or email. The vendor will then have 15 calendar days from the initial determination to correct the non-compliance. The vendor may request a formal hearing with the Director or designee of EDD, originating department and, if they are not the originating departments, the Finance Department.
4. If the formal hearing results in a determination of non-compliance, the EDD will submit a written recommendation regarding imposition of penalties and sanctions to the City Manager.

5. If a hearing is not requested by the vendor, the initial determination of non-compliance becomes final and the EDD will submit a written recommendation regarding imposition of penalties and sanctions to the City Manager.
6. The City Manager makes the decision to impose sanctions and penalties recommended by the EDD.
7. If the vendor resolves the non-compliance, the vendor must notify the EDD. The EDD has five calendar days to verify the vendor's compliance and notify the vendor in writing that the penalty and sanction is no longer applicable. The penalty and sanction will remain in effect if the EDD determines that the non-compliance has not been resolved.

c. Penalties and Sanctions

Penalties and sanctions can be imposed on contractors that do not comply with the SBEDA Ordinance. Possible violations include:

- Fraudulently using or aiding another in using certification status for purposes of the Ordinance.
- Willfully falsifying, concealing or covering up material facts, making fraudulent statements or representation in writing or knowingly submitting false or fictitious statements pursuant to the terms of this Ordinance.
- Willfully obstructing or impeding any authorized official or employee who is investigating qualification of a business entity which has requested certification.
- Fraudulently obtaining or aiding another person in fraudulently obtaining public monies of which the person is not entitled under the terms of the Ordinance.
- Making false statements to any entity that is or is not certified for purposes of this Ordinance.

The City Manager or designee may recommend sanctions after determining that a contractor or respondent or other business representative failed to comply with any or a portion of the SBEDA Ordinance. These penalties include:

- Suspension of contract
- Withholding funds
- Rescission of contract based upon a material breach of contract
- Refusal to accept a response to a proposal

- Disqualification from eligibility for providing goods and services to the City for a period not to exceed two years (upon City Council approval)

H. Outreach and Business Support Services

Outreach for solicitations is conducted by the individual originating departments. The City and originating departments regularly hold pre-bid conferences providing an opportunity for networking with other potential respondents and obtaining more information regarding projects. City staff and EDD provide online access to a collection of written responses to questions from prospective respondents. The City's restriction on communication with City staff during the solicitation period does not apply to the EDD. Respondents are encouraged to contact the EDD for assistance or questions with issues specifically related to SBEDA Program during the solicitation period.

EDD staff distribute a bi-monthly newsletter to registered vendors informing them of upcoming solicitations with SBEDA Program APIs.

The City's website¹⁷⁰ provides access to information and many resources to assist small firms. The website offers information about doing business with the City, including a dedicated new vendor registration page with a guide on how to easily register using the CVR System. A video with registration instructions is also available. The website also provides access to current bidding, tabulations and awards and high-profile procurements. The Annual Procurement Guide provides a detailed list of projects and future solicitation opportunities for the upcoming year.

Targeted resources on the website¹⁷¹ include a searchable database of City of San Antonio and SBEDA eligible vendors and a library of SBEDA compliance forms. Links are provided to the SCTRCA for firms needing assistance with registration.

EDD has compiled a comprehensive small business resource guide program that lists organizations, agencies and City departments offering resources to assist small businesses with business development. Firms can contact a City Business Outreach Specialist for assistance in connecting with an organization to provide needed information and services. An email option on the website allows firms to directly request information about the program and support options. Booklets and inserts published on the website provide detailed information about program eligibility and the affirmative action initiative available for each industry category.

170. <https://www.sanantonio.gov/purchasing/biddingcontract>

171. <https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement>; see also <https://www.sanantonio.gov/edd>

In 2013, the City adopted a Diversity Action Plan (“DAP”) to assist new firms take advantage of the SBEDA program. The plan establishes initiatives to promote equitable utilization of minority and woman-owned businesses on City contracts through outreach, certification, solicitation planning, capacity building programs, and access to capital.

The EDD hosts vendor orientation sessions to provide registered vendors with information to maximize their bidding opportunities on City contracts. Sessions cover topics such as proposal development, managing a firm’s San Antonio Electronic Procurement System Profile (“SAePS”), and SBEDA Program requirements. The EDD offers vendor training on B2Gnow[®]. When vendors are non-responsive to solicitations due to SBEDA Program requirements, EDD is available to meet with the vendors to instruct them on how to improve. EDD provides prime contractors and subcontractors trainings on an on-call basis.

EDD staff conducts multiple public presentations to the business community, chambers of commerce, trade organizations, and advocacy organizations regarding SBEDA Program benefits and requirements for prospective respondents.

The City sponsors a wide variety of programs to assist S/M/WBEs.

- The Loan Interest Buydown Program assists S/M/WBEs with access to capital. Currently offered through LiftFund, the program offers qualified S/M/WBEs 0% interest loans up to \$1 million to assist with various business needs such as starting or expanding a business, employment, or for the purchase of property, inventory, and equipment.
- Launch SA, offered in partnership with LiftFund, provides resources for prospective entrepreneurs and businesses at all levels of development to provide direction, education, mentorship and technical assistance.
- Small Business Development Fee Waiver Program waives City license and permit fees, as well as SAWS sewer and water impact fees, of up to \$50,000 for local S/M/WBEs, depending on their eligibility.
- The License & Permitting Navigation Program provides resources to e
- ntrepreneurs and existing businesses to assist in navigating a variety of local licensing and permitting rules and regulations.
- The Mentor Protégé Program, offered in partnership with Alamo College, provides small businesses access education and personalized mentorship. The program consists of two phases: Phase I, educational courses over twelve months; and Phase II, pairing with a Mentor for a two-year commitment.
- Capacity Building & Bonding Assistance Program is offered in partnership with the San Antonio Economic Development Corporation (SAEDC) and Alamo

Surety Bonds. The program provides surety and bond assistance to eligible local small, minority, and woman-owned businesses seeking City construction contracts. The program is tailored to the needs of eligible program participants and provides one-on-one bonding counseling, project support if awarded a City contract, and access to a \$500,000 revolving pool of funds for those in need of assistance to cover costs related to City bonding requirements.

- The Corridor Program identifies two commercial corridors for development and funding support over two years. Training and technical support is provided to encourage greater corridor investment and organization development to revitalize the identified corridor.
- The Covid-19 Construction Impact Grant Program offers grants to small businesses impacted by the Covid-19 pandemic and the prolonged construction revenue loss tied to City-initiated construction zones. In 2022, qualifying businesses received up to \$35,000 in grant funding to help offset demonstrated losses in 2022 compared to 2021.

In 2023, the City launched a Growth Fund, Capacity Building Ecosystem in collaboration with the Edward Lowe Foundation, Maestro and the Local Initiatives Support Corporation to promote second-stage companies. Companies must be privately owned with \$1 million to \$50 million in annual revenues, employ 6 to 99 people and be based in San Antonio with the intent to grow to qualify. Additional small business programs implemented by the City in 2023 include the Noise Mitigation Program, Economic Development Incentive Fund Grants for export-oriented firms, the Façade Improvement Program and Outdoor Spaces Program.

The City has also partnered with various organizations to offer direct outreach, training and supportive services for small businesses. Support includes capacity development and financial assistance to allow S/M/WBEs to more readily participate on City contracts.

Partnerships include:

- The Maestro Entrepreneur Center, a non-profit business center aimed at addressing economic growth for underserved businesses by making resources and networks accessible to all. The center connects businesses to opportunities, trains for financial growth and sustainability, and provides office space for business incubation at a multi-industry business center.
- San Antonio Economic Development Corporation is a non-profit focusing on promoting long term economic growth specific to the San Antonio regional business ecosystem. The corporation offers assistance to help grow current businesses, create new start-up companies, and attract new business to the area.

- Prosper West San Antonio works to foster economic development on the Westside of San Antonio. The program offers financial services including a small business loan and grant program to support small business growth and increase the capacity of Westside businesses.
- San Antonio for Growth on the Eastside supports the business community on San Antonio's Eastside. The program delivers direct assistance and training in fiscal management through the Back Office Program to Eastside businesses.
- Southside First serves the small businesses, neighborhoods, and community corridors that encompass the City's southside. The program partners with other community stakeholders to conduct workshops to assist business owners expand their operations.

I. Staff Training

The EDD encourages professional development for department staff. Staff attend the annual B2Gnow[®] User Training Conference and the American Contract Compliance Association's annual National Training Institute. Staff also attend conflict management and supervisor academy training.

The EDD has developed a training video on the SBEDA process for City of San Antonio staff that can be easily viewed on YouTube.¹⁷²

J. Experiences with the SBEDA Program

To explore the impacts of San Antonio SBEDA Program, we interviewed 101 business owners (including both M/WBEs and non-M/WBE firms) about their experiences and solicited their suggestions for changes. We also collected written comments from 233 businesses about their experiences with the SBEDA Program through an electronic survey. Written comments were also collected during the study.

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 seven sessions by participants.

1. Business Owner and Stakeholder Interviews

As discussed in Chapter VI, most minority and women participants reported that the SBEDA programs assist them to obtain contract opportunities on City

172. <https://youtu.be/ZcL2FcleeEs>

projects. There were several topics they raised related to the programs' implementation, of its initiatives and improvements to the overall procurement process.

a. Contract Compliance Monitoring

Some certified firms stated that the City does not sufficiently monitor the prime contractor's adherence to its contractual commitments to the M/WBEs listed in the Utilization Plan.

San Antonio does not have a hard auditing program in place to ensure that utilization of the minority subcontractors is actually being utilized or getting those work orders. And there's no way for the subcontractors to verify if that contractor they're working with actually received work, that they could have issued to them, the verification and the auditing part of that. It has not worked out once, after a contract was awarded and to identify that they're actually receiving that work, even though you could see it on the website. It says they've been invoiced out this much or paid this much, we're like no we're still waiting or no, we didn't get this, project sent to you.

The biggest thing is, again, on a communication standpoint, who's the contact person or contact people? And I guess just follow up and transparency.

b. Supportive Services

In addition to the current array of services, some M/WBEs requested additional assistance with understanding the city's procurement processes and developing winning bids and proposals.

I think there could be more resources around understanding what that winning bid looks like.

More of an understanding of RFPs, how they're written, how they're put together for the smaller guy. Many of those RFPs are written for many of your prime contractors. So, a lot of subs, they get that information. It comes across their desk. They don't even know what to do with it. It's a way to get more of a buy-in from these smaller companies and what this program is designed for is to help that smaller guy to become a larger company and then be mentors and pull someone else up as it happened for them.

People want real results, no more window dressing, no more lip service, because they've been around enough.

They've heard all the stories. People want to know, "Hey, do I really have an opportunity to get a contract? And if I do then, okay, what is going to take? And then if I don't, how do I get to be a player?" Because that's the message that's being preached in the community. You want to practice what you preach.

Some participants suggested more education about what the programs can accomplish.

They get certified and then they're waiting for sometimes some miraculous stuff to happen because of what you hear, but then none of those things come to fruition. It begins to make the program unbelievable and makes their job more difficult because they seek to say, "Hey you have a potential and opportunity." And some of those opportunities are so far gone because of the capacity level. I think having a better sense of educating businesses on certification and then what types fit the business model because every certification is it may suit a firm differently based on their business model and what they're accustomed to.

One approach would be to add descriptions of certified firms to the database so that everyone would have a better understanding of what a firm might be capable of performing.

I think if we had some definitions of being able to categorize some of these businesses and what they really can handle, I think it'll be a win-win for both the city and the vendor in that perspective.

One MBE stated that it is the City staff, not certified firms, that need educating.

We don't need training. Your procurement people need training. Contracting people need training, your program managers and project managers need training.

c. Mentor-Protégé Program

There was widespread support for the concept of mentor-protégé relationships.

I think a lot of education and mentorship and protege programs are some of the first that jump out.... A lot of the benefits have come with businesses is true one on ones....

Having one on ones was probably your biggest is in it to build capacity.

Several praised the City's current program.

I think them having the mentor-protege piece.... it's a good starter.

The City actually awards, gives point preference, to mentors who are taking on protégés, which is kind of cool.

However, there were some deficiencies.

I was a participant in the [mentor-protégé program]. And a friend, a colleague of mine, former colleague of mine said, "Hey, I just did this thing." This is a few years ago. Maybe I don't know, eight years ago, six years ago. He said, "You should do it."... So, at the time you had to take classes, I don't know, six of eight or something like that. They were fabulous, and really good instructors, good information, great people. I met good people who turned into contacts. And then part of it, to actually get the full certification, you had to do an intern or a mentorship. Or menteeship. They didn't have enough mentors to go around. So, for some of us, we had to find our own. So, I did, I tried. And I went to a company that I know, and I said, "I want to talk to you about being a mentee to you because there's a city program. And apparently there's ways that you can get some advantages." So anyway, I had an interview and stuff and he goes, "We're not going to do this program." He said, "There's frankly nothing in it for us as a larger company, but we'll hire you." So, I got a gig that way. So, it was kind of indirect. But I think it had such potential. And for some reason, it just didn't come to fruition. So, I really hope that they figure that out, that if they're going to accept a mentee, then have a mentor.... I don't think anybody at the City, aside from the department that was running this program, even knew about it.... I consider that to be too bad, and I bet they could fix it. So anyhow, because it has such potential.

[I am] currently in the city of San Antonio Mentor-Protégé Program that they partnered up with [mentor]. I have been in this program since January of the beginning of last year and I finished my course work a year ago and I have not yet been assigned a mentor to partner up with and the program is supposed to expire in December this year.

One M/WBE dropped out.

Our mentor tried to sell us services, and so we quit the program at that time.

Encouraging joint ventures (not necessarily with a mentor) by the M/WBE joint venture partner's participation towards meeting the contract goal M/WBEs would also assist M/WBEs.

If they look to do joint ventures, pretty much what you're saying and really foster a smaller company to have them to scale in some capacity.

d. M/WBE Certification Standards

Some minority owners felt that White woman-owned firms were “fronts” for White men.

One of the biggest examples that I see, and I see it all the time, and I know firms that have it, is that there'll be non-minority people start a company with their wife as a main person and they're only the figurehead to be certified. And those firms get hired a lot. And even when they only have one year of experience, because they're working with a non-White person, it happens.

That's 100 percent true. And there's quite a few firms that have done that specifically to get around that.

e. Contract Size

Several interviewees discussed the size of the City's contracts as an impediment to bids or proposals from smaller firms.

A lot of the small firms already know they're knocked out of the water because of the bonding capacity and stuff like that because the packets are so large. I was able to get some projects here in San Antonio because they had a small business advocate, [name], who went to battle to try to get some of those packages reduced to smaller sizes, 550,000, 750,000. Something that the small companies could endure.

Instead of making it one large packet, break it up into several packages and then you can get several firms. Or if we can get two or three firms to be able to pull their bonding together as a unit and try to go after it that way.

f. Insurance Requirements

Many firms, including non-M/WBEs, reported that the City's insurance requirements were often unnecessarily high or restrictive. This impacts their ability to get work as prime vendors.

The City Attorney's office sent me the contract to sign, and I was stunned. I hadn't seen it before; 22-page contract. I felt it was highly problematic, very predatory. Couple things: the general liability insurance request, millions of dollars' worth. Listen, my contract was only \$30,000. If I were to get that amount of general liability insurance, I would have to charge tons more just to cover the liability insurance that they were requiring.

We have felt the crunch, felt the pinch, of that increase of insurance. And one, not understanding why. Because a lot of times the subs, we only got one segment of the project, and for us to have to carry a larger insurance just for that one segment, if I'm just doing some concrete work for the project, not the entire project, why do we have to [carry more coverage]? And by the time we pay that extra money, and even some of them ask for umbrella insurance and so forth. And that's an added cost, and that comes out of our profit, which is always low in the beginning because we have to be the lowest bidder to even get the project. So, we're already rock bottom.

2. Experience Criteria

Similarly, the experience criteria in many requests for proposals were seen as excessive, to the detriment of smaller proposers.

They'll usually say provide your last three projects within five years that you worked on a program over \$200M. If you don't have the capacity to buy for those type of projects, year after year, you're not going to have a set of three light type projects for \$200M. And you're definitely out of the scoring system immediately, so they have to find a way. And other cities have done it, find a way to skirt that question in a way that small businesses are still able to be a player in the game. And that would solve a lot of the things that I've heard today. Where you can't get in, because they don't want to bring you. A lot of times we get to the point where we would prefer to prime. Because that's the only way we

can grow capacity, or joint venture. Now, if that obstacle is there, what I just mentioned, we can't. Because we know the scoring system is not going to score us favorably at the end of the day. That's one thing they could change.

It's like a chicken and egg problem. You don't have experience, you don't get work, you don't get work, you don't get experience. How can you break in?

One small firm felt that overall, the City's process was too burdensome for small firms working on small projects.

I provided [the City] a template that the New York City office and government use when they're hiring consultants, especially. And I provided to them and suggested look, "This is what New York City is doing. Consider this." They were like, "Absolutely not. Can't do that." And I'm like, "Okay, well, yes, but something in between would be helpful." I don't think it's fair that they use the same template they would use for huge firms, construction companies, for a person that's going to do a [scope]. A single consultant. It's just not fair. In fact, it's a huge barrier.

3. Meeting Contract Goals

Most prime vendors reported they have been able to meet contract goals.

I think the City's been flexible in looking at the goal as an overall total.

For the most part, it works.

The City of San Antonio's got the most aggressive, small business program that I've ever seen in looking at other cities and other agencies and that's okay. It's been successful when we do have a disparity, when there's availability and the usage isn't there, then we plug the program in and it solves that issue. And then see if the market takes care of that and so forth. I think one thing that's been good is, it is a mandatory program, not good faith effort.

One participant lauded the City for counting certified firms' participation towards contract goals.

The one thing that's good about it is primes count. So, if you're a small business and you're priming the design work, that's going to count towards the goals, which is good.

Other prime vendors reported challenges in meeting goals.

I can speak from the contractor side of successfully being able to meet the goals. It is a big challenge. And sometimes you don't have as low a bid as you could because sometimes, you're using the certified subs and their prices are higher than what they are by non-certified firms, which I understand the City would understand that as well and know that they're paying more for some of these construction projects because of it. But we have been able to meet it on projects and haven't had to get waivers. We're not doing jobs as large as [name] is in the marketplace, but I think we've been successful in getting the participation. It's a challenge.

It's a lot of risk that we take on for 60% of the reward because we carry all the risk.

We have some subs who perform well, and we have some subs who we basically end up doing their work for them because they don't deliver.... Sometimes it's easier just for us to clean up the mess than it is to go back and get them to fix it. Overall, at the end of the day, it's our neck on the line, if it's shoddy work. We're being forced to sub out some of this work or to certain people and then sometimes it's not so great and it's our neck. Most of the time it works, sometimes it doesn't.... It's a lot of risk that we take on for 60% of the reward because we carry all the risk. And I'm sure a contractor would say the same thing.... I understand and agree with the overall intent program.... I'm not a big firm, I feel like I'm in that sweet spot here of a hundred people where I'm not one of these national firms that has all sorts of capabilities, and I'm not one of these small firms that fits that niche, I'm right in between. That can be a tough spot to be in.

Several prime firms stated that the contract goals often did not seem to be tailored to the specifics of the project.

The [M/WBE goal] ... doesn't move.

Sometimes I feel like these numbers are thrown out there. Does the capacity even exist? Because there's a there's a limited number of these firms that we can put on our teams, typically they're on multiple teams.

Most recently the MEP prime [contract] that we went after and that had the subcontracting goals. To me, that seems like a silly

place to have the subcontracting goals. What you're doing is prequalifying a firm and then they kind of go into the distribution list. It sort of seems like you can get more bang for your subcontracting buck on the larger scale projects than maybe necessarily smaller IDIQs. And then we have, for an MEP for us, we'll do mechanical and plumbing, but we'll sub out electrical and that sort of seems to make things needlessly complex.

The goal setting committee does not understand capacity in the marketplace.

They get a goal setting committee, and they work with a small business department and then they figure out what the goals going to be for this particular RFQ. And then they release it. This recent one for the bike plan is really, really heavy on one, a local preference, a veteran owned business, a small business. It means dedicating like 20 points just to all those different functions or those different specific certifications.

One prime consultant felt that it should not have to compete with firms it uses to meet the goals.

We have a minority sub on our team, but they also primed it themselves. They're already prequalified on their own. Why do we also need to kind of have them on our team as well?

Another issue for prime bidders is the difficulty of submitting full utilization plans with the bids.

When you hard bid jobs, it's a frantic deal on bid day. And you're getting numbers flying in, and I've seen other practices in other cities, and the city of Austin employs this too, they would allow us a day to figure out the numbers with the subs. And that goes back to right sizing packages. You don't want to give away a bunch of work to a minority that doesn't have the capacity to do the work, they're just going to fail. That's not the goal of the program, you want them to succeed. So, you've got to have time right sizing packages. I can tell you on our alternative delivery jobs, whether it's SEMA risk or progression design billable work, we're planning the job, we're negotiating the work, we're creating smaller packages for minorities. Our goals, far out, are far greater than they are on these hard bid jobs. We don't have time to right size packages on bid day, get more participation, and everything else. It's a whole procurement problem on the public owner side. And I get it that they got to

hard bid a lot these jobs, and [our company] understands that, but we have no time to right size packages and vet these small firms to make them successful, to see what their capacity is, at that time on bid day. We just don't. Even at the time, because some of the work, but it takes research to get that done, and on bid day, it's just too frantic, and you can't. But on the alternate delivery jobs where we're able to plan, our numbers far exceed goals.... We don't have time to really figure out these subs, vet them, figure out the package form, submit a proposal and a price. An extra day would do a wealth of good to figure that out and make people successful.

These competitive sealed proposals, they want you to put your sub name, your main subs, in the proposal, and you're trying to print so many copies of the proposal, too. And do your bid list. It's just not a good situation.

An unintended consequence of this approach is that bidders tend to use subs with which they have already worked.

It does mean that we are using the same subs quite a bit because that's what's out there, that's what's available, that's who we have the proven experience with. But we do try to use other subs when opportunities allow.

One prime contractor did not see the same day submission requirement as an issue.

I don't have the bid day problems.

4. 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. Overall Perceptions of the Program's Effectiveness

Minority- and woman-owned firms widely supported the program. Many stated the program was essential to obtaining business.

It has helped tremendously. We probably would not have been involved in a lot of projects that grew our business and reputation without it.

Being certified as an MBE subcontractor has helped us get more jobs.

The program works and is necessary. Keep it. Strengthen it. Don't back down.

We are asked to join ... a proposal team because of our MBE status.

It has been a great help over our 30+ years.

The goals setting does help.

[The SBEDA Program has helped] by requiring firms use us.

Yes, absolutely, [the program helped our business].

It helped us get the initial contract and retain the contract ongoing.

It has assisted in the growth of our firm since we do plenty of work as a subconsultant to a prime.

It has helped us win contracts.

We have been fortunate to get some City Park jobs and that has helped us push forward to go for larger amount jobs with the City.

Has provided us with access to more projects to continue growing.

It allows for small businesses to get their foot in the door in government work and to create connections that can create stability in workload, funding, and growth.

Helped me find partners and win projects.

Yes, it's helps minority, women owned businesses open doors and prove their success.

When a project has goals, my company is solicited to bid.

SBEDA has allowed us to have an opportunity to compete.

We have been included on proposed work with the city to meet their percentages and have performed well so we are included for work where percentage are not required.

Being certified as M/WBE has been helpful when being hired by an organization that gets financial assistance from the city.

It initially gave me a way in to work with the city.

We have submitted several RFPs for the City of SA and have won a few.

Allowed us to compete with against much larger firms.

City contracts have grown our company within the last 5 years.

It has allowed us to have an advantage for the work we are performing.

Some M/WBEs consider the program essential for networking.

It has provided opportunities to work with other firms.

Allowed us to create long-term partnerships with larger Firms.

We have had opportunities to team up with larger firms and gain working relationships with them.

[Prime] firms reach out to for us to team on projects.

Made some [prime firms] more aware of who we are.

Provided connections to networking.

[Keeps] us in the loop.

One prime contractor was complimentary of the program.

Overall, we believe the SBEDA program is well run, beneficial and fair.

Some firms did not receive much benefit from the program.

My work comes from my experience that is recognized in my industry, not through programs that the city tries to run.

It has not helped my business, but I have learned the processes and areas I need to be in contact with.

Please design a program that works.

b. Experiences with the S/M/WBE Certification Process

A few firms found the certification process burdensome.

SBE process is too time consuming and onerous.

The process was confusing.

Some suggested that the City accept the U.S. Department of Transportation's Disadvantaged Business Enterprise certification.

Any SBE program should not have application requirements beyond what's required for your DBE program. If I am already a certified DBE in your state, the required paperwork should be minimal. But typically, it is not, and that should change.

Effort involved in certifying our company in all locations where we support airport projects is quite burdensome for small firms. We need to prove and recertify we are DBE, WBE, MBE many, many times across the country.

MBE registered thru TXDOT, not sure the need for cert thru SCTRCA?

A Native American firm felt the City's certification requirements for Native American firms were more onerous than those imposed by other certification agencies.

Additional requirements inquires for native owned business above and beyond other certification agencies.

Some respondents urged greater scrutiny of certified firms to identify "front" companies.

Primes selection of WBE who are fronted by a women owner firm who's [sic] spouse is the real owner and is non-minority. It's to [sic] easy to front a firm with women or minority person. The certification agency don't [sic] look at the other 49% owners.

If the city would consider giving work to an actual minority business, instead of a million-dollar company with the same certifications, it would greatly impact my demographics.

Audit certified companies to make sure they are not taking advantage of the system. There are businesses fronting as a small businesses but they are owned by business owners that are a part of multiple businesses. It's scamming your system. It's hard to compete when small businesses are actually a part of network of small businesses owned by the same people.

Better enforcement of the local preference requirement was also requested by several M/WBE firms.

Enforce local preference.

Some of these businesses are not even local, they have an office here but no staff.

Audit those that say they are local and really are not.

Numbers that are being reported are only a reflection of small solicitations about local businesses. Report the entire distribution of solicitations so we have a valid point of reference of where our funds are genuinely going. Our ordinance should read Headquartered in San Antonio with a significant presence of a minimum of 7 years.

c. Access to City Contracting Opportunities

Some M/WBEs requested more opportunities to perform as prime contractors.

Focus on local firms and continue to allow us to expand and grow by awarding us large prime contracts. Our firm can perform on the same large projects and contracts as large international firms.

Getting assigned larger contracts (\$15,000,000+) as a prime consultant.

Gave us a small edge to get some projects as a prime and provide subconsultant services to several firms.

The opportunity to contract directly with the city.

More opportunities to prime contract!

Our firm would like to participate in a prime capacity more since we have the staff and experience but sometimes it is hard to compete with the larger firms.

Provide opportunities for small firm prime projects.

More direct contracts with city for smaller projects that build the relationship.

Many M/WBEs suggested “unbundling” projects into small contracts to open more prime opportunities and allow smaller firms to take on more work.

De bundle [sic] generational contracts would allow new smalls to pursue opportunities with the city.

Assigning smaller contracts for phases of the meaningful projects to DBE's contracts rather than an overall contract to a prime. Otherwise, the same primes and DBEs get to work on the bigger contracts.

Should consider projects specifically for the smaller firms to compete as prime consulting firm.

Why not direct contract with small business and break the contract up into smaller parts.

Please unbundle large contracts, please open the specifications to other top tier vendors.

[I would like to see] more opportunities for SBEDA firms. Possibly smaller contracts for only SBEDA firms that would allow them to gain experience and exposure with City staff.

Public entities helping SBE or DBE with contracts rather than having a prime select the DBEs [as subcontractors].

Reach out to WBE, HUB etc. with smaller contracts to help build networks, relationships, and capacity.

City contracts being too large monetarily so that the bonding is not available.

One prime firm agreed.

I will say small firms need small projects to pursue. When I started in the early 1980s, my largest client was COSA.

Setasides for M/WBEs and small firms was another recommendation.

Goals set aside from the City allows minority owned businesses to be considered.

Increase set aside projects for small businesses.

The city needs more set aside contracting opportunities that help the niche businesses.

Set aside smaller projects for minority firms only.

[I recommend] setasides.

Some M/WBE respondents thought the program could do more to encourage participation of certain minority groups.

Establish AABE goals. The reason there are no AABE goals is because when the vague and non-specific MBE/DBE/SBE is

used, this allows for overutilization of Asian/AAPI businesses and the under to non-utilization of AABEs while checking the "minority" box. SBEDA needs to disaggregate "minority" and make separate goals for Asian, Latino and Black-owned businesses. Also funding for City projects is divided by district but yet, the rationale for cutting Black-owned businesses out of projects is the citywide Black population percentage, not the district Black population percentage. All economic resources should be based on district demographics, not citywide demographics.

If funds are distributed by district, contracting needs to be based on district demographics not citywide demographics. As a Black-owned business, City officials throw the 7% citywide Black population in our face as justification for cutting us out. Black-owned businesses need to get 22% of District 2 spending. The City can't have it both ways.

Establish stronger mechanisms for African American owned businesses since San Antonio has a large minority population.

Since DBE/SBE/MBE goals can be met without contracting to Black-owned businesses, we only get luncheons, conferences and disparity studies. We get lots of word salad but no meat and potatoes. Why have an AABE certification if there is no AABE goals?

The program is almost worthless. The only real minority in San Antonio is the AABE. The WBE. Hispanics are not minorities in San Antonio or/and Austin.

Several M/WBEs felt the same firms are repeatedly used.

For COSA to consider other Top Tier vendors other than the ones they always put down in the specifications.

Stop allowing the same companies to get the work. There should be limitations on how often a contractor can bid and a \$\$ amount so that others have a chance to bid.

Allowing more opportunities for small businesses by not hiring the same firms over and over with the same teams for years and years.

The solicitation process was seen by some respondents as burdensome and costly for small firms.

More contract opportunities where the requirements to submit aren't so cumbersome in dedicated staff time to complete with short turnaround windows.

The lead time to apply and secure a contract with the City is long and often cumbersome and is time spent that does not generate revenue. The cost benefit of going after City work is sometimes preventative; however, our passion for public service sometimes pushes us to make the decision to pursue the work regardless of time-value of money.

The bid proposal process to submit with the city is so overwhelming and takes so much time. A more simplified bidding process with the City or Bexar County would be appreciated.

d. SBEDA Program Compliance

Almost all the non-M/WBE survey respondents indicated they were able to meet M/WBE contract goals.

One firm reported difficulty in meeting goals because of the specialized nature of its industry.

Based on the specificity of the products we provide to the City, it is difficult to find subcontractors that we can generate enough billing work for them to meet the goals.

One non-African American M/WBE found it hard to meet AABE goals.

Possibly revising the AABE goal to be a part of the M/WBE goals. At times it has been difficult to find AABE firms to team with when there is a hard AABE goal.

A few respondents questioned the commitment of City departments to adhere to program objectives and goal requirements.

We just need to make sure all COSA departments are in line with the M/WBE goals and programs. Not just lip service.

Unlike Austin, San Antonio has zero accountability and zero goals for itself when it comes to providing winnable contracts for M/WBEs, especially local M/WBEs. Talk to Austin's procurement department and copy their model. It works.

The program needs to have more transparency. It seems it is run like a private business.

[I would like to see more] due diligence in maintaining the integrity of the RFP Process and Awards.

[The SBEDA program] needs to be changed and loopholes closed.

Some M/WBE respondents requested more oversight to ensure prime contractors comply with goal requirements.

An honest system where certified goals are actually met.

Make sure the prime shares the work.

Prime contractors [not] giving me work after I help them win the contract.

To increase goals and hold primes accountable for payment by requiring them to invoice within 10 days of the prior month completed.

I won a contract with the city, but never got any work through the prime.

Prime Contractors requesting certifications for bids/RFPs then not assigning work once they are awarded.

Too many certified companies just let big companies use their certifications for a fee.

One minority and woman-owned firm complimented the City's effort to enforce SBEDA guidelines.

COSA helped by holding prime contractors accountable to HUB minimums. 80% of our business came as a sub to a prime that adhered to SBEDA guidelines for two years.

Payment tracking was an issue reported by one M/WBE firm.

A better tracking system for payment that requires the prime to invoice within 10 days of the prior month completed. Primes will hold an invoice for months and the city has no idea. Therefore, the small business on the team is not getting paid for months. This will put a small business under and requiring them to close down or go into excruciating debt.

One prime found the program's reporting procedures unclear.

Reporting procedure can be unclear and inconsistent.

e. SBEDA Program Outreach and Access to Information

Some requested more notification and information about upcoming projects.

We need to know about the upcoming project and potential prime consultants.

They will notify you but there maybe is not enough time notice given.

One M/WBE respondent indicated they were satisfied with the level of outreach.

No specifics, the city outreach programs are good.

Several M/WBE respondents requested more targeted outreach based on their industry.

Only receive information related to our industry.

More communication around bid opportunities tailored to our type of business.

Have SBEDA email businesses directly with information relevant to that particular business.

Access to bids that are specific to my industry. I receive a lot of solicitations for construction projects and jobs that are not related to what we can do.

Additional support to facilitate relationship building between subcontractors and prime contractors was a common request.

Easily identifying appropriate opportunities and connecting with the right people.

Make it easier for small companies to get in touch with larger companies (primary contractors) to benefit from subcontracting opportunities. So far, I would not know who to contact to be considered as a subcontractor.

Networking [would be helpful].

[Conduct] personal interviews [for] contractors to get a closer understanding of what a vendor can do and the expectations of the contractor.

Maybe they can have more seminars for small businesses [where they] can meet larger companies for future subcontracts. Specifically in the professional market.

More networking meetings.

f. Experiences with Joint Ventures and Mentor-Protégé Programs

Many reported positive experiences with joint ventures and suggested they are an important approach for small firms to build capacity and grow.

I have taken advantage of a lot of programs and that has been a huge help, but joint venturing can be a benefit if the city and other government agencies would require it. That is how we will build our capacity to do more and grow.

Putting things in place for mature MBE to grow into primes or JV partners would help both the mature MBEs as well as the smaller MBE who the mature MBEs could pull up as sub-consultant to their prime or JV contracts.

The City would encourage MBE JVs with prime firms where the JV would receive additional points in proposal scoring at the % of the MBE JV partner's contract involvement.

Joint Ventures have been very supportive to the business success.

Joint Ventures work and should be encouraged when possible.

Ability to team or Joint venture with larger firms for larger projects.

Require partnership with these [large] companies for contracts over \$100K.

Both [the Mentor-Protégé Program and joint ventures in which we participated] enabled us to get our foot in the door with the City and with the Airport.

Encouraging more joint venture requirements on contracts [would help our business grow].

Mentor-protégé arrangements was another approach to help minority- and woman-owned businesses.

Mentor-protégé is the best work experience I had. Learned a lot of useful information.

[Our firm would be interested in] direct assistance with or direct assignment of mentor in mentor-protege program.

Require mentor-protege programs for larger long-term projects.

The mentor-protege program was very helpful to our business.

I went through a mentorship program, and it was very effective.

However, not all M/WBE respondents found the mentor-protégé approach to be helpful.

Mentor-Protege programs typically benefit the Mentor more than the protege.

Our Mentor was not very helpful. I would love to be involved in any of these business support or development activities.

I was selected to participate in Launch SA and my mentor said she would call me but never did so I never received the mentorship support.

An M/WBE firm reported being ignored when making an offer to become a mentor.

We offered to mentor through City of San Antonio mentoring program and after reviewing our credentials we were ignored.

One prime preferred mentor-protégé relationships over paper intensive joint ventures.

De-emphasize the teaming (JVs) and alternate delivery methods. Simply too much paperwork for a very small, emerging firm. Mentor programs can help.

g. Experiences with Business Support Services

Most M/WBEs who had participated in supportive services and training classes found them useful.

The UTSA business development center support is the reason I am in business after 35 years of service.

I have attended classes and received requests to complete jobs.

I took several classes; they were good classes.

Our company has been a leader in our community and found success from some of these programs.

The classes that I have attended have been helpful and I have utilized [them] to seek bonding and insurance.

The program was organized and offered a lot of support as well as feedback about different opportunities that could potentially help grow our business.

[Supportive services] have been good experiences.

Helped me get educated in many areas of my business.

They are all very beneficial and helped me get to the level I am at.

Early on I received good information from SCORE and other small business training and certification agencies.

They have been very [good] educational on running a business.

I appreciate the information programs.

One firm wanted the City to assist it with marketing.

Have a centralized portal where City has access to information/videos of the services small/minority/women owned businesses offer.

Some firms reported that services had not led to business opportunities.

It [was] informative, but I do wish it would lead to more opportunities.

It sounds good. But I have yet to receive money via the information I took away and implemented.

It was a lot of talk with no action.

Lack of assistance or availability with regard to finding a mentor [was my experience in working with supportive services programs].

