

King County Disparity Study 2024



KING COUNTY DISPARITY STUDY

2024

Colette Holt & Associates

16 Carriage Hills · San Antonio, TX 78257

(773) 255-6844

colette.holt@mwbelaw.com

facebook.com/MWBELAW • [twitter: @mwbelaw](https://twitter.com/mwbelaw)

About the Study Team

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

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

WindGypsy Consulting leverages 16 years of business consulting to assist small and diverse businesses with analyzing goals, establishing, developing, and improving internal processes. The firm connects prime contractors and agencies to small and diverse businesses to surpass their procurement goals through detailed and clear communication. The firm has worked with CHA to collect contract data on other disparity studies.

Acknowledgments

We wish to express special appreciation to Sandy Hanks, Katia Garcia and the staff at King County for their assistance in conducting this study.

King County Disparity Study 2024

Executive Summary

Colette Holt & Associates ("CHA"), a national expert in conducting disparity studies and designing effective business diversity programs, was retained by King County ("County") to conduct a disparity study of the County's construction and construction-related services contracting activities in conformance with strict constitutional scrutiny.

A. Disparity Study Objectives

- Develop quantitative and qualitative evidence to meet the federal judicial test of constitutional "strict scrutiny", which is the highest level of judicial review.
- Provide policy and program recommendations.
- Educate policy makers and interested parties about the legal and economic issues to build consensus.

B. Disparity Study Findings

1. Review of the County's Business Opportunity Programs

King County's Contracting Opportunities Program for locally funded contracts is designed to promote opportunities for Small Contractors and Suppliers ("SCS") in the County's procurement and contracting process. The program is fully neutral in terms of race and gender and applies incentives, requirements, and goals to contracts to increase the competitiveness of SCS and Minority- and Woman-owned Business Enterprises ("M/WBEs"). In 2016, the County launched a comprehensive Equity and Social Justice Initiative that aims to support M/WBEs. The Initiative utilizes voluntary M/WBE contract goals and SCS participation requirements, technical assistance arrangements, and community partnerships to encourage greater participation on County architecture/engineering services, construction, and other professional services associated with construction projects. In April 2021, the County embarked on a pro-equity contracting initiative with an Executive Order intended to amplify the participation of M/WBEs as part of the Contracting Opportunities Program.

King County is a recipient of funds from various United States (US) Department of Transportation ("USDOT") agencies, including the Federal Transit Administration ("FTA") and the Federal Aviation Administration ("FAA").^a King County administers a Disadvantaged Business Enterprise ("DBE") program in compliance with the DBE

a. The County also receives Federal Highway Administration funds as a subrecipient of the Washington State Department of Transportation. FHWA funded contracts were not examined in this Study.

federal regulations. The program includes a race neutral SBE Program. The SBE program includes outreach, good faith efforts, and identification of work opportunities.

King County also receives funding from the US Environmental Protection Agency (“EPA”) and participates in the EPA’s Fair Share program to foster opportunities for enterprises owned or controlled by socially and economically disadvantaged individuals and women.

2. M/W/DBE Utilization, Availability and Disparity Ratios

CHA analyzed a statistically valid sample of the County’s architecture/engineering and professional services consulting services contracts, and construction and construction-related services contract data for fiscal years 2018 through 2022. The analyses determined the County’s utilization of M/WBEs and DBEs (“M/W/DBEs”) on County construction and construction-related services contracts by funding source; the availability of M/W/DBEs as a percentage of all firms in the County’s geographic and industry market areas; and any disparities between the County’s utilization of M/W/DBEs and their availability in the County’s geographic market (the Seattle Metropolitan Statistical Area) and product market. Below are the results of our analysis for locally funded contracts. The detailed results and the results for the other funding sources are presented in Chapter IV of the report.

At the County’s request, we disaggregated the results for locally funded contracts into architecture/engineering and professional services consulting contracts, and construction and construction related services contracts. These data are provided in Appendix D.

King County Funded Contracts^b All Industries

King County Contracts	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE
Utilization	4.7%	2.2%	4.3%	5.2%	8.4%	24.9%	75.1%
Weighted Availability	2.3%	2.4%	3.2%	2.6%	6.7%	17.2%	82.8%
Disparity Ratio	203.3%***	94.2%***	133.0%***	205.0%***	125.9%***	145.1%***	90.7%***

‡ Indicates substantive significance

*** Statistically significant at the 0.001 level

King County Funded Contracts

b. CHA analyzed 296 prime contracts and 2,141 subcontracts, with a net value of \$550,265,205.

Construction Contracts

	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE
Utilization	4.1%	2.7%	3.3%	7.3%	6.3%	23.6%	76.4%
Weighted Availability	2.7%	2.9%	3.5%	3.4%	6.4%	18.9%	81.1%
Disparity Ratio	149.5%***	91.1%***	93.8%***	215.3%***	99.6%***	125.1%***	94.2%***

Source: CHA analysis of King County data
 *** Statistically significant at the 0.001 level

King County Funded Contracts
A&E Professional Services Contracts

	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE
Utilization	6.3%	1.2%	6.8%	0.1%	13.7%	28.2%	71.8%
Weighted Availability	1.3%	1.1%	2.5%	0.5%	7.5%	12.8%	87.2%
Disparity Ratio	498.9%***	115.3%	270.5%	27.6% [‡]	182.4%***	219.2%***	82.4%***

Source: CHA analysis of King County data
[‡] Indicates substantive significance
 *** Statistically significant at the 0.001 level

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.^c 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.^d A more in-depth discussion of statistical significance is provided in Chapter IV and Appendix C.

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- c. 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.”).
- d. 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.

Overall, the disparity results, both for all industries and the broad industry groupings of A & E and construction, demonstrate that minority- and woman-owned businesses are at or very close to parity with non-M/WBEs in the award of County dollars. The ratios are over 80 percent and are mostly statistically significant. These outcomes indicate that the County's programs have been effective in addressing marketplace discrimination. The only exception is Native American-owned firms performing on locally funded A & E contracts and FTA funded contracts. However, these outcomes are not statistically significant, probably as the result of the very small number of available firms.

Disparity ratios were not calculated for EPA and FAA funded contracts because the analysis was not legally required for EPA funded contracts and there were not enough contracts to perform the analysis for FAA funded contracts.

3. M/WBE Disparities in the County's Market Area

CHA examined the outcomes for M/WBEs in construction and construction related professional and non-professional services in the wider Puget Sound economy beyond the County's own contracting activities. The goal was to shed light on the likely results if King County were to abandon the use of its contracting equity tools. To conduct this examination, CHA analyzed the Census Bureau's American Community Survey from 2017-2021 and the State of Washington Industry Data from the Census Bureau's 2018 Annual Business Survey.^e CHA also reviewed surveys and literature on barriers to access to commercial credit and the development of human capital. Although these results, taken as a whole, show that there are systemic and endemic inequalities outside of the County's programs in the ability of firms owned by minorities and women to have full and fair access to construction and construction-related contracts and associated subcontracts in the Puget Sound and overall Washington economy, King County's specific statistical results contrast with this picture.

4. Qualitative Evidence of Discrimination

CHA developed anecdotal evidence of firms' marketplace with current or past discrimination that may impede equal opportunities for M/W/DBEs to compete for County opportunities. CHA interviewed 72 business owners. CHA also collected 109 responses from an anecdotal electronic survey of business owners. M/W/DBE firms reported experiencing entrenched relationships and networks that impeded their access to information and contract opportunities. Many MBEs said they had faced systemic racial barriers and negative assumptions and perceptions about their competency and capabilities. Some women suffered gender-based discrimination in business opportunities and negative assumptions about their competency. Many found breaking into construction and engineering industry networks

e. The 2018 report provides 2017 data, which are the most recent data available.

particularly challenging. M/W/DBEs often found it difficult to access capital. Most participants reported that the COVID-19 pandemic had no lasting negative impacts on their ability to compete for work.

5. County Contracting Opportunities

Most M/WBEs supported the Small Contractor Supplier (“SCS”) program and found it helpful. A few participants had not benefited from the program. Some interviewees reported that they have been successful in obtaining County work and enjoyed working with the County. Others had negative experiences. Functioning as a subcontractor lead to serious problems for some SCS firms, because of the prime vendor’s control of information and access to County staff. Recent changes to the procurement portal were reported to have made it more difficult to access information on specific contracting opportunities.

In addition, many firms requested the following:

- More outreach events and information about how to network with County decisionmakers and larger firms.
- More support from Business Development Contract Compliance to access information.
- Unbundling contracts so SCS and M/WBE firms can perform as prime vendors.
- Reducing excessive insurance requirements.
- Reforms to the process for setting billing rates on consulting contracts.

6. Recommendations

Based on the Study’s results, case law and national best practices for contracting equity programs, we make the following recommendations for enhancements to the County’s initiatives that have already led to parity:

- Increase communication and outreach to M/W/DBE and SCS firms.
- Focus on increasing prime contract awards to certified firms.
- Enhance opportunities on professional services projects by reviewing the system for setting rates; establishing a task force to make specific recommendations; providing additional points to proposers using a firm new to King County work; and consideration of a fixed markup percentage.
- Reduce insurance requirements, where possible.
- Enhance the SCS Program and the Equity and Social Justice Innovation Plan by developing a program manual; adopting “quick pay” schedules; using the Study’s availability estimates to set race- and gender-neutral SCS and ESJ

contract goals; ensuring the SCS certification list is up to date; reviewing relationships between SCS and non-certified firms during the certification process; and dropping the additional training requirement for continued SCS certification.

- Use the Disparity Study to set the triennial DBE goal for FTA and FAA funded contracts.
- Consider partnering with other agencies and local organizations to provide bonding, financing, and technical assistance programs.
- Develop performance measures for program success.
- Conduct regular program reviews.

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I. STUDY OVERVIEW

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

We determined the County’s utilization of Minority and Woman Business Enterprises (“MWBEs”) and Disadvantaged Business Enterprises (“DBEs”) (collectively, “M/W/DBEs”)¹ on County construction and construction-related services contracts² for fiscal years 2018 through 2022; the availability of these firms as a percentage of all firms in the County’s geographic and industry market areas; and any disparities between the County’s utilization of minority- and woman-owned firms and their availability in the County’s geographic and product market. We further analyzed disparities in the Puget Sound and Washington economies, where contracting equity programs are relatively rare, to evaluate whether barriers continue to impede opportunities for minorities and women when remedial intervention is not imposed. We also gathered qualitative data about the experiences of M/W/DBEs in obtaining County contracts and associated subcontracts. We further evaluated King County’s Small Contractors & Suppliers (“SCS”) Program; its Equity and Social Justice (“ESJ”) Innovation Plan for MWBEs; the FTA and FAA DBE Programs; and the EPA program for MWBEs for conformance with constitutional standards, regulatory requirements and national best practices for government contracting equity programs.

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

A. Summary of Legal Standards for Contracting Equity Programs

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

Strict scrutiny analysis has two prongs:

1. The government must establish its “compelling interest” in remediating race discrimination by current “strong evidence” of the persistence of discrimination. Such evidence may consist of the entity’s “passive participation” in a system of racial exclusion.
2. Any remedies adopted must be “narrowly tailored” to that discrimination; the program must be directed at the types and depth of discrimination identified.³

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

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

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

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

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

In *Adarand v. Peña*,⁴ the United States Supreme Court extended the analysis of strict scrutiny to race-based federal enactments such as the U.S. Department of Transportation (“USDOT”) DBE program for federally assisted transportation contracts.⁵ Just as in the state and 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.⁶

Most federal courts have subjected gender preferences to “intermediate scrutiny”.⁷ Gender-based classifications must be supported by an “exceedingly persuasive justification” and be “substantially related to the objective”.⁸ The quantum of evidence necessary to satisfy intermediate scrutiny is less than that required to satisfy strict scrutiny. The Ninth Circuit requires that gender-based classifications be supported by “sufficient probative evidence” and “exceedingly persuasive justification” and be “substantially related to the objective”.⁹ However, some appellate courts have applied strict scrutiny to the gender-based presumption of social disadvantage in reviewing the constitutionality of the DBE program¹⁰ or held that the results would be the same under strict scrutiny.¹¹

To comply with *Adarand*, Congress reviewed and revised the DBE program statute and regulations¹² for federal-aid contracts in the transportation industry. The program governs King County’s receipt of federal funds from the FTA and FAA. To date, every court that has considered the issue has found the regulations to be constitutional on their face. These cases provide important guidance to King County about how to narrowly tailor its DBE program.

B. King County’s Contracting Equity Programs

1. Program Administration

King County’s contracting equity programs are administered by the Business Development and Contract Compliance (“BDCC”) Office, within the County’s

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

5. 49 C.F.R. Part 26.

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

7. *See, for example, Builders Ass’n of Greater Chicago v. County of Cook, Chicago*, 256 F.3d 642 (7th Cir. 2001). iii

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

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

10. *Northern Contracting III*, 473 F.3d at 715, 720.

11. *Western States Paving Co., Inc. v. Washington State Department of Transportation*, 2013 W.L.1607239 at *13 fn.6 (9th Cir. 2005).

12. 49 C.F.R. Part 26.

Department of Executive Services, Finance and Business Operations Division. A key mission of the Office is to increase contracting equity through the development and implementation of initiatives to increase participation of small contractors and suppliers, SBEs, MWBEs and DBEs.

2. Contracting Equity Programs for Locally Funded Contracts

King County's Contracting Opportunities Program¹³ for locally funded contracts promotes opportunities for small contractors and suppliers to work as prime contracts, subcontractors and suppliers. The fully race- and gender-neutral program applies incentives, requirements and goals to contracts to increase the competitiveness of SBEs, MWBEs and DBEs.