New trucking businesses have a hard time getting jobs. Some of the classes don't teach you how to complete contracts, all they talk about is what is available. It would be nice to streamline the courses and do a hands-on at the

same time. A real course with real time material to work from with regard to the business [would be helpful].

Some suggested supportive services programs could offer more comprehensive instruction and training to help develop concrete skills, techniques and strategies.

Usually too basic to get much value.

Most are superficial and do not provide details of the process and accompanying help during the application phase of the process.

Some positive and others not so informative. Information is sometimes limited and may be by the person that is providing it.

More in-depth classes [would be helpful.]

We are grateful for the Staff who are eager to help S/M/WBEs. They need help and are often stretched too thin. But please don't just hire anyone - it has to be someone who understands small businesses.

Many indicated they need assistance with accessing capital to expand their capacity.

More government assistance to obtain equipment.

A capital investment for operations.

Financing to replace outdated equipment and/or create new crew to take on more workload.

More government assistance to obtain equipment.

Funding opportunities for renewable, carbon negative, fuel, in gasoline, diesel, or heating oil will help grow our business.

Having the opportunity to get a second work vehicle, which requires funds.

Money to fund more employees and upgrade some aging equipment.

Access to capital with lower interest rates or interest only payments for one year.

K. Conclusion

The City of San Antonio's SBEDA program implementation generally complies with M/WBE national best practices. Overall, most M/WBEs reported they are able to obtain work through the various program elements. Some interviewees suggested additional monitoring of contract compliance is needed. The current supportive services offerings were praised but more supportive services were requested. The Mentor-Protégé Program was appreciated but more opportunities for one-to-one mentoring are needed. Contract size, insurance requirements and experience criteria were all barriers to small firms serving as prime vendors. Prime contractors were generally able to meet contract goals. However, many reported challenges, including paying more to use certified firms; uneven capacities of certified firms; contract goals that were not tailored to the specifics of the project; and submitting full compliance paperwork with the bid or proposal.

IV. CONTRACT DATA ANALYSIS FOR THE CITY OF SAN ANTONIO

A. Contract Data Overview

We analyzed data for City of San Antonio's ("City") contracts for calendar years 2014 through 2020. The Initial Contract Data File contained 4,219 contracts. Because of the large number of contracts, we developed a stratified random sample.¹⁷³ To conduct the analysis, we constructed all the fields necessary where they were missing in the contract records (e.g., industry type; zip codes; six-digit North American Industry Classification System ("NAICS") codes of prime contractors and subcontractors; and Minority- and Woman-owned Business Enterprise ("M/WBE") information, including payments, race, gender; etc.). Missing NAICS codes of prime contractors and subcontractors were assigned by CHA. Tables 4-1 and 4-2 provide data on the resulting Final Contract Data File ("FCDF").

Table 4-1: Final Contract Data File
Number of Contracts

Contract Type	Total Contracts	Share of Total Contracts
Prime Contracts	549	32.8%
Subcontracts	1,124	67.2%
TOTAL	1,673	100.0%

Source: CHA analysis of City of San Antonio data

173. The sample was constructed by first stratifying the contract universes into its five industries components: Construction, Goods and Supplies, Professional Services, Architecture & Engineering, and Other Services. With each component, we derived a random sample where distribution of contract dollars within that component approximated the distribution of contract dollars within the component universe.

Table 4-2: Final Contract Data File
Net Dollar Value of Contracts

Business Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contracts	\$628,186,425	70.8%
Subcontracts	\$258,986,339	29.2%
TOTAL	\$887,172,764	100.0%

Source: CHA analysis of City of San Antonio data

The following sections present our analysis, which consisted of five steps:

1. The determination of the product and geographic markets for the analysis.
2. The estimation of the utilization of M/WBEs by the City.
3. The calculation of the M/WBE unweighted and weighted availability in the City's marketplace.
4. The examination of concentration of contract dollars among M/WBE and non-M/WBE firms.
5. The presentation of the M/WBE disparity analysis.

The results disaggregated into the subindustry categories of construction; construction related services; professional services; other services and goods are presented in Appendix F.

B. The City of San Antonio's Contract Markets

The federal courts¹⁷⁴ require that a local government narrowly tailor its M/WBE program elements to its market area. A market has two dimensions: product and geography. This means the study must determine the products or industries which an agency purchases and the geographic location of the firms from which it purchases. These elements of the analysis must be empirically established.¹⁷⁵ The accepted approach is to analyze those detailed industries, as defined by six-digit NAICS codes,¹⁷⁶ that make up at least 75% of the prime contract and subcontract

174. *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 M/WBE 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.").

175. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1520 (10th Cir. 1994) (to confine data to strict geographic boundaries would ignore "economic reality").

176. www.census.gov/eos/www/naics.

payments for the study period.¹⁷⁷ The determination of the City's product and geographic market required three steps:

1. Development of the FCDF to determine the product market. Table 4-3 presents these results.
2. Identification of the geographic market.
3. Determination of the product market constrained by the geographic parameters. Table 4-4 presents these results.

1. Product Market for the City of San Antonio's Contracts

To establish the City's product market, we developed the FCDF, which consisted of 152 NAICS codes, with a total contract dollar value of \$887,172,764. Table 4-3 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 4-3: Industry Percentage Distribution of City of San Antonio Contracts by Dollars

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
237310	Highway, Street, and Bridge Construction	25.8%	25.8%
236220	Commercial and Institutional Building Construction	9.2%	35.0%
541330	Engineering Services	4.2%	39.2%
441110	New Car Dealers	4.0%	43.2%
238220	Plumbing, Heating, and Air-Conditioning Contractors	3.2%	46.4%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	3.1%	49.5%
238210	Electrical Contractors and Other Wiring Installation Contractors	3.0%	52.5%
238110	Poured Concrete Foundation and Structure Contractors	2.7%	55.3%
237110	Water and Sewer Line and Related Structures Construction	2.7%	58.0%
541611	Administrative Management and General Management Consulting Services	2.6%	60.6%

177. 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	2.4%	62.9%
562111	Solid Waste Collection	2.3%	65.2%
561320	Temporary Help Services	2.2%	67.4%
238990	All Other Specialty Trade Contractors	2.0%	69.4%
541511	Custom Computer Programming Services	2.0%	71.4%
722320	Caterers	1.6%	72.9%
561720	Janitorial Services	1.5%	74.5%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	1.4%	75.9%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	1.2%	77.0%
238290	Other Building Equipment Contractors	1.1%	78.1%
238390	Other Building Finishing Contractors	1.0%	79.1%
561730	Landscaping Services	1.0%	80.1%
238310	Drywall and Insulation Contractors	1.0%	81.1%
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	0.9%	82.0%
237990	Other Heavy and Civil Engineering Construction	0.9%	82.9%
561612	Security Guards and Patrol Services	0.9%	83.8%
541990	All Other Professional, Scientific, and Technical Services	0.8%	84.6%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	0.7%	85.3%
238120	Structural Steel and Precast Concrete Contractors	0.7%	86.0%
562119	Other Waste Collection	0.7%	86.7%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.6%	87.3%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.5%	87.8%
236118	Residential Remodelers	0.5%	88.3%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.5%	88.8%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541620	Environmental Consulting Services	0.5%	89.3%
541211	Offices of Certified Public Accountants	0.5%	89.7%
238140	Masonry Contractors	0.5%	90.2%
238160	Roofing Contractors	0.4%	90.6%
541810	Advertising Agencies	0.4%	91.0%
561990	All Other Support Services	0.4%	91.4%
621111	Offices of Physicians (except Mental Health Specialists)	0.4%	91.8%
541310	Architectural Services	0.4%	92.2%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.4%	92.6%
562991	Septic Tank and Related Services	0.3%	92.9%
237120	Oil and Gas Pipeline and Related Structures Construction	0.3%	93.2%
541519	Other Computer Related Services	0.3%	93.4%
541320	Landscape Architectural Services	0.3%	93.7%
488410	Motor Vehicle Towing	0.3%	94.0%
238150	Glass and Glazing Contractors	0.2%	94.2%
236116	New Multifamily Housing Construction (except For-Sale Builders)	0.2%	94.5%
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	0.2%	94.7%
541370	Surveying and Mapping (except Geophysical) Services	0.2%	94.9%
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	0.2%	95.2%
238350	Finish Carpentry Contractors	0.2%	95.4%
561110	Office Administrative Services	0.2%	95.6%
541380	Testing Laboratories	0.2%	95.8%
541219	Other Accounting Services	0.2%	96.0%
524298	All Other Insurance Related Activities	0.2%	96.2%
238320	Painting and Wall Covering Contractors	0.2%	96.4%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	0.2%	96.5%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	0.2%	96.7%
424410	General Line Grocery Merchant Wholesalers	0.2%	96.9%
541910	Marketing Research and Public Opinion Polling	0.2%	97.0%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	0.2%	97.2%
238330	Flooring Contractors	0.1%	97.3%
423220	Home Furnishing Merchant Wholesalers	0.1%	97.5%
511130	Book Publishers	0.1%	97.6%
561312	Executive Search Services	0.1%	97.7%
541820	Public Relations Agencies	0.1%	97.8%
441227	Motorcycle, ATV, and All Other Motor Vehicle Dealers	0.1%	97.9%
811111	General Automotive Repair	0.1%	98.0%
541350	Building Inspection Services	0.1%	98.1%
541420	Industrial Design Services	0.1%	98.2%
423440	Other Commercial Equipment Merchant Wholesalers	0.1%	98.3%
541613	Marketing Consulting Services	0.1%	98.4%
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	0.1%	98.4%
423210	Furniture Merchant Wholesalers	0.1%	98.5%
561613	Armored Car Services	0.1%	98.6%
423420	Office Equipment Merchant Wholesalers	0.1%	98.7%
722511	Full-Service Restaurants	0.1%	98.7%
531210	Offices of Real Estate Agents and Brokers	0.1%	98.8%
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	0.1%	98.8%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.1%	98.9%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
423490	Other Professional Equipment and Supplies Merchant Wholesalers	0.1%	99.0%
236115	New Single-Family Housing Construction (except For-Sale Builders)	0.04%	99.0%
541690	Other Scientific and Technical Consulting Services	0.04%	99.0%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	0.04%	99.1%
562910	Remediation Services	0.04%	99.1%
424210	Drugs and Druggists' Sundries Merchant Wholesalers	0.04%	99.2%
424480	Fresh Fruit and Vegetable Merchant Wholesalers	0.04%	99.2%
611430	Professional and Management Development Training	0.04%	99.2%
518210	Data Processing, Hosting, and Related Services	0.04%	99.3%
485999	All Other Transit and Ground Passenger Transportation	0.04%	99.3%
541860	Direct Mail Advertising	0.04%	99.3%
541110	Offices of Lawyers	0.03%	99.4%
238340	Tile and Terrazzo Contractors	0.03%	99.4%
541930	Translation and Interpretation Services	0.03%	99.4%
423390	Other Construction Material Merchant Wholesalers	0.03%	99.5%
621511	Medical Laboratories	0.03%	99.5%
561311	Employment Placement Agencies	0.03%	99.5%
488490	Other Support Activities for Road Transportation	0.03%	99.6%
541720	Research and Development in the Social Sciences and Humanities	0.03%	99.6%
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	0.02%	99.6%
621910	Ambulance Services	0.02%	99.6%
541490	Other Specialized Design Services	0.02%	99.7%
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	0.02%	99.7%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541618	Other Management Consulting Services	0.02%	99.7%
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	0.02%	99.7%
424690	Other Chemical and Allied Products Merchant Wholesalers	0.02%	99.7%
722330	Mobile Food Services	0.02%	99.7%
551112	Offices of Other Holding Companies	0.02%	99.8%
323111	Commercial Printing (except Screen and Books)	0.02%	99.8%
621399	Offices of All Other Miscellaneous Health Practitioners	0.02%	99.8%
541940	Veterinary Services	0.01%	99.8%
237130	Power and Communication Line and Related Structures Construction	0.01%	99.8%
212319	Other Crushed and Broken Stone Mining and Quarrying	0.01%	99.8%
811198	All Other Automotive Repair and Maintenance	0.01%	99.8%
523930	Investment Advice	0.01%	99.9%
524127	Direct Title Insurance Carriers	0.01%	99.9%
524126	Direct Property and Casualty Insurance Carriers	0.01%	99.9%
541614	Process, Physical Distribution, and Logistics Consulting Services	0.01%	99.9%
115112	Soil Preparation, Planting, and Cultivating	0.01%	99.9%
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	0.01%	99.9%
621999	All Other Miscellaneous Ambulatory Health Care Services	0.01%	99.9%
236210	Industrial Building Construction	0.01%	99.9%
621493	Freestanding Ambulatory Surgical and Emergency Centers	0.01%	99.9%
423840	Industrial Supplies Merchant Wholesalers	0.01%	99.95%
423690	Other Electronic Parts and Equipment Merchant Wholesalers	0.01%	99.96%
424110	Printing and Writing Paper Merchant Wholesalers	0.01%	99.96%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541922	Commercial Photography	0.01%	99.97%
812990	All Other Personal Services	0.004%	99.97%
813312	Environment, Conservation and Wildlife Organizations	0.004%	99.98%
424590	Other Farm Product Raw Material Merchant Wholesalers	0.003%	99.98%
541430	Graphic Design Services	0.003%	99.98%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	0.003%	99.99%
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	0.002%	99.99%
561439	Other Business Service Centers (including Copy Shops)	0.002%	99.99%
423710	Hardware Merchant Wholesalers	0.002%	99.99%
541410	Interior Design Services	0.001%	99.99%
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	0.001%	99.99%
445110	Supermarkets and Other Grocery (except Convenience) Stores	0.001%	99.996%
424810	Beer and Ale Merchant Wholesalers	0.001%	99.997%
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	0.001%	99.998%
221310	Water Supply and Irrigation Systems	0.001%	99.998%
812320	Drycleaning and Laundry Services (except Coin-Operated)	0.0004%	99.999%
237210	Land Subdivision	0.0004%	99.999%
924110	Administration of Air and Water Resource and Solid Waste Management Programs	0.0004%	99.9996%
493110	General Warehousing and Storage	0.0002%	99.9998%
492110	Couriers and Express Delivery Services	0.0001%	99.9999%
522110	Commercial Banking	0.0001%	99.99996%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
424950	Paint, Varnish, and Supplies Merchant Wholesalers	0.00003%	99.99999%
532111	Passenger Car Rental	0.00001%	100.0%
TOTAL		100.0%	

Source: CHA analysis of City of San Antonio data

2. Geographic Market for the City of San Antonio's 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.¹⁷⁸ Firm location was determined by zip code and aggregated into counties as the geographic unit. The state of Texas captured 90.6% of the FCDF and eight counties in the San Antonio Metropolitan Statistical Area – Bexar, Kendall, Guadalupe, Medina, Comal, Wilson, Atascosa, and Bandera – captured 74.8% of the FCDF. Therefore, we used those eight counties as the geographic market.

C. The City of San Antonio's Utilization of M/WBEs in its Product and Geographic Market

Having determined the City's product and geographic market area, the next step was to determine the dollar value of its utilization of M/WBEs¹⁷⁹ as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. There were 128 NAICS codes after constraining the FCDF by the geographic market; the dollar value of the contracts in these codes was \$663,560,651. Table 4-4 presents these data. We note that the contract dollar shares in Table 4-4 are equivalent to the weight of spending in each NAICS code. These data were used to calculate weighted availability¹⁸⁰ from unweighted availability, as discussed below.

178. *National Disparity Study Guidelines*, at p. 29.

179. For our analysis, the term "M/WBE" 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 M/WBE availability calculation that casts a broader net.").

180. 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>.

Table 4-4: NAICS Code Distribution of Contract Dollars in the Constrained Product Market

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
237310	Highway, Street, and Bridge Construction	\$210,686,064	31.8%
236220	Commercial and Institutional Building Construction	\$74,551,368	11.2%
441110	New Car Dealers	\$30,387,426	4.6%
541330	Engineering Services	\$30,034,548	4.5%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$23,162,550	3.5%
238110	Poured Concrete Foundation and Structure Contractors	\$21,469,694	3.2%
238910	Site Preparation Contractors	\$20,777,532	3.1%
561320	Temporary Help Services	\$19,063,650	2.9%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$16,720,440	2.5%
238990	All Other Specialty Trade Contractors	\$14,486,129	2.2%
722320	Caterers	\$13,810,000	2.1%
561720	Janitorial Services	\$13,656,957	2.1%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	\$12,100,787	1.8%
237110	Water and Sewer Line and Related Structures Construction	\$9,978,067	1.5%
238310	Drywall and Insulation Contractors	\$8,560,788	1.3%
561730	Landscaping Services	\$7,837,819	1.2%
561612	Security Guards and Patrol Services	\$7,501,133	1.1%
237990	Other Heavy and Civil Engineering Construction	\$6,888,776	1.0%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	\$6,605,968	1.0%
562119	Other Waste Collection	\$6,115,877	0.9%
238390	Other Building Finishing Contractors	\$5,726,702	0.9%
541990	All Other Professional, Scientific, and Technical Services	\$5,679,351	0.9%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	\$5,459,550	0.8%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
484220	Specialized Freight (except Used Goods) Trucking, Local	\$5,215,072	0.8%
238120	Structural Steel and Precast Concrete Contractors	\$4,584,546	0.7%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	\$4,494,471	0.7%
236118	Residential Remodelers	\$4,432,327	0.7%
238140	Masonry Contractors	\$3,978,731	0.6%
238160	Roofing Contractors	\$3,941,610	0.6%
541620	Environmental Consulting Services	\$3,843,050	0.6%
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	\$3,325,875	0.5%
541211	Offices of Certified Public Accountants	\$3,220,053	0.5%
541611	Administrative Management and General Management Consulting Services	\$3,210,506	0.5%
541810	Advertising Agencies	\$2,743,619	0.4%
562991	Septic Tank and Related Services	\$2,656,782	0.4%
237120	Oil and Gas Pipeline and Related Structures Construction	\$2,542,011	0.4%
541310	Architectural Services	\$2,430,445	0.4%
488410	Motor Vehicle Towing	\$2,367,656	0.4%
238150	Glass and Glazing Contractors	\$2,185,190	0.3%
236116	New Multifamily Housing Construction (except For-Sale Builders)	\$2,155,969	0.3%
562111	Solid Waste Collection	\$1,983,442	0.3%
541370	Surveying and Mapping (except Geophysical) Services	\$1,856,553	0.3%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	\$1,797,537	0.3%
541219	Other Accounting Services	\$1,793,185	0.3%
238320	Painting and Wall Covering Contractors	\$1,613,907	0.2%
424410	General Line Grocery Merchant Wholesalers	\$1,476,161	0.2%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
423220	Home Furnishing Merchant Wholesalers	\$1,159,237	0.2%
541320	Landscape Architectural Services	\$1,139,867	0.2%
423830	Industrial Machinery and Equipment Merchant Wholesalers	\$1,098,952	0.2%
541511	Custom Computer Programming Services	\$1,083,592	0.2%
238350	Finish Carpentry Contractors	\$1,046,492	0.2%
541820	Public Relations Agencies	\$974,085	0.1%
561312	Executive Search Services	\$961,185	0.1%
811111	General Automotive Repair	\$906,670	0.1%
541420	Industrial Design Services	\$858,510	0.1%
441227	Motorcycle, ATV, and All Other Motor Vehicle Dealers	\$821,003	0.1%
541350	Building Inspection Services	\$780,603	0.1%
423440	Other Commercial Equipment Merchant Wholesalers	\$769,597	0.1%
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	\$733,858	0.1%
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	\$687,877	0.1%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	\$640,884	0.1%
423210	Furniture Merchant Wholesalers	\$631,036	0.1%
561990	All Other Support Services	\$620,168	0.1%
423420	Office Equipment Merchant Wholesalers	\$568,282	0.1%
541380	Testing Laboratories	\$537,415	0.1%
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	\$516,084	0.1%
238190	Other Foundation, Structure, and Building Exterior Contractors	\$487,401	0.1%
238330	Flooring Contractors	\$436,246	0.1%
236115	New Single-Family Housing Construction (except For-Sale Builders)	\$392,684	0.1%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	\$369,672	0.1%
424480	Fresh Fruit and Vegetable Merchant Wholesalers	\$348,374	0.1%
541519	Other Computer Related Services	\$319,447	0.05%
485999	All Other Transit and Ground Passenger Transportation	\$313,645	0.05%
541860	Direct Mail Advertising	\$312,826	0.05%
238290	Other Building Equipment Contractors	\$288,806	0.04%
562910	Remediation Services	\$281,729	0.04%
541930	Translation and Interpretation Services	\$281,353	0.04%
423390	Other Construction Material Merchant Wholesalers	\$263,366	0.04%
238340	Tile and Terrazzo Contractors	\$257,922	0.04%
561311	Employment Placement Agencies	\$249,432	0.04%
488490	Other Support Activities for Road Transportation	\$242,524	0.04%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	\$234,718	0.04%
621910	Ambulance Services	\$190,843	0.03%
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	\$171,984	0.03%
722511	Full-Service Restaurants	\$151,710	0.02%
722330	Mobile Food Services	\$149,011	0.02%
541690	Other Scientific and Technical Consulting Services	\$148,434	0.02%
621399	Offices of All Other Miscellaneous Health Practitioners	\$135,887	0.02%
541910	Marketing Research and Public Opinion Polling	\$119,707	0.02%
212319	Other Crushed and Broken Stone Mining and Quarrying	\$119,019	0.02%
811198	All Other Automotive Repair and Maintenance	\$117,448	0.02%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
424210	Drugs and Druggists' Sundries Merchant Wholesalers	\$114,800	0.02%
541618	Other Management Consulting Services	\$112,780	0.02%
524127	Direct Title Insurance Carriers	\$108,472	0.02%
561110	Office Administrative Services	\$105,118	0.02%
524126	Direct Property and Casualty Insurance Carriers	\$103,030	0.02%
115112	Soil Preparation, Planting, and Cultivating	\$102,427	0.02%
541110	Offices of Lawyers	\$95,565	0.01%
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	\$94,407	0.01%
621999	All Other Miscellaneous Ambulatory Health Care Services	\$88,707	0.01%
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	\$81,550	0.01%
236210	Industrial Building Construction	\$80,662	0.01%
423840	Industrial Supplies Merchant Wholesalers	\$77,940	0.01%
424110	Printing and Writing Paper Merchant Wholesalers	\$58,435	0.01%
541613	Marketing Consulting Services	\$46,358	0.01%
424590	Other Farm Product Raw Material Merchant Wholesalers	\$30,240	0.005%
237130	Power and Communication Line and Related Structures Construction	\$29,165	0.004%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	\$26,944	0.004%
424690	Other Chemical and Allied Products Merchant Wholesalers	\$25,120	0.004%
813312	Environment, Conservation and Wildlife Organizations	\$20,631	0.003%
561439	Other Business Service Centers (including Copy Shops)	\$17,359	0.003%
423710	Hardware Merchant Wholesalers	\$14,144	0.002%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
541922	Commercial Photography	\$13,851	0.002%
531210	Offices of Real Estate Agents and Brokers	\$13,101	0.002%
541410	Interior Design Services	\$12,834	0.002%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	\$12,669	0.002%
445110	Supermarkets and Other Grocery (except Convenience) Stores	\$11,013	0.002%
424810	Beer and Ale Merchant Wholesalers	\$10,826	0.002%
221310	Water Supply and Irrigation Systems	\$5,489	0.001%
812320	Drycleaning and Laundry Services (except Coin-Operated)	\$3,805	0.001%
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	\$3,617	0.001%
237210	Land Subdivision	\$3,555	0.001%
924110	Administration of Air and Water Resource and Solid Waste Management Programs	\$3,217	0.0005%
493110	General Warehousing and Storage	\$1,792	0.0003%
323111	Commercial Printing (except Screen and Books)	\$494	0.0001%
522110	Commercial Banking	\$485	0.0001%
492110	Couriers and Express Delivery Services	\$321	0.00005%
424950	Paint, Varnish, and Supplies Merchant Wholesalers	\$276	0.00004%
TOTAL		\$663,560,651	100.0%

Source: CHA analysis of City of San Antonio data

Tables 4-5 and 4-6 present data on the City's M/WBE utilization, measured in contract dollars and percentage of contract dollars.

Table 4-5: Distribution of Contract Dollars by Race and Gender
(total dollars)

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
115112	\$0	\$0	\$0	\$0	\$0	\$0	\$102,427	\$102,427
212319	\$0	\$119,019	\$0	\$0	\$0	\$119,019	\$0	\$119,019
221310	\$0	\$5,489	\$0	\$0	\$0	\$5,489	\$0	\$5,489
236115	\$0	\$392,684	\$0	\$0	\$0	\$392,684	\$0	\$392,684
236116	\$0	\$218,418	\$0	\$0	\$0	\$218,418	\$1,937,552	\$2,155,969
236118	\$0	\$4,432,327	\$0	\$0	\$0	\$4,432,327	\$0	\$4,432,327
236210	\$0	\$0	\$0	\$0	\$0	\$0	\$80,662	\$80,662
236220	\$230,269	\$18,905,965	\$0	\$0	\$13,469,750	\$32,605,984	\$41,945,384	\$74,551,368
237110	\$125,987	\$296,701	\$0	\$0	\$5,115,087	\$5,537,775	\$4,440,292	\$9,978,067
237120	\$0	\$0	\$0	\$0	\$1,547,842	\$1,547,842	\$994,169	\$2,542,011
237130	\$29,165	\$0	\$0	\$0	\$0	\$29,165	\$0	\$29,165
237210	\$3,555	\$0	\$0	\$0	\$0	\$3,555	\$0	\$3,555
237310	\$2,801,334	\$63,068,385	\$22,751	\$0	\$42,855,563	\$108,748,033	\$101,938,028	\$210,686,061
237990	\$0	\$382,262	\$0	\$0	\$4,976,691	\$5,358,953	\$1,529,823	\$6,888,776
238110	\$92,393	\$11,866,841	\$0	\$0	\$40,827	\$12,000,061	\$9,469,633	\$21,469,694
238120	\$0	\$2,705,692	\$0	\$0	\$93,421	\$2,799,113	\$1,785,433	\$4,584,546
238140	\$107,268	\$156,664	\$0	\$0	\$3,237,863	\$3,501,794	\$476,937	\$3,978,731
238150	\$0	\$0	\$0	\$0	\$198,440	\$198,440	\$1,986,750	\$2,185,190
238160	\$0	\$2,484,930	\$0	\$0	\$0	\$2,484,930	\$1,456,680	\$3,941,610
238190	\$0	\$429,970	\$0	\$0	\$0	\$429,970	\$57,430	\$487,401
238210	\$2,310,762	\$3,880,750	\$225,396	\$0	\$680,183	\$7,097,091	\$16,065,459	\$23,162,550

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
238220	\$773,075	\$5,305,855	\$0	\$0	\$2,628,741	\$8,707,671	\$8,012,769	\$16,720,440
238290	\$0	\$0	\$0	\$0	\$216,429	\$216,429	\$72,378	\$288,806
238310	\$96,986	\$796,763	\$0	\$0	\$412,494	\$1,306,243	\$7,254,544	\$8,560,788
238320	\$0	\$227,698	\$0	\$0	\$1,381,489	\$1,609,187	\$4,720	\$1,613,907
238330	\$0	\$33,613	\$16,725	\$0	\$173,760	\$224,098	\$212,147	\$436,246
238340	\$0	\$0	\$0	\$0	\$0	\$0	\$257,922	\$257,922
238350	\$0	\$174,814	\$64,001	\$0	\$636,014	\$874,829	\$171,663	\$1,046,492
238390	\$0	\$814,329	\$11,823	\$0	\$42,875	\$869,028	\$4,857,674	\$5,726,701
238910	\$0	\$7,263,884	\$7,980	\$0	\$440,954	\$7,712,818	\$13,064,713	\$20,777,532
238990	\$225,810	\$5,602,989	\$0	\$0	\$675,294	\$6,504,093	\$7,982,035	\$14,486,129
323111	\$0	\$0	\$0	\$0	\$494	\$494	\$0	\$494
423110	\$0	\$0	\$0	\$0	\$0	\$0	\$6,605,968	\$6,605,968
423120	\$0	\$0	\$0	\$0	\$0	\$0	\$234,718	\$234,718
423210	\$0	\$541,778	\$0	\$0	\$82,253	\$624,031	\$7,005	\$631,036
423220	\$0	\$9,563	\$0	\$0	\$1,134,084	\$1,143,647	\$15,590	\$1,159,237
423310	\$0	\$0	\$0	\$0	\$0	\$0	\$12,669	\$12,669
423320	\$137,723	\$0	\$0	\$0	\$82,556	\$220,279	\$11,880,508	\$12,100,787
423390	\$0	\$140,466	\$0	\$0	\$0	\$140,466	\$122,900	\$263,366
423420	\$0	\$0	\$0	\$0	\$0	\$0	\$568,282	\$568,282
423430	\$95,045	\$0	\$0	\$0	\$2,942,787	\$3,037,832	\$288,043	\$3,325,875
423440	\$0	\$15,641	\$0	\$0	\$753,209	\$768,850	\$747	\$769,597
423450	\$0	\$733,858	\$0	\$0	\$0	\$733,858	\$0	\$733,858
423510	\$0	\$109,187	\$17,848	\$0	\$0	\$127,035	\$5,332,516	\$5,459,550

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
423610	\$0	\$0	\$0	\$0	\$1,324,303	\$1,324,303	\$473,234	\$1,797,537
423620	\$0	\$2,225	\$0	\$0	\$0	\$2,225	\$1,392	\$3,617
423710	\$0	\$0	\$0	\$0	\$0	\$0	\$14,144	\$14,144
423720	\$0	\$32,578	\$0	\$0	\$0	\$32,578	\$608,306	\$640,884
423810	\$0	\$0	\$0	\$0	\$0	\$0	\$81,550	\$81,550
423830	\$0	\$852,108	\$0	\$0	\$0	\$852,108	\$246,844	\$1,098,952
423840	\$63,672	\$0	\$0	\$0	\$1,299	\$64,971	\$12,969	\$77,940
423850	\$0	\$0	\$0	\$0	\$0	\$0	\$4,494,470	\$4,494,470
423910	\$0	\$545,041	\$0	\$0	\$0	\$545,041	\$142,836	\$687,877
423990	\$0	\$0	\$0	\$0	\$0	\$0	\$26,944	\$26,944
424110	\$0	\$0	\$0	\$0	\$58,435	\$58,435	\$0	\$58,435
424210	\$0	\$98,748	\$0	\$0	\$0	\$98,748	\$16,052	\$114,800
424410	\$0	\$0	\$0	\$0	\$0	\$0	\$1,476,161	\$1,476,161
424480	\$21,771	\$237,950	\$0	\$0	\$88,653	\$348,374	\$0	\$348,374
424590	\$0	\$30,240	\$0	\$0	\$0	\$30,240	\$0	\$30,240
424690	\$0	\$0	\$0	\$0	\$0	\$0	\$25,120	\$25,120
424720	\$0	\$0	\$0	\$0	\$280,493	\$280,493	\$89,179	\$369,672
424810	\$0	\$0	\$0	\$0	\$0	\$0	\$10,826	\$10,826
424930	\$0	\$516,084	\$0	\$0	\$0	\$516,084	\$0	\$516,084
424950	\$0	\$0	\$0	\$0	\$0	\$0	\$276	\$276
424990	\$0	\$94,407	\$0	\$0	\$0	\$94,407	\$0	\$94,407
441110	\$0	\$26,302,308	\$0	\$0	\$0	\$26,302,308	\$4,085,118	\$30,387,426
441227	\$0	\$0	\$0	\$0	\$0	\$0	\$821,003	\$821,003

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
445110	\$0	\$0	\$11,013	\$0	\$0	\$11,013	\$0	\$11,013
484220	\$716,320	\$4,143,618	\$0	\$0	\$61,445	\$4,921,383	\$293,689	\$5,215,072
485999	\$0	\$313,645	\$0	\$0	\$0	\$313,645	\$0	\$313,645
488410	\$0	\$0	\$129,285	\$0	\$0	\$129,285	\$2,238,370	\$2,367,656
488490	\$0	\$39,668	\$0	\$0	\$0	\$39,668	\$202,856	\$242,524
492110	\$0	\$0	\$0	\$0	\$0	\$0	\$321	\$321
493110	\$0	\$0	\$0	\$0	\$0	\$0	\$1,792	\$1,792
522110	\$0	\$0	\$0	\$0	\$0	\$0	\$485	\$485
524126	\$0	\$0	\$0	\$0	\$0	\$0	\$103,030	\$103,030
524127	\$0	\$0	\$0	\$0	\$0	\$0	\$108,472	\$108,472
531210	\$0	\$13,101	\$0	\$0	\$0	\$13,101	\$0	\$13,101
532490	\$0	\$0	\$0	\$0	\$20,826	\$20,826	\$151,159	\$171,984
541110	\$0	\$0	\$0	\$0	\$95,565	\$95,565	\$0	\$95,565
541211	\$1,127,100	\$662,271	\$0	\$0	\$364,607	\$2,153,978	\$1,066,075	\$3,220,053
541219	\$0	\$0	\$0	\$0	\$0	\$0	\$1,793,185	\$1,793,185
541310	\$24,200	\$871,381	\$102,552	\$0	\$276,849	\$1,274,982	\$1,155,462	\$2,430,445
541320	\$0	\$81,013	\$2,250	\$0	\$659,553	\$742,816	\$397,051	\$1,139,867
541330	\$6,167,950	\$7,381,222	\$5,955	\$0	\$2,595,294	\$16,150,420	\$13,884,128	\$30,034,549
541350	\$243,860	\$472,690	\$0	\$0	\$285	\$716,835	\$63,768	\$780,603
541370	\$0	\$1,391,208	\$106,055	\$0	\$145,647	\$1,642,910	\$213,643	\$1,856,553
541380	\$0	\$345,164	\$960	\$0	\$0	\$346,124	\$191,291	\$537,415
541410	\$0	\$0	\$0	\$0	\$12,834	\$12,834	\$0	\$12,834
541420	\$46,992	\$91,465	\$36,850	\$0	\$35,500	\$210,807	\$647,703	\$858,510

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
541511	\$0	\$760,428	\$114,548	\$0	\$0	\$874,975	\$208,616	\$1,083,591
541519	\$0	\$319,447	\$0	\$0	\$0	\$319,447	\$0	\$319,447
541611	\$157,780	\$1,278,564	\$0	\$0	\$173,561	\$1,609,905	\$1,600,601	\$3,210,506
541613	\$0	\$46,358	\$0	\$0	\$0	\$46,358	\$0	\$46,358
541618	\$0	\$82,500	\$0	\$0	\$0	\$82,500	\$30,280	\$112,780
541620	\$78,550	\$680,792	\$0	\$0	\$319,572	\$1,078,914	\$2,764,135	\$3,843,050
541690	\$0	\$1,905	\$0	\$0	\$146,529	\$148,434	\$0	\$148,434
541810	\$0	\$0	\$0	\$0	\$2,743,618	\$2,743,618	\$0	\$2,743,618
541820	\$0	\$18,655	\$0	\$0	\$30,549	\$49,204	\$924,881	\$974,085
541860	\$0	\$0	\$0	\$0	\$312,826	\$312,826	\$0	\$312,826
541910	\$0	\$0	\$0	\$0	\$119,707	\$119,707	\$0	\$119,707
541922	\$13,851	\$0	\$0	\$0	\$0	\$13,851	\$0	\$13,851
541930	\$0	\$125,750	\$0	\$0	\$0	\$125,750	\$155,603	\$281,353
541990	\$9,341	\$3,148,740	\$0	\$0	\$1,446,085	\$4,604,166	\$1,075,185	\$5,679,351
561110	\$105,118	\$0	\$0	\$0	\$0	\$105,118	\$0	\$105,118
561311	\$0	\$158,712	\$0	\$0	\$0	\$158,712	\$90,720	\$249,432
561312	\$0	\$961,185	\$0	\$0	\$0	\$961,185	\$0	\$961,185
561320	\$616,401	\$16,845,007	\$0	\$0	\$1,149,990	\$18,611,398	\$452,252	\$19,063,650
561439	\$0	\$0	\$0	\$0	\$0	\$0	\$17,359	\$17,359
561612	\$703,918	\$0	\$0	\$0	\$0	\$703,918	\$6,797,215	\$7,501,133
561720	\$331,741	\$12,522,861	\$0	\$0	\$975	\$12,855,576	\$801,380	\$13,656,957
561730	\$238,239	\$6,496,350	\$0	\$0	\$298,854	\$7,033,443	\$804,377	\$7,837,819
561990	\$0	\$236,961	\$0	\$0	\$123,590	\$360,551	\$259,617	\$620,168

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
562111	\$0	\$1,364	\$0	\$0	\$0	\$1,364	\$1,982,078	\$1,983,441
562119	\$0	\$0	\$0	\$0	\$0	\$0	\$6,115,877	\$6,115,877
562910	\$218,473	\$31,945	\$0	\$0	\$0	\$250,417	\$31,311	\$281,729
562991	\$0	\$2,631,835	\$0	\$0	\$24,946	\$2,656,781	\$0	\$2,656,782
621399	\$0	\$0	\$0	\$0	\$135,887	\$135,887	\$0	\$135,887
621910	\$0	\$0	\$0	\$0	\$0	\$0	\$190,843	\$190,843
621999	\$0	\$0	\$0	\$0	\$88,707	\$88,707	\$0	\$88,707
722320	\$0	\$13,810,000	\$0	\$0	\$0	\$13,810,000	\$0	\$13,810,000
722330	\$0	\$0	\$0	\$0	\$149,011	\$149,011	\$0	\$149,011
722511	\$0	\$13,108	\$15,436	\$0	\$0	\$28,545	\$123,166	\$151,710
811111	\$0	\$0	\$0	\$0	\$0	\$0	\$906,670	\$906,670
811198	\$0	\$0	\$0	\$0	\$0	\$0	\$117,448	\$117,448
812320	\$0	\$0	\$0	\$0	\$3,805	\$3,805	\$0	\$3,805
813312	\$0	\$0	\$0	\$0	\$0	\$0	\$20,631	\$20,631
924110	\$0	\$3,217	\$0	\$0	\$0	\$3,217	\$0	\$3,217
Total	\$17,914,649	\$235,810,354	\$891,428	\$0	\$97,108,900	\$351,725,328	\$311,835,319	\$663,560,651

Source: CHA analysis of City of San Antonio data

Table 4-6: Percentage Distribution of Contract Dollars by Race and Gender
(share of total dollars)

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
115112	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
212319	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
221310	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
236115	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
236116	0.0%	10.1%	0.0%	0.0%	0.0%	10.1%	89.9%	100.0%
236118	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
236210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236220	0.3%	25.4%	0.0%	0.0%	18.1%	43.7%	56.3%	100.0%
237110	1.3%	3.0%	0.0%	0.0%	51.3%	55.5%	44.5%	100.0%
237120	0.0%	0.0%	0.0%	0.0%	60.9%	60.9%	39.1%	100.0%
237130	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
237210	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
237310	1.3%	29.9%	0.0%	0.0%	20.3%	51.6%	48.4%	100.0%
237990	0.0%	5.5%	0.0%	0.0%	72.2%	77.8%	22.2%	100.0%
238110	0.4%	55.3%	0.0%	0.0%	0.2%	55.9%	44.1%	100.0%
238120	0.0%	59.0%	0.0%	0.0%	2.0%	61.1%	38.9%	100.0%
238140	2.7%	3.9%	0.0%	0.0%	81.4%	88.0%	12.0%	100.0%
238150	0.0%	0.0%	0.0%	0.0%	9.1%	9.1%	90.9%	100.0%
238160	0.0%	63.0%	0.0%	0.0%	0.0%	63.0%	37.0%	100.0%
238190	0.0%	88.2%	0.0%	0.0%	0.0%	88.2%	11.8%	100.0%
238210	10.0%	16.8%	1.0%	0.0%	2.9%	30.6%	69.4%	100.0%
238220	4.6%	31.7%	0.0%	0.0%	15.7%	52.1%	47.9%	100.0%
238290	0.0%	0.0%	0.0%	0.0%	74.9%	74.9%	25.1%	100.0%
238310	1.1%	9.3%	0.0%	0.0%	4.8%	15.3%	84.7%	100.0%
238320	0.0%	14.1%	0.0%	0.0%	85.6%	99.7%	0.3%	100.0%
238330	0.0%	7.7%	3.8%	0.0%	39.8%	51.4%	48.6%	100.0%
238340	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238350	0.0%	16.7%	6.1%	0.0%	60.8%	83.6%	16.4%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
238390	0.0%	14.2%	0.2%	0.0%	0.7%	15.2%	84.8%	100.0%
238910	0.0%	35.0%	0.0%	0.0%	2.1%	37.1%	62.9%	100.0%
238990	1.6%	38.7%	0.0%	0.0%	4.7%	44.9%	55.1%	100.0%
323111	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
423110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423210	0.0%	85.9%	0.0%	0.0%	13.0%	98.9%	1.1%	100.0%
423220	0.0%	0.8%	0.0%	0.0%	97.8%	98.7%	1.3%	100.0%
423310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423320	1.1%	0.0%	0.0%	0.0%	0.7%	1.8%	98.2%	100.0%
423390	0.0%	53.3%	0.0%	0.0%	0.0%	53.3%	46.7%	100.0%
423420	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423430	2.9%	0.0%	0.0%	0.0%	88.5%	91.3%	8.7%	100.0%
423440	0.0%	2.0%	0.0%	0.0%	97.9%	99.9%	0.1%	100.0%
423450	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
423510	0.0%	2.0%	0.3%	0.0%	0.0%	2.3%	97.7%	100.0%
423610	0.0%	0.0%	0.0%	0.0%	73.7%	73.7%	26.3%	100.0%
423620	0.0%	61.5%	0.0%	0.0%	0.0%	61.5%	38.5%	100.0%
423710	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423720	0.0%	5.1%	0.0%	0.0%	0.0%	5.1%	94.9%	100.0%
423810	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423830	0.0%	77.5%	0.0%	0.0%	0.0%	77.5%	22.5%	100.0%
423840	81.7%	0.0%	0.0%	0.0%	1.7%	83.4%	16.6%	100.0%
423850	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423910	0.0%	79.2%	0.0%	0.0%	0.0%	79.2%	20.8%	100.0%
423990	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424110	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
424210	0.0%	86.0%	0.0%	0.0%	0.0%	86.0%	14.0%	100.0%
424410	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424480	6.2%	68.3%	0.0%	0.0%	25.4%	100.0%	0.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
424590	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
424690	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424720	0.0%	0.0%	0.0%	0.0%	75.9%	75.9%	24.1%	100.0%
424810	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424930	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
424950	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424990	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
441110	0.0%	86.6%	0.0%	0.0%	0.0%	86.6%	13.4%	100.0%
441227	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
445110	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
484220	13.7%	79.5%	0.0%	0.0%	1.2%	94.4%	5.6%	100.0%
485999	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
488410	0.0%	0.0%	5.5%	0.0%	0.0%	5.5%	94.5%	100.0%
488490	0.0%	16.4%	0.0%	0.0%	0.0%	16.4%	83.6%	100.0%
492110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
493110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
522110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
524126	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
524127	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
531210	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
532490	0.0%	0.0%	0.0%	0.0%	12.1%	12.1%	87.9%	100.0%
541110	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541211	35.0%	20.6%	0.0%	0.0%	11.3%	66.9%	33.1%	100.0%
541219	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541310	1.0%	35.9%	4.2%	0.0%	11.4%	52.5%	47.5%	100.0%
541320	0.0%	7.1%	0.2%	0.0%	57.9%	65.2%	34.8%	100.0%
541330	20.5%	24.6%	0.0%	0.0%	8.6%	53.8%	46.2%	100.0%
541350	31.2%	60.6%	0.0%	0.0%	0.0%	91.8%	8.2%	100.0%
541370	0.0%	74.9%	5.7%	0.0%	7.8%	88.5%	11.5%	100.0%
541380	0.0%	64.2%	0.2%	0.0%	0.0%	64.4%	35.6%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
541410	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541420	5.5%	10.7%	4.3%	0.0%	4.1%	24.6%	75.4%	100.0%
541511	0.0%	70.2%	10.6%	0.0%	0.0%	80.7%	19.3%	100.0%
541519	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541611	4.9%	39.8%	0.0%	0.0%	5.4%	50.1%	49.9%	100.0%
541613	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541618	0.0%	73.2%	0.0%	0.0%	0.0%	73.2%	26.8%	100.0%
541620	2.0%	17.7%	0.0%	0.0%	8.3%	28.1%	71.9%	100.0%
541690	0.0%	1.3%	0.0%	0.0%	98.7%	100.0%	0.0%	100.0%
541810	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541820	0.0%	1.9%	0.0%	0.0%	3.1%	5.1%	94.9%	100.0%
541860	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541910	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541922	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541930	0.0%	44.7%	0.0%	0.0%	0.0%	44.7%	55.3%	100.0%
541990	0.2%	55.4%	0.0%	0.0%	25.5%	81.1%	18.9%	100.0%
561110	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
561311	0.0%	63.6%	0.0%	0.0%	0.0%	63.6%	36.4%	100.0%
561312	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
561320	3.2%	88.4%	0.0%	0.0%	6.0%	97.6%	2.4%	100.0%
561439	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561612	9.4%	0.0%	0.0%	0.0%	0.0%	9.4%	90.6%	100.0%
561720	2.4%	91.7%	0.0%	0.0%	0.0%	94.1%	5.9%	100.0%
561730	3.0%	82.9%	0.0%	0.0%	3.8%	89.7%	10.3%	100.0%
561990	0.0%	38.2%	0.0%	0.0%	19.9%	58.1%	41.9%	100.0%
562111	0.0%	0.1%	0.0%	0.0%	0.0%	0.1%	99.9%	100.0%
562119	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562910	77.5%	11.3%	0.0%	0.0%	0.0%	88.9%	11.1%	100.0%
562991	0.0%	99.1%	0.0%	0.0%	0.9%	100.0%	0.0%	100.0%
621399	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
621910	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
621999	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
722320	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
722330	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
722511	0.0%	8.6%	10.2%	0.0%	0.0%	18.8%	81.2%	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%
812320	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
813312	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
924110	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
Total	2.7%	35.5%	0.1%	0.0%	14.6%	53.0%	47.0%	100.0%

Source: CHA analysis of City of San Antonio data

D. The Availability of M/WBEs for City of San Antonio Contracts

1. The Methodological Framework

Estimates of the availability of M/WBEs in the City’s geographic and product market are a critical component of the City’s compliance with its constitutional obligation to determine whether it has a strong basis in evidence to continue the use of race- and gender-conscious measures. The courts require that the availability estimates reflect the number of “ready, willing and able” firms that can perform specific types of work involved in the recipient’s prime contracts and associated subcontracts; general population is legally irrelevant.¹⁸¹

We applied the “custom census” approach, with refinements, to estimating availability. The courts and the National Model Disparity Study Guidelines¹⁸² have recognized this methodology as superior to the other methods for at least four reasons:

181. 49 C.F.R. §25.45(c).

182. *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.

- 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 M/WBEs 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 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 City’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-M/WBEs 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.¹⁸³
- Fourth, it has been upheld by every court that has reviewed it, including most recently in the successful defense of the Illinois State Toll Highway’s M/WBE program, for which we served as testifying experts.¹⁸⁴

Using this framework, CHA utilized three databases to estimate availability:

1. The Final Contract Data File
2. The Master M/W/DBE Directory compiled by CHA
3. Dun & Bradstreet/Hoovers Database

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

184. *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).

First, we eliminated any duplicate entries in the geographically constrained FCDF. Some firms received multiple contracts for work performed in the same NAICS codes. This list of unique firms comprised the first component of the Study's availability determination.

To develop the Master Directory, we utilized the Texas Unified Certification Program Directory, the South Central Texas Regional Certification Authority Directory and the City's Contract Data File. We limited the firms we used in our analysis to those operating within the City's product market.

We next developed a custom database from Hoovers, a Dun & Bradstreet company, for minority- and woman-owned firms and non-M/WBEs. 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.¹⁸⁵ 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 contracts.

2. The Availability Data and Results

Tables 4-7 through 4-9 present data on:

- The unweighted availability percentages by race, gender and by NAICS codes for the City's product market;

185. The variable is labeled: "Is Minority Owned" and values for the variable can be either "1" (for yes) or blank.

- 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 City's market area.

We “weighted” the availability data for two reasons. First, 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 dollars.

Second, 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 contracting patterns.¹⁸⁶ For example, in a hypothetical NAICS Code 123456, the total available firms are 100 and 60 of these firms are M/WBEs; hence, M/WBE 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 D.

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 4-7. In the previous example, the unweighted availability for M/WBEs 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 4-8. This share is the *weight*. Using the previous example, where the City spending in NAICS Code 123456 was one percent, the component of M/WBE weighted availability for NAICS Code 123456 would be 0.006: 60% multiplied by one percent. We say “the component of M/WBE 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 4-9.

Table 4-7: Unweighted M/WBE Availability for City of San Antonio Contracts

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
115112	0.0%	11.8%	0.0%	0.0%	5.9%	17.6%	82.4%	100.0%
212319	0.0%	14.3%	0.0%	0.0%	0.0%	14.3%	85.7%	100.0%
221310	2.3%	1.1%	0.0%	0.6%	1.1%	5.1%	94.9%	100.0%

186. <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
236115	0.3%	2.4%	0.0%	0.1%	1.6%	4.4%	95.6%	100.0%
236116	1.1%	4.6%	1.1%	0.0%	3.5%	10.2%	89.8%	100.0%
236118	1.7%	4.7%	0.0%	0.2%	2.6%	9.2%	90.8%	100.0%
236210	2.4%	10.8%	0.0%	1.2%	4.8%	19.3%	80.7%	100.0%
236220	3.1%	18.6%	1.2%	1.9%	5.3%	30.3%	69.7%	100.0%
237110	2.1%	10.3%	0.0%	0.0%	7.6%	19.9%	80.1%	100.0%
237120	1.6%	3.1%	0.0%	7.8%	3.1%	15.6%	84.4%	100.0%
237130	2.6%	15.8%	0.0%	0.0%	0.0%	18.4%	81.6%	100.0%
237210	0.2%	0.4%	0.1%	0.1%	1.2%	1.9%	98.1%	100.0%
237310	5.5%	25.0%	0.6%	0.3%	7.3%	38.7%	61.3%	100.0%
237990	1.1%	14.3%	0.0%	2.2%	13.2%	30.8%	69.2%	100.0%
238110	1.9%	11.8%	0.2%	0.0%	2.2%	16.1%	83.9%	100.0%
238120	0.0%	21.6%	0.0%	2.0%	7.8%	31.4%	68.6%	100.0%
238140	0.9%	6.3%	0.0%	0.0%	8.1%	15.2%	84.8%	100.0%
238150	0.0%	6.6%	0.0%	0.0%	7.9%	14.5%	85.5%	100.0%
238160	0.5%	3.5%	0.0%	0.0%	2.5%	6.5%	93.5%	100.0%
238190	4.3%	27.7%	0.0%	0.0%	0.0%	31.9%	68.1%	100.0%
238210	1.2%	9.9%	0.9%	0.3%	3.4%	15.6%	84.4%	100.0%
238220	0.4%	4.3%	0.2%	0.1%	2.5%	7.5%	92.5%	100.0%
238290	0.0%	4.3%	0.0%	0.0%	13.0%	17.4%	82.6%	100.0%
238310	2.0%	8.9%	0.3%	0.0%	3.6%	14.9%	85.1%	100.0%
238320	0.9%	7.0%	0.1%	0.1%	4.9%	13.1%	86.9%	100.0%
238330	1.8%	12.5%	0.9%	1.8%	7.1%	24.1%	75.9%	100.0%
238340	0.0%	3.1%	0.6%	0.0%	3.1%	6.9%	93.1%	100.0%
238350	0.7%	8.7%	0.7%	0.7%	4.3%	15.2%	84.8%	100.0%
238390	0.0%	9.1%	0.8%	0.0%	6.8%	16.7%	83.3%	100.0%
238910	2.1%	15.6%	0.4%	0.4%	7.4%	25.9%	74.1%	100.0%
238990	0.6%	4.7%	0.0%	0.1%	3.3%	8.8%	91.2%	100.0%
323111	0.7%	4.0%	0.4%	0.0%	9.7%	14.7%	85.3%	100.0%
423110	0.0%	1.8%	0.0%	0.0%	1.8%	3.7%	96.3%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
423120	0.0%	0.6%	0.0%	0.0%	0.6%	1.2%	98.8%	100.0%
423210	0.0%	8.1%	1.4%	0.0%	9.5%	18.9%	81.1%	100.0%
423220	0.0%	3.7%	2.8%	0.0%	12.8%	19.3%	80.7%	100.0%
423310	1.1%	1.1%	0.0%	0.0%	3.7%	5.9%	94.1%	100.0%
423320	0.7%	2.2%	0.0%	0.0%	5.0%	7.9%	92.1%	100.0%
423390	2.3%	2.3%	0.0%	0.0%	9.1%	13.6%	86.4%	100.0%
423420	2.5%	2.5%	0.0%	0.0%	12.5%	17.5%	82.5%	100.0%
423430	4.7%	7.8%	0.0%	3.1%	9.4%	25.0%	75.0%	100.0%
423440	0.3%	2.3%	0.3%	0.0%	2.8%	5.6%	94.4%	100.0%
423450	3.6%	10.2%	1.1%	0.4%	9.9%	25.2%	74.8%	100.0%
423510	0.0%	10.1%	0.8%	0.0%	1.6%	12.4%	87.6%	100.0%
423610	1.1%	7.6%	0.0%	0.0%	6.5%	15.1%	84.9%	100.0%
423620	0.0%	6.1%	0.0%	0.0%	3.0%	9.1%	90.9%	100.0%
423710	0.0%	3.8%	0.0%	0.0%	7.7%	11.5%	88.5%	100.0%
423720	0.0%	4.8%	0.0%	0.0%	6.0%	10.8%	89.2%	100.0%
423810	2.7%	3.6%	0.0%	0.0%	3.6%	9.8%	90.2%	100.0%
423830	0.7%	3.0%	0.3%	0.3%	6.1%	10.4%	89.6%	100.0%
423840	1.2%	3.7%	0.0%	0.6%	8.7%	14.3%	85.7%	100.0%
423850	1.1%	2.7%	1.1%	0.0%	9.7%	14.5%	85.5%	100.0%
423910	1.7%	0.9%	0.0%	0.0%	2.6%	5.2%	94.8%	100.0%
423990	0.4%	1.0%	0.1%	0.3%	5.8%	7.7%	92.3%	100.0%
424110	0.0%	0.0%	0.0%	0.0%	27.3%	27.3%	72.7%	100.0%
424210	0.0%	4.7%	0.9%	0.0%	12.3%	17.9%	82.1%	100.0%
424410	0.0%	1.8%	0.0%	0.0%	2.4%	4.1%	95.9%	100.0%
424480	1.1%	11.6%	0.0%	0.0%	7.4%	20.0%	80.0%	100.0%
424590	0.0%	4.5%	0.0%	0.0%	2.3%	6.8%	93.2%	100.0%
424690	1.0%	3.1%	0.0%	0.0%	6.2%	10.3%	89.7%	100.0%
424720	1.5%	1.0%	0.0%	0.0%	3.0%	5.5%	94.5%	100.0%
424810	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424930	0.0%	8.5%	0.0%	0.0%	6.4%	14.9%	85.1%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
424950	0.0%	11.6%	0.0%	0.0%	2.3%	14.0%	86.0%	100.0%
424990	0.3%	1.2%	0.1%	0.0%	2.9%	4.5%	95.5%	100.0%
441110	0.4%	1.8%	0.0%	0.0%	2.1%	4.3%	95.7%	100.0%
441227	0.0%	0.4%	0.0%	0.0%	1.5%	1.9%	98.1%	100.0%
445110	0.0%	0.3%	0.1%	0.0%	3.8%	4.2%	95.8%	100.0%
484220	6.5%	35.9%	0.0%	0.0%	14.1%	56.5%	43.5%	100.0%
485999	5.9%	17.6%	0.0%	0.0%	5.9%	29.4%	70.6%	100.0%
488410	0.0%	2.5%	0.6%	0.0%	1.5%	4.6%	95.4%	100.0%
488490	11.1%	8.9%	0.0%	0.0%	4.4%	24.4%	75.6%	100.0%
492110	2.8%	2.8%	0.0%	0.0%	4.2%	9.7%	90.3%	100.0%
493110	0.3%	1.2%	0.0%	0.0%	1.9%	3.4%	96.6%	100.0%
522110	0.0%	0.8%	0.2%	0.0%	0.0%	0.9%	99.1%	100.0%
524126	0.8%	0.4%	0.0%	0.0%	1.6%	2.8%	97.2%	100.0%
524127	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
531210	0.4%	0.5%	0.1%	0.0%	2.6%	3.6%	96.4%	100.0%
532490	0.1%	0.3%	0.1%	0.0%	1.5%	1.9%	98.1%	100.0%
541110	0.2%	0.8%	0.1%	0.0%	3.1%	4.2%	95.8%	100.0%
541211	0.9%	2.6%	0.2%	0.2%	7.0%	10.9%	89.1%	100.0%
541219	2.1%	2.8%	0.7%	0.0%	10.3%	15.8%	84.2%	100.0%
541310	1.1%	14.4%	1.1%	0.0%	7.0%	23.6%	76.4%	100.0%
541320	0.1%	3.5%	0.3%	0.0%	3.8%	7.6%	92.4%	100.0%
541330	2.6%	14.2%	2.4%	1.2%	5.0%	25.4%	74.6%	100.0%
541350	2.7%	4.5%	0.9%	0.0%	1.8%	9.8%	90.2%	100.0%
541370	0.0%	17.7%	1.9%	0.0%	7.0%	26.6%	73.4%	100.0%
541380	0.4%	5.4%	3.4%	0.0%	2.3%	11.5%	88.5%	100.0%
541410	0.0%	5.3%	0.3%	0.0%	22.2%	27.8%	72.2%	100.0%
541420	9.1%	9.1%	9.1%	0.0%	9.1%	36.4%	63.6%	100.0%
541511	3.1%	4.3%	1.8%	0.5%	2.6%	12.4%	87.6%	100.0%
541519	18.3%	14.1%	0.0%	1.4%	4.2%	38.0%	62.0%	100.0%
541611	3.3%	4.5%	0.5%	0.3%	4.5%	13.1%	86.9%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
541613	1.5%	3.4%	0.1%	0.0%	6.0%	10.9%	89.1%	100.0%
541618	1.1%	1.7%	0.3%	0.0%	2.3%	5.4%	94.6%	100.0%
541620	2.3%	8.5%	1.6%	0.8%	9.7%	22.9%	77.1%	100.0%
541690	3.7%	8.2%	0.3%	1.2%	6.1%	19.5%	80.5%	100.0%
541810	1.1%	10.5%	0.0%	0.0%	12.6%	24.2%	75.8%	100.0%
541820	0.8%	8.5%	0.0%	0.0%	16.9%	26.2%	73.8%	100.0%
541860	0.0%	6.1%	3.0%	0.0%	6.1%	15.2%	84.8%	100.0%
541910	2.8%	8.3%	1.8%	0.0%	11.0%	23.9%	76.1%	100.0%
541922	1.4%	3.4%	0.0%	0.0%	12.3%	17.1%	82.9%	100.0%
541930	0.0%	24.1%	1.1%	0.0%	18.4%	43.7%	56.3%	100.0%
541990	1.3%	2.3%	0.0%	0.0%	6.2%	9.8%	90.2%	100.0%
561110	0.5%	0.9%	0.1%	0.1%	1.0%	2.5%	97.5%	100.0%
561311	3.7%	8.2%	0.9%	0.2%	6.6%	19.7%	80.3%	100.0%
561312	3.9%	11.8%	0.0%	1.0%	6.9%	23.5%	76.5%	100.0%
561320	4.3%	11.2%	0.0%	0.0%	8.6%	24.0%	76.0%	100.0%
561439	0.0%	7.1%	0.0%	0.0%	14.3%	21.4%	78.6%	100.0%
561612	4.1%	4.6%	1.8%	0.5%	5.1%	16.1%	83.9%	100.0%
561720	3.4%	7.3%	0.6%	0.0%	6.1%	17.4%	82.6%	100.0%
561730	1.3%	4.5%	0.0%	0.0%	3.9%	9.7%	90.3%	100.0%
561990	1.4%	2.2%	0.2%	0.1%	3.6%	7.5%	92.5%	100.0%
562111	0.0%	37.5%	0.0%	0.0%	6.3%	43.8%	56.3%	100.0%
562119	0.0%	1.4%	0.0%	0.0%	2.8%	4.2%	95.8%	100.0%
562910	5.6%	20.4%	0.0%	5.6%	11.1%	42.6%	57.4%	100.0%
562991	1.1%	6.4%	0.0%	0.0%	4.3%	11.7%	88.3%	100.0%
621399	0.9%	0.2%	0.0%	0.0%	10.4%	11.4%	88.6%	100.0%
621910	0.0%	1.6%	0.0%	0.0%	3.3%	4.9%	95.1%	100.0%
621999	0.5%	0.5%	0.1%	0.0%	2.6%	3.6%	96.4%	100.0%
722320	1.4%	5.0%	0.3%	0.0%	8.3%	15.0%	85.0%	100.0%
722330	2.7%	2.7%	0.0%	0.0%	8.1%	13.5%	86.5%	100.0%
722511	0.2%	0.6%	0.2%	0.0%	5.1%	6.1%	93.9%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
811111	0.1%	0.9%	0.0%	0.0%	1.6%	2.6%	97.4%	100.0%
811198	1.0%	0.5%	0.0%	0.0%	3.1%	4.7%	95.3%	100.0%
812320	0.0%	4.9%	0.5%	0.0%	12.6%	18.0%	82.0%	100.0%
813312	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
924110	0.0%	8.3%	0.0%	0.0%	0.0%	8.3%	91.7%	100.0%
Total	1.0%	3.3%	0.3%	0.1%	3.7%	8.4%	91.6%	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

These unweighted estimates can be used by the City as the starting point for setting narrowly tailored Business Enterprise Program contract goals. The agency uses the B2Gnow® electronic data collection and monitoring system, and the goal setting module has been designed specifically to interface with our study methodology and results.

Table 4-8: Distribution of the City of San Antonio's Spending by NAICS Code (the Weights)

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
115112	Soil Preparation, Planting, and Cultivating	0.02%
212319	Other Crushed and Broken Stone Mining and Quarrying	0.02%
221310	Water Supply and Irrigation Systems	0.001%
236115	New Single-Family Housing Construction (except For-Sale Builders)	0.1%
236116	New Multifamily Housing Construction (except For-Sale Builders)	0.3%
236118	Residential Remodelers	0.7%
236210	Industrial Building Construction	0.01%
236220	Commercial and Institutional Building Construction	11.2%
237110	Water and Sewer Line and Related Structures Construction	1.5%
237120	Oil and Gas Pipeline and Related Structures Construction	0.4%
237130	Power and Communication Line and Related Structures Construction	0.004%
237210	Land Subdivision	0.001%
237310	Highway, Street, and Bridge Construction	31.8%
237990	Other Heavy and Civil Engineering Construction	1.0%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
238110	Poured Concrete Foundation and Structure Contractors	3.2%
238120	Structural Steel and Precast Concrete Contractors	0.7%
238140	Masonry Contractors	0.6%
238150	Glass and Glazing Contractors	0.3%
238160	Roofing Contractors	0.6%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.1%
238210	Electrical Contractors and Other Wiring Installation Contractors	3.5%
238220	Plumbing, Heating, and Air-Conditioning Contractors	2.5%
238290	Other Building Equipment Contractors	0.04%
238310	Drywall and Insulation Contractors	1.3%
238320	Painting and Wall Covering Contractors	0.2%
238330	Flooring Contractors	0.1%
238340	Tile and Terrazzo Contractors	0.04%
238350	Finish Carpentry Contractors	0.2%
238390	Other Building Finishing Contractors	0.9%
238910	Site Preparation Contractors	3.1%
238990	All Other Specialty Trade Contractors	2.2%
323111	Commercial Printing (except Screen and Books)	0.0001%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	1.0%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	0.04%
423210	Furniture Merchant Wholesalers	0.1%
423220	Home Furnishing Merchant Wholesalers	0.2%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	0.002%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	1.8%
423390	Other Construction Material Merchant Wholesalers	0.04%
423420	Office Equipment Merchant Wholesalers	0.1%
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	0.5%
423440	Other Commercial Equipment Merchant Wholesalers	0.1%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	0.1%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.8%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.3%
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	0.001%
423710	Hardware Merchant Wholesalers	0.002%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	0.1%
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	0.01%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.2%
423840	Industrial Supplies Merchant Wholesalers	0.01%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	0.7%
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	0.1%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.004%
424110	Printing and Writing Paper Merchant Wholesalers	0.01%
424210	Drugs and Druggists' Sundries Merchant Wholesalers	0.02%
424410	General Line Grocery Merchant Wholesalers	0.2%
424480	Fresh Fruit and Vegetable Merchant Wholesalers	0.1%
424590	Other Farm Product Raw Material Merchant Wholesalers	0.005%
424690	Other Chemical and Allied Products Merchant Wholesalers	0.004%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	0.1%
424810	Beer and Ale Merchant Wholesalers	0.002%
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	0.1%
424950	Paint, Varnish, and Supplies Merchant Wholesalers	0.00004%
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	0.01%
441110	New Car Dealers	4.6%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
441227	Motorcycle, ATV, and All Other Motor Vehicle Dealers	0.1%
445110	Supermarkets and Other Grocery (except Convenience) Stores	0.002%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.8%
485999	All Other Transit and Ground Passenger Transportation	0.05%
488410	Motor Vehicle Towing	0.4%
488490	Other Support Activities for Road Transportation	0.04%
492110	Couriers and Express Delivery Services	0.00005%
493110	General Warehousing and Storage	0.0003%
522110	Commercial Banking	0.0001%
524126	Direct Property and Casualty Insurance Carriers	0.02%
524127	Direct Title Insurance Carriers	0.02%
531210	Offices of Real Estate Agents and Brokers	0.002%
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	0.03%
541110	Offices of Lawyers	0.01%
541211	Offices of Certified Public Accountants	0.5%
541219	Other Accounting Services	0.3%
541310	Architectural Services	0.4%
541320	Landscape Architectural Services	0.2%
541330	Engineering Services	4.5%
541350	Building Inspection Services	0.1%
541370	Surveying and Mapping (except Geophysical) Services	0.3%
541380	Testing Laboratories	0.1%
541410	Interior Design Services	0.002%
541420	Industrial Design Services	0.1%
541511	Custom Computer Programming Services	0.2%
541519	Other Computer Related Services	0.05%
541611	Administrative Management and General Management Consulting Services	0.5%
541613	Marketing Consulting Services	0.01%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
541618	Other Management Consulting Services	0.02%
541620	Environmental Consulting Services	0.6%
541690	Other Scientific and Technical Consulting Services	0.02%
541810	Advertising Agencies	0.4%
541820	Public Relations Agencies	0.1%
541860	Direct Mail Advertising	0.05%
541910	Marketing Research and Public Opinion Polling	0.02%
541922	Commercial Photography	0.002%
541930	Translation and Interpretation Services	0.04%
541990	All Other Professional, Scientific, and Technical Services	0.9%
561110	Office Administrative Services	0.02%
561311	Employment Placement Agencies	0.04%
561312	Executive Search Services	0.1%
561320	Temporary Help Services	2.9%
561439	Other Business Service Centers (including Copy Shops)	0.003%
561612	Security Guards and Patrol Services	1.1%
561720	Janitorial Services	2.1%
561730	Landscaping Services	1.2%
561990	All Other Support Services	0.1%
562111	Solid Waste Collection	0.3%
562119	Other Waste Collection	0.9%
562910	Remediation Services	0.04%
562991	Septic Tank and Related Services	0.4%
621399	Offices of All Other Miscellaneous Health Practitioners	0.02%
621910	Ambulance Services	0.03%
621999	All Other Miscellaneous Ambulatory Health Care Services	0.01%
722320	Caterers	2.1%
722330	Mobile Food Services	0.02%
722511	Full-Service Restaurants	0.02%
811111	General Automotive Repair	0.1%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
811198	All Other Automotive Repair and Maintenance	0.02%
812320	Drycleaning and Laundry Services (except Coin-Operated)	0.001%
813312	Environment, Conservation and Wildlife Organizations	0.003%
924110	Administration of Air and Water Resource and Solid Waste Management Programs	0.0005%
TOTAL		100.0%

Source: CHA analysis of City of San Antonio data

Table 4-9 presents the weighted availability results for each of the racial and gender categories. The aggregated availability of M/WBEs, weighted by the City's spending in its geographic and industry markets, is 24.9%.

Table 4-9: Aggregated Weighted Availability for City of San Antonio Contracts

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
3.1%	14.8%	0.6%	0.5%	5.9%	24.9%	75.1%	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

3. Analysis of the Concentration of Contract Dollars among Firms

In addition to examining the level of M/WBE and non-M/WBE 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 M/WBEs' and non-M/WBEs' largest shares of their 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-M/WBE earnings AND these NAICS codes are different from the codes that provide large shares of M/WBE earnings, this indicates that M/WBEs do not enjoy the same position in the agency's marketplace as non-M/WBEs. Second, if an asymmetry exists between agency spending and M/WBE earnings, then the high utilization of M/WBEs as a group will mask unequal opportunities at a more granular level. Consequently, a race- or gender-based remedial program may still be supportable. This section presents data to examine this issue.

Prior to presenting these data, it is important to emphasize two important findings: 1) for Blacks and White women, the three NAICS codes that provide

the most contract dollars to each M/WBE group capture a larger share of overall City spending received by the group than the share of overall City spending captured by the top three NAICS codes for the City's overall spend; for Hispanics and Asian, the share is roughly the same. Note: Native American firms did not receive any contracts from the City; 2) with respect to the share of a groups' overall earnings relative to the share of non-M/WBEs' overall earnings sharp generalizations cannot be made. The text below will detail this relationship group by group.

With respect to the first finding, Table 4-10 presents data on the share of the City's contract dollars received by the top three NAICS codes for each demographic group. These shares are derived from the data presented in Tables 4-5 and 4-6. The three NAICS codes where the City spent most of its contract dollars capture 47.6% of all the City spending. For Blacks, Hispanics, Asians, and White women, the corresponding figure for the share of spending captured by the top three codes ranges between 63.3% (White women) and 45.9% (Hispanic).

Table 4-10: Comparison of the Share of the City of San Antonio Spending Captured by the Top Three NAICS Codes for Each Demographic Group

Demographic Group	Share of All the City Spending in the Top Three NAICS Codes for Each Group
All	47.6%
Black	63.0%
Hispanic	45.9%
Asian	52.6%
Native American	0.0%
White Woman	63.3%
Non-M/WBE	51.3%

Source: CHA analysis of City of San Antonio data

Table 4-11 provides more detail on the data presented in Table 4-10. Table 4-11 lists the top three codes for each group and their corresponding share of the group's total spending. The code where the City spends the largest share of its funds – NAICS 237310; Highway, Street, and Bridge Construction – is among the leading three codes for Blacks, Hispanics, and White Women. The code where the City spends the next largest share of its funds – NAICS 236220; Commercial and Institutional Building Construction – is the second leading code for White women. Beyond this code, the three most important codes for the City are identical to the three most important codes for Hispanics. None of the leading codes for Asians are among the City's leading codes.

**Table 4-11: The Top Three City of San Antonio Spending NAICS Codes
for Each Demographic Group**

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
All			
237310	Highway, Street, and Bridge Construction	31.8%	47.6%
236220	Commercial and Institutional Building Construction	11.2%	
441110	New Car Dealers	4.6%	
Black			
541330	Engineering Services	34.4%	63.0%
237310	Highway, Street, and Bridge Construction	15.6%	
238210	Electrical Contractors and Other Wiring Installation Contractors	12.9%	
Hispanic			
237310	Highway, Street, and Bridge Construction	26.7%	45.9%
441110	New Car Dealers	11.2%	
236220	Commercial and Institutional Building Construction	8.0%	
Asian			
238210	Electrical Contractors and Other Wiring Installation Contractors	25.3%	52.6%
488410	Motor Vehicle Towing	14.5%	
541511	Custom Computer Programming Services	12.8%	
Native American			
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White Woman			
237310	Highway, Street, and Bridge Construction	44.1%	63.3%
236220	Commercial and Institutional Building Construction	13.9%	
237110	Water and Sewer Line and Related Structures Construction	5.3%	
Non-M/WBE			
237310	Highway, Street, and Bridge Construction	32.7%	51.3%
236220	Commercial and Institutional Building Construction	13.5%	
238210	Electrical Contractors and Other Wiring Installation Contractors	5.2%	

Source: CHA analysis of City of San Antonio data

Tables 4-12 through 4-16 present data on the second finding: how the City spending varies across groups. These results illustrate the different levels of concentration of contract dollars among M/WBEs compared to non-M/WBEs. For each demographic group, we restate the three NAICS codes where the group received the largest share of the City's spending (first presented in Table 4-11). 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-M/WBEs.

Table 4-12 presents the three NAICS codes where Black firms received the largest share of their contract dollars. While these codes captured 63.0% of all Black contract dollars, the corresponding figure for non-M/WBEs was 42.3%. In addition, the table indicates that for two of the codes – NAICS 541330 and NAICS 238210 – the share of Black contract dollars from those codes far exceeds that the share of non-M/WBE contract dollars from those codes. The reverse is true for NAICS code 237310. This indicates that Black firms receive contract dollars from the City far differently than non-M/WBE firms.