In 2010, King County extended its Equity and Social Justice Initiative to all County departments, agencies and branches. The Initiative seeks to provide full and equal access to opportunities to all people and communities. In 2016, the County launched a comprehensive ESJ Strategic Plan that includes directives to provide MWBEs greater access to County contracting opportunities.

In 2021, the County issued a Pro-Equity Executive Order reaffirming the agenda of the ESJ Plan and directing efforts to increase participation of MWBEs to compete for County contracts. The Executive Order includes specific race-neutral initiatives.

a. Small Contractors and Suppliers Contracting Program

i. SCS Eligibility

To be eligible to participate in the SCS program, an applicant must:

- Be an independent for-profit small business.
- Be licensed to do business in Washington State.
- Meet the U.S. Small Business Administration size standards for small businesses, with an overall limit of \$30.4M in gross receipts over a three-year average.
- Be majority owned by an individual or individual whose personal net worth is less than \$1.32M (excluding the primary residence and equity in the business).

The County has a Fast-Track Application Process for a small business that is already certified by the Washington State Office of Minority and Woman's Business Enterprises ("OMWBE"). A firm certified as an MBE; WBE; MWBE; Combination Business Enterprise¹⁴; or a Socially and Eco-

13. King County Municipal Code §2.97.010-130.

nomically Disadvantaged Business Enterprise¹⁵ automatically qualifies for SCS certification and is not required to complete the standard SCS certification application.

ii. SCS Utilization Requirements

The County awards evaluation points on solicitations that have SCS requirements to prime proposers of technical, consulting, architectural and engineering services who use SCS subconsultants, or to SCS prime consultants.

When there is a sufficient number of available SCS firms in the contract's scope of work based on the project manager's review, the County can impose mandatory SCS utilization percentage requirements on construction, architectural and engineering, and professional consulting contracts. Bidders and proposers must meet the SCS utilization requirement as a condition of responsiveness.

Bidders must submit a Letter of Intent ("LOI") with the bid for each SCS firm it plans to utilize to meet the contract goal, detailing the total dollar amount or materials to be supplied; a description of work that will be performed or materials supplied; and the signature of the SCS owners. Omission of any information from the LOI can result in rejection of the bid.

iii. Counting SCS Utilization

Only the work actually performed by an SCS firm can be counted toward the goal. SCS prime bidders may count 100% of the work performed with its own forces. SCS firms can subcontract a portion of the work, but they must perform at least 51 percent of the contracted amount to receive 100 percent SCS credit. Materials or supplies purchased from a SCS firm are counted at 60 percent.

SCS firms must perform a Commercially Useful Function ("CUF") to be counted toward a contract goal. CUF means the performance of real and actual services in the discharge of any contractual endeavor, rather than being an uninvolved participant in a transaction, contract or project through which funds are passed to obtain the appearance of SCS participation. No SCS utilization credit is given for an SCS firm acting as a passive conduit of funds to a non-certified firm.

14. Fifty percent owned by women and minorities.

15. Owned by a non-minority man found to be socially and economically disadvantaged on a case-by-case basis.

b. Small Business Contracting Incentives

In addition to the SCS program, King County has adopted the following measures.

- Small Works Roster contracts are construction contracts under \$350,000 solicited from a list of contractors registered for specific North American Industry Classification System (“NAICS”) codes. Contractors from the roster are invited to submit bids on a rotational basis. The County actively solicits roster enrollment of small businesses.
- The architecture/engineering (“A/E”) consultant roster is used to award contracts for projects less than \$500,000. The County invites at least one SCS business to submit a proposal for every project. There is no limit on how much work an SCS business may be awarded through the A/E roster.
- King County sets SCS goals for Individual Job Orders limited to \$500,000 issued under a Job Order Contract (JOC). A JOC requires subcontracting 90% of the work.

c. Equity and Social Justice Innovation Plan

As part of the ESJ Innovation Plan, the County requests proposers and bidders on consulting contracts and alternative public works contracts to commit to voluntary percentage goals for MWBE participation if there are sufficient OMWBE certified MWBEs to perform the scopes of work. Occasionally, the County may suggest the State of Washington’s goals of 10% for MBEs and 6% for WBEs or suggest a minimum MBE and WBE aspirational goal. MWBE participation is not a condition for responsiveness in evaluation of the contract award but submittal of a plan is a matter of responsiveness. A bidder must agree to make Good Faith Efforts (“GFE”) to meet the contract goals whenever procuring subcontracts, equipment, services and supplies.

Proposals are evaluated on the quality of the approach and the proposer’s specific actions to maximize MWBE participation, including whether the goals were attainable. Proposers are encouraged to provide MWBEs with mentoring, technical assistance strategies, tools and/or a network to support their success and increase MWBE participation and capacity. Proposers are required to provide an outline of how their efforts will maximize MWBE participation. The County will consider the proposer’s approach to advancing equity and social justice within the County and beyond.

d. SCS Program and MWBE Contract Performance Compliance

Compliance with the SCS utilization requirement and voluntary MWBE goals become material conditions of the contract. The County continually evaluates compliance over the life of the contract. Failure to comply with the contract provisions without approval from the County can be deemed a material breach of the contract.

All requests to modify the SCS or MWBE utilization commitment must be submitted in writing to the County. The request must include documentation of the factors leading to the contractor's inability to comply with the SCS or ESJ requirement. Substitutions are permitted for a fixed number of reasons. Firms must make GFEs to fulfill their commitment. Unless waived for good cause by the County in writing, the contractor must replace the certified firm with another certified firm.

The County enforces its prompt payment provisions and processes through the Diversity Contract Management System ("DCMS"). DCMS tracks payments to subcontractors at all tiers for all funding sources. Contractors must report utilization of all subcontractors and/or suppliers monthly.

During contract performance, the County can request a corrective action plan if the contractor is not meeting the SCS contract goal, MWBE aspirational goals or making satisfactory progress toward the objectives identified in the ESJ Innovation Plan. The contractor must submit a written plan explaining the goal shortfall and how it will be corrected. If the County determines that corrective action plan is unsatisfactory, it may withhold payments or terminate the contract for default.

e. Violations and Sanctions

A firm that violates the County's contracting opportunities programs can be subject to sanctions, including but not limited to:

- Liquidated damages
- Withholding of funds
- A civil fine or penalty
- Disqualification from eligibility for bidding on, entering into, or participating as a subcontractor on a County contract for a period not to exceed five years

Sanctions must be imposed in writing with the reasons for their imposition and provided promptly to the person being sanctioned. The sanctioned firm may appeal in accordance with the County Code.

3. U.S. Department of Transportation's Disadvantaged Business Enterprise Program

As a recipient of USDOT funds through the FTA and FAA, King County is required as a condition of receipt to implement a DBE program in compliance with 49 C.F.R. Part 26. King County has signed an assurance that it will comply with 49 C.F.R. Part 26.

a. Program Administration

The Manager of BDCC serves as the DBE Liaison Officer ("DBELO") and is responsible for administering all aspects of the DBE program. The DBELO has direct, independent access to the County Executive. The BDCC office's responsibilities include, but are not limited to, establishing DBE triennial and contract goals; identifying mechanisms to improve progress; conducting internal and external assessments and reviews of DBE program activities and coordinating enforcement action; and advising the County Executive and other office directors on DBE matters.

b. Program Eligibility Requirements

All DBE and SBE certifications are conducted by OMWBE. DBEs and SBEs must meet the requirements of 49 C.F.R. Part 26, including the business size¹⁶ and personal net worth limits¹⁷. The firm must be organized as a for-profit business and the owner must be a U.S. citizen or permanent U.S. resident. The applicant owner must own, manage, and control the business on a day-to-day basis.

OMWBE maintains the Washington State Uniform Certified Program Directory of certified DBE and SBE firms. The Directory is posted online.¹⁸

c. FTA DBE Triennial goals

King County's overall FTA FFY 2021-2023 DBE goal is 10%, all of which is to be achieved through race-neutral means. The County's 2024-2026 proposed FTA DBE Triennial goal is 15%. The County establishes SBE contract goals to meet the maximum feasible portion of its DBE goal through race-neutral means in accordance with USDOT regulations.

16. The current overall cap is \$30.4M.

17. The current limit is \$1.32M.

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

d. Small Business Enterprise Element

To meet the requirement in 49 C.F.R. §26.39, Small Business Participation, King County has established a race-neutral Small Business Enterprise Program. The SBE program includes outreach and identification of work opportunities, mentor-protégé and technical assistance arrangements, community partnerships, cultural competency, and where applicable, practices from the Equity and Social Justice Innovation Plan.

Subcontracting requirements and set-aside provisions include:

- Setting contract specific SBE subcontracting requirements.
- Allocating points to proposers who commit to meet or exceed the SBE percentage on architecture, engineering, and professional service contracts.
- Setting aside architecture, engineering, or professional service contracts for competition only among SBEs. SBE prime proposers can subcontract up to 70% of the total price of the contract.
- Applying a SBE Fair Market Range. This bid preference is typically between three and five percent.
- Using the Architectural/Engineering Consultants Roster to award contracts for capital projects with an estimated cost of less than \$500,000. King County agencies will invite at least one SBE to submit a proposal for every FTA assisted project. There is no limit on how much work can be awarded to SBEs through the A/E Roster.
- Using the Small Works Roster to award contracts for construction projects with an estimated cost of less than \$350,000. SBEs are encouraged to register in order to receive direct bidding opportunities. Projects solicited under the roster system are not advertised. Contractors from the roster will be invited, on a rotational basis, to submit bids for a solicited project.

e. Contract Solicitation, Award and Compliance Procedures

Signed Federal Small Business Enterprise Utilization Certification Forms from each proposed SBE must be submitted at the time of bid opening or proposal submission. King County treats DBE compliance as a condition of responsiveness. The County will evaluate the contractor's compliance with the SBE Utilization Requirement against the total contract price. The County follows the counting provisions of the DBE program regulations.

King County applies contract monitoring and enforcement policies and procedures for FTA and FAA funded contracts similar to its non-federally

assisted contracts. Contractors that do not meet their Utilization Plan goals must make GFE to contract with another certified DBE or SBE and provide all the necessary documentation. King County conducts regular reviews to ensure that DBEs and SBEs are performing a CUF.

f. Record Keeping

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

4. Environmental Protection Agency Fair Share Program

King County receives funding from the EPA and participates in the EPA's Fair Share program at 40 C.F.R. Part 33. Recipients of EPA financial assistance must award a "fair share" of procurement and contracting opportunities to disadvantaged, minority- and woman-owned businesses.

a. Program Eligibility

EPA accepts certifications as described in 40 C.F.R. 33.204-33.205 from Disadvantaged, Minority, or Woman Business Enterprises that have been certified by an approved DBE entity or that have been certified by the EPA. Firms must be certified by OMWBE to participate.

b. Program Goals and Participation

The EPA and the State of Washington have established Fair Share goals of 10% for MBEs and 6% for WBEs. The consultant agrees to ensure, to the fullest extent possible that, at least the applicable "fair share" objectives are made available to entities owned or controlled by socially and economically disadvantaged individuals and women.

The counting rules are similar to those of the DBE program, except that an MWBE can subcontract up to 49% of its work. Bidders and proposers agree to demonstrate the EPA's required six GFE to meet fair share goals when procuring contracts, subcontracts, equipment, services and supplies.

Bidders and proposers must submit the Woman and Minority Business Enterprises Utilization Form listing all M/WBEs that will be utilized on the project at the time of bid or proposal submission.¹⁹

19. 40 C.F.R. 33 Subpart C.

c. Program Monitoring and Compliance

BDCC reviews contract procurement and monitors contractor compliance with the Fair Share requirements. King County applies similar contract monitoring and utilization enforcement policies and procedures to Fair Share contracts that it applies to its non-federally assisted contracts.

5. Technical Assistance and Small Business Supportive Services

The County's Cashflow Improvement Initiative assists MWBEs and small prime contractors to receive payment of their approved invoices in two to three days versus at least 30 days.

In addition, King County through the Washington Department of Enterprises partners with several state business advocacy agencies to offer business support to MWBEs and small businesses, including Tabor 100 and the U.S. Department of Commerce Minority Business Development Agency. These agencies publish relevant County bid and proposal opportunities on their websites and host networking events and speaker series. Accounting and tax services, bid and contract assistance, marketing and website expertise are offered at subsidized rates.

6. Vendor Outreach and Training

The County regularly holds pre-bid/proposal conferences for construction and architectural and engineering projects for prospective bidders and proposers. Through the E-Procurement Supplier Portal, firms can opt to receive system-generated email notifications of County solicitations that match self-selected NAICS codes. King County also advertises on social media platforms and in print media outlets.

The Supplier Portal offers information about past, current and upcoming solicitations. Firms can view and download documents related to past solicitations and active contracting opportunities. The document holders list details all registered firms that have taken an action in response to a publicly advertised solicitation. This list is continually updated to reflect addendums that are issued and the suppliers that have taken an action in response to the solicitation since the addendum was issued.

The County offers downloadable supplier registration user guides, as well as video tutorials about how to do business with the County, respond to a solicitation, acknowledge an addendum and maintain user profiles.

Monthly training specifically directed to MWBEs includes online modules through the DCMS system. These include online certification application, con-

tract compliance reporting, how to put together a utilization plan and DCMS system training.

The County conducts semi-annual two-hour online orientation sessions with tips for submitting successful bids on A&E, construction and goods and services solicitations.