Table 4-12: Three NAICS Codes where Black Firms Received the Most Spending

NAICS Code	NAICS Code Label	Weight	Share of Total Black Dollars	Share of Total Non-M/WBE Dollars
541330	Engineering Services	4.5%	34.4%	4.5%
237310	Highway, Street, and Bridge Construction	31.8%	15.6%	32.7%
238210	Electrical Contractors and Other Wiring Installation Contractors	3.5%	12.9%	5.2%
Total 3-code Share of Total Group Dollars			63.0%	42.3%

Source: CHA analysis of City of San Antonio data

Table 4-13 presents the three NAICS codes where Hispanic firms received the largest share of their contract dollars. While these codes comprised 45.9% of all Hispanic contract dollars, the corresponding figure for non-M/WBEs was 47.5%. Here the relative shares are close in two codes – NAICS 237310 and NAICS 236220 – and far apart in the third code – NAICS 441110.

Table 4-13: Three NAICS Codes where Hispanic Firms Received the Most Spending

NAICS Code	NAICS Code Label	Weight	Share of Total Hispanic Dollars	Share of Total Non-M/WBE Dollars
237310	Highway, Street, and Bridge Construction	31.8%	26.7%	32.7%
441110	New Car Dealers	4.6%	11.2%	1.3%
236220	Commercial and Institutional Building Construction	11.2%	8.0%	13.5%
Total 3-code Share of Total Group Dollars			45.9%	47.5%

Source: CHA analysis of City of San Antonio data

Table 4-14 presents the three NAICS codes where Asian firms received the largest share of their contract dollars. While these codes captured 52.6% of all Asian contract dollars, the corresponding figure for non-M/WBEs was 5.9% - a wide discrepancy between the importance of these three codes to Asian firms and their importance to non-M/WBE firms. With the overall level of City spending in these codes of 4.1% (a summation of the three weights), the elimination of these three codes would have minimal impact on the level of City spending, but it would reduce the funds received by Asian firms by 46%.

Table 4-14: Three NAICS Codes where Asian Firms Received the Most Spending

NAICS Code	NAICS Code Label	Weight	Share of Total Asian Dollars	Share of Total Non-M/WBE Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	3.5%	25.3%	5.2%
488410	Motor Vehicle Towing	0.4%	14.5%	0.7%
541511	Custom Computer Programming Services	0.2%	12.8%	0.1%
Total 3-code Share of Total Group Dollars			52.6%	5.9%

Source: CHA analysis of City of San Antonio data

Table 4-15 presents the three NAICS codes where White woman firms received the largest share of their contract dollars. These codes comprise 63.3% of all White woman contract dollars; the corresponding figure for non-M/WBEs was 47.6%.

Table 4-15: Three NAICS Codes where White Woman Firms Received the Most Spending

NAICS Code	NAICS Code Label	Weight	Share of Total White Woman Dollars	Share of Total Non-M/WBE Dollars
237310	Highway, Street, and Bridge Construction	31.8%	44.1%	32.7%
236220	Commercial and Institutional Building Construction	11.2%	13.9%	13.5%
237110	Water and Sewer Line and Related Structures Construction	1.5%	5.3%	1.4%
Total 3-code Share of Total Group Dollars			63.3%	47.6%

Source: CHA analysis of City of San Antonio data

The data presented in Tables 4-10 through 4-15 support the inference that regardless of any statistical disparities between contract utilization and weighted availability, the experiences of M/WBEs other than Hispanic-owned firms with respect to participation in the City's procurements are different than the experiences of non-M/WBEs. These results support the conclusion that while overall, M/WBEs have received fair opportunities to do work on the City contracts, their work, with the exception of Hispanics, has been highly concentrated in a few codes. Narrowly tailored race- and gender-conscious measures may still be supportable to ensure that all minority and woman firms have equal opportunities to compete for all types of the City contracts.

E. Disparity Analysis for City of San Antonio Contracts

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.¹⁸⁷ 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.¹⁸⁸ 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 187 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 4-16 presents the disparity ratios for each demographic group. The disparity ratios for Blacks, Asians, Native Americans, and non-M/WBEs were substantively significant. The disparity ratios for all groups except Native Americans are statistically significant at the 0.001 level.

Table 4-16: Disparity Ratios by Demographic Group

	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE
Disparity Ratio	88.5%***	239.9%***	22.1%‡***	0.0%‡	246.6%***	212.8%***	62.6%‡***

Source: CHA analysis of City of San Antonio data

‡ Indicates substantive significance

*** Statistically significant at the 0.001 level

In order to better understand the disparity ratios for Hispanic- and White Woman-owned firms and M/WBEs overall, we examined more closely the four NAICS codes where the City spent 52.1% of its contract dollars. These three codes were

187. 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.”).

188. 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.

selected because the share of City spending in these codes ranged from 31.8% to 4.5%. The next largest share was 3.5% and the remaining 124 NAICS codes accounted for just 47.9% of all City spending. For each NAICS code, we compared a demographic group's utilization on the City contract dollars to its unweighted availability. Table 4-17 presents this comparative data.

For Hispanics, the data indicate that in each of the four NAICS codes, Hispanic utilization exceeds Hispanic unweighted availability. For White women, utilization exceeds their unweighted availability in three of these codes, with a particularly large difference in the two codes where 43% of the City's funds are spent. These data might explain why the overall disparity ratios are high for these two groups.

**Table 4-17: Comparing Utilization and Unweighted Availability in the Four NAICS Codes
Where the City of San Antonio Spends 52.1% of Its Funds**

		Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
NAICS Code: 237310; Weight: 31.8%									
Utilization	237310	1.30%	29.90%	0.00%	0.00%	20.30%	51.60%	48.40%	100.00%
Unweighted Availability		5.50%	25.00%	0.60%	0.30%	7.30%	38.70%	61.30%	100.00%
NAICS Code: 236220; Weight: 11.2%									
Utilization	236220	0.30%	25.40%	0.00%	0.00%	18.10%	43.70%	56.30%	100.00%
Unweighted Availability		3.10%	18.60%	1.20%	1.90%	5.30%	30.30%	69.70%	100.00%
NAICS Code: 441110; Weight: 4.6%									
Utilization	441110	0.00%	86.60%	0.00%	0.00%	0.00%	86.60%	13.40%	100.00%
Unweighted Availability		0.40%	1.80%	0.00%	0.00%	2.10%	4.30%	95.70%	100.00%
NAICS Code: 541330; Weight: 4.5%									
Utilization	541330	20.50%	24.60%	0.00%	0.00%	8.60%	53.80%	46.20%	100.00%
Unweighted Availability		2.60%	14.20%	2.40%	1.20%	5.00%	25.40%	74.60%	100.00%

Source: CHA analysis of City of San Antonio data

F. Conclusion

This Chapter examined the City's utilization of M/WBEs compared to non-M/WBEs; provided estimates of the availability of M/WBEs and non-M/WBEs to per-

form the types of goods and services utilized by the City in its geographic market area; and tested for whether there are significant disparities in the results of utilization compared to availability. Overall, we found that, compared to non-M/WBEs, minority- and woman-owned firms, apart from Hispanic firms, were concentrated in a different subset of industries.

V. ANALYSIS OF DISPARITIES IN THE CITY OF SAN ANTONIO'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.¹⁸⁹

This Chapter explores the data and literature relevant to how discrimination in the City of San Antonio ("City") area economy affects the ability of minorities and women to fairly and fully engage in the City of San Antonio's contract opportunities. First, we analyze the rates at which M/WBEs in the San Antonio area economy form firms and their earnings from those firms. Then, we analyze state-wide data to see if M/WBE 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. Next, we summarize the literature on barriers to equal access to commercial credit. Finally, we summarize the literature on barriers to equal access to human capital. 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 discrimination without some type of affirmative intervention.

A key element to determine the need for the City to intervene in its market through contract goals is an analysis of disparities independent of the City's intervention through its contracting affirmative action program.

The courts have repeatedly held that analysis of disparities in the rate of M/WBE formation in the government's markets as compared to similar non-M/WBEs, disparities in M/WBE earnings, and barriers to access to capital markets are highly relevant to a determination of whether market outcomes are affected by race or

189. Arrow, Kenneth J., "What Has Economics to say about racial discrimination?" *Journal of Economic Perspectives*, 12, 2, (1998), 91-100.

gender ownership status.¹⁹⁰ Similar analyses supported the successful legal defense of the Illinois Tollway's DBE program from constitutional challenge.¹⁹¹

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.¹⁹²

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 evidence of the continuing effects of discrimination.¹⁹³ As recognized by the Sev-

190. See the discussion in Chapter II of the legal standards applicable to contracting affirmative action programs.

191. *Midwest Fence Corp. v. Illinois Department of Transportation, Illinois State Toll Highway Authority et al*, 840 F.3d 942 (7th Cir. 2016) (upholding the Illinois Tollway'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); *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 M/WBE program for local construction contracts satisfied "compelling interest" standards using this framework).

192. *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).

193. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868, at *64 (Sept. 8, 2005).

enth Circuit Court of Appeals, “[e]vidence 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 again demonstrates that *existing* M/WBEs are precluded from competing for public contracts.”¹⁹⁴

This type of court-approved analysis is especially important for an agency such as the City, which has been implementing a program for many years. The City’s remedial market interventions through the use of race- and gender-based contract goals may ameliorate the disparate impacts of marketplace discrimination in the City’s own contracting activities. Put another way, the program’s success in moving towards parity for minority and woman firms may be “masking” the effects of discrimination that, but for the contract goals, would mirror the disparities in M/WBE utilization in the overall economy.

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.¹⁹⁵ 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.

194. *Id.*

195. Data from 2016 - 2020 American Community Survey are the most recent for a five-year period.

We used the San Antonio metropolitan area (as we did in the previous chapter) 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.¹⁹⁶

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 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.¹⁹⁷ 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 will examine these data in two ways: First, we will calculate the minority- and woman-owned business share of each variable. Second, we will calculate 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:

- Ratio of sales and receipts share for all firms over the share of total number of all 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

We explore the data to see if an M/WBE'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.

196. Possible disparities in wages is 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).

197. 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.

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 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.

B. Disparate Treatment in the City of San Antonio Marketplace: Evidence from the Census Bureau's 2016 - 2020 American Community Survey

As discussed in the beginning of this Chapter, the key question is whether firms owned by non-Whites and White women face disparate treatment in the marketplace without the intervention of a contracting affirmative action program. In this section, we use the Census Bureau's ACS data to explore this and other aspects of this question. 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. In order to obtain robust results from our analysis, we used the file that combines the most recent data available for years 2016 through 2020.¹⁹⁸ With this rich data set, our analysis can establish with greater certainty any causal links between race, gender and economic outcomes.

198. Initially, the Census Bureau contacted approximately 3.5M households. For the analysis reported in this Chapter, we examined over 47,000 observations. For more information about the ACS PUMS, see <https://www.census.gov/programs-surveys/acs/>.

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. In order 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, 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 state of residence in the analysis.

We employ a multiple regression statistical technique to process this 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 examine 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.¹⁹⁹

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.

1. All Industries Combined in the San Antonio Metropolitan Area

One method of exploring differences in economic outcomes is to examine the rate at which different demographic groups form businesses. There were insufficient observations to draw statistically valid inferences for Native American and Other firms. Consequently, for all of the tables in the ACS analysis that reference business activity (business formation; probability of forming a business; business earnings) we have entered values of “----” to indicate that no analysis was conducted. (While there were not enough observations on business there were enough observation on employees so analysis is provided for

199. Most social scientists do not endorse utilizing a confidence level of less than 95%. Appendix C explains more about statistical significance.

wage earnings.) We developed these business formation rates using data from the U.S. Bureau of the Census' ACS for the San Antonio-New Braunfels Metropolitan Statistical Area. Table 5-1 presents these results.

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 that forms businesses. For example, Table 5-1 indicates that 1.9% of Blacks forms businesses; this is less than the 5.1% business formation rate for White men. The Table indicates that White men have higher business formation rates compared to non-Whites and White women. Table 5-2 utilizes probit regression analysis to examine the probability of forming a business after controlling for important factors beyond race and gender.²⁰⁰ This Table indicates that non-Whites (excluding Asians) and White women are less likely to form businesses compared to White men; the reduced probability ranges from 1.2% for Hispanics to 2.9% for Blacks. These results were statistically significant at the 0.01 level for Blacks, Hispanics, and White women.

With respect to the interpretation of the level of statistical significance of a result, as indicated in the latter part of the previous section, we are exploring whether the result of the regression analysis is statistically different from zero; if the finding is statistically significant, we also indicate the level of statistical confidence at which the result is accurate. Table 5-2 indicates that the probability that Blacks form businesses is 2.9% less than the probability that White men form business, once we control for age, education, and occupation. The statistical significance of this result is at the 0.01 level, which means we are 99% statistically confident the result is true. 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 there is not a statistically significant level of confidence in the result.

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.²⁰¹ Tables 5-3 and 5-4 present this data on wage and salary incomes and business earnings respectively. Table 5-3 indicates that non-Whites and White women earn less than White men. The reduction in earnings ranges from 3.7% to 24.8% and all of the results are statistically significant at the 0.001 level (except the coefficient for Native Americans and Others). Table 5-4 indicates that Blacks, Hispanics, and White women

200. Appendix B provides a "Further Explanation of Probit Regression Analysis."

201. See Appendix A for more information on multiple regression statistical analysis.

receive business earnings less than White men. The reduction in earnings ranges from 68.9% to 39.5%. These results were not statistically significant.

Table 5-1: Business Formation Rates

All Industries, 2016 - 2020²⁰²

Demographic Group	Business Formation Rates
Black	1.9%
Hispanic	2.5%
Native American	-----
Asian/Pacific Islander	5.0%
Other	-----
White Women	3.2%
Non-White Male	2.7%
White Male	5.1%

Source: CHA calculations from the American Community Survey

Table 5-2: Business Formation Probabilities

Relative to White Males, All Industries, 2016 - 2020

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-2.9%***
Hispanic	-1.2%***
Native American	-----
Asian/Pacific Islander	0.8%
Other	-----
White Women	-1.4%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

202. Statistical significance tests were not conducted on basic business formation rates.

**Table 5-3: Wage Differentials for Selected Groups
Relative to White Men, All Industries, 2016 - 2020**

Demographic Group	Wages Relative to White Men (% Change)
Black	-24.8%***
Hispanic	-19.1%***
Native American	-12.3%
Asian/Pacific Islander	-22.4%***
Other	-3.7%
White Women	-24.6%***

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**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-68.9%
Hispanic	-39.5%
Native American	-----
Asian/Pacific Islander	32.7%
Other	-----
White Women	-48.3%

Source: CHA calculations from the American Community Survey

2. The Construction Industry in the San Antonio Metropolitan Area

We were unable to analyze Black, Native American and Other firms because of the small sample size in the construction industry. Table 5-5 indicates that White men have higher business formation rates compared to Hispanics and White women. Table 5-6 indicates that Hispanics and White women are less likely to form businesses compared to similarly situated White men. The reduced probabilities of business formation were 1.8% (for Hispanics) and 1.3% (for White women). None of these coefficients were statistically significant. Table 5-7 indicates that non-Whites (except for Native Americans) and White women earn less than White men. The reductions in earnings range from 32.8% to 6.6%; only the coefficients for Blacks and White women were statistically significant. Table 5-8 indicates that business earnings for Hispanics

and White women were less than White men; the coefficients were not statistically significant.

Table 5-5: Business Formation Rates
Construction, 2016 - 2020

Demographic Group	Business Formation Rates
Black	-----
Hispanic	5.1%
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	10.1%
Non-White Male	5.2%
White Male	10.9%

Source: CHA calculations from the American Community Survey

Table 5-6: Business Formation Probability Differentials for Selected Groups
Relative to White Men, Construction, 2016 - 2020

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-----
Hispanic	-1.8%
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-3.1%

Source: CHA calculations from the American Community Survey

**Table 5-7: Table 5-7 Wage Differentials for Selected Groups
Relative to White Men, Construction, 2016 - 2020**

Demographic Group	Wages Relative to White Men (% Change)
Black	-32.8%**
Hispanic	-7.4%
Native American	8.1%
Asian/Pacific Islander	-26.2%
Other	-6.6%
White Women	-27.6%**

Source: CHA calculations from the American Community Survey

** Indicates statistical significance at the 0.01 level

**Table 5-8: Business Earnings Differentials for Selected Groups
Relative to White Men, Construction, 2016 - 2020**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-----
Hispanic	-12.5%
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-83.5%

Source: CHA calculations from the American Community Survey

3. The Construction-Related Services Industry in the San Antonio Metropolitan Area

The sample of firms in the construction-related services industry contained too few numbers of Black, Hispanic, Native American, Asian, White woman, and Other firms to produce reliable estimates for these groups. The wages for Black, Hispanic, Native American, Asian, and White women were less than those of White men with the results ranging from 57.8% to 16.4%. None of the results were statistically significant.

**Table 5-9: Business Formation Rates
Construction-Related Services, 2016 - 2020**

Demographic Group	Business Formation Rates
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-----
Non-White Male	8.7%
White Male	14.1%

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, 2016 - 2020**

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, 2016 - 2020**

Demographic Group	Wages Relative to White Men (% Change)
Black	-57.1%
Hispanic	-33.8%
Native American	-----
Asian/Pacific Islander	-16.4%
Other	40.3%
White Women	-57.8%

Source: CHA calculations from the American Community Survey

**Table 5-12: Business Earnings Differentials for Selected Groups
Relative to White Men, Construction-related Services, 2016 - 2020**

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 San Antonio Metropolitan Area

There were low numbers of Black, Native American, Asian, Other and White women firms in the sample of the goods industry. Therefore, once again, reliable estimates of firm outcomes could not be made for these groups. Table 5-13 indicates that Hispanics have lower business formation rates compared to White men. While Table 5-14 indicates that the probability that Hispanics form businesses is less than that of White men. Table 5-15 indicates that statistically significant results are found for non-Whites and White women and all indicate lower wages relative to White men. The coefficient for Hispanic business earnings is high and statistically significant.

Table 5-13: Business Formation Rates
Goods, 2016 - 2020

Demographic Group	Business Formation Rates
Black	-----
Hispanic	1.3%
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-----
Non-White Male	1.9%
White Male	4.1%

Source: CHA calculations from the American Community Survey

Table 5-14: Business Formation Probabilities
Relative to White Males, Goods, 2016 - 2020

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-----
Hispanic	-1.5%
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-----

Source: CHA calculations from the American Community Survey

Table 5-15: Wage Differentials for Selected Groups
Relative to White Men, Goods, 2016 - 2020

Demographic Group	Wages Relative to White Men (% Change)
Black	-33.6%***
Hispanic	-30.5%***
Native American	-180.0%* ^a

Demographic Group	Wages Relative to White Men (% Change)
Asian/Pacific Islander	-28.5%*
Other	-154.0%**
White Women	-45.9%***

a. The proper way to interpret a coefficient that is less than negative 100% (e.g., the value of the coefficient for Other 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 180% more than Native Americans and 154.0% more than Others.

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

**Table 5-16: Business Earnings Differentials for Selected Groups
Relative to White Men, Goods, 2016 - 2020**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-----
Hispanic	-1480.0%
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-----

Source: CHA calculations from the American Community Survey

5. The Services Industry in San Antonio Metropolitan Area

Table 5-17 indicates that White men have higher business formation rates compared to non-Whites and White women. Table 5-18 indicates that non-Whites (except Asians) and White women are less likely to form businesses compared to similarly situated White men; the reduced probabilities range from 2.6% to 0.7%. Only the coefficient for Blacks is statistically significant. Table 5-19 indicates that Blacks, Hispanics, Asians, and White women earn less than White men – ranging from 22.5% to 18.2% – and these coefficients were statistically significant at the 0.001 level. Table 5-20 indicates that Blacks, Hispanics, and White woman had lower business earnings than White men; the coefficients for Hispanics, and White woman were statistically significant.

Table 5-17: Business Formation Rates
Services, 2016 - 2020

Demographic Group	Business Formation Rates
Black	2.4%
Hispanic	2.9%
Native American	-----
Asian/Pacific Islander	4.4%
Other	-----
White Women	3.9%
Non-White Male	3.1%
White Male	5.6%

Source: CHA calculations from the American Community Survey

Table 5-18: Business Formation Probability Differentials for Selected Groups
Relative to White Men, Services, 2016 - 2020

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-2.6%*
Hispanic	-0.7%
Native American	-----
Asian/Pacific Islander	0.7%
Other	-----
White Women	-1.3%

Source: CHA calculations from the American Community Survey

* Indicates statistical significance at the 0.05 level

Table 5-19: Wage Differentials for Selected Groups
Relative to White Men, Services, 2016 - 2020

Demographic Group	Wages Relative to White Men (% Change)
Black	-19.3%***
Hispanic	-18.2%***
Native American	11.6%

Demographic Group	Wages Relative to White Men (% Change)
Asian/Pacific Islander	-18.3%***
Other	6.6%
White Women	-22.5%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

**Table 5-20: Business Earnings Differentials for Selected Groups
Relative to White Men, Services, 2016 - 2020**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-46.9%
Hispanic	-78.7%*
Native American	-----
Asian/Pacific Islander	69.8%
Other	-----
White Women	-82.5%*

Source: CHA calculations from the American Community Survey

Indicates statistical significance at the 0.05 level

6. The Information Technology Industry in the San Antonio Metropolitan Area

The sample size was only large enough for a reliable estimate of firm outcomes for Hispanic and White male firms in this sector. Table 5-21 indicates that White men have lower business formation rates compared to Hispanics. Table 5-22 indicates that the Hispanic coefficient was not statistically significant. Table 5-23 indicates that non-Whites and White women earn less than White men; only the coefficient for White women was statistically significant. Table 5-24 indicates that the Hispanic coefficient was not statistically significant.

**Table 5-21: Business Formation Rates
Information Technology, 2016 - 2020**

Demographic Group	Business Formation Rates
Black	-----
Hispanic	4.0%
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-----
Non-White Male	2.9%
White Male	2.0%

Source: CHA calculations from the American Community Survey

**Table 5-22: Business Formation Probability Differentials for Selected Groups
Relative to White Men, Information Technology, 2016 - 2020**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-----
Hispanic	2.5%
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-----

Source: CHA calculations from the American Community Survey

**Table 5-23: Wage Differentials for Selected Groups
Relative to White Men, Information Technology, 2016 - 2020**

Demographic Group	Wages Relative to White Men (% Change)
Black	-5.9%
Hispanic	-6.9%
Native American	-59.0%

Demographic Group	Wages Relative to White Men (% Change)
Asian/Pacific Islander	-7.6%
Other	-39.3%
White Women	-18.4%*

Source: CHA calculations from the American Community Survey

* Indicates statistical significance at the 0.05 level

Table 5-24: Business Earnings Differentials for Selected Groups Relative to White Men, Information Technology, 2016 - 2020

Demographic Group	Earnings Relative to White Men (% Change)
Black	-----
Hispanic	104.0%
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-----

Source: CHA calculations from the American Community Survey

7. Conclusion

Overall, 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 of San Antonio Area 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 City's area marketplace. This question is 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.

To answer this question, we examined the ABS. 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.²⁰³ For this analysis, we examined firms in the State of Texas. The state was the geographic unit of analysis because the ABS does not present data at the sub-state level.

With these data, we grouped the firms into the following ownership categories.^{204,205}

- 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 purposes of 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 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:

- Construction

203. For more information on the Annual Business Survey see <https://www.census.gov/programs-surveys/abs/about.html>.

204. Race and gender labels reflect the categories used by the Census Bureau.

205. 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.

- 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. In particular, we had to define the sectors at the two-digit North American Industry Classification System (“NAICS”) code level, and therefore our sector definitions do not exactly correspond to the definitions used to analyze The City 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.

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 ^a	54
Goods	31,42, 44
Other Services	48, 52, 53, 56, 61, 62, 71, 72, 81

a. This sector includes (but is broader than just) construction-related services. It is impossible to narrow this category to construction-related services without losing the capacity to conduct race and gender specific analyses.

The balance of this Chapter reports the findings of the ABS analysis.

1. All Industries

For a baseline analysis, we examined all industries. Table 5-26 presents data on the percentage share that each group has of the total of each of the following four business outcomes:

- The number of firms with employees (employer firms)
- The sales and receipts of all employer firms

- The number of paid employees
- The annual payroll of employer firms

Panel A of Table 5-26 presents data for the four basic non-White racial groups:

- Black
- Hispanic
- Native American
- Asian

Panel B of Table 5-26 presents data for the following types of firm ownership:

- Non-White
- White women
- Not non-White/non-White women²⁰⁶

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 firm 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 13.0% (as shown in Table 5-26). This is derived by taking the Black share of sales and receipts for all employer firms (0.3%) and dividing it by the Black share of total number of all employer firms (2.2%) that are presented in Table 5-26.²⁰⁷ If Black-owned

206. 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.

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.²⁰⁸ All of the 18 disparity ratios for non-White firms and White woman firms are below this threshold.²⁰⁹

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	2.2%	0.3%	1.1%	0.6%
Hispanic	12.2%	2.2%	5.7%	3.4%
Asian	11.3%	2.1%	4.1%	2.4%
Native American	0.4%	0.1%	0.2%	0.1%
Panel B: Distribution of All Firms				
Non-White	26.1%	4.7%	11.1%	6.5%
White Women	13.6%	2.7%	5.8%	4.5%
Not Non-White/ Not White Women	60.3%	92.6%	83.1%	89.0%
All Firms	100.0%	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

207. 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 13.0% (as presented in Table 5-27) is not the same figure as that which would be derived when you divided 0.3 by 2.2 (the numbers presented in Table 5-26).
208. 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.").
209. Because the data in the subsequent tables are presented for descriptive purposes, significance tests on these results are not conducted.

Table 5-27: Disparity Ratios of Firm Utilization Measures
All Industries, 2017

	Ratio of Sales to Number of Employer Firms	Ratio of Employees to Number of Employer Firms	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratio for Non-White Firms			
Black	13.0%	50.5%	26.2%
Hispanic	18.0%	46.7%	27.5%
Asian	18.5%	36.6%	21.6%
Native American	22.1%	42.8%	30.0%
Panel B: Disparity Ratios for All Firms			
Non-White	17.8%	42.6%	24.9%
White Women	19.9%	42.9%	33.2%
Not Non-White/Not White Women	153.6%	137.7%	147.6%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

This same approach was used to examine the Construction, Professional, Scientific and Technical Services, Goods, and Other Services sectors. The following are summaries of the results of the disparity analyses.

2. Construction

Of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-28, 17 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	48.4%	58.0%	44.7%
Hispanic	44.3%	52.3%	39.9%
Asian	35.9%	33.9%	29.8%
Native American	50.5%	69.2%	59.3%

	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	44.1%	51.8%	40.0%
White Women	62.9%	84.0%	74.6%
Not Non-White/Not White Women	119.4%	114.9%	119.2%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

3. Professional, Scientific and Technical Services

Of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-29, all 18 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	33.0%	34.9%	25.5%
Hispanic	34.7%	44.2%	26.8%
Asian	43.3%	44.4%	39.1%
Native American	34.4%	33.3%	24.9%
Panel B: Disparity Ratios for All Firms			
Non-White	38.5%	43.1%	32.3%
White Women	42.0%	44.1%	32.0%
Not Non-White/Not White Women	135.9%	133.8%	140.6%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

4. Goods

Of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-30, all 18 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	13.5%	25.8%	20.9%
Hispanic	14.3%	29.8%	23.4%
Asian	12.7%	21.4%	14.3%
Native American	19.2%	42.7%	39.2%
Panel B: Disparity Ratios for All Firms			
Non-White	13.4%	24.9%	18.1%
White Women	13.8%	34.4%	30.8%
Not Non-White/Not White Women	158.7%	148.9%	152.8%
All Firms	100.00%	100.00%	100.00%

Source: CHA calculations from American Business Survey

5. Services

Of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-31, all 18 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	21.9%	59.3%	33.2%
Hispanic	24.6%	55.7%	34.5%
Asian	23.7%	44.4%	26.4%
Native American	23.3%	51.1%	24.7%
Panel B: Disparity Ratios for All Firms			
Non-White	23.9%	51.3%	30.9%

	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
White Women	28.5%	46.8%	36.4%
Not Non-White/Not White Women	157.6%	138.7%	152.0%
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 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.

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 and the survey of 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 the City's 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 general consensus that disparities in personal wealth translate into disparities in business creation and ownership.²¹⁰ The most recent research highlights the magnitude of the COVID-19 pandemic's disproportionate impact on minority-owned firms.

210. 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.

1. Federal Reserve Board Small Business Credit Surveys²¹¹

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. Small Business Credit Survey 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*,²¹² 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.²¹³

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 full amount of funding for which they applied in the prior twelve months.²¹⁴

211. 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).

212. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

213. Findings for Native American-owned firms were omitted from the report because sample sizes were too small to make precise estimates for most measures.

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.

b. 2022 Small Business Credit Survey

The 2022 Small Business Credit Survey (“2022 Survey”)²¹⁵ 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 continues to significantly impact 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 remain an important source of financial stability for small businesses, while financing approval rates continue 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 they were earlier in the pandemic. Approval rates on loans, lines of credit

214. 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.

215. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/2022-sbcs-employer-firms-report>.

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.

c. **2021 Report on Firms Owned by People of Color**

i. **Overview**

The *2021 Report on Firms Owned by People of Color*²¹⁶ compiles results from the 2020 SBCS. The SBCS provides data on small business performance, financing needs, and decisions and borrowing outcomes.^{217,218} 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 among 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, which includes states with a mix of pandemic responses. For example,

216. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

217. The SBCS is an annual survey of firms with fewer than 500 employees.

218. 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.

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 continue 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 have smaller amounts of debt than other firms. About one in ten firms owned by people of color do 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- and 91% of Hispanic-owned firms are non-employer firms, compared to 78% of White-owned and 75% of Asian-owned firms.²¹⁹

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.

d. 2021 Small Business Credit Survey

The 2021 SBCS²²⁰ 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

219. The Report notes that a future report will describe findings from the 2020 SBCS for non-employers in greater detail.

220. <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.

e. **2018 Small Business Credit Survey**

The 2018 SBCS²²¹ 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.²²²

Among the findings for employer firms relevant to discriminatory barriers were the following:

221. Small Business Credit Survey, <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

222. *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.²²³ 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.²²⁴
- 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.²²⁵
- 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.²²⁶
- 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.²²⁷
- Low credit score and lack of collateral were the top reported reasons for denial of applications by Black- and Hispanic-owned firms.²²⁸

ii. Non-employer firms²²⁹

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.²³⁰

Among the findings for non-employer firms relevant to discriminatory barriers were the following:

223. *Id.* at 3.

224. *Id.* at 4.

225. *Id.* at 5.

226. *Id.* at 6.

227. *Id.* at 9.

228. *Id.* at 15.

229. *Id.* at 18.

230. *Id.* at 18.

- Black-owned firms were more likely to operate at a loss than other firms.²³¹
- Black-owned firms reported greater financial challenges, such as obtaining funds for expansion, accessing credit and paying operating expenses than other businesses.²³²
- Black- and Hispanic-owned firms submitted more credit applications than White-owned firms.²³³

f. 2016 Small Business Credit Survey

The 2016 Small Business Credit Survey²³⁴ 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.²³⁵ 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 Firms²³⁶

The 2016 SBCS Report on Minority-Owned Firms provided results for White-, Black- or African American-, Hispanic-, and Asian- or Pacific Islander-owned firms.

Demographics²³⁷

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 construction (27%). White-owned firms were more evenly distrib-

231. *Id.*

232. *Id.* at 19.

233. *Id.* at 20.

234. <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

235. 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.

236. <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

237. 2016 SBCS, at 2.

uted 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%).²³⁸

Profitability Performance Index²³⁹

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/Demands²⁴⁰

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.

238. *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.

239. *Id.* at 3-4.

240. *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.²⁴¹

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 Impact²⁴²

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.

241. The share of minority-owned firms receiving at least some financing was lower across all financing products, compared with non-minority firms.

242. *Id.* at 17.

Non-employer Firms²⁴³

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 Firms²⁴⁴

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 Industries²⁴⁵

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.²⁴⁶

Profitability Challenges and Credit Risk Disparities²⁴⁷

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

243. *Id.* at 21.

244. <https://www.newyorkfed.org/medialibrary/media/smallbusiness/2016/SBCS-Report-WomenOwnedFirms-2016.pdf>.

245. 2016 SBCS, at 1-5.

246. 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; Construction; Wholesale Trade; Transportation and Warehousing (NAICS codes: 11, 21, 22, 23, 42, 48-49).

247. *Id.* at 6-7.

older than five years, credit risk was indistinguishable by the owner's gender.

Financial Challenges During the Prior Twelve Months²⁴⁸

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 Differences²⁴⁹

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 Financing²⁵⁰

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 Financing²⁵¹

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.

248. *Id.* at 8.

249. *Id.* at 10.

250. *Id.* at 16.

251. *Id.* at 14.

*Lender Satisfaction*²⁵²

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*,²⁵³ the number of loans to Black businesses through the SBA's 7(a) program²⁵⁴ decreased 35% in 2020.²⁵⁵ 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.²⁵⁶

Bankers, lobbyists, and other financial professionals attributed the 2020 decline to the impact of the PPP pandemic relief effort.²⁵⁷ 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.²⁵⁸ 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 data²⁵⁹ reveal that the number of SBA loans made annually to Black

252. *Id.* at 26.

253. 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.

254. Section 7(a) of the Small Business Act of 1953 (P.L. 83-163, as amended).

255. The total number of 7(a) loans declined 24%.

256. 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.

257. 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.

258. 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 2020.²⁶⁰

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.²⁶¹ 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.²⁶² 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.

3. 2010 Minority Business Development Agency Report²⁶³

The 2010 Minority Business Development Agency Report, "Disparities in Capital Access Between Minority and non-Minority Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs", summarizes results from the Kauffman Firm Survey, data from the U.S. Small Business Administration's Certified Development Company/504 Guaranteed Loan Program and addi-

259. The SBA denied the original request for information; however, the publication prevailed on appeal.

260. Data obtained by the *Business Journal* does not include information from lenders who made less than ten loans in 2020.

261. While PPP loans are administered by the SBA, they are disbursed primarily through banks.

262. 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/>.

263. Robert W. Fairlie and Alicia Robb, *Disparities in Capital Access Between Minority and non-Minority Businesses: The Troubling Reality of Capital Limitations Faced by MBEs*, Minority Business Development Agency, U.S. Department of Commerce, 2010 ("MBDA Report") (<https://archive.mbda.gov/sites/mbda.gov/files/migrated/files-attachments/DisparitiesinCapitalAccessReport.pdf>).

tional extensive research on the effects of discrimination on opportunities for minority-owned firms. The report found that:

low levels of wealth and liquidity constraints create a substantial barrier to entry for minority entrepreneurs because the owner's wealth can be invested directly in the business, used as collateral to obtain business loans or used to acquire other businesses.²⁶⁴

It also found, "the largest single factor explaining racial disparities in business creation rates are differences in asset levels."²⁶⁵

Some additional key findings of the Report include:

- Denial of Loan Applications. Forty-two percent of loan applications from minority firms were denied compared to 16% of loan applications from non-minority-owned firms.²⁶⁶
- Receiving Loans. Forty-one percent of all minority-owned firms received loans compared to 52% of all non-minority-owned firms. MBEs are less likely to receive loans than non-minority-owned firms regardless of firm size.²⁶⁷
- Size of Loans. The size of the loans received by minority-owned firms averaged \$149,000. For non-minority-owned firms, loan size averaged \$310,000.
- Cost of Loans. Interest rates for loans received by minority-owned firms averaged 7.8%. On average, non-minority-owned firms paid 6.4% in interest.²⁶⁸
- Equity Investment. The equity investments received by minority-owned firms were 43% of the equity investments received by non-minority-owned firms even when controlling for detailed business and owner characteristics. The differences are large and statistically significant. The average amount of new equity investments in minority-owned firms receiving equity is 43% of the average of new equity investments in non-minority-owned firms. The differences were even larger for loans received by high sales firms.²⁶⁹

264. *Id.* at 17.

265. *Id.* at 22.

266. *Id.* at 5.