King County participates in various contracting conferences and events sponsored by other local government agencies throughout the year, including but not limited to, the Regional Contracting Forum, North Puget Sound Contracting Conference and the City of Seattle's Reverse Vendor Trade Show.

7. Staff Training

BDCC staff regularly attends the American Contract Compliance Association's annual National Training Institute, where they receive extensive training on national best practices for M/W/DBE programs. BDCC Staff attend the annual B2Gnow® User Training and LCP Tracker User Conferences. Staff also participate regularly in B2Gnow® online training.

8. Experiences with King County's Contracting Equity Programs

a. Industry and Community Partner and Business Owner Interviews

To explore the impacts of King County's programs, we interviewed 72 individuals about their experiences and solicited their suggestions for changes. We also collected written comments.

SCS Program: Most MWBEs supported the SCS program and found it helpful to obtain County work. A few participants had not benefited from the program.

ESJ Innovation Plan: This approach was reported to sometimes actually undermine MWBEs seeking work as prime vendors because the Plan gives points for the comprehensive diversity programs and dedicated diversity staffs that large contractors are able to maintain versus small firms that are themselves diverse but do not have Diversity, Equity and Inclusion and mentoring programs for other diverse firms.

Obtaining County Contracts: Some interviewees reported that they have been successful in obtaining County work and enjoyed working with the County. Others had negative experiences. Functioning as a subcontractor lead to serious problems for some M/W/DBEs.

Outreach and Networking: Several participants requested more outreach events and information about how to network with County decisionmakers and larger firms.

Procurement Portal: Recent changes to the procurement portal were reported to have made it more difficult to access information on specific contracting opportunities.

Vendor Support: More support from BDCC to access information and obtain prime contracts was requested. Further, one owner reported a good experience in seeking a debriefing from the Procurement and Payables Department. Another was unable to obtain information about the basis for the scores it received on its proposal.

Contract Size: Contract size was another impediment to SCS' and MWBEs' ability to serve as prime contractors on County jobs. Many participants want to move into the prime role.

Insurance Requirements: Excessive insurance requirements discourage MWBE and SCS prime participation.

Consulting Contract Billing Rates: The process for setting billing rates on consulting contracts discourages MWBE and SCS firms from obtaining County prime contracts.

Impact of COVID-19 Pandemic: Most participants reported that the COVID-19 pandemic had little impact on their businesses. Some owners had benefited from the pandemic. One effect of the shutdowns was it was harder to connect with government staff and receive timely information and answers to questions.

b. Electronic Survey Responses

Written comments were collected from 109 survey respondents about their experiences with King County's Programs.

Impact of the SCS and DBE Programs: Overall, M/W/DBE respondents supported the County's SCS and DBE programs. Many stated the programs have been instrumental in obtaining contracts with the County. Several M/W/DBE firms found the County's DBE program especially helpful in obtaining work. Some did not find the SCS program as helpful.

A few minority owners were unaware of the SCS certification and program. Some minority and woman-owned firms thought the process required for OMWBE certification was too cumbersome. The SCS certification process was seen as less onerous.

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

Some non-M/W/DBEs complimented the County's management of the programs.

A number of M/W/DBEs want mandatory MBE/WBE/DBE solicitation goals that are evaluated as a condition of award. Several veteran firms want the County to impose goals for their firms.

Outreach and Access to Information: All types of firms requested more outreach and opportunities to network with primes and County staff.

Access to King County Contracting Opportunities: Some M/W/DBE respondents requested more opportunities to perform on smaller projects and to perform as prime contractors. Several M/W/DBEs suggested that the County's contracting process for setting staff rates could be improved. Small businesses supported changes to make contracting requirements less burdensome.

Monitoring Program Compliance: Several M/W/DBEs requested more oversight of the County's procurement practices to ensure prime contractors comply with goal requirements once the contract is awarded.

Payments: Some M/W/DBEs reported slow payments by the County. This caused cash flow issues for subcontractors that are not paid until the prime contractor is paid.

Project Labor and Community Workforce Agreements: Project Labor and Community Workforce Agreements were barriers to some small construction firms obtaining work for King County. Many non-M/W/DBEs reported similar issues.

Experiences with Business Supportive Services: Businesses who had participated in business support services generally found them helpful.

Experiences with Mentor-Protégé Programs and Teaming Arrangements: Mentor-protégé programs and joint ventures were proffered as possible approaches to help M/W/DBEs. Those that participated in these programs generally reported good experiences. Less favorable experiences were reported by a small number of M/W/DBE firms. Non-M/W/DBE firms reported mixed experiences with mentor-protégé programs.

C. Utilization, Availability and Disparity Analyses of the County's Construction and Construction-related Services Contracts

We analyzed data from King County's federal aid and State funded contracts for fiscal years 2018 through 2022. We received 2,851 contract records worth \$656,620,351. These contracts were funded by either the County, FTA, FAA or EPA dollars. To conduct the analysis, we constructed all the fields necessary where they were missing in King County's contract records (*e.g.*, industry type; zip codes; six-digit NAICS codes of prime contractors and subcontractors; payments, race; gender; etc.). These results were used to create the overall Final Contract Data File ("FCDF") and one FCDF for each funding source.

For all four funding sources, we found the geographic market to be the three county Seattle metropolitan area ("Seattle MSA"): King County; Pierce County; and Snohomish County. Table 1-1 presents the County's geographic market area for contracts funded by all three funding sources in the state of Washington. In Tables 1-2 through 1-4, we present data on utilization, weighted availability, and disparity ratio by each funding source. At the County's request, we disaggregated the results for locally funded contracts into construction and architecture/engineering ("A &E") and professional services. These data are provided in Appendix D.

Table 1-1: Summary of Findings: Share of Final Contract Data File within the Seattle MSA (by funding source)

Funding Source	Seattle MSA Share of FCDF
King County	81.4%
FTA	83.3%
EPA	95.8%
FAA	100.0%

Source: CHA analysis of King County data

CHA determined the share of contract dollars received by different demographic groups (utilization); each group's availability weighted by each NAICS code's share of overall the County spending (weighted availability); and the disparity between the utilization and weighted availability (disparity ratio). Tables 1-2 through 1-4 present these results.

Table 1-2: Summary of Findings: King County Funded Contracts
All Industries
(2,437 Contracts)

	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE
Utilization	4.7%	2.2%	4.3%	5.2%	8.4%	24.9%	75.1%
Weighted Availability	2.3%	2.4%	3.2%	2.6%	6.7%	17.2%	82.8%
Disparity Ratio	203.3%***	94.2%***	133.0%***	205.0%***	125.9%***	145.1%***	90.7%***

Source: CHA analysis of King County data
 *** Statistically significant at the 0.001 level

Table 1-3: Summary of Findings of King County Funded Contracts:
Construction Contracts

	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE
Utilization	4.1%	2.7%	3.3%	7.3%	6.3%	23.6%	76.4%
Weighted Availability	2.7%	2.9%	3.5%	3.4%	6.4%	18.9%	81.1%
Disparity Ratio	149.5%***	91.1%***	93.8%***	215.3%***	99.6%***	125.1%***	94.2%***

Source: CHA analysis of King County data
 *** Statistically significant at the 0.001 level

Table 1-4: Summary of Findings of King County Funded Contracts:
A&E Professional Services Contracts

	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE
Utilization	6.3%	1.2%	6.8%	0.1%	13.7%	28.2%	71.8%
Weighted Availability	1.3%	1.1%	2.5%	0.5%	7.5%	12.8%	87.2%
Disparity Ratio	498.9%***	115.3%	270.5%	27.6% [‡]	182.4%***	219.2%***	82.4%***

Source: CHA analysis of King County data
[‡] Indicates substantive significance
 *** Statistically significant at the 0.001 level

**Table 1-5: Summary of Findings: FTA Funded Contracts
(283 Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE
Utilization	3.4%	1.8%	8.9%	0.7%	6.6%	21.4%	78.6%
Weighted Availability	1.5%	1.4%	2.8%	1.0%	6.7%	13.5%	86.5%
Disparity Ratio	225.9%	121.1%	321.6%***	64.8% [‡]	98.9%***	158.9%***	90.8%***

Source: CHA analysis of King County data

‡ Indicates substantive significance

**** Statistically significant at the 0.001 level*

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.²⁰ 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.²¹ A more in-depth discussion of statistical significance is provided in Chapter IV and Appendix C.

Overall, the disparity results, both for all industries and the broad industry groupings of construction and A & E, demonstrate that minority- and woman-owned businesses are at or very close to parity with non-M/WBEs in the award of County dollars. The ratios are over 80 percent and are mostly statistically significant. These outcomes do not support the inference that minority- or woman-owned firms suffer from discrimination in the award of County contracts. To the contrary, they suggest that the County has successfully remediated marketplace discrimination through the application of its programs. The only exception is Native American-owned firms performing on locally funded A & E contracts and FTA funded contracts. However, these outcomes are not statistically significant, probably as the result of the very small number of available firms.

20. 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.”).

21. 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.

Disparity ratios were not calculated for EPA and FAA funded contracts because the analysis was not legally required for EPA funded contracts and there were not enough contracts to perform the analysis for FAA funded contracts.

**Table 1-6: Summary of Findings: FAA Funded Contracts
(28 Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE
Utilization	2.1%	0.0%	5.6%	0.0%	4.4%	12.1%	87.9%
Weighted Availability	1.7%	1.4%	2.5%	1.6%	5.5%	12.8%	87.2%

**Table 1-7: Summary of Findings: EPA Funded Contracts
(103 Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE
Utilization	5.4%	1.7%	9.6%	0.3%	13.4%	30.4%	69.6%
Weighted Availability	3.3%	2.9%	4.1%	4.7%	8.6%	23.6%	76.4%

D. Analysis of Disparities in King County's Marketplace

Evidence of the experiences of M/WBE firms outside of King County's programs is relevant and probative of the likely results for King County if it were to abandon the use of its equity tools. To examine the outcomes throughout King County's market area for construction and construction related professional and non-professional services, we explored two Census Bureau datasets and the government and academic literature relevant to how discrimination in King County's industry market and throughout the wider economy affects the ability of minorities and women to fairly and fully engage in the County's prime contract and subcontract opportunities.

We analyzed the following data and literature:

- The Census Bureau's American Community Survey from 2017-2021 for the State of Washington, King County's geographic market. This rich data set establishes with greater certainty any causal links between race, gender and economic outcomes. We employed a multiple regression statistical technique to examine the rates at which minorities and women form firms in the

construction and related services industries. In general, we found that even after considering potential mitigating factors, business formation rates by Blacks, Hispanics and White women are lower compared to White males. The data indicate that non-Whites and White women receive lower wages and Blacks and White women receive lower business earnings after controlling for possible explanatory factors. These analyses support the conclusion that barriers to business success do affect non-Whites and White women entrepreneurs.

- State of Washington Industry Data from the Census Bureau's 2018 Annual Business Survey, which contains 2017 data, the most recent data available. This dataset indicated large disparities between M/WBE firms and non-M/WBE construction and related services 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 King County's contract data that M/WBEs face obstacles to achieving success on contracts outside of business equity programs.

All three types of evidence have been found by the courts to be relevant and probative of whether a government will be a passive participant in overall marketplace discrimination without some type of affirmative intervention. This evidence supports the conclusion that without the type of programs implemented by the County, marketplace disparities continue to hinder the growth and development of M/WBEs and therefore their ability to obtain and succeed on County contracts.

E. Qualitative Evidence of Race and Gender Barriers in King County's Marketplace

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/W/DBEs such that narrowly tailored race-conscious contract goals are needed to ensure equal opportunities to compete for King County prime contracts. To explore this type of anecdotal evidence, we received input from 72 participants in small group interviews. We also received 109 net responses to an electronic anecdotal survey and written comments during the study period.

1. Business Owner Interviews

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

- Some women reported suffering from gender-based discrimination in business opportunities.
- Minority owners may face more entrenched biases than White women.
- Hiring more minority and female staff was one suggestion to initiate significant changes.
- Gay men had encountered few barriers on the basis of sexual preference.
- Military veterans had not suffered any discrimination as the result of having served in the armed forces.
- Most participants reported that the pandemic had no lasting negative impacts on their ability to compete for work. Some firms even benefited.

2. Electronic Business Survey

Results from the electronic survey were similar to those of the interviews. Among minority- and woman-owned firms, 39.7% reported that they still experience barriers to equal contracting opportunities; 29.3% said their competency was questioned because of their race or gender; and 25.9% indicated that they had experienced job-related sexual or racial harassment or stereotyping.

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

- Many minority respondents reported that fair opportunities to compete for contracts were not available because of systemic racial barriers. They continue to experience negative assumptions and perceptions about their competency and capabilities.
- Many women reported sexist attitudes, stereotyping about their roles and authority and negative biases about their competency. Breaking into the construction and engineering industry networks was particularly challenging.
- Many M/W/DBE firms experienced entrenched relationships and networks that impeded their access to information and contract opportunities.

- Some M/W/DBEs reported that being in a subcontracting role further exacerbated their access to information.
- Several minority and woman respondents felt that prime bidders often use them only to meet affirmative action goals.
- Some M/W/DBEs reported barriers based on their size.
- Some M/W/DBEs reported they cannot obtain the necessary capital to increase capacity to take on work.
- The cost of financing and burdensome insurance requirements restrict opportunities to take on contracting work.
- A few M/W/DBEs reported discriminatory supplier pricing.
- Some M/W/DBEs reported the COVID-19 pandemic disrupted supply-chain, lead to higher material costs, exacerbated labor shortages and resulted in the loss of key employees. The lack of in-person meetings made it challenging to do business. Several M/W/DBEs reported that it took time to adjust to new technology to conduct business remotely. For some firms, employee vaccination mandates further exacerbated staff shortages. A few M/W/DBEs reported that the pandemic did not negatively affect their business operations. Several indicated their businesses benefited from the pandemic.