267. *Id.*

268. *Id.*

269. *Id.*

4. Federal Reserve Board Surveys of Small Business Finances

The Federal Reserve Board and the U.S. Small Business Administration have conducted surveys of discrimination in the small business credit market for years 1993, 1998 and 2003.²⁷⁰ These Surveys of Small Business Finances are based on a large representative sample of firms with fewer than 500 employees. The main finding from these Surveys is that MBEs experience higher loan denial probabilities and pay higher interest rates than White-owned businesses, even after controlling for differences in credit worthiness and other factors. Blacks, Hispanics and Asians were more likely to be denied credit than Whites, even after controlling for firm characteristics like credit history, credit score and wealth. Blacks and Hispanics were also more likely to pay higher interest rates on the loans they did receive.²⁷¹

5. Other Reports

- Dr. Timothy Bates found venture capital funds focusing on investing in minority firms provide returns that are comparable to mainstream venture capital firms.²⁷²
- According to the analysis of the data from the Kauffman Firm Survey, minority-owned firms' investments into their own firms were about 18% lower in the first year of operations compared to those of non-minority-owned firms.
- This disparity grew in the subsequent three years of operations, where minorities' investments into their own firms were about 36% lower compared to those of non-minority-owned firms.²⁷³
- Another study by Fairlie and Robb found minority entrepreneurs face challenges (including lower family wealth and difficulty penetrating financial markets and networks) directly related to race that limit their ability to secure financing for their businesses.²⁷⁴

270. <https://www.federalreserve.gov/pubs/oss/oss3/nssbftoc.htm>. These Surveys have been discontinued. They are referenced to provide some historical context.

271. See Blanchflower, D.G., Levine, P. and Zimmerman, D., "Discrimination In The Small Business Credit Market," *Review of Economics and Statistics*, (2003); Cavalluzzo, K. S. and Cavalluzzo, L. C., "Market structure and discrimination, the case of small businesses," *Journal of Money, Credit, and Banking*, (1998).

272. See Bates, T., "Venture Capital Investment in Minority Business," *Journal of Money Credit and Banking* 40, 2-3 (2008).

273. Fairlie, R.W. and Robb, A, *Race and Entrepreneurial Success: Black-, Asian- and White-Owned Businesses in the United States*, (Cambridge: MIT Press, 2008).

274. *Id.*

E. Evidence of Disparities in Access to Human Capital

There is a strong intergenerational correlation with business ownership. The probability of self-employment is significantly higher among the children of the self-employed. A generational lack of self-employment capital disadvantages minorities, whose earlier generations were denied business ownership through either *de jure* segregation or *de facto* exclusion.

There is evidence that current racial patterns of self-employment are in part determined by racial patterns of self-employment in the previous generation.²⁷⁵ Black men have been found to face a “triple disadvantage” in that they are less likely than White men to: 1. Have self-employed fathers; 2. Become self-employed if their fathers were not self-employed; and 3. To follow their fathers into self-employment.²⁷⁶

Intergenerational links are also critical to the success of the businesses that do form.²⁷⁷ Working in a family business leads to more successful firms by new owners. One study found that only 12.6% of Black business owners had prior work experiences in a family business as compared to 23.3% of White business owners.²⁷⁸ This creates a cycle of low rates of minority ownership and worse outcomes being passed from one generation to the next, with the corresponding perpetuation of advantages to White-owned firms.

Similarly, unequal access to business networks reinforces exclusionary patterns. The composition and size of business networks are associated with self-employment rates.²⁷⁹ The U.S. Department of Commerce has reported that the ability to form strategic alliances with other firms is important for success.²⁸⁰ Minorities and women in our interviews reported that they felt excluded from the networks that help to create success in their industries.

F. 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

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275. Fairlie, R.W., “The Absence of the African-American Owned Business, An Analysis of the Dynamics of Self-Employment,” *Journal of Labor Economics*, Vol. 17, 1999, pp 80-108.
276. Hout, M. and Rosen, H. S., “Self-employment, Family Background, and Race,” *Journal of Human Resources*, Vol. 35, No. 4, 2000, pp. 670-692.
277. Fairlie, R.W. and Robb, A., “Why Are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital,” *Journal of Labor Economics*, Vol. 24, No. 2, 2007, pp. 289-323.
278. *Id.*
279. Allen, W. D., “Social Networks and Self-Employment,” *Journal of Behavioral and Experimental Economics (formerly The Journal of Socio-Economics)*, Vol. 29, No. 5, 2000, pp. 487-501.
280. “Increasing MBE Competitiveness through Strategic Alliances” (Minority Business Development Agency, 2008).

have full and fair access to City of San Antonio 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.

VI. QUALITATIVE EVIDENCE OF RACE AND GENDER BARRIERS IN THE CITY OF SAN ANTONIO'S MARKET

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 successful operations of the City's SBEDA Program, M/WBEs continue to face discriminatory barriers to their full and fair participation in City opportunities. Anecdotal evidence also sheds light on the likely efficacy of using only race- and gender-neutral remedies, designed to benefit all small contractors, to combat discrimination and achieve the objectives of the SBEDA Program for M/WBEs. As discussed in the Legal Chapter, this type of anecdotal data has been held by the courts to be relevant and probative of whether an agency continues to have a need to use narrowly tailored M/WBE 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 "brought the cold [statistics] convincingly to life."²⁸¹ 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.²⁸² 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."²⁸³ "[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."²⁸⁴

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

282. *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).

283. *Concrete Works of Colorado, Inc. v. City and County 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.”²⁸⁵ 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.”²⁸⁶

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-conscious and race-neutral measures, we conducted five small group, and individual business owner and stakeholder interviews, totaling 101 participants. We also received written comments. We met with a broad cross section of business owners from the City’s geographic and industry markets. 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, other government agencies, and in the private sector. We also elicited recommendations for improvements to the City’s SBEDA Program.

In addition to the group interviews, we conducted an electronic survey of firms in San Antonio’s market area about their experiences in obtaining work, marketplace conditions and the City’s S/M/WBE Program. We received 233 responses to the survey. The results were similar to those of the interviews.

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 of the numerous disparity studies we have conducted in Texas. These studies are directly relevant and

284. *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 926 (11th Cir. 1997).

285. *H.B. Rowe Co., Inc. v. Tippet*, 615 F.3d 233, 249 (4th Cir. 2010).

286. *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).

probative of the barriers to success that minority and woman entrepreneurs continue to face in the Texas market area.²⁸⁷

1. Biased Assumptions and Negative Perceptions of Competency

Many minority and/or woman respondents reported that they continue to face biased assumptions about their capabilities and qualifications and that there is often a stigma to being a certified M/WBE.

We don't even want to be known as [an MBE].... Can you actually perform? Are you a real company? I think somebody mentioned about brick and mortar. Do you actually have the assets that you can perform the work? Do you have the financing, backing, that you can perform the work? Are we going to have to carry you? Is it going to be more burdensome to us from a contract management perspective, from the client's perspective?

I think [racism is] still there and we all feel it. And I was just at a meeting yesterday where I heard comments, "Well, we're not going to use that firm because we can't understand anything they say because they're whatever." So, I think it's very prevalent and I feel it and I see it.

The contractor's assistant is somebody I knew before he had the job. And so, he kind of leveled with me and he told me that he compared it to a boxing match. He said, "if you're going to beat the champ, you bet you better beat him up." He told me I needed to blow everybody out of the water with my pricing and clearly beat anybody else for me to actually win.

That feeling of just not being wanted.

One Latina-owned firm reported outright racial harassment.

I wanted to get into heavy highway DOT work and purchased equipment and as we started bidding, we did win a contract.... TxDOT point of contact would not talk to us but did talk to my subcontractors that I hired out there in [name] County, which were Anglo. They told my son I'm not going to talk to a Spic.... We ended up mutually agreeing to just release this contract because of the way we were being treated.

Native American-owned firms faced special barriers.

287. Appendix E: Qualitative Evidence from Texas Disparity Studies.

With us being native owned, we also often find the stigma that, well, first of all, we don't exist. That there's not native businesses that are out there. And then the second part of it is that we are often lumped into a tribally-owned business, not just a native business. And so those are two very different registrations, right? One is independently owned, and one is owned by the tribe.... These large entrepreneurship programs that they have, [such as those offered by] JP Morgan Chase, Bank of America. Natives are also not included in any of those minority inclusion entrepreneurship programs either.... Oftentimes, we are forced to go to smaller, maybe a native bank or a native CDFI, and they just don't have the capital to cover those type of things.... Like Houston. "We can't use you, because you don't qualify or you're a tribal business. You're not really small, but we can't use you." And we can't even get to the point where they'll let us at least swing the bat.

2. Impact of the City's Programs

The City's Affirmative Procurement Initiatives were crucial to the success, or even survival, of many M/WBEs.

The City works with me in regards to trying to make things work for us and make it easier. They understand when you're a small business. The thing is what I've learned throughout the processes is you have to explain to your different engineers or different programs that are out there, what your current situation is. Hey, you're a small business. I don't have millions of dollars in my account, even though these are million dollars projects. So, I need everybody to work with me to try to get this financing going so we can get the money to make the projects happen. I've had good luck with that.

We're not asking for handouts; we're just asking for opportunities.

We would probably not be in business if we didn't have the contracts that we have with the City.

I do appreciate the City of San Antonio, which is how we started years ago.... After several years, we won a contract and became the prime. And now we also actually have three primes under our contract that we subcontract to. And they're all minority woman, three minority, and two of them are women-owned. And then I just finished mentoring a woman-owned small

business HR company for the City of San Antonio. So, I know they do outreach. I know it's not perfect, but I must say that I do give them credit for at least making sure there's a subcontracting requirement on most of their contracts.

Typically, the reason why we're on a lot of these projects, even though they say we do great work, is because of what the city has as an African American percentage, two percent. But the same firms that we do all this business with and we supposedly do a great job in, we're not doing any of the private work with them. Any of it, not one or maybe one. I would say probably 80 to 85%, maybe 90% of the work that I do is with the city and the state.

Without this program, in my opinion, we would either not be in business or would probably be just me, myself and I doing \$5 jobs.

Without the goals, several firms reported they would not receive work.

We were a prime on a project. We brought a non-prime on the team and successful project. And then afterwards, we were vying for another project that they were the prime on. And we asked if we could support their team. And the answer was, "you know they don't have a small business goal".... And I basically just, I rubbed it in his face, and he just put his head down. Because he said, "My goodness, I didn't think of it that way." Well, we think of it that way every day and that's where the difference is. And that's where I would very much say that anyone that says racism is not an issue is, they need to think twice because it is. I'm not saying it's on every situation, but it is out there.

They just reach out to you just to meet that requirement.

A few certified firms reported the programs had not assisted them.

I didn't see that the certification helped with getting any business from any City office contract or business downtown that I didn't have to go out and go get myself as just an individual business.

The hardest thing for me is really not that I'm a woman or a minority. I feel like there's already a niche of people that do business all the time that they already have their minority friends. They have the teams already established. And it is really hard to get in that group of people. It's common, right, that you

get used to doing business with a certain group of people and you want to repeat it. And if it goes great, you do it again. And I think that is mainly what I discover.

3. Obtaining Prime Contracts

Even with the implementation of the City's Initiatives, obtaining prime contracts remains especially difficult.

We don't respond to anything from the City at this point since we don't know if this is a genuine request for our services.

Our biggest thing is trying to go from a smaller firm to actually graduate out of it and get prime contracts. And that has definitely been something that has not been, I guess something that's that we've been able to get is the prime contract. We actually have gotten one prime contract from the city.

We really have not benefited from any City minority work. And it just so happens if we have a contract with the City of San Antonio, it's typically with some sort of general or prime contractor that we have a relationship with, which is few and far between.

Providing mobilization funds at the start of contract performance was one suggestion to support M/WBEs moving into the prime role.

If we can get that mobilization money where it can sustain the company on that particular project for up to 60 or 90 days, then a lot of the minority contractors will come back and start bidding on this work.

Another recommendation was to support joint ventures between certified and non-certified firms.

One item of concern that we have in most of these companies, that I see are mature companies, the lack of encouragement for joint ventures.... There should be something that allows the joint venture where a minority firm can joint venture with a prime firm for that minority JV to count towards the goal.

A third idea was to "unbundle" contracts into smaller portions or less complex scopes.

With [M/WBEs] being smaller firms and the bigger contracts, a lot of them just don't meet the capacity level in order to participate with some of those city contracts. So, one of the

things I suggested was being able to look at debundling as much as possible.

One White male-owned firm requested that service-disabled veteran-owned firms be counted towards M/WBE goals.

If the City of San Antonio was going to happily advertise to the world and the airport that they're a military city in USA, you would think there would be some competition or abilities for a qualified SDVOSB to be in the mix. But as you already said, there's nothing. I mean they have nothing out there for SDVOSBs, which is somewhat of a head scratcher with a city that has five bases surrounding it.... Why are we excluded in the opportunity [to participate in the City's race- and gender-conscious program]? Or maybe not excluded, but certainly not called out or recognized if you will, for lack of better term. I mean, when you really just advertise woman-owned or minority-owned, I mean, it's a pretty narrow spectrum.

B. Anecdotal Survey of the City of San Antonio's Market Area Firms

To supplement the in-person interviews, we also conducted an anecdotal, electronic survey of firms on our Master M/W/DBE Directory; the City's contract data file; and firms identified through our outreach efforts. We further solicited written comments. The survey was comprised of up to 45 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, and capacity development, as well as the City's SBEDA program.

The survey was emailed to 6,663 firm representatives and owners, nine times from June 2, 2022, to August 15, 2022. The response period ended on September 29, 2022.

We received 284 gross responses. After accounting for incomplete and non-relevant responses, there were 233 net useable responses. Percentage results have been rounded to one decimal place to increase readability.

1. Respondents' Profiles

Table 6-1 and Chart 6-1: The race and gender distribution of the 64 minority and woman survey respondents is listed below. Construction and suppliers of construction materials accounted for 22.6%; architecture and engineering

firms accounted for 15.2%; professional services firms accounted for 38.7%; other services firms accounted for 14.3%; and goods and supplies firms accounted for 9.2% of the responses.

Table 6-1: Race and Gender Distribution

Firm Ownership	#	%
African American	62	26.6%
Hispanic-American/Latino	94	40.3%
Asian Pacific/Subcontinent Asian American	13	5.6%
Native American/Alaska Native	2	0.9%
Non-Minority Women	46	19.7%
M/WBE Total	217	93%
Non-Minority Males	12	5.2%
Publicly Held, Non-M/WBE Total	4	1.7%
Respondents Total	233	100.0%

Source: CHA Survey Data Results

Chart 6-1: Respondent Type of Work

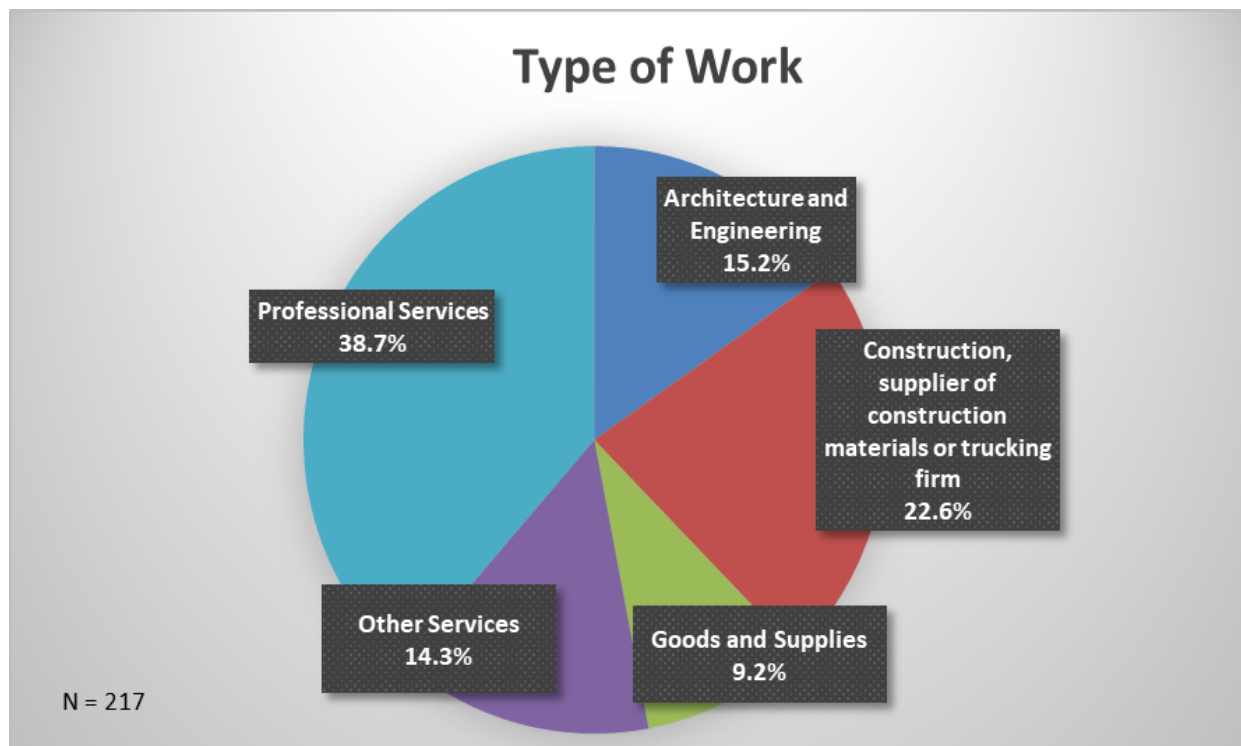


Chart 6-2: Among M/WBEs, 15.2% of the firms had worked on City projects only as a prime contractor or supplier; 11.5% had worked only as a subcontractor or supplier; 17.1% had worked as both a prime contractor or supplier and as a subcontractor; and 56.2% had not done business with the City.

Almost eighty-five percent (83.4%) were certified as an M/WBE with the South Central Texas Regional Certification Agency (“SCTRCA”). Over ninety percent were certified as a minority, woman or disadvantaged business with additional government agencies. Eighty-nine percent (88.5%) were certified as a small business enterprise (“SBE”).

Chart 6-2: Respondent Contractor Status with COSA

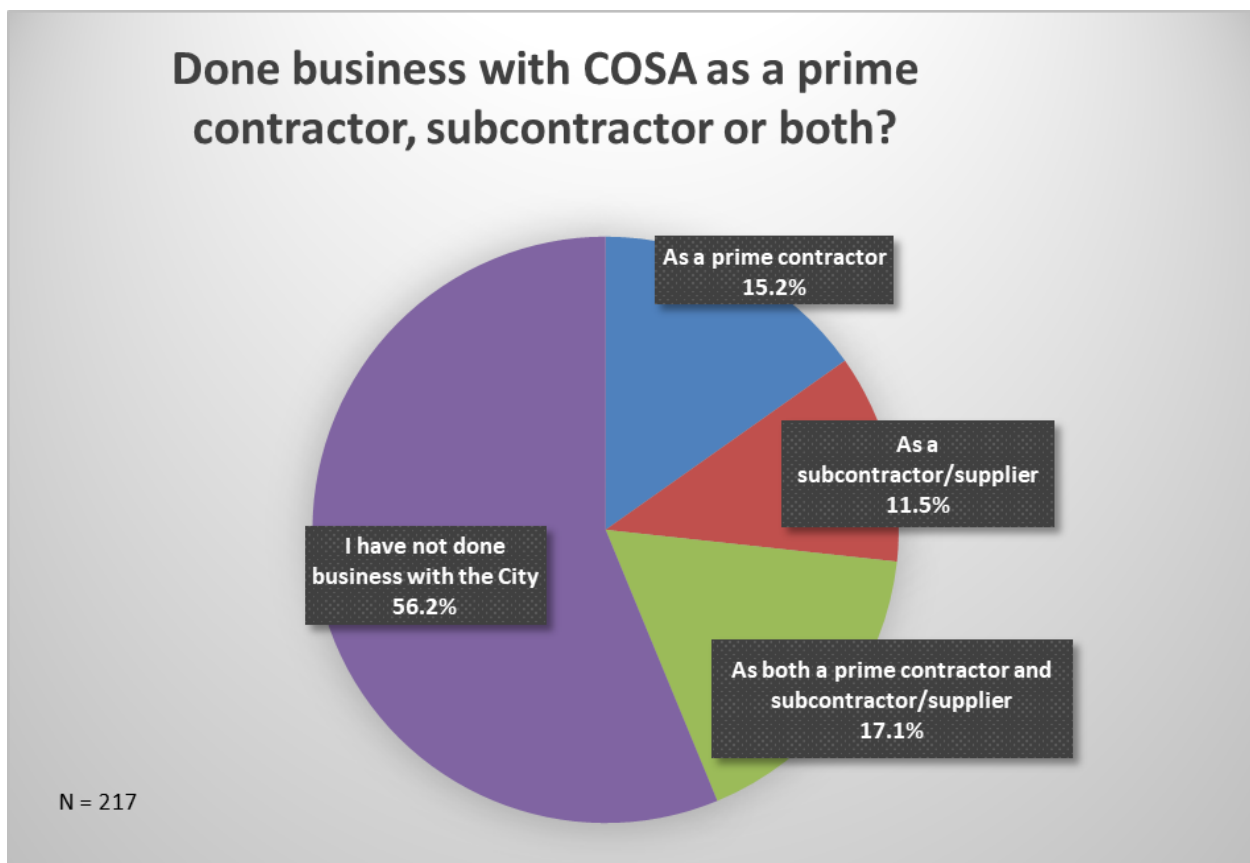
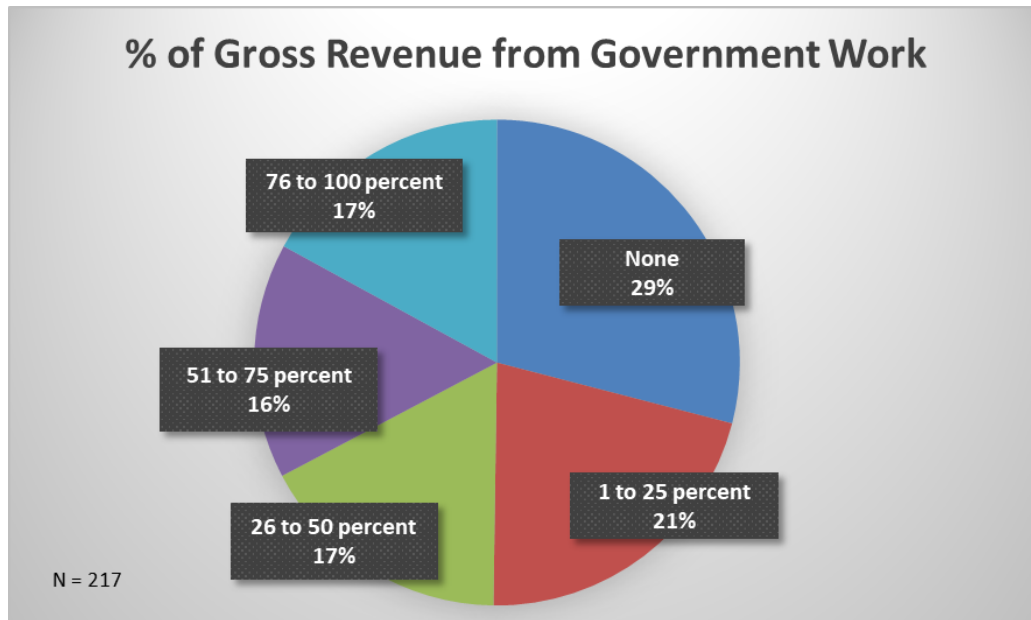


Chart 6.3: Seventy-one percent of M/WBE respondents reported that some of their revenue was derived from government work: 21% of the firms reported that one to twenty-five percent was from government contracts; 17% reported between twenty-six and fifty percent; 16% reported between fifty-one and seventy-five percent; and 17% reported between seventy-six and one hundred percent. Government work did not contribute to the gross revenue of 29% of the firms.

Chart 6-3: Respondent Contractor Revenue from Government Work



2. Quantitative Responses

a. Discriminatory Barriers and Perceptions

Chart 6-4: Almost 40% (37.3%) of M/WBEs reported that they had experienced barriers to contracting opportunities based on their race and/or gender.

Chart 6-4: Barriers to Contracting Opportunities Based on Race and Gender

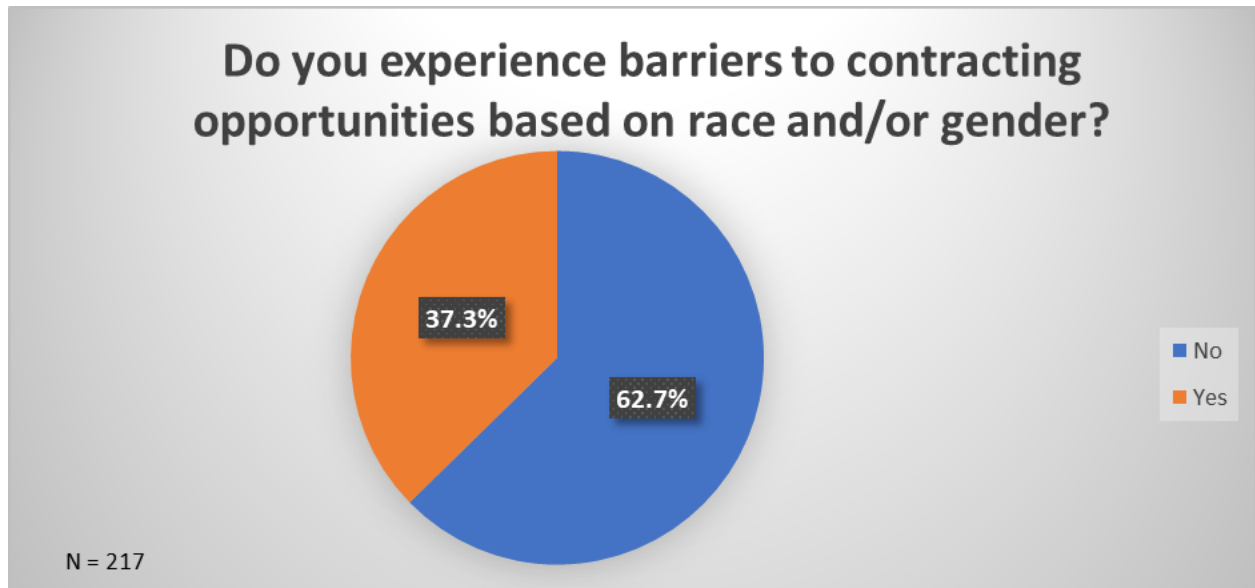


Chart 6-5: Among M/WBE respondents, a quarter (25.8%) answered "Yes" to the question, "Is your competency questioned based on your race and/or gender?".

Chart 6-5: Negative Perception of Competency Based on Race or Gender

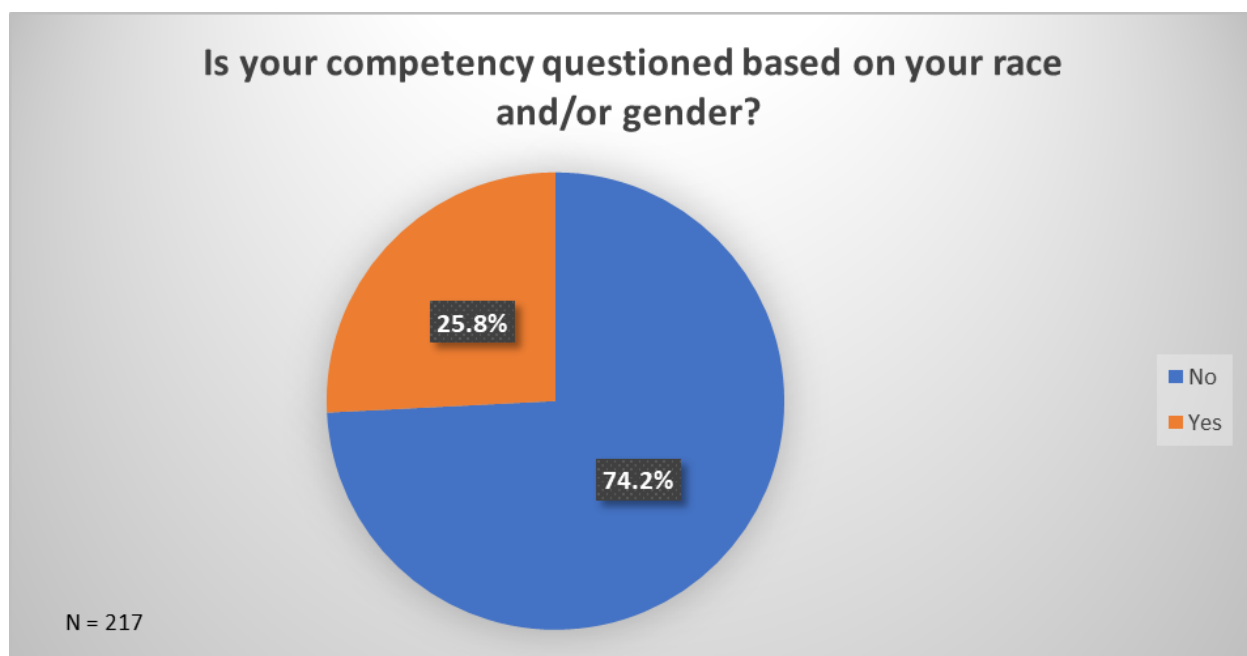


Chart 6-6: Almost a fifth (18.4%) indicated that they had experience job-related sexual or racial harassment or stereotyping.

Chart 6-6: Industry-Related Sexual or Racial Harassment or Stereotyping

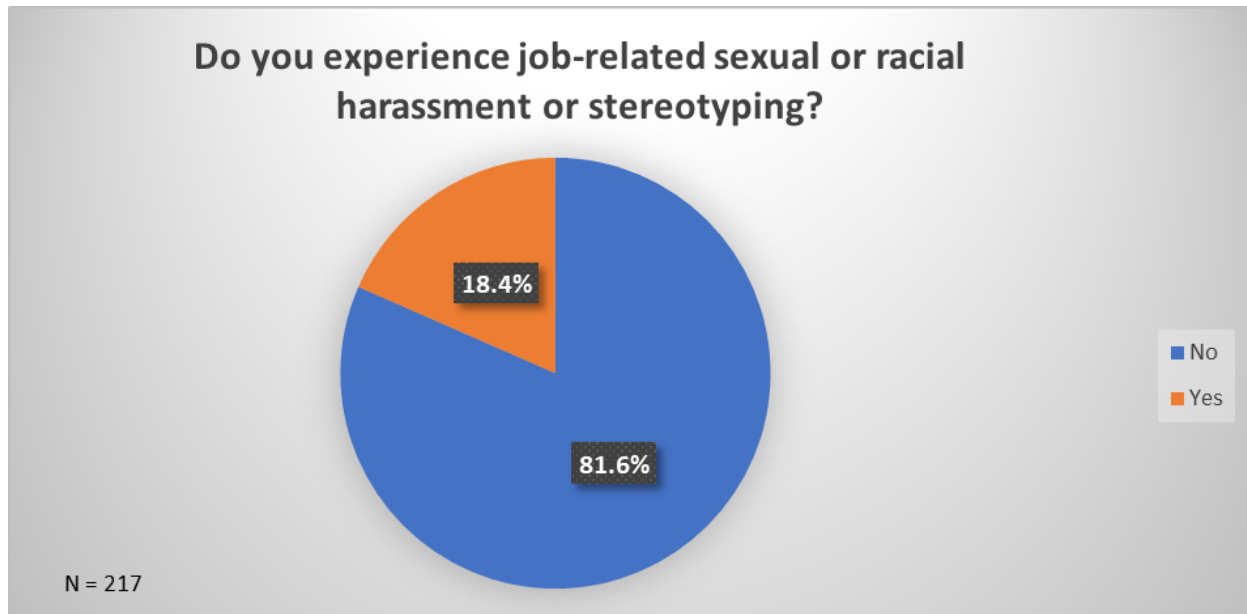
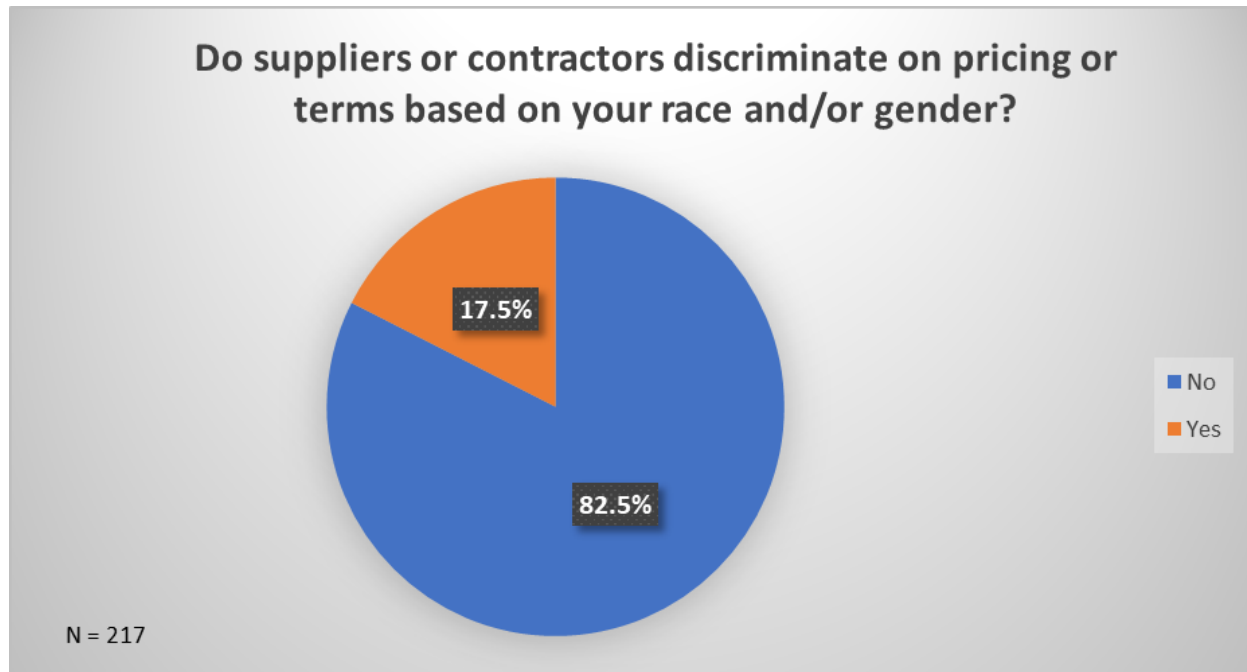


Chart 6-7: Discrimination from suppliers or subcontractors because of their race and/or gender was experienced by 17.5% of the respondents.

Chart 6-7: Supplier Pricing and Term Discrimination Based on Race and Gender



b. Access to Formal/Informal Business and Professional Networks

Chart 6-8: Over a quarter (26.7%) of MWBE respondents reported that they did not have equal access to the same information as non-certified firms in their industry.