F. Recommendations for Enhancements to King County's Contracting Equity Programs

The quantitative and qualitative data presented in this study provide a thorough examination of whether M/W/DBEs operating in King County's geographic and procurement markets have full and fair opportunities to compete for County construction and construction-related services prime contracts and associated sub-contracts. We analyzed the County's utilization of M/W/DBEs compared to their availability by funding source; examined overall marketplace disparities impacting minority and woman firms in the Puget Sound area; gathered extensive anecdotal data of possible discrimination through interviews and an electronic survey; and reviewed the County's current contracting equity programs. We also provided Appendix F, which presents summaries of anecdotal evidence of discrimination against minority and woman businesses collected during our disparity studies for other Washington state agencies. Based on these results, case law and national best practices for contracting equity programs, we make the following recommendations for enhancements to the County's current successful initiatives. We acknowledge that many suggestions may require additional staff and costs.

1. Increase Communication and Outreach to M/W/DBEs and SCS Firms

A common complaint from M/W/DBEs and SCS firms was the difficulty in accessing timely information about County opportunities. Even large prime vendors reported that it is challenging to navigate the County's website to find all relevant solicitations or other necessary information. Attempting to access information on job order contracts was especially frustrating. We therefore recommend that the County conduct a thorough review of how this portal or other websites operate. DCMS also has the capability to send eBlasts to certified firms notifying them of opportunities relevant to their industry codes.

Another improvement would be an annual contracting forecast of larger contracts to permit vendors to plan their work and form teams. It is common that groups are formed months in advance of major solicitations and given that small firms usually do not employ large marketing staffs, they need time to contact possible partners and cement relationships.

Further, as is the case with many governments, the study revealed that M/W/DBEs are receiving few opportunities in several subindustry codes. We suggest that special outreach be conducted to firms in those sectors. Activities could include targeted emails about future contracts, matchmaking events focusing on those industries, and identification of firms that are not currently certified, but might be eligible for inclusion, to encourage applications.

2. Focus on Increasing Prime Contract Awards to M/W/DBEs and SCS Firms

Many small firm owners would like to perform as prime vendors on government contracts. Given the size of the County's budget, there are numerous opportunities for smaller firms to participate. While the SCS program has been successful in reducing barriers, the contracts are small and many certified firms perform only at the subcontractor level. Several steps should be implemented:

- Develop a protocol to consider whether to unbundle projects into less complex scopes and lower dollar values.
- Review experience requirements with the goal of reducing them to the lowest level necessary to ensure that the bidder or proposer has adequate experience, perhaps by recognizing similar though not identical types of work, including work performed for other governments and private sector clients.

- Ensure debriefings are available upon request for proposers that were unsuccessful. Whether such information is provided seems to vary by the user department, so we suggest this be centralized in Purchasing and a protocol be developed (perhaps with a request form) to ensure small firms have access to information about how to strengthen their proposals.

3. Enhance Opportunities on Professional Services Projects

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

The County should consider providing additional points in best value or negotiated contracts for a prime proposer using a firm that is new to King County work. This is one approach that will incentivize proposers to seek out new partners on County opportunities.

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

4. Reduce Insurance Requirements

Many small firms, and even some large primes, stated that the County's standard insurance requirements were impediments to certified businesses' ability to propose on County contracts or even serve as subcontractors. The "one size fits all" approach or excessive insurance requirements disadvantage smaller firms by making it difficult or even impossible for them to work on projects for which they are fully qualified but do not carry unnecessary coverage. We therefore suggest that the County do a thorough review of its risk management protocols, with the objective of not requiring more coverage than is truly necessary for the specific project.

5. Enhance the SCS Program and the Equity and Social Justice Innovation Plan

The race- and gender-neutral SCS program and the ESJ Innovation Plan have been quite successful in reducing barriers to County contracts on the basis of race and gender. The disparity results in Chapter IV suggest that for most groups, parity or very close to parity has been achieved. Therefore, in addition to recommending the programs be continued, the following enhancements should be considered:

- Develop a program manual that collects all the relevant documents in one place for easy access, including the policies and procedures that govern the various programs, as well as forms and instructions.
- Continue to implement “quick pay” schedules and mobilization payments to subcontractors for construction contracts. Many small firms noted cash flow as a major issue in working on government contracts. This was especially true for King County because of the Community Workforce Agreement, that requires substantial cash outlays to stay in compliance.
- Use the study’s M/WBE availability estimates to set mandatory race- and gender-neutral SCS goals and voluntary, aspirational M/WBE ESJ contract goals. The current approach is ad hoc, either applying the State of Washington’s overall, annual MBE and WBE goals on ESJ solicitations or a goal developed by the County’s project manager and BDCC for SCS contracts. We recommend a tailored approach that uses the MWBE availability estimates in this report to set any contract goals.

This approach will ensure that SCS firms are utilized to the maximum feasible extent. The availability of MWBEs is less than that for certified SCS firms, since SCS certified firms may be owned by White males. This means that the estimate of MWBE availability will be a subset of SCS firms, ensuring that the goal is achievable.

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

- Keep the SCS certification list up to date. Several large bidders reported that they had been rejected as non-responsive because the SCS firm had not renewed its certification but was still listed in the Directory.

- Review the relationships of an applicant for SCS certification with non-certified firms during the application process, not during consideration for contract award. It is standard best practice to consider the affiliations of an applicant for a preference during certification, not wait until a bidder is seeking credit for using a certified firm. If a firm is not independent of a larger firm, it should not have been certified at all. Waiting until the contract review stage means issues have to be addressed for each bid or proposal, leading to repetitive questions, uncertainty and possibly less participation in the end because the non-certified bidder might have chosen an eligible business had it known its proposed SCS firm was not eligible for goal credit.”
- Drop the requirement for continued SCS certification that the County must assess the contractor's need for additional training, and possibly then require the small contractor to complete up to 15 additional hours annually of business-related training. Aside from how this assessment might be conducted and under what standards, most of the SCS certified firms we interviewed were relatively experienced businesspeople who asked for specific information about doing business with the County, not overall business training. These resources would be better purposed toward targeted supportive services.

6. Use the Study to Implement the DBE Program

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

49 C.F.R. Part 26 requires a recipient to engage in a two-step process to set a triennial goal for DBE participation. One approved method to set the triennial goal is to use data from a disparity study. We therefore recommend that the County use the DBE aggregated weighted availability findings in Chapter IV to determine the Step One base figure for the relative availability of DBEs required by §26.45(c) for each funding source. These results are the estimates of total DBE availability that reflect the importance of each subindustry to the County’s overall FTA and FAA funded contracting activity. Under §26.45(d), the County must perform a Step Two analysis. The County must consider whether to adjust the Step One figure to reflect the effects of the DBE program and the level of DBE availability that would be expected in the absence of discrimination. The County can use the statistical disparities in Chapter V of the rates at which DBEs form businesses as a possible marker of the availability of minority- and woman-owned businesses that would be expected “but for” discrimination. This is the type of “demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.” However, we note that while the DBE

regulations have withstood repeated legal attacks, there is no direct case law upholding this type of “but for” analysis. We therefore advise King County to proceed with caution in using the economy-wide data for an adjustment.

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

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

7. Consider Partnering with Other Agencies and Local Organizations to Provide Bonding, Financing and Technical Assistance Programs

We recommend that the County implement a more robust supportive services program to provide wide ranging support to certified firms. While the County offers technical assistance that includes online orientation modules, tutorials of how to do business with the County and information sessions at contracting conferences, more could be done. A bonding and working capital element that includes a surety and a lender that agree to bond and finance graduates of the training program would be very helpful. There are some excellent programs that provide this type of support to certified contractors to increase their capacities. Other needed support includes marketing, legal services, accounting services, regulatory compliance and any other aspect of managing a business needed to work on County construction and construction-related services contracts. Engineering firms could benefit from assistance with setting overhead rates and submitting winning proposals. Perhaps the County can partner with WSDOT, Sound Transit, the City of Seattle and the Port of Seattle to increase the availability of these services and the pool of firms that can participate.

8. Develop Performance Measures for Program Success

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

- Progress toward meeting the overall, annual SCS and DBE goals.
- The number of bids or proposals, industry and the dollar amount of the awards and the goal shortfall, where the bidder was unable to meet the goals and submitted GFE to do so.
- The number, dollar amount and the industry code of bids or proposals rejected as non-responsive for failure to make GFE to meet the goal.
- The number, industry and dollar amount of M/W/DBE substitutions during contract performance.
- Increased bidding by certified firms as prime vendors.
- Increased prime contract awards to certified firms.
- Increased “capacity” of certified firms, as measured by bonding limits, size of jobs, profitability, complexity of work, etc.
- Increased variety in the subindustries in which M/WDBEs are awarded prime contracts and subcontracts.

9. Conduct Regular Program Reviews

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

II. LEGAL STANDARDS FOR CONTRACTING EQUITY PROGRAMS

A. Summary of Constitutional Equal Protection Standards

To be effective, enforceable, and legally defensible, a race-based affirmative action program for public sector contracts, regardless of funding source, must meet the judicial test of constitutional “strict scrutiny”. Strict scrutiny is the highest level of judicial review.²² 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.²³

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

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

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

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

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

1. The necessity of relief;²⁴
2. The efficacy of race-neutral remedies at overcoming identified discrimination;²⁵
3. The flexibility and duration of the relief, including the availability of waiver provisions;²⁶
4. The relationship of numerical goals to the relevant market;²⁷ and
5. The impact of the relief on the rights of third parties.²⁸

In *Adarand v. Peña*,²⁹ the United States Supreme Court extended the analysis of strict scrutiny to race-based federal enactments such as the United States Department of Transportation (“USDOT”) Disadvantaged Business Enterprise (“DBE”) program for federally assisted transportation contracts.³⁰ Just as in the local government context, the national legislature must have a compelling governmental interest for the use of race, and the remedies adopted must be narrowly tailored to that evidence.³¹ Most federal courts have subjected preferences for Woman-Owned Business Enterprises (“WBEs”) to “intermediate scrutiny”.³² The quantum of evidence necessary to satisfy intermediate scrutiny is less than that required to satisfy strict scrutiny. The Ninth Circuit requires that gender-based classifications be supported by “sufficient probative evidence” and “exceedingly persuasive justification” and be “substantially related to the objective”.³³ However, appellate courts have applied strict scrutiny to the gender-based presumption of social dis-

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

25. *Id.*

26. *Id.*

27. *Crosen*, 488 U.S. at 506.

28. *Id.*

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

30. 49 C.F.R. Part 26 and Part 23.

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

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

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

advantage in reviewing the constitutionality of the DBE program³⁴ or held that the results would be the same under strict scrutiny.³⁵

Classifications not based upon a suspect class (race, ethnicity, religion, national origin or gender) are subject to the lesser standard of review called “rational basis” scrutiny.³⁶ The Ninth Circuit Court of Appeals applies intermediate scrutiny to gender conscious programs.³⁷ 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.³⁸ 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.³⁹

Unlike most legal challenges, the defendant bears the initial burden of producing “strong evidence” in support of its race-conscious program.⁴⁰ 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.⁴¹ “[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.”⁴²

A plaintiff “cannot meet its burden of proof through conjecture and unsupported criticism of [the government’s] evidence.”⁴³ To successfully refute the government’s case, a plaintiff must introduce “credible, particularized evidence” that rebuts the government’s showing of a strong basis in evidence.⁴⁴ 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

34. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 720 (7th Cir. 2007), *cert. denied*, 15-1827, June 26, 2017 (“*Northern Contracting III*”).

35. *Western States Paving*, 407 F.3d at 998.

36. *See, generally, Coral Construction*, 941 F. 2d at 910; *Equal. Found. v. City of Cincinnati*, 128 F. 3d 289 (6th Cir. 1997).

37. *See, for example, Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation*, 713 F.3d at 1195 (9th Cir. 2013); *Western States Paving*, 407 F.3d at 990 n.6.

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

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

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

41. *Scott*, 199 F.3d at 219; *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1166 (10th Cir. 2000), 532 U.S. 941, *cert. granted then dismissed as improvidently granted*, 534 U.S. 103 (2001) (“*Adarand VII*”).

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

43. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 989 (10th Cir. 2003), *cert. denied*, 540 U.S. 1027 (2003) (10th Cir. 2003) (“*Concrete Works IV*”).

44. *H.B. Rowe Co., Inc. v. Tippet*, 615 F.3d 233 (4th Cir. 2010); *Midwest Fence Corp. v. U.S. Department of Transportation, Illinois Department of Transportation, Illinois State Toll Highway Authority*, 84 F. Supp. 3d 705 (N.D. Ill. 2015), *affirmed*, 840 F.3d 932 (7th Cir. 2016) (“*Midwest Fence II*”).

minority-owned small businesses enjoy non-discriminatory access to, and participation in, federally assisted highway contracts. Thus, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.”⁴⁵ When the statistical information is sufficient to support the inference of discrimination, the plaintiff must prove that the statistics are flawed.⁴⁶ 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.⁴⁷

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

B. Elements of Strict Scrutiny

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

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

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

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

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

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

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

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

[A] state or local subdivision...has the authority to eradicate the effects of private discrimination within its own legislative jurisdiction.... [Richmond] can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment...[I]f the City could show that it had essentially become a “passive participant” in a system of racial exclusion ...[it] could take affirmative steps to dismantle such a system.⁴⁸

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.⁴⁹ 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.⁵⁰ The City could not rely upon the disparity between its utilization of MBE prime contractors and

48. 488 U.S. at 491-92.

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

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

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

In the case at hand, the City has not ascertained how many minority enterprises are present in the local construction market nor the level of their participation in City construction projects. The City points to no evidence that qualified minority contractors have been passed over for City contracts or subcontracts, either as a group or in any individual case. Under such circumstances, it is simply impossible to say that the City has demonstrated “a strong basis in evidence for its conclusion that remedial action was necessary.”⁵¹

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.”⁵²

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.⁵³ The Court noted that the City “does not even know how many MBEs in the

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

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

52. *Id.*

relevant market are qualified to undertake prime or subcontracting work in public construction projects.”⁵⁴

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

Nothing we say today precludes a state or local entity from taking action to rectify the effects of identified discrimination within its jurisdiction. If the City of Richmond had evidence before it that non-minority contractors were systematically excluding minority businesses from subcontracting opportunities, it could take action to end the discriminatory exclusion. Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise. Under such circumstances, the City could act to dismantle the closed business system by taking appropriate measures against those who discriminate based on race or other illegitimate criteria. In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion... Moreover, evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.⁵⁵

While much has been written about *Croson*, it is worth stressing what evidence was, and was not, before the Court. First, Richmond presented *no* evidence regarding the availability of MBEs to perform as prime contractors or subcontractors and *no* evidence of the utilization of minority-owned subcontractors on City contracts.⁵⁶ 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

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

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

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

56. *Id.* at 502.

be considered in determining whether discrimination against Black businesses infects the local economy.⁵⁷

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

[I]t is important to remember what the *Croson* plurality opinion did and did not decide. The Richmond program, which the *Croson* Court struck down, was insufficient because it was based on a comparison of the minority population in its entirety in Richmond, Virginia (50%) with the number of contracts awarded to minority businesses (0.67%). There were no statistics presented regarding the number of minority-owned contractors in the Richmond area, *Croson*, 488 U.S. at 499, and the Supreme Court was concerned with the gross generality of the statistics used in justifying the Richmond program. There is no indication that the statistical analysis performed by [the consultant] in the present case, which does contain statistics regarding minority contractors in New York City, is not sufficient as a matter of law under *Croson*.⁵⁸

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

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

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

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

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

1. Elements of the DBE Program for USDOT Assisted Contracts

In *Adarand v. Peña*,⁵⁹ the Supreme Court again overruled long settled law and extended the analysis of strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment to federal enactments. To comply with *Adarand*, Congress reviewed and revised the DBE program statute⁶⁰ and implemented regulations⁶¹ for federal-aid contracts in the transportation industry. The program governs King County's receipt of federal funds from the Federal Transit Administration ("FTA") and the Federal Aviation Administration ("FAA").

To date, every court that has considered the issue has found the regulations to be constitutional on their face.⁶² These cases provide important guidance to the County about how to narrowly tailor its DBE program, as well as any race-conscious initiatives for locally funded contracts to meet federal law.

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

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

59. 515 U.S. 200 (1995) ("*Adarand III*").

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

61. 49 C.F.R. Part 26.

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

- Various types of overt and institutional discrimination by prime contractors, trade unions, business networks, suppliers, and sureties against minority contractors.⁶³

Next, the regulations were facially narrowly tailored. Unlike the prior program,⁶⁴ the new Part 26 rule provides that:

- The overall goal must be based upon demonstrable evidence of the number of DBEs ready, willing, and able to participate on the recipient's federally assisted contracts.
- The goal may be adjusted to reflect the availability of DBEs "but for" the effects of the DBE program and of discrimination.
- The recipient must meet the maximum feasible portion of the goal through race-neutral measures as well as estimate that portion of the goal it predicts will be met through such measures.
- The use of quotas and set-asides is limited to only those situations where there is no other remedy.
- The goals are to be adjusted during the year to remain narrowly tailored.
- Absent bad faith administration of the program, a recipient cannot be penalized for not meeting its goal.
- Periodic review is undertaken by Congress during surface transportation reauthorizations to ensure adequate durational limits.
- The inclusion of provision allowing for individual determinations of social and economic disadvantage
- Exemptions or waivers from program requirements are available.
- The presumption of social disadvantage for racial and ethnic minorities and women is rebuttable, "wealthy minority owners and wealthy minority firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage."⁶⁵

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

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

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

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

will be met through race-neutral and race-conscious measures (contract goals).⁶⁶ This requirement has been central to the holdings that the DBE regulations meet narrow tailoring.⁶⁷ Further, a recipient may terminate race-conscious contract goals if it meets its annual overall goal through race-neutral means for two consecutive years. Finally, the authorizing legislation is subject to Congressional reauthorization that will ensure periodic public debate.

In 2015, Congress reauthorized the DBE program and again concluded that the evidence before it “provided a strong basis” to continue the program.⁶⁸ Relevant evidence before Congress fell into four main categories: (1) evidence of discriminatory barriers to the formation of qualified MBEs; (2) evidence of discriminatory barriers to the success of qualified MBEs; (3) evidence from local disparity studies; and (4) evidence from the results of removing affirmative action programs.⁶⁹

More recently, in the *Infrastructure Investment and Jobs Act (IIJA)*, also known as the *Bipartisan Infrastructure Law (BIL)*,⁷⁰ Congress received and reviewed testimony and voluminous documentation of race and gender discrimination from numerous sources, including congressional hearings and other investigative activities, disparity studies, scientific reports, reports issued by public and private agencies at every level of government, news reports, academic publications, reports of discrimination by organizations and individuals, and discrimination lawsuits. This evidence demonstrates that race- and gender-neutral efforts alone continue to be insufficient to address the nationwide problem. Congress found that despite the real improvements caused by the DBE program, minority- and woman-owned businesses across the country continue to confront serious and significant race- and gender-based obstacles to success on USDOT funded transportation contracts.⁷¹

2. Narrowly Tailoring King County’s DBE Programs

Agencies that receive USDOT aid contracts for projects that equal or exceed an accumulative amount of \$250,000.00 in a fiscal year must have a DBE program and must meet related requirements as an expressed condition of receiving

66. 49 C.F.R. §26.45(f)(3).

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

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

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

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

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

these funds. Therefore, King County must establish a DBE program plan for its FTA and FAA funded contracts in conformance with 49 C.F.R. Part 26 (“Part 26”).

While the Ninth Circuit has agreed with the other Federal courts that have reviewed the DBE program and found that Part 26 and its authorizing statutes are constitutional, it has said that in order to be narrowly tailored, the race-conscious elements of a national program must be limited to those parts of the country where its race-based measures are demonstrably needed. The Ninth Circuit has moved beyond the DBE regulatory and legal framework and added the requirement that a recipient must provide additional evidence beyond the national data in the record upon which Congress relied in enacting the DBE program in order to narrowly tailor the agency’s DBE program. In *Western States Paving v. Washington State Department of Transportation*, the court was persuaded by USDOT’s argument that race-conscious goals can only be applied by recipients in those localities where the effects of discrimination are present. “As the United States correctly observed in its brief and during oral argument, it cannot be said that TEA-21 is a narrowly tailored remedial measure unless its application is limited to those states in which the effects of discrimination are actually present.”⁷² In addition, each group sought to be included in race-conscious relief must have suffered discrimination in the agency’s market area.⁷³

WSDOT failed to introduce any evidence at the summary judgment stage to address the question whether “the effects of discrimination [are] present in the Department’s markets.”⁷⁴ The court was proffered no statistical or anecdotal data similar to that presented to the district court in the challenge to the Minnesota Department of Transportation’s DBE program.⁷⁵ “The record is therefore devoid of any evidence suggesting that minorities currently suffer--or have ever suffered--discrimination in the Washington transportation contracting industry. We must therefore conclude that Washington's application of TEA-21 conflicts with the guarantees of equal protection because the State's DBE program is not narrowly tailored to further Congress's remedial objective.”⁷⁶

As the result of the decision in *Western States Paving*, states in the Ninth Circuit must establish the presence of discrimination within their transportation contracting industry. Even if discrimination is present within the state, the pro-

72. 407 F.3d at 998.

73. 407 F.3d at 999.

74. 407 F.3d at 996.

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

76. 407 F.3d at 999.

gram is narrowly tailored only if it applies to those minority groups that have actually suffered discrimination.

In the wake of *Western States*, the Office of General Counsel of USDOT issued official institutional guidance in the form of *Questions and Answers Concerning Response to Western States Paving Co. v. Washington State Department of Transportation (USDOT Guidance)* for the benefit of states in the Ninth Circuit.⁷⁷ The USDOT Guidance calls for consideration of both statistical and anecdotal evidence and advises recipients to gather evidence of discrimination and its effects separately for each of the presumptively disadvantaged Part 26 groups. Recipients should consider, as they plan their studies, the evidence-gathering efforts that Federal courts have approved in the past and specifically points to the studies in the *Sherbrooke* and *Northern Contracting* cases.⁷⁸ In conducting subsequent studies, research should include:

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

Under Part 26, King County must use a two-step goal-setting process to establish its overall triennial goal for its FTA and FAA funded contracts. The overall triennial goals must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on its USDOT assisted contracts. As discussed in the USDOT Guidance, a disparity study is the preferred method in the Ninth Circuit to determine the availability of DBEs to perform in the recipient's market.⁷⁹

Under Step 1, the County must determine the base figure for the relative availability of DBEs. Under Step 2, the County must examine all evidence available

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

78. *Sherbrooke; Northern Contracting III*.

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

in its jurisdiction to determine whether to adjust the base figure. King County must consider the current capacity of DBEs, as measured by the volume of work DBEs have performed in recent years.

To perform Step 1—estimating the base figure of DBE availability—the study must conduct the following analyses. First, it must empirically establish the geographic and product dimensions of its contracting and procurement market area. This is a fact driven inquiry; it may or may not be the case that the market area is the government’s jurisdictional boundaries.⁸⁰ A commonly accepted definition of geographic market area applied in this Report is the contiguous locations that account for at least 75% of the agency’s contract and subcontract dollar payments.⁸¹ Likewise, the accepted approach is to analyze those detailed industries that make up at least 75% of the prime contract and subcontract payments for the Study period.⁸² This is the methodology recommended in the Transportation Research Board’s *National Disparity Study Guidelines*. Second, the study must calculate the availability of DBEs in the County’s market area, discussed below.

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

The stark disparity in DBE participation rates on goals and non-goals contracts, when combined with the statistical and anecdotal evidence of discrimination in the relevant marketplaces, indicates that IDOT’s 2005 DBE goal represents a “plausible lower-bound estimate” of DBE participation in the absence of discrimination... Plaintiff presented no persuasive evidence contravening the conclusions of IDOT’s studies, or explaining the disparate usage of DBEs on goals and non-goals contracts... IDOT’s proffered evidence of discrimination against DBEs was not limited to alleged discrimination by prime

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

81. Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program, Transportation Research Board of the National Academy of Sciences, NCHRP Report, Issue No. 644, 2010, p. 49 (National Disparity Study Guidelines).

82. *Id.* at 50-51.

contractors in the award of subcontracts. IDOT also presented evidence that discrimination in the bonding, insurance, and financing markets erected barriers to DBE formation and prosperity. Such discrimination inhibits the ability of DBEs to bid on prime contracts, thus allowing the discrimination to indirectly seep into the award of prime contracts, which are otherwise awarded on a race- and gender-neutral basis. This indirect discrimination is sufficient to establish a compelling governmental interest in a DBE program... Having established the existence of such discrimination, a governmental entity has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.⁸³

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

failed to establish that better data was [sic] available or that Mn/DOT was otherwise unreasonable in undertaking this thorough analysis and in relying on its results. The precipitous drop in DBE participation in 1999, when no race-conscious methods were employed, supports Mn/DOT's conclusion that a substantial portion of its 2001 overall goal could not be met with race-neutral measures, and there is no evidence that Mn/DOT failed to adjust its use of race-conscious and race-neutral methods as the year progressed, as the DOT regulations require.⁸⁴

More recently, the Seventh Circuit affirmed the district court and upheld the Illinois Tollway's DBE program for non-federal-aid contracts based upon a Colette Holt & Associates disparity study utilizing this methodology. Plaintiff's main objection to the defendant's evidence was that it failed to account for "capacity" when measuring DBE availability and underutilization. As is well established, "Midwest would have to come forward with 'credible, particularized evidence' of its own, such as a neutral explanation for the disparity between DBE utilization and availability showing that the government's data are flawed, demonstrating that the observed disparities are statistically insignificant or presenting contrasting statistical data. [citation omitted]. Plaintiff 'fail[ed] to provide any independent statistical analysis or make this showing here.'"⁸⁵ Midwest offered only mere conjecture about how the defendants'

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

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

85. See *Midwest Fence II*, 84 F. Supp. 3d at 705.

studies' supposed failure to account for capacity may or may not have impacted other evidence demonstrating actual bias.