Chart 6-8: Access to the Same Information as non-Certified Firms

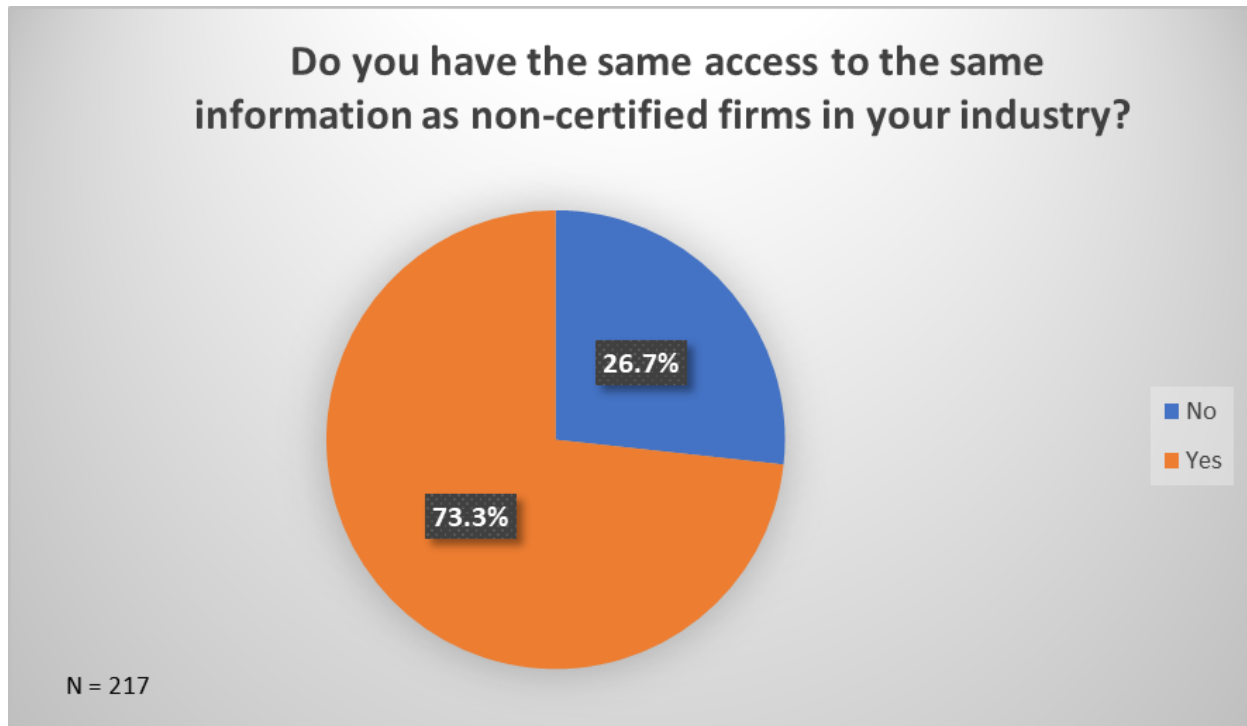
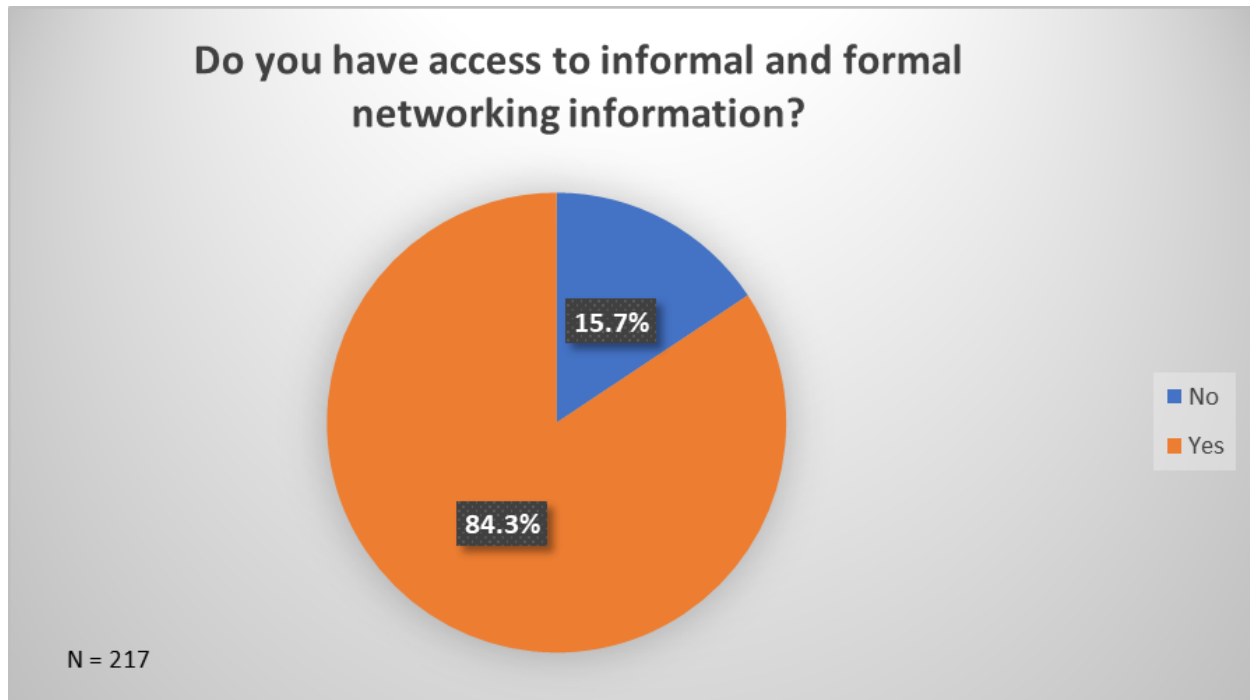


Chart 6-9: Limited access to informal and formal networking information was reported by 15.7% of M/WBE respondents.

Chart 6-9: Access to Informal Formal Networking Information



c. Access to Financial Supports

Chart 6-10: Among M/WBEs, 6.9% reported challenges in their efforts to obtain bonding. In comparison, none of the non-M/WBEs reported difficulty with obtaining bonding.

Chart 6-10: Barriers to Obtaining Bonding

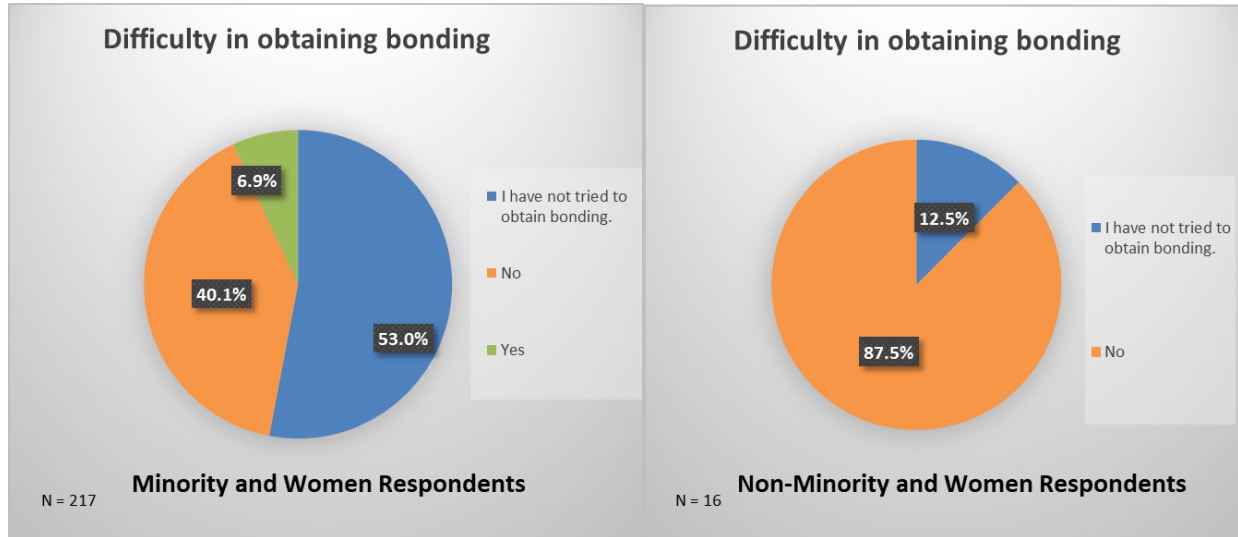


Chart 6-11: Over a quarter (28.6%) of M/WBEs reported experiencing barriers in their efforts to obtain financing and loans. In comparison, none of the non-minority firms reported such difficulties.

Chart 6-11: Barriers to Obtaining Financing and Loans

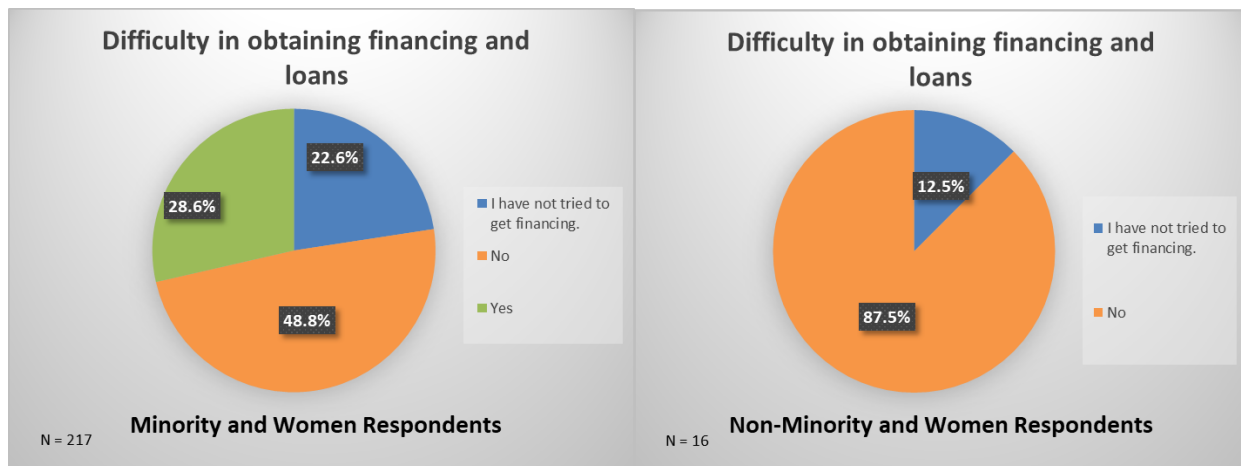
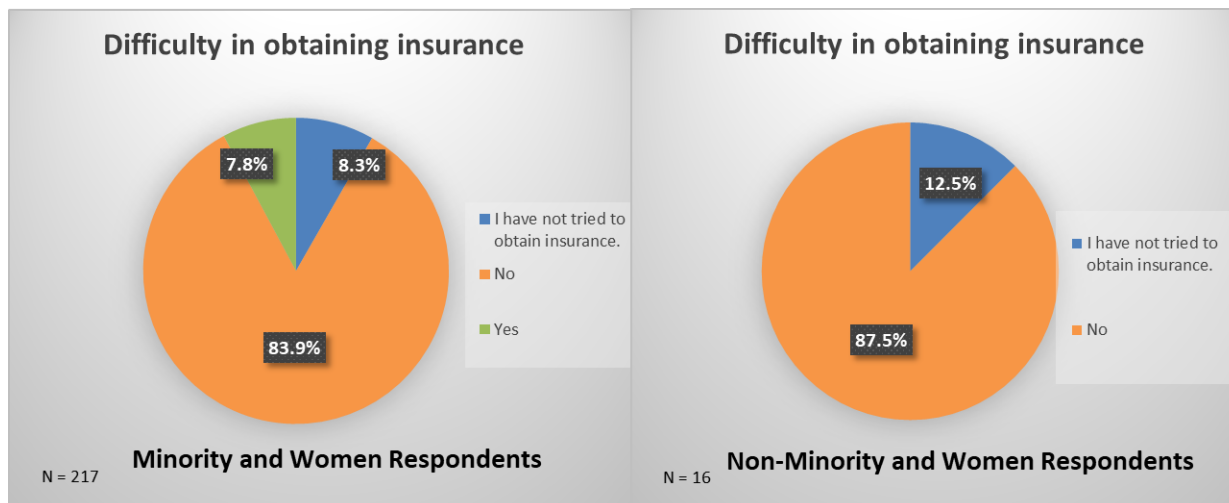


Chart 6-12: Among M/WBEs, 7.8% reported experiencing barriers to obtaining insurance. None of the non-minority firms reported such difficulties.

Chart 6-12: Barriers to Obtaining Insurance



d. Obtaining Work on an Equal Basis

Chart 6-13: Three fifths (61.8%) of M/WBEs reported that they are solicited for COSA or government projects with M/WBE goals.

Chart 6-13: Solicitation for COSA or Government Projects with M/WBE Goals

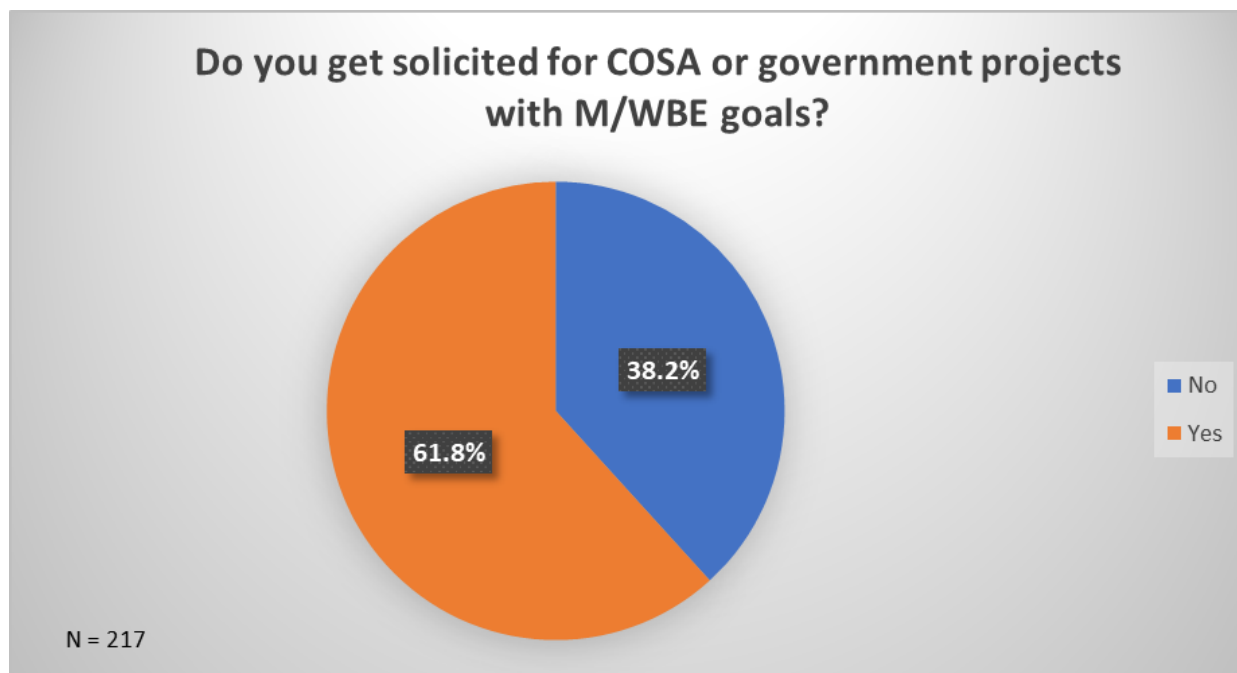


Chart 6-14: A little less than half (48.4%) reported that they are solicited for private projects or projects without goals.

Chart 6-14: Solicitation for Private Projects or Projects Without Goals



e. Capacity for Growth

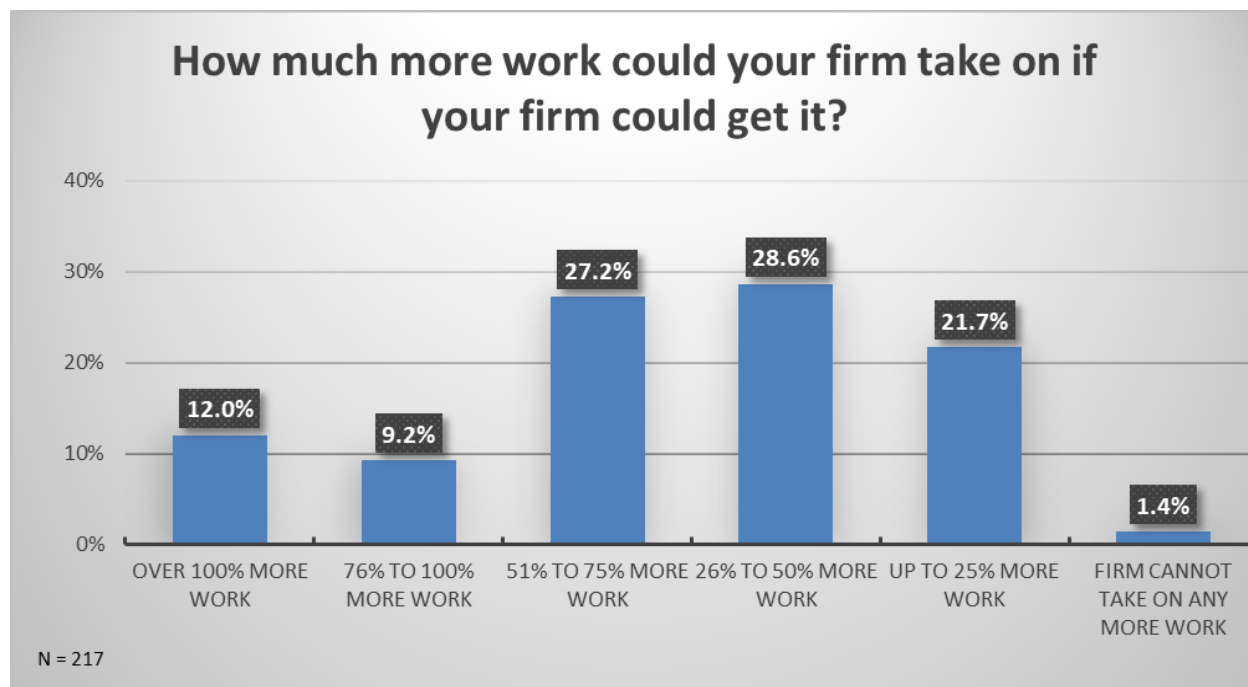
Chart 6-15: Over half of M/WBEs (58.1%) reported that their firm's contract size was either well or slightly below the amount they are qualified to perform.

Chart 6-15: Firm Contract Size vs. Contract Amounts Qualified to Perform



Chart 6-16: A majority (77.5%) of minority and female respondents reported that they could take on up to 75% more work if it were offered. A little over twenty percent (21.2%) could take on up to 75% to more than 100% more work. Only 1.4% of the firms reported not being able to take on any additional work.

Chart 6-16: Capacity for More Work



f. Prompt Payment

Chart 6-17: Of the M/WBE contractors who reported doing work for the City, 73.3% said that the City paid them promptly. Prime contractors were reported to pay much more slowly, with only 48.6% of M/WBE respondents reporting that prime contractors paid within 30 days.

Chart 6-17: Prompt Payment within 30 Days

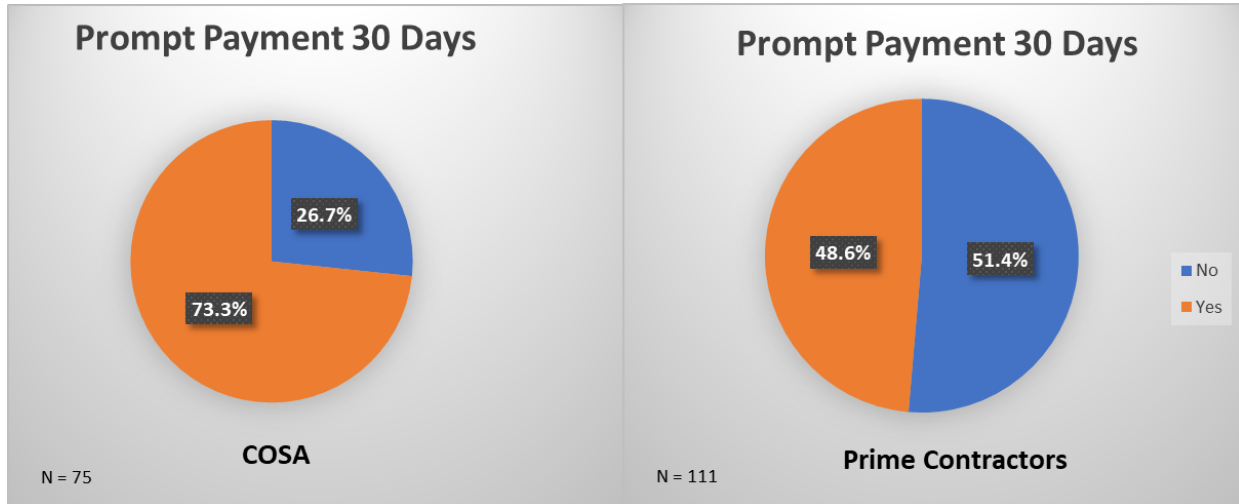
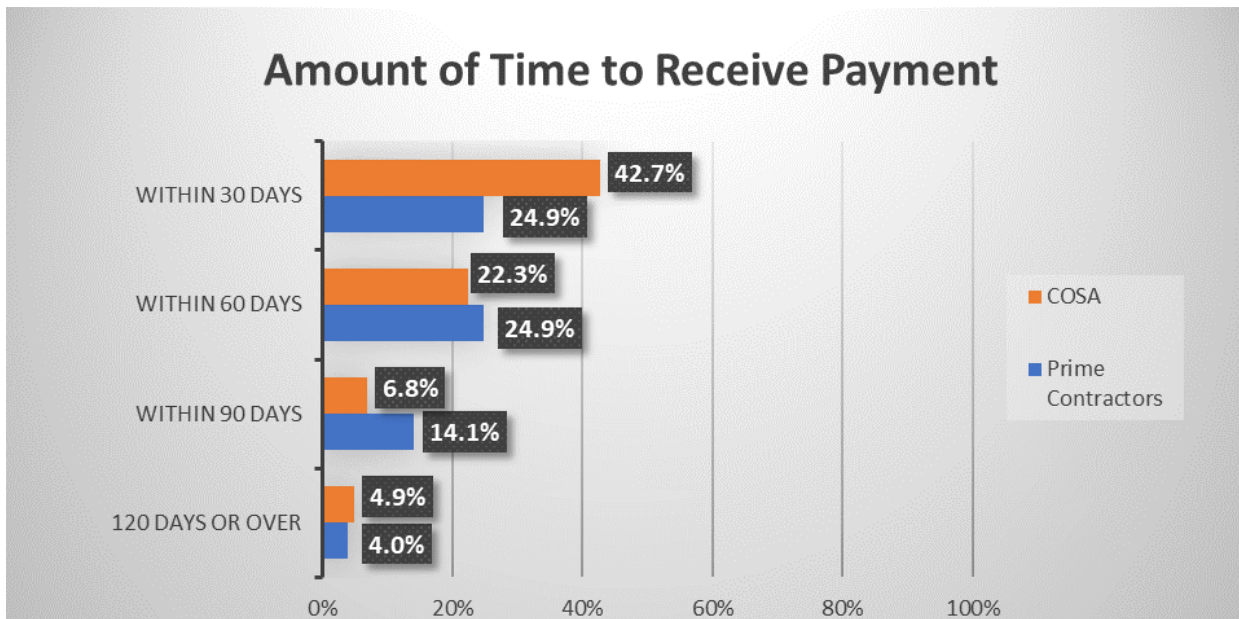


Chart 6-18: Of M/WBE contractors performing work for the City, 65.0% reported receiving payment within 60 days; 6.8% were paid within 90 days; and 4.9% were paid in 120 days or later. Prime vendors were reported to pay on a slower schedule. Only half (49.7%) said prime vendors paid within 60 days; 14.1% reported they were paid within 90 days; and 4.0% reported they were paid 120 days or later.

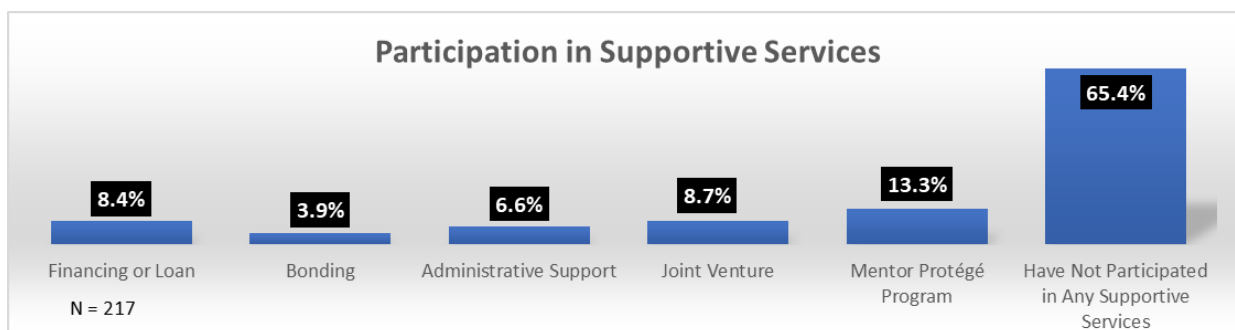
Chart 6-18: Amount of Time to Receive Payment



g. Capacity Development and Participation Incentives

Chart 6-19: Over a third (34.6%) of M/WBE respondents reported they had participated in a business support program. A little under ten percent (8.4%) had participated in financing or loan programs and 3.9% had accessed bonding support programs. Almost ten percent (8.7%) joint ventured with another firm and over ten percent (13.3%) had participated in a mentor-protégé program. Slightly over five percent (6.6%) had received support services such as assistance with marketing, estimating, information technology. A majority (65.4%) had not participated in any supportive service offering.

Chart 6-19: Participation in Supportive Services



3. Written Survey Responses

The survey also included open-ended response questions. These responses were consistent with information provided in the business owner interviews and the survey's closed-ended questions. Responses to these questions have been categorized and are presented below.

a. Systemic Racial Exclusion

Many minorities reported that fair opportunities to compete for contracts are not available because of systemic racial barriers.

Prime contractors and buyers required past performance in areas that have not been traditionally open to African American companies.

Roadblocks are placed in our paths through: Not enough information was given to our firm that was given to incumbent firms. Projects that do not require RFPs are given to non-Black firms without consideration.

State and local governments spend billions of dollars hiring contractors for goods and services, but most of those contracts go to White-owned businesses, not minority contractors — despite decades of affirmative action and other policies meant to make up for disparities. A federal study released by the Minority Business Development Agency found the needle has barely moved on boosting minority business participation in public contracts. As a minority woman owned agency, our challenges have increased.

I'm a little Mexican American company. Trying to wiggle my way into a White man's world. We do not exist in [the] corporate city of SA.

[Our experience with barriers is demonstrated] by the sheer fact that we [as an African American firm] have to submit as a sub-consultant on 85% of our work.

As a small minority owned insurance agency, we are often overlooked once we send in our certification on large federal, state or municipal RFPs, because we are minority.

We [as a Hispanic-owned company] have more than 70 years of combined experience in this field and it is practically impossible to get city, county, state and federal contracts. It all comes in a package in glass ceilings and walls. Veterans and White owned businesses are privileged and targeted to get the majority if not all government contracts.

[As a Latino-owned company, we have experienced] bias treatment.

I was prospecting a potential client for months. Gave up, sent our Caucasian salesperson in to meet with the same client and they offered us a contract. We didn't accept but it confirmed my thoughts.

Discriminatory barriers on the basis of race or gender may be imbedded within the organization through selection committees.

Race is a SYSTEMATIC issue now and will always be.

[Our experience with barriers is] contracts [have been] awarded to Caucasian owned companies although their

rates may have been higher, their position not as strong and their portfolio may have been less than desirable.

Minority women owners experienced both racial and gender barriers that created significant challenges in obtaining work.

[As a Black and woman-owned firm], we don't get the jobs even-though we may bid lower and has been around longer than our competition.

Always, minority women have it hard, you can't make money without opportunities.

Black female, no revenue and lack of opportunities in my opinion.

[We are a Hispanic company and] sexual and/or racial harassment or stereotyping continues to occur. The White House Combating Race and Sex Stereotyping through "Executive Order on Combating Race and Sex Stereotyping" (EO). According to the World Economic Forum's Global Gender Gap Report 2020, North America won't see gender equality for 151 years. The report also states that gender parity can have a large impact on whether an economy or society will thrive. As a minority women owned business, we face that challenge every day.

[As a Black woman business owner], I find it harder for me to compete. I am in a very competitive industry. I find it harder to compete when compared to my bigger male counterparts. All my life, I have felt like there were more hurdles that I need to jump compared to other individuals. I did not start from a fair playing ground, so I have to work harder and more to over compensate in the areas that I feel like are not fair. Even though things appear to be equal, it is not equitable.

Being a woman of color is questions [sic] from the start. We have to fight tooth and nails to get seen.

Not with the City but with other governmental agencies we've been called names because of my gender and men rather work with men and because of our race.

Size of business (small business not as "good" as large agencies with brick-and-mortar buildings), women Hispanic have been told I'm loud, bracelets are distracting "very

ethnic," ok to bid on smaller projects but never considered for the larger RFPs even with the same departments. We were good enough to work on the smaller budget, but not the larger projects with larger budgets.

A Hispanic company had not been subject to racial barriers.

Not aware of racial barriers.

b. Discriminatory Attitudes and Behaviors

Several minority business owners related instances of overt racism and demeaning comments.

Using the N word.

I have been spoken to as if I am illiterate.

One African American firm had not experienced harassment.

I have not perceived any harassment from this perspective.

c. Negative Perceptions of Competency and Professionalism

Many minority respondents were subject to stereotypical assumptions and attitudes on the basis of race. Several reported their credentials and competency are routinely questioned.

Indirect questioning of abilities.

Large primes not as interested as working with small minority contractors. They treat us as high risk or unable us to not do good quality work.

I was asked if my work would be on time because they had worked with Black owned businesses before, and the work was late.

Many agencies don't believe that Minority owned firms have the capacity or capability to serve as prime consultants on major government projects.

I'm no longer under any illusions that the playing field is level, but its anything but that. Due to my ethnicity, my intelligence is always called into question. Honestly, most of the time I don't even get upset or even bother to complain because it appears to me that sexism and racism is taught. I've never asked for a handout and have worked for everything to this point in my life. Is it too much to ask for a

level playing field? If all things are equal, I know my business will be successful!

There is an assumption Hispanics/Mexican American business are run by uneducated, non-degree, limited English, owners/staff. The man-power, the workers is what Hispanics contribute, but knowledge, the expertise that comes from our male-White counterparts.

[As a Black firm owner], I am perceived [as a] risk and [my] capabilities questioned.

Individuals continually second guessing my work or data that is presented or outright discounting it. This is the reason I started my small business, so I can be the change I want to see. For example, after reviewing technical and programmatic data, I gave my analysis as to how risk could be mitigated and show the flaws in the current analysis. My input was totally discounted. It appears that this certain ethnic group is always trying to establish dominance over everyone else and I'm just tired.

[Our competency is questioned] when non-minority firms think that we won the business based on our certifications.

I believe there have been times that our firm has not been selected because of the perception that as a minority firm or a small business, we are unable to perform the work.

People tend to question my experience and knowledge more so than my male counterparts. Especially in the construction industry, people tend to act as if I do not know what I am talking about because I am young, African American and a female.

Anglo Saxons look upon you with doubt then get envious when they find out you're educated.

A Black firm saw improvement over time.

This has happened over the years. It's less likely to happen now after so many years of proving myself based on knowledge in my field.

One M/WBE firm reported that being certified as a minority- or woman-owned business often carries a stigma.

We stopped putting our Disadvantage Certifications on most of our bids unless it's requested in an RFP, because I really do feel we've lost plenty of bids due to a potential client not wanting to hire a disadvantage company.

Some respondents noted that it can be difficult, if not impossible, to know whether they had been subjected to discrimination.

Not completely sure if I was denied due to race, but I have a feeling it has happened.

The racial harassment is light, but it is present. The level of professionalism drops considerably in both communication and due diligence.

It's complicated. I believe so, but impossible to prove.

Defining barriers can be perception vs. reality. However, I do believe that we are in a time where race still plays a role into the availability of opportunities. Some of this occurs by way of questions about decision-making or micro criticisms that skew the perception of your professional IQ. It also can be found in setting insurance levels or requesting insurance coverage above normal levels for the project size being considered. Again, defining barriers can be perception vs. reality.

Not that any of my clients or peers would openly let me recognize nowadays.

I think it is. It's not blatant but you can feel it as micro-aggression type of attitude or with unconscious bias.

The questions and reactions have become subtle and politically correct.

Barriers are now hidden. You can't be sure why you were denied.

d. Gender Bias and Barriers

Many women, especially in construction, reported experiencing sexist attitudes about their competency and professional skills.

I am a woman and they do not think I can do the job.

Being a small, woman-owned business in engineering, we often find that our engineering technical decisions are not valued, also because we are not a large "national" firm. We

often need to struggle to be heard and have our engineering thoughts accepted. Our technical engineering decisions are often scrutinized, with many layers of the Prime firm's QA/QC (often by their personnel who have less experience than we do), and ongoing questions to validate that, "though" we are a women-owned small business, we truly do know what we are doing and we take responsibility for our work!

Contractor's sometimes have a difficult time with a female construction manager or inspector regardless of age and experience. I frequently have to "prove" I can do my job and am not hired simply because I am a DBE, SBE or M/W/DBE.

I am sometimes dismissed for being a woman in construction. Within my own industry, women are underrepresented in positions of leadership.

I had a major design recommended for a water plant, and the construction foreman tried to belittle my idea in front of the client by saying that my idea won't help the dishes get cleaned. It was for a water treatment plant.

It's not easy being a woman owner of construction company since this industry is dominated by males but it's my goal every day to do my work with responsibility and proof that I have the knowledge to perform my trades.

This is typical for our industry. Unfortunately, I have learned to deal with it but it's still happening.

Educational barriers. Barriers in Armed Forces, Barriers with prime contractors as a DBE or as a woman owned business. Barriers with supplier reps for being woman owned.

In IT [as a woman-owned business], [I am] often dismissed and talked down to - better in recent years, but unconscious bias is real, active stereotypes are real.

Most city government officials prefer to work with men.

Prejudice against women who perform major engineering decisions especially when dealing with construction in remote areas.

Sometimes I have been ignored because I'm a female.

Female business owners are often overlooked.

Working with prime contractors in an effort to win work - I specifically was talked down to and told that my firm was incompetent and we provided no value.

I'm a stucco, stone framing company owner most of GCs that I start to work [with] at the beginning doubted my knowledge and capabilities to do the projects.

In IT, there are assumptions that I don't understand or have experience with databases, coding, architecture. Both men and women still express surprise. I'm contacted for referrals of "experts" in my field by people who don't think to invite me.

As a woman in the business, men tend to disregard my knowledge and many times, over the years, [my competency has been questioned].

I feel that they do not trust me to do the job for my age and gender.

One woman in the goods & services industry noted few experiences when her competency was questioned.

Gender - it does not happen frequently.

Several woman firm owners reported being overlooked for contract work because of their gender.

Not certain, but it does seem that well established men are the default position for contracts.

My competency is not questioned, as I am an overachiever. I have been refused to be considered BECAUSE of my competency, as it was felt I would take the benefit away from "one of my boys".

Non-return of calls because we are female.

Women do not get as many opportunities to even move through the bid process after the initial response.

I can't prove this so I'm answering no, but I know I don't get the competitive bids that males get.

I work in a male dominated industry. Male owned businesses are typically given consideration before we are.

The good ole boy network does not include women contractors. We don't share information or get invited to participate.

It's a man's world.

With the City of SA, if you're not a male and part of the click you don't get work.

One woman reported being overlooked based on her sexual orientation.

I am a gay woman and I feel confident I am stereotyped and miss out on opportunities.

Some women reported encountering sexist behaviors and stereotypical attitudes about their role and authority.

All the time as a contractor, they look for the male in the meeting to talk to.

As a woman in construction, many times I am not even included in the conversations.

I worked through the '70's and '80's. Yes, of course I did [experience sexual harassment or stereotyping], including men hired in the same position for \$15,000 more even though I outperformed all of them, and blatantly told I should understand because I had a husband to support me, and they were the breadwinners of their family.

Many men assume I am frail and weak, but I am neither. I just finished 2 days of fuels work north of Dallas in 104 degrees, no problem.

Stereotyping on job sites - very male dominated.

Machismo attitude from primes, women owned firms can be dismissed.

Interrupting, over talking are common. I'm 62 - used to be a lot worse than it is now, but it's still present. Assumed that I'll help with birthdays, events, food, gifts.

Gender and age. Men look at me and make assumptions.

Outright sexual harassment and demeaning comments remain a challenge for some women.

I am older, and living through the sexual revolution has certainly delayed my progress. I have been accosted quite frequently in the fielded throughout my career.

As a woman in construction, yes dealing with sexual and racial harassment has been part of being a part of this industry. Unfortunately, we have gotten good at not paying attention to it.

As the managing member, I'm called honey or sweetie in professional meetings.

Construction is still a boy's club. I have personally been the victim of significant workplace sexualization at construction sites.

I have been described as a bitch, or that I am gay.

e. Access to Networks

Many minority and woman business owners felt excluded from networks that offer information and relationships necessary for success.

Lack of networks and lack of contracts leads to further isolation in the process.

I am not in any networking groups that work in State and Local governments. Federal yes. I have found less bias in federal opportunities.

I certainly do have access to formal networking information and I do not have access to informal.

Limited to formal networking.

And accent. Always an outsider.

Limited access to business networks. Limited Opportunity for Skill Development.

Most of the information is paid membership based.

We are unable to fully make use as some of the information comes in the form of membership required.

I do [have access to networking information] but it is very limited.

I don't know where to start [accessing networking information].

Long-term genuine relationships are established through heritage connections and social memberships.

Assuming non-certified means primes, they have much larger staffs, locations and budgets, which allows them to network and gather information pertaining to upcoming opportunities prior to our knowledge. There is a saying that "If you don't know about an RFP until it is released, you're already too late".

I really don't know how companies get certain information to public sector and or Government opportunities. This was since we've opened our doors.

I have access to the same information, but not necessarily the same opportunities.

Usually, I'm shut down when going into places to network or trying to find business.

You don't know what exist until after the contract has been awarded.

Several reported the presence of a "good ole boys" network that was impossible to penetrate.

The good ole boy network does not include women contractors. And unless it's required to include women participation it does not happen automatically.

Seems like you have to be part of the homeboys in order to get any solid info.

The energy business is really based on relationships and is male dominated so while I do believe I have access to the same information I know I do not as I'm not invited to the golf outings or the sporting events other males in my industry are.

Establishing relationships with prime contractors was problematic for some subcontractors.

Unable to establish relationship with buyers or primes. If they contact you the scope is ambiguous and not obtainable.

They will either ignore you by not returning calls or emails therefore you are left out because of Primes who already have someone already in line.

Primes will choose not to allow access for meetings. If they have no contact, they technically did not refuse to consider your company, and they can continue using only a non-certified firm.

Most places will give the run around when trying to work with them or get information on procurements in San Antonio.

A few M/WBE firms felt that the barriers they face are a result of being small or new.