In the Ninth Circuit, recipients must take the further step of ensuring that only those groups that have suffered discrimination in its marketplace are eligible for race-conscious relief. In practice, this means that the agency must have commissioned a disparity study that found that a group no longer is subject to discriminatory barriers and enjoys a level playing field for recipient prime contracts and subcontracts. If a group is no longer "underutilized", a firm owned by a member of an otherwise presumptively socially disadvantaged group may not be credited toward meeting contract goals.⁸⁶ Further, the availability of any such group cannot be part of the analysis to set contract goals.⁸⁷

Guidance on the application of this test has been provided by courts in the Ninth Circuit in the wake of *Western States*. In the challenge to the California Department of Transportation's ("CalTrans") DBE program, the court affirmed the district court's judgment that CalTrans program was sufficiently narrowly tailored.⁸⁸ CalTrans properly relied upon a disparity study to determine whether there was evidence of discrimination in California's contracting industry.

The district court in *Mountain West Holding Co., Inc. v. Montana*,⁸⁹ applied *Western States Paving* and rejected the plaintiff's argument that the Montana Department of Transportation's DBE goal-setting program unlawfully required prime contractors to give preference to minority and female subcontractors competing for work with prime contractors on state jobs. Montana established sufficient evidence to demonstrate discrimination in the Department's transportation contracting industry. The court relied on evidence demonstrating that participation by DBEs declined after Montana abandoned contract goals in the wake of *Western States Paving*, as well as anecdotal evidence of a "good ol' boys" network within the state's contracting industry.⁹⁰ Following Mountain West's appeal, the Ninth Circuit determined that the claims for injunctive and declaratory relief were moot, since Montana does not currently employ gender- or race-conscious goals, and the goals were several years old.

86. No case has addressed whether a firm certified under the individual consideration of social and economic disadvantage criteria set out in Appendix E to Part 26 can be counted toward contract goals.

87. Part 26, §26.45 (h) states that overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

88. AGC. Caltrans.

89. 2017 WL 2179120 (9th Cir. May 16, 2017), Memorandum Opinion (Not for Publication), dismissing in part, reversing in part and remanding the U.S. District Court decision at 2014 WL 6686734 (D. Mont. 2014).

90. *Id.*

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

AGC also discounts the anecdotal evidence because some accounts ascribe minority underutilization to factors other than overt discrimination, such as difficulties with obtaining bonding and breaking into the “good ole boy” network of contractors. However, federal courts and regulations have identified precisely these factors as barriers that disadvantage minority firms because of the lingering effects of discrimination. [citations omitted] Moreover [sic], AGC ignores the many incidents of racial and gender discrimination presented in the anecdotal evidence. Caltrans does not claim, and the anecdotal evidence does not need to prove, that every minority-owned business is discriminated against. It is enough that the anecdotal evidence supports Caltrans’ [sic] statistical data showing a pervasive pattern of discrimination.⁹¹

Even where an agency has established its right to employ race-conscious contract goals on appropriate solicitations, the recipient must use race-neutral measures to the maximum feasible extent.⁹² There is no requirement that an agency must try or exhaust all possible race-neutral approaches and prove they failed before it can implement contact goals.⁹³

Difficulty in accessing procurement opportunities, restrictive bid specifications, excessive experience requirements, and overly burdensome insurance and/or bonding requirements, for example, might be addressed by the County 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.⁹⁴ Further, governments have a duty to ferret out and punish discrimination against minorities and women by their contractors, staff, lenders, bonding companies or others.⁹⁵ It was precisely these types of race-neutral remedies applied by Cal-

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

92. 49 C.F.R. §26.51(a).

93. 2013 WL 1607239 at *10.

94. *Id.*

95. *Crosby*, 488 U.S. at 503 n.3.

Trans that the Ninth Circuit pointed to in holding its program to meet strict scrutiny.⁹⁶

D. Establishing a “Strong Basis in Evidence” for a Contracting Equity Program for King County’s Locally Funded Contracts

The case law on the DBE program should guide any race-conscious⁹⁷ contracting equity program or benefits for the County’s locally funded contracts. Whether the program is called a “M/WBE” program or a “DBE” program or any other moniker, the federal constitutional test of strict scrutiny applies.⁹⁸ As discussed, 49 C.F.R. Part 26 has been upheld by every court, and a local M/WBE program will be judged against this federal legal framework.⁹⁹ 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 is relevant and probative under the strict scrutiny standard. Discrimination must be shown using sound statistics and econometric models to examine the effects of systems or markets on different groups, as well as by evidence of personal experiences with discriminatory conduct, policies, or systems.¹⁰⁰ 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.¹⁰¹

Croson’s admonition that “mere societal” discrimination is not enough to meet strict scrutiny is met where the government presents evidence of discrimination in the industry targeted by the program. “If such evidence is presented, it is immaterial for constitutional purposes whether the industry discrimination springs from

96. 2013 WL 1607239 at *10.

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

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

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

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

101. *Id.*

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.”¹⁰²

The County 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.”¹⁰³ 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 evidentiary elements courts will examine in determining the federal constitutional validity of a County race- and gender-conscious program and the steps in performing a disparity study necessary to meet those elements.

1. Define King County’s Market Area

The first step is to determine the relevant geographic market area in which the County 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.¹⁰⁴ The County 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.¹⁰⁵ This study employs long established economic principles to empirically establish the County’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.¹⁰⁶ Similarly, the accepted approach is to analyze

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

103. *Id.* at 977.

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

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

106. 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*”).

those detailed industries that make up at least 75% of the prime contract and associated subcontract payments for the study period.¹⁰⁷ This produces the utilization results within the geographic market area.¹⁰⁸

2. Determine King County's Utilization of M/WBEs

The study should next determine the County'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:

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

3. Determine the Availability of M/WBEs in King County's Market Area

Next, the study must estimate the availability of minorities and women in the County's relevant geographic market area to participate in the County's 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 County'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.

107. *Id.* at 50-51.

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

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/WBE Master Directory. This methodology includes both certified firms and non-certified firms owned by minorities or women.¹⁰⁹ The Master Directory consists of all available government and private M/W/DBE directories, limited to firms within the County's geographic and product market.
 - The firms contained in the County's contract data file. This will require the elimination of any duplications because a firm might have received more than one contract for work in a given NAICS code during the study period.
 - Firms extracted from the Dun & Bradstreet MarketPlace/Hoovers database, using the relevant geographic and product market definitions.
2. The estimation of unweighted availability. The Merged Business Availability List will be the available universe of relevant firms for the study. This process will significantly improve the identification of minority-owned and woman-owned businesses in the business population. Race and sex must be assigned to any firm not already classified.¹¹⁰ This will produce estimates of woman and minority business availability in the County'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 County's spending in each NAICS code. The unweighted availability determination will be weighted by the share of dollars the County actually spends in each NAICS code, derived from the utilization analysis. These resulting weighted availability estimates will be used in the calculation of disparity indices.

This adjustment is important for two reasons. First, disparity analyses compare utilization and availability. The utilization metrics are shares of

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

110. 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.

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 County's overall usage of available firms must be conducted with an understanding of what NAICS codes received what share of agency spending. Absent this, a particular group's availability share (high or low) in an area of low spending would carry equal weight to a particular group's availability share (high or low) in an area of large spending.

This methodology for estimating availability is usually referred to as the "custom census" approach with refinements. This approach is favored for several reasons. As recognized by the courts and the *National Disparity Study Guidelines*,¹¹¹ this methodology in general is superior to the other methods for at least four reasons.

- First, it provides an internally consistent and rigorous "apples to apples" comparison between firms in the availability numerator and those in the denominator. Other approaches often have different definitions for the firms in the numerator (e.g., certified 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 DBE availability calculation that casts a broader net" than merely using bidders lists or other agency or government directories.¹¹² A broad methodology is also recommended by the Federal DBE Program, which has been upheld by every court.¹¹³ 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

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

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

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

the 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.¹¹⁴

- 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 program¹¹⁵ and most recently in the successful defense of the Tollway’s DBE program.¹¹⁶

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

Many plaintiffs have argued that studies must somehow control for “capacity” of 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 agency. 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 sys-

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

115. *Northern Contracting III*, 473 F.3d at 715.

116. *Midwest Fence II*, 840 F.3d at 932; see also *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7th Cir. 2007), *cert. denied*, 137 S.Ct. 2292 (2017) (CHA served as testifying experts for the Tollway).

tematic, 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.”¹¹⁷ Significantly, *Croson* does not “require disparity studies that measure whether construction firms are able to perform a *particular contract*.”¹¹⁸

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.¹¹⁹ “Since the state defendants offered evidence to do so, the burden then shifted to Midwest Fence to show a genuine issue of material fact as to whether the state defendants had a substantial basis in evidence for adopting their DBE programs. Speculative criticism about potential problems will not carry that burden.”¹²⁰ “To successfully rebut the [Illinois] Tollway’s evidence of discrimination, [plaintiff] Midwest [Fence] must come forward with a neutral explanation for the disparity, show that the Tollway’s statistics are flawed, demonstrate that the observed disparities are insignificant, or present contrasting data of its own. *See Concrete Works IV*, 321 F.3d at 959 (citation omitted). Again, the Court finds that Midwest has failed to make this showing.”¹²¹

There are also practical reasons to not circumscribe availability through “capacity” limitations. First, there is no agreement concerning what variables are relevant or how those variables are to be measured for the purpose of examining whether race and gender barriers impede the success of minority and woman entrepreneurs. [“Plaintiff’s” expert] and Midwest Fence have not explained how to account for relative capacity.”¹²² For example, a newly formed firm might be the result of a merger of much older entities or have

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

118. *Id.*

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

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

121. *Midwest Fence Corp. v. U.S. Department of Transportation*, 84 F. Supp. 3d 705 (N.D. Ill. 2015) (“*Midwest Fence I*”).

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

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), since a researcher cannot assume that all White male-owned firms have adequate capacity but that M/WBEs do not.

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

4. Examine Disparities between King County's Utilization of M/WBEs and M/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.¹²³

This is known as the “disparity ratio” or “disparity index” which is a critical element of the statistical evidence. A disparity ratio measures the participation of a group in the government’s contracting opportunities by dividing that group’s utilization by the availability of that group and multiplying that result by 100. Courts have looked to disparity indices in determining whether strict scrutiny is satisfied.¹²⁴ An index less than 100% indicates that a given group is being utilized less than would be expected based on its availability.

The courts have held that disparity results must be analyzed to determine whether the results are “significant”. There are two distinct methods to measure the significance of a result. First, a “large” or “substantively significant” disparity is commonly defined by courts as utilization that is equal to or less than 80% of the availability measure. This is based on the Equal Employment Opportunity Commission’s “eighty percent rule” that a ratio less than 80% presents a *prima facie* case of discrimination by supporting the inference that the result may be caused by the disparate impacts of discrimination.¹²⁵ 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.¹²⁶ 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.¹²⁷

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

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

125. 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.

126. 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.

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

The County need not prove that the statistical inferences of discrimination are “correct”. In upholding Denver’s M/WBE Program, the Tenth Circuit Court of Appeals noted that strong evidence supporting Denver’s determination that remedial action was necessary need not have been based upon “irrefutable or definitive” proof of discrimination. Statistical evidence creating inferences of discriminatory motivations was sufficient and, therefore, evidence of market area discrimination was properly used to meet strict scrutiny. To rebut this type of evidence, the plaintiff must prove by a preponderance of the evidence that such proof does not support those inferences.¹²⁸

Nor must the County 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.¹²⁹

The County 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.¹³⁰

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.¹³¹

5. Analyze Economy-Wide Evidence of Race- and Gender-Based Disparities in the Puget Sound Area Market

The courts have repeatedly held that analysis of disparities in the rates at which M/WBEs in the government’s markets form businesses compared to

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

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

130. *Id.* at 971.

131. *Id.* at 973.

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 the Illinois Tollway's DBE program¹³². 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.¹³³

Business discrimination studies and lending formation studies are relevant and probative because they show a strong link between the disbursement of public funds and the channeling of those funds due to private discrimination. "Evidence that private discrimination results in barriers to business formation is relevant because it demonstrates that M/WBEs are precluded *at the outset* from competing for public construction contracts. Evidence of barriers to fair competition is also relevant because it similarly demonstrates that *existing* M/WBEs are precluded from competing for public contracts."¹³⁴ 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

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

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

134. *Id.*

cannot control for subjective descriptions such as “quality of education”, “culture” and “religion”.¹³⁵

For example, in unanimously upholding the DBE program, the courts agree that disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms and the disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners are strong evidence of the continuing effects of discrimination.¹³⁶ 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.¹³⁷

6. Evaluate Anecdotal Evidence of Race- and Gender-Based Barriers to Equal Opportunities in the Puget Sound 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.”¹³⁸ 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.¹³⁹ While anecdotal evidence is insuffi-

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

136. *Id.*; *Western States Paving*, 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*”).

137. *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.”).