Large businesses have lobbyist, contract search subscription's, proposal writers, partnerships with Chambers of Commerce, etc. Small businesses cannot compete fairly.

Bigger firms at times have insight we don't have.

Contracts not requiring public bids are usually inaccessible to companies my size.

I feel that larger Firms get more and better access to Executives and Politicians than smaller Firms.

[Barriers] based on size...Yes.

Financial size in the marketplace.

They have created barriers to ensure that as 3 people we don't get work.

Barriers are preconceived bias associated with minority owned micro businesses lacking knowledge or skill to execute services.

There is really no standard in our field since it is so relatively new. We do have greater in-depth experience in what our firm provides but are usually not given much credence since we are small in size.

Entrenched relationships at the City with some contractors were seen as a big obstacle in obtaining contracts.

Seems that if we do not know anyone in the city, we have no chance of winning a bid.

Many companies have social relationships with COSA and that is hard to overcome.

For the City opportunities it is not what you know but who you know.

Minority firms often are not in the room in the early stages when decisions are being made.

When you have been the agency's representative tasked to ensure the playing field is level, you see the opposite, and the status quo continues without consequences.

City personnel in charge of contracts going out for bid are influenced by lobbyist for large firms where the small businesses cannot bond for the large size contracts

Not a club member, opportunities are taken before the governmental entity requires the prime to attempt reasonable faith effort. Good faith efforts are not sincere.

f. Access to Contract Opportunities

Some minority and woman respondents felt that prime bidders often use them only to meet affirmative action goals.

Constantly hearing that we would include you on the team, but there's no DBE or MBE goal on this RFQ.

Firms use non-minority firms when there is no set goal.

Our contracts with larger national firms are clear - if we lose our S/M/WBE status, it is a breach of contract and grounds for our termination. We have tried to negotiate this wording out of our contracts, but we have yet to succeed.

They only use us if a goal is required.

We are only used when required by a contract, the same firms won't use us if not required to use a certified firm.

They only want to give little pieces of work to us to check boxes. Never anything substantive.

Sometimes people put us on teams just to meet percentages and they may or may not actually use us on projects. When they are not required to meet percentages, they use other firms.

One woman contractor noted private projects were difficult to obtain.

As a woman contractor, we don't get included on private contracts.

g. Financial Barriers to Opportunities

One of the most common issues reported by M/WBEs was the barriers encountered when trying to obtain financing, bonding and insurance. Lack of access to these financial resources and the high rates charged when they are obtained impedes capacity to grow and compete on an equal basis. Small and new firms faced particularly large challenges.

My firm has faced tremendous issues obtaining lines-of-credit even when all options were explored. This is a sad day for America!

We have limited access to capital at local banks as we are considered high risk. We have to work with what we have and be very resourceful if we want to get things accomplished. Wish things were easier.

Five years in business, 26 staff members. Before COVID, over 500k in gross Receipts. And for the life of me we haven't qualified with LIFTFUND. SO yes, there is a big issue there.

Every application [for credit] has been rejected.

Frost bank, RBFCU, NFCU, and others denied credit even when there was a contract in hand to cover the work and loan.

Have worked with 4 different banks in my past 15 years. All have told me they could not do more for me because we are considered high risk. Although we have zero debt in the company and carry \$1M in cash to fund our projects. Not sure what else we can do but makes it really difficult to grow.

I had to recently change the name of my firm due to a partnership split, and although I had the same people working for me and a slew of on-going projects and contracts, I was still looked at as a firm that had not been in business long enough to qualify for a much-needed loan to help me grow, get equipment and hire.

I have been struggling A LOT financially due to I can't get loans from banks or financial [institutions]. I have to find private lenders that make loans to me with very high interest rates or project percentages.

I have been turned down so many times even though we have our own land, building and good credit.

I was told that since my firm was small and minority-owned I would need a co-signer even though I have good credit.

I've applied dozens of times. [They] stated I'm not qualified.

Minority financing programs Bank of America, JP Morgan Chase for example do not include programs for native owned businesses.

Once some of these microlenders or grantors met their "negro number" it is impossible to receive funding.

Seems like they are always asking for my spouse's info even though I do not have one.

The most demeaning thing was I applied for a business loan/line-of-credit and was outright offered a personal loan.

We have tried with more than three companies to obtain funding with all of them ending in the same way...denied.

We tried to get funding on so many occasions and were denied, I stopped applying for loans about 3 years ago, we found we can maintain without it...basically we had no choice but to operate without it.

Yes, the fact that I am a woman contractor, I am considered high risk as there are not a lot of women who have proven to be successful. So, I get very limited access to capital and it's always at higher interest rate. Being small or being a woman in construction has no advantages whatsoever. We do it because we don't give up fighting but why does it have to be such a fight every time?

As an [Black] business owner, I relied on self-funding, [was] turned down numerous times for loans or financing. My personal credit took a hit as a result for using my personal credit to maintain my business and employees.

You are never good enough for a loan.

I either have to pay high premiums, which create low profits or I am denied all together. I lose work opportunities because of this.

They cast doubt and keep the rates high and bond capacity at a minimal.

Unwillingness to offer coverage for tribal projects.

Being a service industry firm, we are considered high risk and they requested spouse information although he has nothing to do with my business.

Not understanding government contracts or saying we are too small.

We have better luck from out of state sources which is a shame.

Large companies have generationally obtained enough capital and experience to be able to self-insure at certain levels and thereby remain more competitive than small business.

As a [Black] Veteran, I possessed a very naive view and always played by the rules. After standing ready to die for our way of life, to include the capitalist system, I was under the false impression that I could get access to capital. Without capital even the greatest idea doesn't leave the drawing board. I don't have delinquencies on my credit and I maintain a Top Secret security clearance but can't understand how capital is still evading me.

One firm noted that access to funding improved over time.

In the past, we had some issues obtaining loans when we really needed them. Now that we don't need it, offers for financing are coming out of the woodwork.

Achieving sufficient surety bonding was a particular challenge for some M/WBE firms.

34 years and [our] bond capacity is a fraction than [sic] anglo saxon competitors. Anglo Saxon competitors enjoy \$50M bond capacity. We have to make it happen with \$1M bond capacity.

[We have had difficulty in obtaining] fair and equal bonding, I believe because I am a Hispanic female.

For bonding, we have been able to show consistent past performance but need larger line of credit to grow. Bonding and banks won't give me more.

I can't get projects where I need to be bonded for my credit capacity.

San Antonio is saturated with construction companies. Unfortunately having these certifications does nothing when having to deal with the BONDING road blocks. Unfortunately, there doesn't seem to be a way around it even though I've run my business by the books.

Bonding agencies tend to not give as much bonding to smaller firms as they do to larger firms.

Obtaining the required insurance coverage was another obstacle.

Most of the time, I have to increase deductibles to lower pricing for insurance.

I have seen an increase locally with some agencies in the limit of insurance. I find this to be an interesting condition given that the project size does not appear to warrant the insurance limits. I believe the limits are being used to limit access to the projects whether for reasons of race or just to cull the herd.

Insurance rates are slowly pricing small business out of business. Especially the auto policies.

Some minority and woman respondents reported being charged higher pricing for materials based on their race, ethnicity or gender.

We are considered high risk and always have to pay more for construction materials and we are last in line for deliveries too.

Because we are not Anglo, we do not get fair and equal pricing.

The price for us to buy is always higher than male construction companies my size. Deliveries are also not priority and I have to wait to get items delivered.

They give preferred pricing to non-minority owned firms.

I am female and sometimes they do try to take advantage thinking that I am not educated on a matter.

Fortunately, money talks. But sometimes it doesn't. A manufacturer's rep blatantly assumed the man in our

meeting was the owner. When he found out it was woman owned, he was visibly upset, and there was not only pricing discrimination, but he also disparaged us to a manufacturer that almost led to our company being excluded from purchasing.

I feel they hide many [pricing] options available for my construction company.

It is disguised as buying in bulk and your business gets the discount or access to capital. We all know what this is? If small firms can't get access to capital due to some standard that isn't applied across the board then we know what this is! This is effectively pushing undesired groups out of the pool of potential company's competing for the business.

Pre-payment is often requested.

Sub-contractors have charged me more than when I have a Spanish speaker call and ask for the same work.

[Pricing discrimination is] to be expected until there is some purposeful change.

The inability to know whether the cause of a decision was discriminatory was cited by some respondents.

There's no way to know for sure, but I believe so.

I am not privy to information that would appear to be pricing discrimination based on sex and/or race. A company may be able to obtain this information through an Open Records request, but the pricing information may be shielded by a confidentiality agreement or protected as proprietary information.

Some minority and woman respondents reported that they are often under pressure to reduce their pricing relative to their White male counterparts.

I offered a client a mark-up rate of 48% and they pushed back. Two weeks later, our [White] Salesperson went in and presented a mark-up rate of 55% and they agreed to it.

Large suppliers and contractors expect and demand lower pricing since they are willing to give you a so-called opportunity.

Primes expect your price to be lower or they tell you what you should charge.

We have been told to reduce fees or are only offered "grunt tasks" in order to be listed as a subcontractor - Primes use us for our diversity certification with no expectation of actually giving us the work.

Sometimes they think since we are a small woman owned business that we should be cheaper.

At times, clients want to pay less for jobs because of race or they question my professional abilities even though I have a triple A rating with the Better Business Bureau.

We are blessed in that we have gained a good reputation over the years. Still, we are asked to cut our fees - as if we have a special "buy 1 get 1 free" coupon! This happens mostly when the fee for our scope of work exceeds the allocated S/M/WBE "goal". So, for example, if our scope is indeed about 15% of the project, but the S/M/WBE goal is 10%, then we are asked to find ways to reduce our fee. How do you reduce fee without reducing scope? Yup, that magical coupon that we small businesses have in our desk, and we offer simply because we need/want the work, the opportunity, the ability to keep our staff employed and busy. Again, this happens mostly with firms with whom we have limited experience, firms who would use us to simply meet the minimum M/WBE goals. And that's all they want to do - meet the minimum goals.

Black-owned firms are not provided the same rate of pay for the same jobs as our non-Black owned companies. Both as primes and as subcontractors. The level of scrutiny is more intense with Black-owned firms in the pricing process and QC after the job is awarded. Lack of communication about projects that fit Black firm's competencies and the same lack of communication about COSA's inner processes.

There are firms who force us to be paid by percentage of total "initial" contract and there are changes with fees we don't get them. By paying by percentage, we are given the most difficult work which requires more hours to complete.

Pricing discrimination was not an issue for one M/WBE.

I say no only because I have not noticed a significant difference.

C. Conclusion

Consistent with other evidence reported in this Study, the business owner and stakeholder interviews and the survey results strongly suggest 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. Many M/WBEs reported negative perceptions and assumptions about their competency that impeded their ability to conduct business. Minorities and women still face challenges related to stereotyping, racial harassment and sexism. M/WBEs had reduced opportunities to obtain contracts, especially prime contracts; less access to formal and informal networks and much greater difficulties in securing financial support relative to non-M/WBEs in their industries. A large number indicated that they were working well below their capacity.

Anecdotal evidence may "vividly complement" statistical evidence of discrimination. While not definitive proof that the City needs to continue to implement race- and gender-conscious remedies for these impediments, the results of the qualitative data are the types of evidence that are relevant and probative of the City's evidentiary basis to consider the continued use of race- and gender-conscious measures.

VII. RECOMMENDATIONS FOR THE CITY OF SAN ANTONIO'S SBEDA PROGRAM

The quantitative and qualitative data in this study provide a thorough examination of the experiences of minority- and woman-owned firms in the City of San Antonio's ("City") geographic and industry markets for its prime contracts and associated sub-contracts. As required by strict constitutional scrutiny, we analyzed evidence of the utilization of Minority- and Woman-Owned Business Enterprises ("M/WBEs") by the City as measured by dollars spent. We next estimated the availability of M/WBEs in the City's markets in the aggregate and by detailed industry code. We then compared the City's utilization of M/WBEs to the availability of all ready, willing and able firms in its market to calculate whether there are disparities between the City's utilization of M/WBEs and availability of M/WBEs to perform on its contracts.

We further solicited anecdotal or qualitative evidence of minority and woman firms' experiences in obtaining contracts in the public and private sector. City staff also provided extensive input about the operations of the program and suggestions for enhancements. These results provide the City with the evidence necessary to narrowly tailor its contracting equity program as required by the federal courts.

The City's SBEDA program is generally in compliance with strict constitutional scrutiny and national best practices. The following suggestions are directed towards additional enhancements to support current efforts and activities to provide even greater opportunities for all firms to compete on a level playing field for City contracts and subcontracts.

A. Review Race- and Gender-Neutral Measures

The courts require that an agency use race-neutral²⁸⁸ approaches to the maximum feasible extent to meet its contracting equity objectives, including contract goals. This is a critical element of narrowly tailoring the program, so that the burden on non-M/WBEs is no more than necessary to achieve the City's remedial purposes. Increased participation through race-neutral measures will also reduce the need to set contract goals.

288. The term race-neutral as used here includes gender-neutrality, as defined in 49 C.F.R. §5.

1. Revise the Program's Structure

We suggest that rather than describing various program elements by “Industry” and designating all program elements as “Affirmative Procurement Initiatives,” we suggest grouping the program’s race- and gender-neutral elements together and the race- and gender-conscious elements under those descriptions. This will make it clear to a court and the public what remedies are available to all small firms, including those owned by White males, and what remedies are limited to certified M/WBEs. For example, the Emerging Small Business Enterprise Prime Contract Program for firms certified as ESBEs or EMWBEs is a race- and gender-neutral program and should be listed as such. This will help to focus program implementation on whether the specific remedy is open to all SBEs or just M/WBEs. The current program documents lump race- and gender-neutral and race- and gender-conscious programs together, which is somewhat confusing and masks all the race-neutral elements included in the SBEDA program.

This is also important because several of the remedies can only be applied on a race- and gender-neutral basis. Evaluation points or bid credits available only to M/WBEs or to firms that contract with M/WBEs will likely be held by a court to violate the narrow tailoring principles. As discussed in Chapter II, a program must be flexible in its use of race-based remedies and firms that make good faith efforts must be treated the same as firms that meet goals or otherwise utilize M/WBEs.

2. Enhance Contract Data Collection and Reporting

A critical element of this study and a major challenge was data collection of full and complete prime contract and associated subcontractor records. The City is a large and complex organization and, as is very common, did not have all the information needed for the analysis. Based on our experiences collecting contract records for this report, we suggest the following:

1. Collect full information on all contracts regardless of size, procurement method or certification status for all firms, both prime contractors and subcontractors. This should include email addresses, six-digit NAICS codes for the work performed or the goods/services provided on the contract, race and gender ownership, and M/WBE certification status disaggregated by race and gender. This will facilitate creating full and complete data, as well as guard against double counting of participation, which are necessary for any future disparity study.
2. Conduct ongoing and follow-up training on how to use the B2Gnow® system for City personnel, prime contractors and subcontractors.

3. Provide training to City staff on how to assign NAICS codes for contract goal setting.
4. Create tighter communication between systems and standardize contract record creation in those systems. The data were not always consistent between two systems, SAP and SAPePS. Additionally, “master contracts” were not always consistently handled. Sometimes a five year contract, say Janitorial, was created for five years, but a similar one may have been created for one year and renewed under the same contract number and then yet another one would have five separate contract numbers generated, one for each year, then a master number added to tie them together. A standard protocol should be developed for these contracts.

B. Continue to Implement a Narrowly Tailored SBEDA Program

1. Use the Study to Set the Overall, Annual Aspirational Goals

The City’s SBEDA program has been very successful in opening opportunities for minority and woman firms on its contracts. As reported in Chapter IV, overall, M/WBEs have reached parity or beyond with non-M/WBEs in receiving City dollars. We note, however, that these benefits have not accrued to each group in the same measure. Further, 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 M/WBEs compared to non-M/WBEs.

In addition, as documented in Chapter V, when examining outcomes in the wider economy, it is clear that M/WBEs do not yet enjoy full and fair access to opportunities to compete. Data from the Census Bureau’s *Survey of Business Owners* indicate very 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), or the payroll of employer firms. Similarly, data from the Census Bureau’s *American Community Survey* (“ACS”) indicate that Blacks, Hispanics and White women were underutilized relative to White men. Controlling for other factors relevant to business outcomes, wages and business earnings were lower for these groups compared to White men. Data from the ACS further indicate that non-Whites and White women are less likely to form businesses compared to similarly situated White men. The results of numerous small business credit surveys reveal that M/WBEs, especially Black-owned firms, suffer significant barriers to business financing. There are also race-based barriers to the development of the human capital necessary for entrepreneurial success.

Our interviews with individual business owners and stakeholders and the results of our other studies for San Antonio and Texas governments further buttress the conclusion that race and sex discrimination remain persistent barriers to equal 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 recommend that the City continue to implement narrowly tailored race- and gender-based measures. The weighted availability estimates can be used to set the overall, annual aspirational goal.

2. Use the Study to Set M/WBE Contract Goals

The City should 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. A readily accessible methodology might help to address resistance or questions from prime contractors and even City staff.

This methodology involves four steps to develop goals that are transparent, can be replicated and are legally defensible²⁸⁹:

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 M/WBEs 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.

This constitutionally mandated approach may result in no goals where there are insufficient subcontracting opportunities (as is often the case with supply contracts) or an insufficient number of available firms. It will also clarify that contract goals are not "subcontract" goals but rather apply to all the dollars and scopes of the project.

289. See www.contractgoalsetting.com, for instructions on correct contract goal setting. Our firm, in conjunction with B2Gnow®, developed this free site to provide the methodology and forms for contract goal setting.

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.

The City uses the B2Gnow® electronic diversity management system to support program implementation. We have worked with this firm to develop a contract goal setting module to assist with the process of setting narrowly tailored goals that are legally defensible and administratively feasible. The detailed, six-digit NAICS availability figures in Chapter IV should be entered into the goal setting formula, then adjusted to the dollar weights of the specific contract scopes. The results of this formula must then be reviewed by the City for any adjustments.²⁹⁰

This approach has the further advantage of reducing the complexity of the current process. Only contracts that are subject to the program are included, so there is no need for waivers for solicitations that are exempt (*e.g.*, sole source contracts, emergency procurements, contracts with other governments, etc.). The originating department is part of the process from the beginning, so there is no need for waivers or exemptions later. Goals will not be set on contracts without subcontracting opportunities. The use of a defined and defensible data set will reduce arbitrariness, voting by the GSC and the need to reevaluate goals if the solicitation process takes longer than originally expected.

We further urge the City to bid some contracts without goals that it determines have significant opportunities for M/WBE participation. These control contracts can illuminate whether certified firms are used, or even solicited, in the absence of goals. The development of some “unremediated markets” data, as held by the courts in upholding USDOT’s Disadvantaged Business Enterprise (“DBE”) program, will be probative of whether the program remains needed to level the playing field for minorities and women. The legal standard is that an agency must use race-neutral methods to the “maximum feasible extent” and the outcomes of “no goals” contracts will illuminate how effective race-neutral measures are in achieving non-discriminatory outcomes.

3. Adopt a Personal Net Worth Standard for Program Eligibility

The courts are clear that there must be limits on the personal net worth of the owner of the firm seeking certification to ensure that the Program is narrowly tailored to assist only economically disadvantaged individuals. We suggest that the City adopt the PNW limit of the USDOT DBE program, currently \$1.32M,

290. For information about using disparity study data to set narrowly tailored contract goals, please see www.contractgoal-setting.com. We developed this free website in conjunction with B2Gnow®, Inc., to assist agencies to set defensible and achievable contract goals.

excluding an individual's ownership interest in the applicant firm, and his or her equity in their primary residence; for assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time, are included.²⁹¹

4. Update Program Administration Policies and Procedures

While the current Program has produced admirable results, there are some possible revisions that can strengthen the City's efforts.

- Increased monitoring of program compliance was urged by M/WBEs and City staff. Examples include meeting the M/WBE commitments in the bid submission and the contractual documents and evaluating contractors' GFE throughout the life of the contract. Electronic processing and review of utilization plans would further support monitoring. The City recently added an additional SBEDA Compliance staff member and a SBEDA coordinator to assist with outreach, but more staff may be needed.
- Focus on "unbundling" contracts into less complex scopes or limiting the number of units or the breadth of services required. For example, construction projects or services contracts with multiple locations could be disaggregated into single locations.
- Clarify and simplify the standards for counting the participation of certified firms in joint venture agreements. The current Joint Venture Programs are confusing, and in any event, points or other credits can only be awarded on a fully race- and gender-neutral basis. Further, it appears that the City does not count prime level participation of the certified firm joint venture partner towards meeting the contract goals unless the joint venture tool is applied. This is highly unusual and deprives M/WBEs of an avenue to pursue prime contracts in concert with a larger firm. We suggest the City follow the federal approach: "When an MBE/WBE performs as a participant in a certified Joint Venture, only the portion of the contract value that is the result of the distinct, clearly defined portion of the work that the MBE/WBE performs with its own forces and for which it is at risk shall be counted towards the project goals."²⁹² A training video or virtual session could help to increase outreach, understanding and participation.

291. 49 C.F.R. § 26.67(a)(2).

292. 49 C.F.R. § 26.55(b).

- Revise the standards for evaluating a bidder's GFE to meet contract goals. We recommend the City adopt a holistic approach to evaluating GFE submissions, rather than the current system of awarding points for meeting some of the elements, with only a 70 percent score required to pass muster. In practice, this means that a firm that would not be considered to have made GFE in the vast majority of programs will pass the City by doing less than everything possible to meet the contract goal. This "good enough" approach rewards bidders who do the bare minimum needed to get the minimum number of points, even when additional participation could have been achieved with additional efforts, thereby shortchanging M/WBEs. Further, a rigid point system may not meet the strict scrutiny test for flexibility. The DBE program regulations²⁹³ are the national model of comprehensive GFE reviews and they have been upheld by every court that reviewed Part 26. The regulations provide a highly detailed list of all the actions and extensive guidance about what constitutes GFE. We suggest the City adopt those standards.
- Permit more time for bid/proposal submission compliance paperwork submission. The City properly requires the submission of compliance information with responses to invitations for bids or requests for proposals. Many new and smaller certified firms, however, complained that prime vendors repeatedly use the same firms to meet contract goals. Prime vendors stated that using tried and true subcontractors reduced their risk and the burdens of program compliance at bid time. The City should therefore consider streamlining the paperwork due at submission and permit a very short window between the submission of the initial compliance statement and the backup paperwork to establish either that the bidder will meet the contract goals or has made GFE to do so. For example, the Utilization Plan could be submitted in two parts: the total amount of participation proposed to meet each goal or a statement that GFE documentation will be submitted to explain why the goal was not met, with the list of firms (including NAICS code, work description, percentage of total bid price, name of the firm, etc.) due a few hours later. A longer lead time to submit the paperwork will help to open opportunities for new firms or firms with whom the prime bidder is unfamiliar, by providing some time to explore whether a new firm can perform the scope at the quoted price.

293. 49 C.F.R. § 26.53 and Appendix A, *Guidance Concerning Good Faith Efforts* ("Determinations should not be made using quantitative formulas.")

5. Develop Performance Measures for Program Success

The City should develop quantitative performance measures for the overall success of the SBEDA program. In addition to meeting the overall, annual goal, possible benchmarks might be:

- The number of bids or proposals, the industry and the dollar amount of the awards and the goal shortfall, where the bidder was unable to meet the goals and submitted good faith efforts to do so.
- The number, dollar amount and the industry code of bids or proposals rejected as non-responsive for failure to make GFE to meet the goal.
- The number, industry and dollar amount of MBE and WBE substitutions during contract performance.
- Increased bidding by certified firms as prime vendors.
- Increased prime contract awards to certified firms.
- Increased M/WBE bonding limits, size of jobs, profitability, complexity of work, etc.
- Increased variety in the industries in which minority- and woman-owned firms are awarded prime contracts and subcontracts.

C. Continue to Conduct Regular Program Reviews

The federal courts require a race-conscious program to have a sunset date. Data should continue to be reviewed approximately every five to six years, to evaluate whether race- and gender-based barriers have been reduced such that affirmative efforts are no longer needed. If such measures are necessary, the City must ensure that they remain narrowly tailored.

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 San Antonio, the analysis was limited to data from eight counties in the San Antonio Metropolitan Statistical Area - Bexar, Kendall, Guadalupe, Medina, Comal, Wilson, Atascosa, and Bandera. 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.²⁹⁴ 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.

294. 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 San Antonio 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.²⁹⁵ 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.

295. 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:

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 measures 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 D-1 contains data on unweighted availability measured by the number of firms:

Table D-1

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 D-1). For example, the Black share of total firms in NAICS code AAAAAA is 2.1 percent (10/470). Table D-2 presents the unweighted availability measure as a group’s share of all firms.

Table D-2

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%

NAICS	Black	Hispanic	Asian	Native American	White Women	Non-M/W/DBE	Total
BBBBBB	4.2%	3.1%	3.1%	0.8%	3.3%	85.4%	100.0%
CCCCC	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 D-3 presents data on the agency's spending in each NAICS code:

Table D-3

NAICS	Total Dollars	Share
AAAAAA	\$1,000.00	22.2%
BBBBBB	\$1,500.00	33.3%
CCCCC	\$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 D-3) 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-4 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-4 presents this information:

Table D-4

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-4 is converted into a percentage (*e.g.*, for the Black weighted availability: $0.028 * 100 = 2.8$ percent). Table D-5 presents these results.

Table D-5

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 E:

QUALITATIVE EVIDENCE FROM TEXAS 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 several studies in Texas over the last few years that shed light on the experiences of minority- and woman-owned firms in the Texas marketplace.

This summary of anecdotal reports provides an overview of the following Disparity Studies:²⁹⁶ the City of Austin 2022 (“Austin”); Capital Metro 2022 (“CapMetro”); Harris Health System 2022 (“Harris Health”); Travis County Healthcare District 2022 (“Central Health”); Travis County 2021 (“Travis County”); the San Antonio Water System 2021 (“SAWS”); Harris County 2020 (“Harris County”); the City of Fort Worth 2020 (“Fort Worth”); the City of Arlington 2020 (“Arlington”); Texas Department of Transportation 2019 (“TxDOT”); the Dallas Fort Worth International Airport 2019 (“DFW”); Dallas County 2015 (“Dallas County”); and Parkland Health and Hospital System 2015 (“PHHS”).

1. Discriminatory Attitudes and Negative Perceptions of Competency and Professionalism

Many minority and women owners reported being stigmatized by their race and/or gender. Subtle and overt stereotyping and race and gender discrimina-

296. Copies of these studies can be accessed at the following links: Austin https://www.austintexas.gov/sites/default/files/images/Small_Minority_Business/City%20of%20Austin%20Disparity%20Study%20Report%202022.pdf; CapMetro <http://www.mwbelaw.com/wp-content/uploads/2022/09/Capital-Metro-Disparity-Study-2022.pdf>; Harris Health <https://www.harrishealth.org/SiteCollectionDocuments/harris-health-disparity-study-2022.pdf>; Central Health <https://www.centralhealth.net/wp-content/uploads/2022/06/Central-Health-Disparity-Study-Report-2022-1.pdf>; Travis County <http://www.mwbelaw.com/wp-content/uploads/2022/09/Travis-County-Disparity-Study-2021.pdf>; SAWS <http://www.mwbelaw.com/wp-content/uploads/2022/09/San-Antonio-Water-System-Minority-and-Woman-Owned-Business-Enterprise-Disparity-Study-2021.pdf>; Harris County <https://www.hcp1.net/media/Reports%20and%20Studies/DisparityStudy2020.pdf>; Fort Worth <https://www.fortworthtexas.gov/files/assets/public/diversity-inclusion/documents/business-equity/2020-city-of-fort-worth-disparity-study.pdf>; Arlington <https://ftp.dot.state.tx.us/pub/txdot/civ/txdot-disparity-study-2019.pdf>; TxDOT <https://ftp.dot.state.tx.us/pub/txdot/civ/txdot-disparity-study-2019.pdf>; DFW <http://www.mwbelaw.com/wp-content/uploads/2021/03/2019-Dallas-Fort-Worth-International-Airport-Disparity-Study.pdf>; Dallas County <http://www.mwbelaw.com/wp-content/uploads/2020/06/2015-Dallas-County-Texas-Disparity-Study-1.pdf>; PHHS <http://www.mwbelaw.com/wp-content/uploads/2019/10/2015-Dallas-County-Parkland-Health-and-Hospital-System-Disparity-Study.pdf>.

tion were commonplace. Respondents reported that White men often evince negative attitudes concerning their competency, skill and professionalism.

Biases about the capabilities of minority and women business owners 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.

Racism still exists and the construction industry is one that still has a lot of small to mid-size businesses that still discriminate. (Travis County, page 200)

On a construction site, I once heard an employee say that we were a “check the box” hire. (SAWS, page 182)

We have run into larger firms who think small DBE/HUB firms do not do good work. Often larger firms are scared to do business with small DBE firms due to this stereotype. (Austin, page 242)

Sometimes [minority status is] a disadvantage, unfortunately. (Travis County, page 181)

I find that when I would go to places to speak and take my examiner with me who is not a Black person, all questions are directed to him.... They’d say things like, “Okay, we’re going to give you our business. I’m sure your boss will be proud of you.” The assumption was made that it was someone else’s company and I was perhaps a salesperson. (Harris Health, page 118) One of the biggest general contractors in this part of Texas got up and says, “I don’t want to do business with [minorities].... The only reason why I’m here is because I got a contract and the state is paying for it, or else I wouldn’t be doing business with you. (Harris County, page 95)

We don’t typically say we are a Black-owned firm or we are a minority. Because, again, that’s not why we’re there.... But the gentleman said to me... “go back and talk with your bosses and I’ll be happy to have a conversation with them and go from there.” And we looked at each other and we said, “Okay, we’ll just do that. Thank you, thank you for your time.” (Harris Health, page 118)

Usually, the first reaction that they have to DBEs is not a pleasant one.... Not all DBEs are equal on the business level. And when they’ve had some bad experiences, it can give them an opportunity or basically kind of make them wince or shy

away. So, I try to avoid that at all costs and do the qualifications first. Once they're interested, genuinely interested because of the qualifications and it fills a need for them, then I'll say, "Oh, yes. And as a value add, we are also..." (Travis County, page 181)

Black businesses are stereotyped as less than equipped for major projects. (Travis County, page 200)

If there is an employer asking for design and or leadership role, who's in charge kind of deal, and beside me there is a Caucasian person, the employers tend to ask him and assume he is in charge before even asking me who I am, even though he is my helper. This has happened multiple times. (Austin, page 241, survey)

There's a perception that [MBEs fail to do the work that] we as a group have to constantly go up against. (SAWS, page 169)

I have witnessed a company go to a white company outside the USA to come in and provide the service when we are located in the USA. When they run into an issue, only then will we receive a call for help. (Travis County, page 200)

I've been told not to mention that we are a HUB [Historically Underutilized Business]/WOSB [Woman-owned Small Business] because we will not be taken seriously. (Travis County, page 203)

There's the stigma of being certified, you could say, but then there's this stigma of being Black and a woman. (CapMetro, page 135)

My whole time as an MBE/HUB consultant [my competency has been questioned.] (Travis County, page 203)

[The prime contractors] start to refer to me as the "diversity firm". So, they're like, "Who's the diversity firm?" And then they proceed to talk to me as though I'm not in the room and sort of you're just here because we have to do this. (Austin, pages 222-223)

Stigma sometimes can come from leading your marketing with M/WBE status, and that's a quick way to [not get work]. (DFW, page 158)

It's a daily struggle [racial harassment]. I have to hide the fact that I'm black and female in order to even be considered. (Travis County, page 200)

I have known White females that are very capable and successful as consultants. I have met African American women who tried to start their own company. I have never known one that succeeded, because they just cannot get work. I have met several Hispanic and African American people, personally, who tried and never succeeded. And there are a few of us who are trying to make it. (Central Health, page 129)

People just don't take you seriously and you don't get access or treated fairly. I'm used to it as I'm African American and nothing has ever been handed to me! (SAWS, page 182)

There is a negative connotation out there with MBE or WBE firms that they're not as qualified. I was actually on a conversation about two weeks ago with a prime firm. And they're talking about how they had too many MBE or DBE firms on their team, and it was going to drag their team down during the interview. And so, it wasn't just, that they had too many partners. It was that they were MBE or DBE firms. So, that is definitely out there. And a lot of people do see it as like, "Oh, I have to do this, because the City is making me. Not that I want to do this, because there are good people to work with or they're good firms." So, there definitely is negative connotation out there towards minority-owned businesses. (Austin, page 222)

Sometimes, I choose not to present myself as a minority contractor.... Obviously, when people meet me, [being an MBE] they assume certain things. As they get to know me and understand that I can speak construction, that I'm bilingual, that I speak engineering, then I get the comment, "Oh, you're different." Or "You're educated." ... I do think that there is a stigma" [to being an MBE]. (DFW, page 158)

I try not to use my accent. And treatment is completely different, completely different [if they think I am White]. (TxDOT, page 161)

Sometimes [large general contractors] underestimate what we'll do. We try to be as professional as possible, but we expect the same thing back from them. (CapMetro, page 135)

Most Caucasian employers see Hispanics as labor workers only, [they] do not see us as a relevant workforce on arts, science and/or [as] entrepreneurs. (Austin, page 241, survey)

It [discriminatory behavior] is deep and very systematic. You cannot know what is going on because it is deep. (Austin, page 242)

It's usually more of the smaller [construction firms], but especially if I go into a place where they're putting in a [project], they don't necessarily believe that I understand what I'm talking about.... I can say it, and then I can have whoever the male beside me is say it and it'll be like, "Oh, okay. Yeah, yeah, we got that." I'm like, "yeah." It's something that I think a lot of us have learned to deal with, but it's shockingly still very prevalent. I don't know how prevalent it is everywhere, but definitely in our industry. (Austin, page 225)

[Agency staff and prime vendors] are looking down at you because you are a woman. Because you're a woman, you probably didn't know IT. (Dallas County, page 104) (PHHS, page 107)

Being the only female, automatically you were the person that was in charge of taking notes and the person that was automatically in charge of counseling, an end-[to]-end user as to why they couldn't have their way on the websites. And so, yes, I have been severely discriminated against, all my career in IT. (SAWS, page 170)

[The Program] allowed us to have experience working with larger firms and working on larger projects. It's like a two-sided thing now, that was the good side. It's given us all this experience and been able to work on really some fantastic projects. But at the same time, there is that stigma... You're just a WBE firm. (Austin, page 223)

There's still this stigma. "Well, I guess, you know, we'll see what the little girls are doing over there." (DFW, page 158) There are many women owned businesses who are trying today to survive in the male-owned, if you want to say good old boy, Texas network. Many of us. And it does keep us down because of the perception of what the woman knows in math and science as you negotiate with engineers. (Dallas County, page 102)

When a White firm commits an offense, something goes wrong, they say run his ass off. Not the firm, but the architect or that manager who did a poor job. If it's an African-American firm or Hispanic firm, run the company off. (PHHS, page 108) (Dallas County, page 103)

People of color do not get the same credit even if their financials and credit scores are the same.... [A White man has] got a little bit more credit than you did. And then there was a slowdown in paid invoices, [he's] a big GC and he floats it because he's got a little more credit. And then people turn around, "Hey, that guy's a good business. Joe Man Black over here, Hispanic, he doesn't know how to manage his business." All he did was access his credit line. And if he would've had his credit line, he could do it, too. It's like he ain't stupid. If he had a credit line, he'd access it when he needs it.... So then, [non-M/WBEs] look like they're better businesspeople, not because they're better businesspeople, but because people are carrying them. (Fort Worth, page 137)

You just have to prove yourself over and over and over again.... [Prime contractors are] like, "Oh, another minority company. Like I have to work with you." And then you're a chick. And like, "do you know what you're doing?" (Austin, page 223)

Many large firms and clients believe HUB or DBE firms do not do good work. We are often looked down on because we have a HUB or DBE certification. (Travis County, page 203)

It's a daily struggle [against racial harassment]. I have to hide the fact that I'm black and female in order to even to be considered. (Travis County, page 200)

There's definitely on fees, an expectation, that if you are woman-owned or minority-owned firm, that you're going to do the work for less. Same work, for less. (Harris County, page 95)

Received questioning of competency on ability and knowledge in landscape construction during installation of a major project. Not uncommon for another contractor or sub to avoid asking a female on our team by asking a male on our team. (Travis County, page 202)

It's often subtle-someone else undercutting something when I say it, but if a male colleague speaks up, the idea isn't met with resistance, etc. (Austin, page 241, survey)

There are overtones that we don't know what we're doing or our integrity is questioned. Additionally, talking down to us is another insult we endure. (SAWS, page 182)

It's based on race, despite living in a high Hispanic city, we are often dismissed as not as competent. (SAWS, page 182)

A few owners had been able to turn initial negative assumptions into positive relationships.