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

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

cient 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.”¹⁴⁰ “[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.”¹⁴¹

There is no requirement that anecdotal testimony be “verified” or corroborated, as befits the role of evidence in legislative decision-making as opposed to judicial proceedings. “[Plaintiff] offered no rationale as to why a fact finder could not rely on the State’s ‘unverified’ anecdotal data. Indeed, a fact finder could very well conclude that anecdotal evidence need not— and indeed cannot— be verified because it ‘is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perceptions.”¹⁴² 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.”¹⁴³

E. Narrowly Tailoring a Contracting Equity Program for King County

Even if the County has a strong basis in evidence to believe that race-based measures are needed to remedy identified discrimination, the program must still be narrowly tailored to that evidence. In striking down the City of Chicago’s earlier M/WBE construction program, the court held that “remedies must be more akin to a laser beam than a baseball bat.”¹⁴⁴ In contrast, as discussed above, programs that closely mirror those of the DBE program¹⁴⁵ have been upheld using that frame-

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

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

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

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

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

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

work.¹⁴⁶ 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;¹⁴⁷
- The efficacy of race- and gender-neutral remedies at overcoming identified discrimination;¹⁴⁸
- The relationship of numerical benchmarks for government spending to the availability of minority- and woman-owned firms and to subcontracting goal setting procedures;¹⁴⁹
- The flexibility of the program requirements, including the provision for good faith efforts to meet goals and contract specific goal setting procedures;¹⁵⁰
- The relationship of numerical goals to the relevant market;¹⁵¹
- The impact of the relief on third parties;¹⁵² and
- The over inclusiveness of racial classifications.¹⁵³

1. Implement Race-Neutral Remedies

Race-neutral approaches, such as the County's Small Contractor and Supplier program, are necessary components of a defensible and effective M/WBE program,¹⁵⁴ and the failure to seriously consider such remedies has proven fatal to several programs.¹⁵⁵ The trial court in the City of Chicago case noted that "there was little testimony about the effectiveness of race-neutral programs."¹⁵⁶

146. 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).

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

148. *Paradise* at 171.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Croson* at 506.

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

154. *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).

155. 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.

Difficulty in accessing procurement opportunities, restrictive bid specifications, excessive experience requirements, and overly burdensome insurance and/or bonding requirements, for example, might be addressed by the County without resorting to the use of race or gender in its decision-making. Effective remedies include unbundling of contracts into smaller units that facilitate small business participation; providing technical support; and developing programs to address issues of financing, bonding, and insurance important to all small and emerging businesses.¹⁵⁷ Further, governments have a duty to ferret out and punish discrimination against minorities and women by their contractors, staff, lenders, bonding companies or others.¹⁵⁸

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 rule meets narrow tailoring.¹⁵⁹ 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.¹⁶⁰ 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.”¹⁶¹ Actual results matter, too. “Like [the Illinois Department of Transportation], the [Illinois] Tollway uses race- and gender-neutral measures.... Those measures have not produced substantial DBE participation, however, so the Tollway also sets DBE participation goals.”¹⁶²

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

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

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

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

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

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

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

2. Set Targeted MWBE Goals

Numerical goals or benchmarks for the participation of MWBEs must be substantially related to their availability in the relevant market.¹⁶³ For example, the DBE program requires that the overall goal must be based upon demonstrable evidence of the number of DBEs ready, willing, and able to participate on the recipient's federally assisted contracts.¹⁶⁴ "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*."¹⁶⁵

It is settled case law that goals for a particular solicitation should reflect the particulars of the contract, not reiterate annual aggregate targets or be based on guesses; goals must be contract specific. In holding the City of Chicago's former construction program to be insufficiently narrowly tailored, the court found that the MBE and WBE goals were "formulistic" percentages not related to the availability of firms.¹⁶⁶ Contract goals must be based upon availability of M/WBEs to perform the anticipated scopes of the contract, location, progress toward meeting annual goals, and other factors.¹⁶⁷ Not only is transparent, detailed contract goal setting legally mandated,¹⁶⁸ but this approach also reduces the need to conduct good faith efforts reviews, as well as the temptation to create "front" companies and sham participation to meet unreasonable contract goals. While this is more labor intensive than defaulting to the annual, overall goals, narrow tailoring requires contract goal setting.

3. Ensure Flexibility of Goals and Requirements

It is imperative that remedies not operate as fixed quotas.¹⁶⁹ 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. In *Croson*, the Court refers approvingly to the contract-by-contract waivers used in the DBE program,¹⁷⁰ a feature that has been central to the holding that the DBE program meets the

163. *Webster*, 51 F.Supp.2d at 1379, 1381 (statistically insignificant disparities are insufficient to support an unexplained goal of 35% M/WBE participation in County contracts); *see also Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore, et al.*, 83 F.Supp.2d 613, 621 (D. Md. 2000) ("*Baltimore I*").

164. 49 C.F.R. §26.45 (b).

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

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

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

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

169. *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").

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

narrow tailoring requirement. If the standards for evaluating whether a bidder who fails to meet the contract goal has made good faith efforts to do so,

seems vague, that is likely because it was meant to be flexible.... A more rigid standard could easily be too arbitrary and hinder prime contractors' ability to adjust their approaches to the circumstances of particular projects. Midwest Fence's real argument seems to be that in practice, prime contractors err too far on the side of caution, granting significant price preferences to DBEs instead of taking the risk of losing a contract for failure to meet the DBE goal. Midwest Fence contends this creates a de facto system of quotas because contractors believe they must meet the DBE goal in their bids or lose the contract. But Appendix A to the [DBE program] regulations cautions against this very approach.... Flexibility and the availability of waivers affect whether a program is narrowly tailored. The regulations caution against quotas; provide examples of good faith efforts prime contractors can make and states can consider; and instruct a bidder to use "good business judgment" to decide whether a price difference between a DBE and a non-DBE subcontractor is reasonable or excessive in a given case. For purposes of contract awards, this is enough to "give fair notice of conduct that is forbidden or required," [citation omitted].¹⁷¹

Chicago's program failed narrow tailoring by imposing a "rigid numerical quota" on prime bidders' utilization of MBEs and WBEs.¹⁷² By contrast, the constitutionally sound Illinois Tollway's program provides for detailed waiver provisions, including rights of appeal of adverse determinations that the bidder made a good faith effort to meet a contract goal.¹⁷³

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

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

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

172. *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.").

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

The groups to be included must be based upon evidence demonstrating disparities caused by discrimination.¹⁷⁴ 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”.¹⁷⁵ In striking down Cook County, Illinois’ construction program, the Seventh Circuit remarked that a “state or local government that has discriminated just against Blacks may not by way of remedy discriminate in favor of Blacks and Asian-Americans and women.”¹⁷⁶ 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.¹⁷⁷ 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.¹⁷⁸

The over-inclusiveness concern is mitigated by the requirement that the firm’s owner(s) must be disadvantaged.¹⁷⁹ The DBE program’s rebuttable presumptions of social and economic disadvantage, including the requirement that the disadvantaged owner’s personal net worth not exceed a certain ceiling and that the firm meet the Small Business Administration’s size definitions for its industry, have been central to the courts’ holdings that it is narrowly tailored.¹⁸⁰ “[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.”¹⁸¹ In contrast, Chicago’s program was held to fail strict scrutiny because “[t]he ‘graduation’ revenue amount is very high, \$27,500,000, and

174. *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).

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

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

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

178. *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 overinclusiveness.”).

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

180. *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).

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

very few have graduated. There is no net worth threshold. A third generation Japanese-American from a wealthy family, and with a graduate degree from MIT, qualifies (and an Iraqi immigrant does not).¹⁸²

5. Evaluate the Burden on Third Parties

Failure to make “neutral” changes to contracting and procurement policies and procedures that disadvantage M/WBEs and other small businesses may result in a finding that the program unduly burdens non-M/WBEs.¹⁸³ However, “innocent” parties can be made to share some of the burden of the remedy for eradicating racial discrimination.¹⁸⁴

The Court reiterates that setting goals as a percentage of total contract dollars does not demonstrate an undue burden on non-DBE subcontractors. The Tollway's method of goal setting is identical to that prescribed by the Federal Regulations, which this Court has already found to be supported by “strong policy reasons” [citation omitted].... Here, where the Tollway Defendants have provided persuasive evidence of discrimination in the Illinois road construction industry, the Court finds the Tollway Program's burden on non-DBE subcontractors to be permissible.¹⁸⁵

Burdens must be proven and cannot constitute mere speculation by a plaintiff.¹⁸⁶ “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.”¹⁸⁷

Narrow tailoring does permit certified firms acting as prime contractors to count their self-performance toward meeting contract goals if the study finds

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

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

184. *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.”).

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

186. *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).

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

discriminatory barriers to prime contract opportunities. There is no requirement that a program be limited only to the subcontracting portions of contracts. Part 26 provides this remedy also is for discrimination against DBEs seeking prime contractor work,¹⁸⁸ and it does not limit the application of the program to only subcontracts.¹⁸⁹ The trial court in upholding the Illinois DOT's DBE program explicitly recognized that barriers to subcontracting opportunities also affect the ability of DBEs to compete for prime work on a fair basis.

This requirement that goals be applied to the value of the entire contract, not merely the subcontracted portion(s), is not altered by the fact that prime contracts are, by law, awarded to the lowest bidder. While it is true that prime contracts are awarded in a race- and gender-neutral manner, the Regulations nevertheless mandate application of goals based on the value of the entire contract. Strong policy reasons support this approach. Although laws mandating award of prime contracts to the lowest bidder remove concerns regarding direct discrimination at the level of prime contracts, the indirect effects of discrimination may linger. The ability of DBEs to compete successfully for prime contracts may be indirectly affected by discrimination in the subcontracting market, or in the bonding and financing markets. Such discrimination is particularly burdensome in the construction industry, a highly competitive industry with tight profit margins, considerable hazards, and strict bonding and insurance requirements.¹⁹⁰

6. Examine the Duration and Review of the Program

Race-based programs must have durational limits. A race-based remedy must “not last longer than the discriminatory effects it is designed to eliminate.”¹⁹¹ The unlimited duration and lack of review were factors in the court's holding that the City of Chicago's M/WBE program was no longer narrowly tailored; Chicago's program was based on 14-year-old information which, while it supported the program adopted in 1990, no longer was sufficient standing alone to justify the City's efforts in 2004.^{192, 193} How old is too old is not definitively

188. 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.”).

189. 49 C.F.R. §26.45(a)(1).

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

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

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

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

answered;¹⁹⁴ however, governments would be wise to analyze data at least once every five or six years.¹⁹⁵

In contrast, the DBE program's periodic review by Congress has been repeatedly held to provide adequate durational limits.^{196, 197} 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."¹⁹⁸

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

195. Chicago's program was amended based on new evidence in 2009 and 2015.

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

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

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

III. KING COUNTY'S CONTRACTING EQUITY PROGRAMS

This Chapter describes King County's Contracting Opportunities Program for state and locally funded construction and construction-related services contracts, the Disadvantaged Business Enterprise ("DBE") program for Federal Transit Administration ("FTA") and Federal Aviation Administration ("FAA") funded contracts and U.S. Environmental Protection Agency ("EPA") funded contracts for Minority- and Woman-Owned enterprises. We first provide overviews of the elements of the programs. The next section presents the results of our interviews with businesses and industry and community partners about the implementation of the programs and results from our electronic survey of business owners.

A. Program Administration

King County's contracting equity programs are administered by the Business Development and Contract Compliance ("BDCC") Office, within the County's Department of Executive Services, Finance and Business Operations Division. The mission of the Office is to develop and implement initiatives to increase participation of small contractors and suppliers, small business enterprises ("SBEs"), Minority and Women owned Business Enterprises ("MWBEs") and DBEs.

BDCC is responsible for:

- Managing the Small Contractor and Supplier ("SCS") Certification program, including certifying eligible small businesses to participate in the program.
- Establishing contract-specific small, disadvantaged, minority and woman business subcontracting requirements and/or goals.
- Evaluating bids and proposals for compliance with program requirements.
- Ensuring only eligible firms participate in the County's federal small and disadvantaged business programs.
- Partnering with community-based organizations to provide technical assistance to small businesses.
- Monitoring compliance with these objectives by county contractors.
- Participating in informational and outreach events.

B. King County’s Policy Measures for Locally Funded Contracts

King County’s Contracting Opportunities Program for state and local contracts is governed by King County Municipal Code §2.97.010-130. The Program promotes opportunities for small contractors and suppliers to work as prime contracts, sub-contractors and suppliers on County contracts. The fully race- and gender-neutral Program applies incentives, requirements and goals to contracts to increase the competitiveness of small businesses, including companies owned by minorities, women and disadvantaged groups.

In 2010 King County extended¹⁹⁹ its Equity and Social Justice (“ESJ”) Initiative requiring all County departments, agencies and branches to provide full and equal access to opportunities to all people and communities. In 2016, the County launched a comprehensive ESJ Strategic Plan for advancing equity throughout County government, that included requirements to give MWBEs greater access to County contracting opportunities.

In 2010, the County also revised and extended its policy to provide equal opportunity for all businesses to participate in providing goods and services to the County.²⁰⁰ Contractors must adhere to an employment and contracting non-discrimination policy prohibiting creation of barriers to fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts. Contractors may not discriminate against any person because of their sex, race, color, marital status, national origin, religious²⁰¹ affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a *bona fide* occupational qualification, when doing business with the County.

In 2021, the County issued a Pro-Equity Executive Order reaffirming the agenda of the ESJ Strategic Plan and promoting greater participation of MWBE firms for County contracts. The Executive Order includes specific race-neutral initiatives to improve access of contracting opportunities for MWBEs.

1. Small Contractors and Suppliers Contracting Program

a. Eligibility

To be eligible to participate in the SCS Contracting Opportunities Program, an applicant must:

199. King County Municipal Code §2.10.200-2.10.230.

200. King County Municipal Code §12.17.

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

- Be an independent for-profit small business.
- Be licensed to do business in Washington State.
- Meet the U.S. Small Business Administration size standards for small businesses, with an overall limit of \$30.4M in gross receipts over a three-year average.
- Be majority owned by an individual or individual whose personal net worth is less than \$1.32M (excluding the primary residence and equity in the business).

The County has a Fast-Track Application Process for a small business that is already certified by the Washington State Office of Minority and Women's Business Enterprises ("OMWBE"). A firm certified as an MBE; WBE; MWBE; Combination Business Enterprise²⁰²; or a Socially and Economically Disadvantaged Business Enterprise²⁰³ automatically qualifies for SCS certification and is not required to complete the standard SCS certification application.