Most general contractors, in my experience, see the MBE, DBE thing not as a positive thing, but more of a pain in the butt to them. So, you try to turn around, and that's what I do is try to see it as a mutual beneficial thing to them. At the beginning, it starts as "You're a pain in the butt," but then at the end, they see you as a valued team member. So, it does take a little time just to turn that tide, but I see it probably three out of four times. People see it as a pain in the butt. I'm going to have to babysit. No, you don't. We know what we're doing. We're qualified. We're professional and we can add value. (CapMetro, page 138)

Many women reported unfair treatment in the business world. Women are often assumed to be less competent.

Sometimes I get statements like, "Are you sure you can do the work?" (TxDOT, page 162)

I am a female who knows what I am providing and I am constantly being questioned.... I have worked and actually know what I am doing. I have to constantly remind these people (99% white males) to look at my resume. (Austin, page 240)

Our team has project management and process improvement experience, but we are perceived as less capable because we are a majority of female employees. (SAWS, page 183)

This person just really had a problem with women in business. Period. And I was not the only one that was subjected to his vile treatment. It was very nasty language in front of you, dressing you down, trying to do everything they could to make you look bad in business. Faking situations so that it was looking like you weren't performing, falsifying documents, to that point. And it wasn't just me in this project. It was all of the women that were running into this. I was simply the only one that kept very good records, and said, no, this has to stop. (CapMetro, page 135)

I have had to argue with contractors about my knowledge and competency to be given a chance. It is assumed I don't understand their needs because women don't know anything about "men's work". (SAWS, page 183)

I've dealt with [TxDOT staff] that just thought I was dumb as dirt because I'm a woman, but this was a woman. (TxDOT, page 163)

Being woman owned and African American doesn't help. I see general contractors helping subcontractors with insurance bonding and materials but not us. (SAWS, page 182)

I work in tech and experience a variety of gender-related harassment as a matter of course. (Travis County, page 202)

I am an African American, female business owner. Based on the racial climate in our country I am sure I have been judged and excluded from opportunities because of my sex and race. (Austin, page 240, survey)

You would think that by proving yourself through the entire process, that somewhere along the line, that you would gain a certain amount of respect and it still doesn't exist. I have dealt with manufacturers' reps who have refused to do business with me because I was a woman. (CapMetro, page 135)

Good ol' boys' club mentality that includes beginning comments with "honey" and comments such as "maybe this isn't a good fit for your type of company" – each spoken by different males to female employees on our staff. (Austin, page 244)

The majority of G[eneral C(tractor)s utilize the good ol[d] boy system. I believe they think I don't know anything about construction since I am female. (SAWS, page 183)

I still do find the initial contact with specifically, a general contractor, there is somewhat that attitude of you're a woman, let me tell you how to do this. (TxDOT, page 162)

My industry it is extremely male dominant.... They say, " Oh, there's a girl, there's a woman. What is she here for? Who does she work for?... That's [name]. Oh, she owns her own company. She's a little bitty company. She's nothing to worry about." (Fort Worth, page 135)

As a minority woman in construction, we are not given the fair opportunities as white male owned firms. (SAWS, page 183)

It is not difficult to get a sense that, for construction work, a preference exists for a male focused company to be the contractor or sub, particularly when the room is packed with males (example, a “get to know the prime” event). When standing in line to discuss a project with a prime, the men before and after have been given more time, discussion, sincerity, and contact info for additional work than our females have received from the GC’s reps at the event. It is not an isolated thing. (Travis County, page 203)

You're a woman, pat you on the head and say it's nice that you came today. Then, all the sudden, they'll be over there doing their thing and you sit there and hear what they're saying. You're like, that's not gonna be to code buddy and good luck with that. They look at you like, how do you know that? This is my job to know those things (TxDOT, page 162)

My name looks male, along with my engineering background, have been in business situations where I was the only female mistakenly invited because they didn’t know I was female. (Austin, page 242, survey)

I have walked away from many meetings where I sat there with one of my male employees, I did all the talking, I answered all the questions, they stand up and shake his hand. The man did not say a word the entire meeting and say, “thank you, we look forward to doing work with you”. And I’m like, glad I brought you, because apparently that’s what it took to get the job. (CapMetro, page 135)

[Texas is] a good old boy state. It is a fact of life whether you’re a woman, small business, whatever. Ladies, the only way we get a chance is we have to legally stand up and demand that we get a fair trial, that we be put on a level playing field by having rules and regulations.... [Women] are always behind. We will always be behind in this state. (Dallas County, page 101)

I’ve had people ask if my husband started and/or runs the business. I’m single. (Travis County, page 201)

I am unable to obtain sufficient funding for growth from my banks for many years. In the first years of growing the company, my bank VP told me twice to come back with my

husband before they could discuss my application for funding. Recently, I was able to receive sufficient funding from the SBA. (Austin, page 245, survey)

I am a middle-aged woman in tech and I am often talked down to by younger male acquaintances who do not believe I have such a deep level of expertise. (Austin, page 243, survey)

They still see women as a support system. They do not see us as businesspeople. (Fort Worth, page 136)

Sometimes when there are meetings called, us females are left out. We're not included in the meetings. (SAWS, page 170)

There are many women owned businesses who are trying today to survive in the male-owned, if you want to say good old boy, Texas network. Many of us. And, it does keep us down because of the perception of what the woman knows in math and science, as you negotiate with engineers. (Dallas County, page 102)

I do work in technology and yeah, I've had some really bad experiences with White male business owners.... The industry is essentially run by White dudes. (Travis County, page 183)

The transportation industry as a whole is dominated by the civil engineers, which typically the folks graduating in civil engineering are White men. You have a very low proportion of women and minorities with those degrees. Inherently, then in the workplace, you're seeing very low amounts of diversity. Same things in environmental services. You don't get a lot of women who are wildlife biologists. Someone with that type of experience typically has been hunting and fishing with his father and his grandpa their entire lives and they have a good old boys club. They go drinking, they go fishing, they go playing golf. (TxDOT, page 162)

In presenting the various options and moving forward from concept into detail design, sitting around a room, and except for maybe an architect, I was always the only woman at the table. It's an expertise that I've carried for many years, and literally, repeated to the owners of a government entity, would present the case and why this is the recommendation to move forward. And it would be silence in the room. And then, this junior, who was not even a licensed P[rofessional] E[ngineer] yet, working underneath of me, who helped me put the slides

together, and did some of the analysis under my leadership, would – they’d ask a couple of questions and this young man would answer the questions based on the slides and flipping back and forth. And then all of a sudden, the recommendation was accepted because this young man, who was my employee, was giving the answer instead of me. (Harris County, page 96)

As a woman and minority firm in construction, it is difficult to acquire qualified field staff to perform our trade because most are males that network with other males or male-owned contractors. (Austin, page 245, survey)

I’m generally the only woman in the room, so that’s definitely an issue for me. (Travis County, page 182)

Negative behavior directed at women from some males, e.g., rudeness, disrespect, not listening to women, interrupting women, talking down to women (mansplaining), saying things that are just on the edge of sexual harassment to women, to see if there’s a reaction. (SAWS, page 182)

Sometimes, a contractor or subcontractor on a job site will look at and speak to unlicensed male intern who I brought to the site with me, rather than me. (SAWS, page 183)

You kind of try to figure out over the years how they want you to be, and you try to be that. But, it’s still a surprise a lot of times when you are a strong woman, you have strong opinions, you know what you’re doing, and you run across a younger Turk or who’s an alpha. They simply do not respond to you. (Travis County, page 182)

Fieldwork opportunities [are] sometimes not offered due to difficulty creating women-only overnight accommodations. (Travis County, page 203)

Women used various strategies to overcome biased attitudes.

I couldn’t get access to financing for a long time. And in 2009, I hired a White man to be our controller. And after that, we didn’t have any problems getting financing. It was like night and day. (Austin, page 226)

Some women reported they still experience sexual harassment or hostile environments.

In general, [I] have to limit the networking activities we participate in to avoid potential sexual harassment situations with potential customers. (Travis County, page 200)

I've had dinner encounters ... I've had a guy grab me at one of those.... I definitely do make it a point to not ride with certain people that I don't feel comfortable with. (DFW, page 158) I have offered to go out and market more for the company and... some guys that were sitting in the back, they said, "Well, we really need somebody very young and pretty and dresses very nice to go out and market, 'cause they get the attention." "Excuse me?" I think I can do a good job marketing, but I ... don't meet those qualifications. (TxDOT, page 163)

I have had requests for sexual relationships from both male and female perspective clients. I have also experienced inappropriate touching from a client. (Austin, page 243, survey)

A male agreed that sexism is still present in the construction industry.

As a man, yeah, it happens. With the minorities I don't know a lot, but with women, for sure. In construction, there's a lot of men outside, and it happens. I have to make rules with my employees, I have to shut them up, tell them to stop looking. You have to talk to them kind of tough and learn not to say anything. And we made up a three second rule, you look one two three and then turn around. (Austin, pages 225-226)

2. Access to Formal and Informal Business and Professional Networks

Both minority and women respondents reported difficulty in accessing networks and fostering relationships necessary for professional success and viability. This difficulty extended to agency staff; respondents were unable to gain access to and communicate with key agency decisionmakers. Business owners frequently stated that Texas is a "good old boy" state (TxDOT, page 161; Dallas County, page 102; Fort Worth, page 134) and that it is difficult for new firms to gain entry into a predominantly White and male-dominated industry. (DFW, page 158).

You're not in the frat. You didn't get the letter, you know? You didn't get the call. (Harris County, page 100)

Breaking into city work is definitely its own challenge. So, the good old boy club is in full regalia. (SAWS, page 171)

A lot of our issue, especially in the transportation industry, comes down the network, the good old boy network. (CapMetro, page 136)

Entrenched relationships, and yes, definitely a “good old boy” network in Austin, particularly for prime jobs. (Austin, page 244, survey)

You call and call and call [prime vendors] and you sort of feel like you’re just bugging them. But they never call back. They never do anything. So, just seems like they’re just used to doing business with the same companies and that’s who they choose to do business with. (Harris County, page 100)

The procurement process I said it’s the Wizard of Oz of our work. No one knows exactly who to contract, we don’t know what specific certifications are needed, what steps are in the process or even where you stand. Literally, we respond to the RFPs if we know where to find it, if it happens to come to us in time. So then, we do all the work to respond and then we shoot this out to this phantom and ... it’s always, “Well, it’s in procurement. Well, who is that? Well, it’s in procurement. Well, where are we in the phase? Well, it’s in procurement. (Central Health, page 130)

I had a meeting with a general contractor to establish a good rapport and the GC kept discussing all his friends and I mentioned that it was an established network and he said of course it is and that it would be difficult for me to break in. I just quit after that. (Austin, page 244, survey)

If relationships was a thing that worked, then we wouldn’t need the DBE program.... How can the DBE work for people who can’t have relationships with folks who don’t want to have relationships with them? Cause that’s very important. We have to understand it. These are people who do not want to have relationship with us, that’s the reason why we need a DBE program. (CapMetro, page 136)

People do business with people that they know and that they trust halfway. And if they don’t know you, or you’re just a quote on a fax machine or an email quote, there’s no relationship there, okay. And then even if they use you ... they’ll shuck and jive you and put you through all these hoops and what not and everything, because there is no relationship there. (Austin, page 224)

Yes, based on history and experience, I have not had access to the same contracting opportunities that larger firms with more history in the area, larger workforces with marketing departments, and better name recognition. (Travis County, page 205)

As an MBE, we do receive some mail regarding networking opportunities, but [we] might not have all of the information possible. (SAWS, page 185)

There is not even the opportunity to see who you are, who you know, or what you have done or what you studied or anything like that. (Central Health, page 128)

There is still, I believe, a barrier to even just being invited to the networking events or, if you're going to a conference and somebody is hosting a kind of cocktail hour because if you don't already know those people, you're not already in those clubs, it's a little bit hard to get those invites and know where those places are where potentially a lot of good networking is out there. (Austin, page 224)

If you're already not already in, it's hard to break in as an unknown or who's not done work with SAWS. (SAWS, page 171)

I believe it's about who you know, so although I am HUB certified and applied for business opportunities, I believe I am still not given the information needed to help me execute the opportunity. (Travis County, page 204)

We are always at a disadvantage because we are not in a situation where we can build these relationships. Going to the country club here and having lunch with the mayor and with all of the CEOs of the companies around here. So, the playing field is not level, and it is discriminatory because we're not in a position to build those relationships. (Arlington, page 143).

You don't get a lot of women who are wildlife biologists. Someone with that type of experience typically has been hunting and fishing with his father and his grandpa their entire lives and they have a good old boys club. They go drinking, they go fishing, they go playing golf. (TxDOT, page 162)

There are certain aspects of the good old boys' club [you see] attending some of the pre-bids. You do see a lot of kind of favoritism and partiality to the contractors that are there and some of the City officials. (Fort Worth, page 134)

The County and the hospital ... do tell you about the opportunities. The problem is you can't get into the inner circle [of agency decision makers]. (Dallas County, page 102)

[There is an] inability to get in front of the key decision makers [at the agencies] I reached out to the executive assistant to the C[hief] I[nformation] O[fficer] and no one has responded at all. (PHHS, page 107)

Large firms have the resources to donate money to local politicians and often receive information about opportunities that are not available to others. (Travis County, page 205)

Vendor lack of experience with small businesses results in questioning a business' capabilities. (Travis County, page 205)

3. Obtaining Work on an Equal Basis

Respondents reported that institutional and discriminatory barriers continue to exist in the Texas marketplace. They were in almost unanimous agreement that 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 a level playing field.

If it's not a project that has a goal, they're not bringing you to the table. (Dallas County, page 103)

When you are a minority of a single type, or a double type as a Black female, what ends up happening is that you don't get the shot. (CapMetro, page 136)

[We have not been] admitted into the inner circle of networking relationships between male-dominated IT service companies and male client team members, especially for larger projects. (Austin, page 245, survey)

Very seldom do you get a call if a goal is not set. There have been times when we've called and said, "We'd like to see if we can team with you on this." And they'll just blatantly say, "Well you know there was no goal, what difference does it make?" You know we work with you; you know we bring credence to your team. So that is kind of a slap in the face, to be quite honest with you. So, we see that a lot, where if it's not encouraged or there is no goal, there is no opportunity for us. (SAWS, page 171)

Contractors just don't really want to use us unless there are goals. Even as a Native American-owned firm, because the goal is so low, they only want to get that little tiny amount from us to satisfy the goal but not really be open to purchasing the other materials we carry. (Austin, page 245, survey)

If you don't have the DBE program, we're never going to get the opportunity to get there, to show what we are capable of on their projects.... The DBE program will allow them to work with us to see, "Oh, they're just as good as so and so." I just don't think the door's going to open for us without that program. (CapMetro, page 136)

There is definitely a stigma to being known as a WBE (or MBE) firm. Certification definitely helps with getting public projects, but actually can be viewed as a negative in the private sector. (Austin, page 242, survey)

Unless there's goals in the project, there is no business for small business. And even then, they try to skirt around it. And they'll use my credentials to actually go for it and then excuse me. (Dallas County, page 103)

The goals need to really stay in place because it does help get jobs. I know I had a hard time in the beginning because the fact of it was I wasn't known. (Travis County, page 184)

All my work is goal-related and people even tell me if they don't have a goal [they will not use me]. [The first tier subcontractor says], we don't have a goal anymore at the end. So, we don't need you anymore." Even though along the way they were saying, "We need you. We want to use you. We're going to do this." But then when they get to the bottom and the prime says, "Well, we satisfied our goal. Whatever entity it is, we don't really need your goal anymore so you don't have to do that." And so that's why the DBE program is very important to us, to me, person like me, because that is the market that I work in. And I find that's the only market that for me, that allows me at least a fighting chance to continue to be in business. Going out in the private market, trying to do what I do anyways, is just futile. It's not even going to work. (CapMetro, page 137)

It's definitely something where they're not looking at us as partners and team members where we bring in value and expertise and especially in the local relationships and understanding of our systems and of our neighborhoods and of

our community, but they just reach out to us because they want that percent and that's a big problem that we're facing and if the M/WBE requirements don't get more stringent or get loosened up or disappear, then a lot of us will go out of business. (SAWS, page 171)

What we all want is a seat at the table. It doesn't matter beyond that, what color we are, what gender we are, anything like that. We want that opportunity to get the seat at the table and to be able to compete fairly. And there is an assumption when you walk in, particularly for a woman in a male dominated industry like construction, and often the vibe is that they are just there to check the box. (Central Health, page 129)

I don't want to get awarded because I'm a minority, I want to get awarded because I'm a good company, I have a good product, you know? But my experience has been that I have not even gotten a chance to do that. Not even to do a trial or anything like so it's just frustrating. (CapMetro, page 119)

I have never had a contract with a general contractor in 36 years that's private. Everything is government, and if the government didn't say use a minority, they wouldn't do it. (Harris County, page 97)

Prime vendors see the goal as the ceiling, not as the floor. (Dallas County, page 103)

I have known White females that are very capable and successful as consultants. I have met African-American women who tried to start their own company. I have never known one that's succeeded, because they just cannot get work. I have met several Hispanic and African-American people, personally, who tried and never succeeded. And there are a few of us who are trying to make it. (Central Health, page 129)

If this program changes, it will be the end of a lot of firms, probably including my firm. I mean, definitely we would struggle to grow because we're too young, we're not where we need to be yet. (SAWS, page 171)

If it wasn't for that requirement, that MWB requirement, most of the businesses would probably have a very difficult time staying in business and my business, probably 80 percent of it [comes] just from these types of governmental projects that come along and it's no way that these primes would work with

us ... on projects that did not have an MWB requirement. (Fort Worth, page 137)

If the program went away, what would happen? You would lose small businesses. One, if you don't have relationships, people do business with who they know. If we don't have a program that says that there has to be utilization, participation levels, whatever that is, DBE goals MBE goals, they won't use them. (Fort Worth, page 137)

If the goal was not there, you can often get forgotten about. Because sometimes it's the squeaky wheel gets the grease, so that the goals definitely help in my opinion. (SAWS, page 171)

The [City] work stopped as a result [of dropping Hispanic firms from the program]. It was not going to be helpful to [the prime proposer] to bring on my firm, because they wouldn't get any points in the grading of the proposals. So, therefore, I have not been able to do any work at all since. (Fort Worth, page 138)

If [prime vendors] think they can get away with it, without having goals, then they're going to self-perform or they're going to use the folks that they have relationships with. And those folks don't necessarily look like us. (Dallas County, page 103)

Until those [business relationships] are equal, you're going to have to keep on forcing numbers. And as quick as you force a number, they're going to come up with something to circumvent that number. (Dallas County, page 104)

[Prime contractors] are like, why do I need you? Why do I need to give you any money? It's not required of me to do it. So, you may have the greatest relationship with them in the world but those larger firms, if they don't need to check the box so to speak, they're not going to reach out and say, hey, I want to help grow you more because in their mind I just helped you on this job get this much money, you should be happy and let me go do what I need to do. (Dallas County, page 103)

We have attended many pre-proposal meetings where primes have made the statement, "why do I need to sub-contract." When communicated [that] it's a requirement, they in turn force minority small businesses to lower pricing knowing if they say no, they can state they did their "good faith effort". (SAWS, page 185)

Minority and female entrepreneurs were also concerned about the inability to get work due to longstanding relationships that predate contracting affirmative action programs.

[Larger white male-owned firms are] going to go and use the same company [with which they usually do business]. (PHHS, page 106)

Unless you break into the large business world, secrets are not shared. It has been said numerous times that, it's not what you know, but who. A truer statement has never been said. (SAWS, page 184)

[People] tend to do business with who they know and who they like, and they really don't care that they're supposed to [meet a goal]. (Dallas County, page 103)

I do not know what bids are available. Large companies working with established manufacturers will work with the same group they have for the past 100 years. (SAWS, page 184)

And if you're not a DBE or HUB or SBE, you're not going to be considered for any work as a consultant for TxDOT because they're going to use these legacy firms for most of their work on the consulting side. (TxDOT, page 164)

It has been said, it's not what you know, but who you know. Unfortunately, that has held true in many circumstances where we had no opportunity even though we had past performance meeting all requirements. (SAWS, page 184)

There's this systemic nature of doing business with people you know. And we all like to do business with people we know. We know that they'll come through. They'll be on time. They'll be under budget.... [But] the systemic aspect of familiarity for others sometimes breeds contempt for the person trying to get in the door. (Fort Worth, page 133)

The pre-solicitation information advantages obtained by larger firms ... [who] become advisors to the client before the RFQ release. Many times, M/WBEs are not a part of that network. (SAWS, page 185)

Respondents also maintained that prime contractors are not comfortable with minorities taking larger roles. They indicated that even M/WBEs who had accessed large public contracts

through M/WBE programs did not translate into private sector work.

Do we really want to play this game and how much headache and how much headache do we want to deal with?... We employ 75 employees and I've had minorities grow through our organization. But the challenge that I have is now that we're able to bond single projects up to 15, 18 million dollars, I'm getting a bigger pushback.... When we can sit down and start talking business and how we're going to staff the job, going to put my bonding up, what's the duration and the schedule? [The large general contractors are] doing this, no, no, no [shaking head]. (Dallas County, page 104)

You get in a niche of being a DBE and you're automatically a sub.... We've had a lot of success in the DBE market and I'm not going to downplay that, but as a prime, we don't get a lot. We end up getting a smaller piece so you can do the hydraulics, or you can do the survey but the true design work for plan and profile on a street or something like that where we can actually show expertise in engineering, we're not given that piece of the pie. (Arlington, page 145).

I think having the requirements at least gives us the opportunity to get our foot at the door, to show that we are a good company, but we're also a certified company. So, I think it benefits us in both ways, but we definitely have seen stigma, especially with us being woman owned minority owned traffic control company. It's pretty much a White male dominated industry.... [The DBE program] gives us a chance to prove ourselves, but again, I think if you didn't have it, we probably wouldn't have the kind of work we have. (CapMetro, page 136)

[A general contractor, which this MBE had worked on major project jobs, when approached about a private sector project, responded] there's no MWBE [goal] on this: I said, wait a minute. We just worked together for five years; you know me. Yes, but there's not MWBE goals. I said, you mean to tell me I can't do [scope]? It's right across the street from my headquarters. Well, there's no MWBE goals. So, he's one of the good guys. (PHHS, page 109)

Respondents also suggested approaches to increasing M/WBE opportunities and capacities.

A public relations component and notification process is essential to having a successful outcome in the number of minority businesses that participate in your procurement process. (Central Health, page 130)

Better, quicker information on upcoming projects [would be helpful]. (SAWS, page 186)

My recommendation is that they start to do lunch and learn where you get to meet with that department for hours specific to your line of business and now, you're able to have a true one-on-one conversation, or even in a group setting of their size where we can ask specific questions to understand how to respond to these RFQs, RFPs better, because as it stands right now, it's the generic and generic gets you nowhere because you don't know what a person expects. And we all have a concept of how we work, but if that's not what the person's looking for, we miss every time. (Arlington, page 146)

Virtual networking introduction and programs to connect small businesses with prime contractors. A lot of information and not enough exposure exist to connect primes with subs and, if there is, we have no knowledge of such. (SAWS, page 186)

It does force some of these companies to have to use you at some point if they don't know you. And as [name] mentioned, sometimes when you've already been established, they will use you outside of projects where there is no goal outside of any type of requirement. But I do think it is beneficial at the beginning. (SAWS, page 172)

One thing that would be really helpful is to have, maybe, like "Meet the Buyer" and the true buyer ... the decision-makers that can say, "Okay, yes, I'll use you for this particular project." I think that would be very helpful because for me, I believe it's about making the relationships or developing those relationships and so if we're able to start a relationship with the actual person that we're working with rather than the middle person... [Then it's not] "Oh, we're just a minority firm so that's why we need to have this opportunity." A direct meeting would really, really help us. (Harris Health, page 119)

Contract awards, marketing support, letting agencies know who we are and what we are capable of doing for the agencies. (SAWS, page 185)

There has to be somebody from the business or the manager's information technology [unit] who have to figure out that how will they channel all their requirements to all the approved vendors. And that has been a challenge for us because we have not been able to figure out who that might be. We had reached out to the person on the RFP document in terms of from procurement, but beyond that, we just don't know where to go. (Harris Health, page 119)

Houston Community College has a lot of money that they have to put programs together. And they said if we will just call them and tell them what program we want, and we can get, say, 10 to 15 people in there, they'll design the program. So, you could put a mentoring program together for anybody. (Harris County, page 103)

I have some experience with J[oint] V[entures] and mentor-protégé relationships and they work but it depends on A, who you're partnering with. It's just like with anything. A JV is like a marriage. (Dallas County, page 105)

Our challenge [with acting as joint venture partner with a majority-owned firm] that we have when we're sitting at the table [is] we're really not in a decision-making position [with the majority-owned partner]. (Dallas County, page 105)

There should be contracts from which] the big boys should be completely excluded. (Dallas County, page 106)

I'm a big fan of being a participant in mentor-protégé programs because you learn how to stay in business. (Harris County, page 103)

If the County were to follow any program on the civil side, it would be the State as opposed to the City [of Houston]. I think the State has a lot better program. They have lower goals, but they use commercially useful function. The City has no commercially useful function. They say they do, but they really don't. There's a lot of pass throughs because their goals are so high. A lot of pass throughs are used every day to meet the goals and to me that's not the purpose of what we're doing. (Harris County, page 106)

It's not going to really change. If you don't have individuals in-house that are going to advocate for it. (Central Health, page 130)

Many respondents mentioned mentor-protégé or joint venture arrangements as vehicles to support the growth of M/WBEs.

Come out with a mentoring program that's goal-oriented and visible. (PHHS, page 110)

A good mentor helps you with a lot of things that have nothing to do with that specific project but with your business. Helps you with your safety plan and quality control plans (Dallas County, page 105)

We've had a mentorship with [firm name] which has helped us immensely. Because I don't think we would have been able to walk through the doors or bid on the things that we've bid on or have the opportunity had we not had that mentorship. Because they had forged a path in places where I hadn't seen before. And I work in a very male dominated business in [specialty trade]. It's predominantly men. And there is some stigma with that. There are competency issues when you show up at a meeting and you're a woman and you're representing the [specialty trade] company. So, I'm really thankful for the mentorship program because I think it's just something that helps open doors. (PHHS, page 110)

I'm hearing a lot of positive feedback on mentor-protégé [initiatives]. Because you write a really good mentor-protégé agreement and you have a great mentor, you can really learn a lot. (Dallas County, page 105)

APPENDIX F:

DISPARITY ANALYSES FOR MAJOR INDUSTRY GROUPS

1. Overview

This appendix presents the results of the disparity analysis after the NAICS codes used by the City of San Antonio were allocated to five major industry groups: Construction; Construction Related Services; Professional Services; Goods; and Other Services. These analyses followed the same methodology as applied in Chapter IV; for purposes of brevity, each section below presents the following tables:

- A listing of NAICS codes in each major industry group.
- The overall utilization in each major industry group.
- The unweighted availability in each major industry group.
- The weighted availability in each major industry group.
- The disparity ratio in each major industry group.

As in Chapter IV, the disparity ratio was tested for its substantive significance. We did not test for statistical significance because of the small sample size in most of the individual demographic categories in the industry groups below.

2. Construction

Table F-1: Construction: NAICS Codes

NAICS	NAICS Code Description
212319	Other Crushed and Broken Stone Mining and Quarrying
221310	Water Supply and Irrigation Systems
236115	New Single-Family Housing Construction (except For-Sale Builders)
236116	New Multifamily Housing Construction (except For-Sale Builders)
236118	Residential Remodelers
236210	Industrial Building Construction

NAICS	NAICS Code Description
236220	Commercial and Institutional Building Construction
237110	Water and Sewer Line and Related Structures Construction
237120	Oil and Gas Pipeline and Related Structures Construction
237130	Power and Communication Line and Related Structures Construction
237310	Highway, Street, and Bridge Construction
237990	Other Heavy and Civil Engineering Construction
238110	Poured Concrete Foundation and Structure Contractors
238120	Structural Steel and Precast Concrete Contractors
238140	Masonry Contractors
238150	Glass and Glazing Contractors
238160	Roofing Contractors
238190	Other Foundation, Structure, and Building Exterior Contractors
238210	Electrical Contractors and Other Wiring Installation Contractors
238220	Plumbing, Heating, and Air-Conditioning Contractors
238290	Other Building Equipment Contractors
238310	Drywall and Insulation Contractors
238320	Painting and Wall Covering Contractors
238330	Flooring Contractors
238340	Tile and Terrazzo Contractors
238350	Finish Carpentry Contractors
238390	Other Building Finishing Contractors
238910	Site Preparation Contractors
238990	All Other Specialty Trade Contractors
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers

Source: CHA analysis of City of San Antonio data

Table F-2: Construction: Overall Utilization

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
1.5%	28.6%	0.1%	0.0%	17.4%	47.6%	52.4%	100.0%

Source: CHA analysis of City of San Antonio data

Table F-3: Construction: Overall Unweighted Availability

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
1.0%	6.3%	0.2%	0.3%	3.2%	11.0%	89.0%	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

Table F-4: Construction: Weighted Availability

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
3.5%	18.1%	0.6%	0.6%	6.0%	28.8%	71.2%	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

Table F-5: Construction: Disparity Ratios

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
43.4% [‡]	158.1%	13.2% [‡]	0.0% [‡]	287.7%	165.0%	73.7% [‡]	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

[‡] Indicates substantive significance

3. Construction Related Services

Table F-6: Construction Related Services: NAICS Codes

NAICS	NAICS Code Description
115112	Soil Preparation, Planting, and Cultivating
237210	Land Subdivision
541310	Architectural Services
541320	Landscape Architectural Services
541330	Engineering Services
541370	Surveying and Mapping (except Geophysical) Services
541420	Industrial Design Services
562910	Remediation Services

Source: CHA analysis of City of San Antonio data

Table F-7: Construction Related Services: Overall Utilization

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
17.6%	26.8%	0.7%	0.0%	10.1%	55.2%	44.8%	100.0%

Source: CHA analysis of City of San Antonio data

Table F-8: Construction Related Services: Overall Unweighted Availability

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
1.0%	7.0%	0.9%	0.4%	3.7%	13.0%	87.0%	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

Table F-9: Construction Related Services: Weighted Availability

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
2.5%	14.0%	2.4%	1.0%	5.3%	25.2%	74.8%	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

Table F-10: Construction Related Services: Disparity Ratio

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
715.8%	191.9%	29.3% [‡]	0.0% [‡]	189.4%	219.6%	59.8% [‡]	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

[‡] Indicates substantive significance

4. Professional Services

Table F-11: Professional Services: NAICS Codes

NAICS	NAICS Code Description
522110	Commercial Banking
524126	Direct Property and Casualty Insurance Carriers
524127	Direct Title Insurance Carriers
531210	Offices of Real Estate Agents and Brokers
541110	Offices of Lawyers
541211	Offices of Certified Public Accountants
541219	Other Accounting Services

NAICS	NAICS Code Description
541350	Building Inspection Services
541380	Testing Laboratories
541410	Interior Design Services
541511	Custom Computer Programming Services
541519	Other Computer Related Services
541611	Administrative Management and General Management Consulting Services
541613	Marketing Consulting Services
541618	Other Management Consulting Services
541620	Environmental Consulting Services
541690	Other Scientific and Technical Consulting Services
541810	Advertising Agencies
541820	Public Relations Agencies
541930	Translation and Interpretation Services
541990	All Other Professional, Scientific, and Technical Services
561320	Temporary Help Services
621399	Offices of All Other Miscellaneous Health Practitioners
813312	Environment, Conservation and Wildlife Organizations
924110	Administration of Air and Water Resource and Solid Waste Management Programs
531210	Offices of Real Estate Agents and Brokers

Source: CHA analysis of City of San Antonio data

Table F-12: Professional Services: Overall Utilization

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
5.0%	56.0%	0.3%	0.0%	14.9%	76.2%	23.8%	100.0%

Source: CHA analysis of City of San Antonio data

Table F-13: Professional Services: Overall Unweighted Availability

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
1.1%	2.1%	0.3%	0.1%	4.1%	7.8%	92.2%	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

Table F-14: Professional Services: Weighted Availability

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
3.0%	7.9%	0.3%	0.1%	8.1%	19.3%	80.7%	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

Table F-15: Professional Services: Disparity Ratio

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
169.5%	712.1%	79.4% [‡]	0.0% [‡]	184.6%	394.1%	29.5% [‡]	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

[‡] Indicates substantive significance

5. Goods

Table F-16: Goods: NAICS Codes

NAICS	NAICS Code Description
323111	Commercial Printing (except Screen and Books)
423110	Automobile and Other Motor Vehicle Merchant Wholesalers
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers
423210	Furniture Merchant Wholesalers
423220	Home Furnishing Merchant Wholesalers
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers
423390	Other Construction Material Merchant Wholesalers
423420	Office Equipment Merchant Wholesalers
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers
423440	Other Commercial Equipment Merchant Wholesalers
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers

NAICS	NAICS Code Description
423510	Metal Service Centers and Other Metal Merchant Wholesalers
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers
423710	Hardware Merchant Wholesalers
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers
423830	Industrial Machinery and Equipment Merchant Wholesalers
423840	Industrial Supplies Merchant Wholesalers
423850	Service Establishment Equipment and Supplies Merchant Wholesalers
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers
423990	Other Miscellaneous Durable Goods Merchant Wholesalers
424110	Printing and Writing Paper Merchant Wholesalers
424210	Drugs and Druggists' Sundries Merchant Wholesalers
424410	General Line Grocery Merchant Wholesalers
424480	Fresh Fruit and Vegetable Merchant Wholesalers
424590	Other Farm Product Raw Material Merchant Wholesalers
424690	Other Chemical and Allied Products Merchant Wholesalers
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)
424810	Beer and Ale Merchant Wholesalers
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers
424950	Paint, Varnish, and Supplies Merchant Wholesalers
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers
441110	New Car Dealers
441227	Motorcycle, ATV, and All Other Motor Vehicle Dealers
445110	Supermarkets and Other Grocery (except Convenience) Stores
621910	Ambulance Services

Source: CHA analysis of City of San Antonio data

Table F-17: Goods: Overall Utilization

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
0.3%	47.9%	0.0%	0.0%	10.6%	58.8%	41.2%	100.0%

Source: CHA analysis of City of San Antonio data

Table F-18: Goods: Overall Unweighted Availability

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
0.6%	2.6%	0.2%	0.1%	4.7%	8.2%	91.8%	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

Table F-19: Goods: Weighted Availability

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
0.7%	3.4%	0.2%	0.2%	3.8%	8.3%	91.7%	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

Table F-20: Goods: Disparity Ratio

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
42.1% [‡]	1407.9%	19.3% [‡]	0.0% [‡]	277.2%	709.6%	44.9% [‡]	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

[‡] Indicates substantive significance

6. Other Services

Table F-21: Other Services: NAICS Codes

NAICS	NAICS Code Description
484220	Specialized Freight (except Used Goods) Trucking, Local
485999	All Other Transit and Ground Passenger Transportation
488410	Motor Vehicle Towing
488490	Other Support Activities for Road Transportation
492110	Couriers and Express Delivery Services
493110	General Warehousing and Storage
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing

NAICS	NAICS Code Description
541860	Direct Mail Advertising
541910	Marketing Research and Public Opinion Polling
541922	Commercial Photography
561110	Office Administrative Services
561311	Employment Placement Agencies
561312	Executive Search Services
561439	Other Business Service Centers (including Copy Shops)
561612	Security Guards and Patrol Services
561720	Janitorial Services
561730	Landscaping Services
561990	All Other Support Services
562111	Solid Waste Collection
562119	Other Waste Collection
562991	Septic Tank and Related Services
621999	All Other Miscellaneous Ambulatory Health Care Services
722320	Caterers
722330	Mobile Food Services
722511	Full-Service Restaurants
811111	General Automotive Repair
811198	All Other Automotive Repair and Maintenance
812320	Drycleaning and Laundry Services (except Coin-Operated)

Source: CHA analysis of City of San Antonio data

Table F-22: Other Services: Overall Utilization

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
3.2%	62.9%	0.2%	0.0%	1.8%	68.2%	31.8%	100.0%

Source: CHA analysis of City of San Antonio data

Table F-23: Other Services: Overall Unweighted Availability

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
0.9%	2.0%	0.2%	0.1%	3.5%	6.7%	93.3%	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

Table F-24: Other Services: Weighted Availability

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
2.4%	8.5%	0.4%	0.1%	6.2%	17.6%	82.4%	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

Table F-25: Other Services: Disparity Ratio

Black	Hispanic	Asian	Native American	White Women	M/WBE	Non-M/WBE	Total
136.3%	739.8%	50.2% [‡]	0.0% [‡]	29.6% [‡]	388.4%	38.6% [‡]	100.0%

Source: CHA analysis of City of San Antonio data; Hoovers; CHA Master Directory

[‡] Indicates substantive significance