SCS certification applications are submitted and processed through the County's Diversity Compliance Management System ("DCMS").

Certification is effective for three years, as long as the firm continues to meet the requirements. To maintain its certification, the County requires the person who controls the business to complete, within one year, at least fifteen hours of business-related training in an approved program. Based on the County's assessment of the small contractor's need for additional training, the County may require a small contractor to complete up to 15 additional hours annually of business-related training.

b. SCS Firm Utilization Requirements

The program employs several incentives to encourage utilization of certified firms.

The County awards evaluation points to prime proposers of technical consulting and architectural and engineering services who use SCS subconsultants, or to SCS prime consultants. Proposers who commit to utilize SCS participation greater than the 10% minimum may receive additional evaluation points. Proposers who do not meet the required 10% minimum will receive zero points for their utilization commitment but remain eligible for award.

202. Owned by women and minorities.

203. Owned by a non-minority man found to be socially and economically disadvantaged on a case-by-case basis.

When there is a sufficient number of available SCS firms in the contract's scope of work based on the project manager's review, the County can impose mandatory SCS utilization percentage requirements on construction, Architectural and Engineering, and professional consulting contracts. The contract manager reviews the scope of the contract and the available firms in the directory and then estimates the level of expected participation. Bidders and proposers must meet the SCS utilization requirement as a condition of responsiveness.

At the time of bid, bidders must submit a Letter of Intent ("LOI") for each SCS firm it plans to utilize to meet the contract goal, detailing the total dollar amount or materials to be supplied; a description of work that will be performed or materials supplied; and the signature of the SCS owners. Any work that the bidder intends to self-perform must be included on the LOI. Omission of any information from the LOI can result in rejection of the bid. No cure period is allowed. The LOI must include total bid dollar amount for the work to be performed, or materials supplied by a SCS firm; the description of work and/or materials supplied by the SCS firm; and the signature of the SCS firm's owner or an authorized representative.

c. Counting SCS Firm Utilization

Only the work actually performed by an SCS firm can be counted toward achievement of the contract utilization requirement. Bidders receive 100% credit toward the contract goal when:

- The SCS firm performs 100% of the work with its own forces as the prime bidder.
- SCS firms perform 100% of the work at all tier levels.
- An SCS firm must perform at least 51% of the subcontracted amount to receive 100% SCS credit.

Purchase of materials or supplies from a SCS Firm are counted at 60%.

Credit is not given for any SCS firm in which the prime bidder has an ownership interest; if the SCS firm has a relationship with the prime that includes shared ownership, common directors or partners, shared equipment, facilities, resources or employees; has a beneficial business arrangement that indicates less than arm's length transaction between the prime and SCS firm; displays an over dependency on a non-certified firm to obtain and perform work; or has the appearance of an affiliation with a non-certified firm that is not normal industry practice.

SCS firms must perform a Commercially Useful Function ("CUF") to be counted toward a contract goal. CUF means the performance of real and

actual services in the discharge of any contractual endeavor, rather than being an uninvolved participant in a transaction, contract or project through which funds are passed to obtain the appearance of SCS participation. The SCS firm must be responsible for the execution of the work of the contract or subcontract and carry out its responsibilities by actually performing, managing and supervising the work. No SCS utilization credit is given for an SCS firm acting merely as a passive conduit of funds to a non-certified SCS firm or for a certified SCS firm that acts as a broker in a transaction.

d. King County Small Business Contracting Incentives

In addition to requirements to include small businesses in all types of construction and construction-related services contracts and applying evaluation points to Architecture and Engineering contracts, King County has adopted initiatives designed specifically to encourage the participation of small businesses.

- Small Works Roster contracts are construction contracts under \$350,000 which are solicited from a list of contractors registered for specific NAICS codes. Contractors from the roster are invited to submit bids on a rotational basis. The County actively solicits roster enrollment of small businesses.
- The Architecture/Engineering consultant roster is used to award contracts for projects with a size limit of \$500,000. The County invites at least one SCS-certified business to submit a proposal for every project. There is no limit on how much work an SCS businesses may be awarded through the A/E roster.
- King County sets SCS goals for Individual Job Orders limited to \$500,000 issued under a Job Order Contract ("JOC") requiring 90% of the work to be subcontracted.

2. Equity and Social Justice Innovation Plan

As part of the ESJ Innovation Plan, the County will request proposers and bidders to commit to voluntary percentage goals for MWBE participation if there are sufficient OMWBE certified MWBEs to perform on consulting contracts and alternative public works contracts. MWBE participation level is not a condition for responsiveness in evaluation of the contract award. On a case-by-case basis, the County will suggest the State of Washington's goals of 10% for MBEs and 6% for WBEs or state a minimum MBE and WBE aspirational goal.

An MWBE prime consultant can count its self-performance toward the goal. Only firms certified by OMWBE as a Minority Business Enterprise and/or a

Woman Business Enterprise count toward the MWBE goals established for the contract. An MWBE must perform a CUF. The MWBE joint venture partner's portion of the proposed hours will count toward the goal but the County will adjust the percentage of participation counted if the MWBE's risk, control or management are not commensurate with its share of the profits.

All proposers must submit an ESJ Innovation Plan with their proposal on the date identified in the proposal. Submittal of a plan is considered a matter of responsiveness. Although MWBE participation is not a condition of award, a bidder must agree to make Good Faith Efforts ("GFE") to meet the contract goals whenever procuring subcontracts, equipment, services and supplies. A bidder that does not meet the goal must submit supporting documentation of its GFE to do so at bid time or within two days for construction contracts. GFE means:

- Ensuring that MWBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
- Making information on forthcoming opportunities available to MWBEs and arranging time frames for contracts and establishing delivery schedules, where the requirements permit, in a way that encourages and facilitates MWBE participation.
- Considering subcontracting with MWBEs or dividing work into smaller tasks or quantities to maximize MWBE participation.
- Encouraging contracting with a consortium of MWBEs when a contract is too large for one of these firms to handle individually.
- Using the services and assistance of the U.S. Small Business Administration, OMWBE and the Minority Business Development Agency of the U.S. Department of Commerce.
- Requiring prime consultants that award subcontracts to subconsultants to follow the same GFE steps outlined in paragraphs 1 through 5.

Proposals are evaluated on the quality of the approach and the proposer's specific actions to maximize MWBE participation, including whether the goals were attained. Proposers are encouraged to provide MWBEs with mentor-protégé opportunities through mentoring, technical assistance strategies, tools and/or a network to support their success and increase MWBE participation and capacity. Proposers are required to provide an outline of how their efforts will maximize MWBE participation and/or submit a fully executed Mentor-Protégé Agreement for each MWBE.

The County will also evaluate the proposer's approach to advancing equity and social justice within the County and beyond. The approach can include community partnerships, incorporating ESJ innovations into the project beyond industry best practices that promote racial equity and equitably distributing tasks for work order contracts.

3. SCS Program and MWBE Contract Performance Compliance

The bidder and proposer's compliance with the SCS utilization requirement and voluntary MWBE goals become material conditions of the contract. The County continually evaluates compliance goals against the total value for all work performed over the life of the contract.

All requests to modify the SCS or MWBE utilization commitment must be submitted in writing to the County. The request must include documentation of the factors leading to the contractor's inability to comply with the SCS requirement. Firms must make GFE to fulfill their commitment. Failure to comply with the contract provisions without approval from the County can be deemed a material breach of the contract and could result in suspensions for a period of not more than six months, or a debarment for a period not more than two years from consideration for award of contracts with the County. The County can withhold progress payments or the final payment and may seek any other remedy allowed by law.

A contractor that proposes to substitute a SCS or MWBE must provide the County five business days' prior written notice and an explanation for the substitution request.²⁰⁴ A substitution is permitted only for the following reasons:

- Refusal of the certified firm to sign a subcontract with the contractor.
- Bankruptcy or insolvency of the certified firm.
- Inability of the certified firm to perform the requirements of the proposed subcontract.
- Inability of the certified firm to obtain the necessary license, bonding, insurance, or other statutory requirements to perform the work of the subcontract.
- The certified firm is barred from participating in the project as a result of a court order.
- Other unforeseen circumstances, as approved by King County.

204. Requests to substitute a certified SCS or MWBE firm at any time after bid opening but before contract Execution, the Contract is not executed unless the County approves the bidder's or proposer's substitution request.

The County will investigate the proposed substitution request and make a written determination to approve or disapprove the proposed substitution. Unless waived for good cause by the County in writing, the contractor shall replace the certified firm with another certified firm. The failure to comply with these requirements will be considered a material breach of the contract and may subject the contractor to liquidated damages.

The County enforces its prompt payment provisions and processes through DCMS. DCMS tracks payments to subcontractors at all tiers for all funding sources. Contractors must report utilization of all subcontractors and/or suppliers monthly. This includes SCS and MWBE subcontractors and third-party subcontractors. The County reviews payments to evaluate whether the actual amount paid to SCS and MWBE subcontractors equals the amounts reported to King County by the prime contractor. BDCC staff may become involved with payment disputes.

During contract performance, the County can request a corrective action plan if the contractor is not meeting the SCS contract goal, MWBE aspirational goals or making satisfactory progress toward the objectives identified in the ESJ Innovation Plan. The contractor will have 10 business days to submit a written plan explaining the goal shortfall and how it will be corrected. If the project has an ESJ commitment, a summary of the status of actions identified in the ESJ Innovation Plan and the effectiveness of each is also required. If the County determines that corrective action plan is unsatisfactory, it may withhold payments or terminate the contract for default.

4. Violations and Sanctions

A person who violates the County's contracting opportunities programs can be subject to sanctions, including but not limited to:

- Liquidated damages
- Withholding of funds
- A civil fine or penalty
- Disqualification from eligibility for bidding on, entering into, or participating as a subcontractor on, a County contract for a period not to exceed five years

Sanctions must be imposed in writing with the reasons for their imposition and provided promptly to the person being sanctioned. The sanctioned firm may appeal in accordance with King County Code.

C. U.S. Department of Transportation’s Disadvantaged Business Enterprise Program

As a recipient of U.S. Department of Transportation (“USDOT”) funds through the FTA and FAA, King County is required as a condition of receipt to implement a DBE program in compliance with 49 C.F.R. Part 26. King County has signed an assurance that it will comply with 49 C.F.R. Part 26 requiring the following program elements:

- Maintaining and reporting program performance data to USDOT, including the utilization of DBEs on its federal-aid contracts and create a bidders list of all firms bidding to King County as prime contractors and firms bidding to those prime contractors as subcontractors.
- Adopting a non-discrimination policy statement.
- Appointing a DBELO, with substantial responsibilities and direct reporting to the chief executive office of the agency.
- Making efforts to utilize DBE financial institutions.
- Adopting a prompt payment mechanism for its prime contractors and for the prompt payment of subcontractors by prime contractors.
- Creating and maintaining a DBE directory. King County is a member of the Washington Unified Certification Program and conducts DBE certifications.
- Addressing possible overconcentration of DBEs in certain types of work.
- Including elements to assist small businesses.

1. DBE Program Administration

The Manager of BDCC serves as the DBELO and is responsible for administering all aspects of the DBE program. The DBELO has direct, independent access to the County Executive. The BDCC office’s responsibilities include, but are not limited to, establishing DBE goals and contract goals; identifying mechanisms to improve progress; conducting internal and external assessments and reviews of DBE program activities and coordinating enforcement action; and advising the County Executive and other office directors on DBE matters. The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. As of 2021, the DBELO had a staff of eight.

2. DBE Program Eligibility Requirements

All DBE and SBE certifications are conducted by OMWBE. DBEs and SBEs must meet the requirements of 49 C.F.R. Part 26, including the business size²⁰⁵ and personal net worth limits²⁰⁶. The firm must be organized as a for-profit business and the owner must be a U.S. citizen or permanent U.S. resident. The applicant owner must own, manage, and control the business on a day-to-day basis.

OMWBE maintains the Washington State Uniform Certified Program Directory of certified DBE and SBE firms. The Directory is posted online.²⁰⁷

3. FTA DBE Triennial Goals

King County's overall FTA FFY 2021-2023 DBE goal is 10%, all of which is to be achieved through race-neutral means. The County's 2024-2026 proposed FTA DBE Triennial goal is 15%. The County establishes SBE contract goals to meet the maximum feasible portion of its DBE goal through race-neutral means in accordance with USDOT regulations.

4. FAA Triennial Goal

The County's 2024-2026 proposed FAA DBE Triennial goal is 9%, all to be achieved through race-neutral measures.

5. Small Business Enterprise Element

To meet the requirement in §26.39, Small Business Participation, King County has established a race-neutral Small Business Program. The SBE program includes outreach and identification of work opportunities, mentor-protégé and technical assistance arrangements, community partnerships, cultural competency, and where applicable, practices from the Equity and Social Justice Innovation Plan.

Subcontracting requirements and set-aside provisions include:

- Setting contract specific SBE subcontracting requirements.
- Allocating points to proposers who commit to meet or exceed the SBE percentage on architecture, engineering, and professional service contracts.

205. The current overall cap is \$30.4M.

206. The current limit is \$1.32M.

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

- Setting aside architecture, engineering or professional service contracts for competition only among SBEs. SBE prime proposers can subcontract up to 70% of the total price of the contract.
- Applying a SBE Fair Market Range. This bid preference is typically between three and five percent.
- Using the Architectural/Engineering Consultants Roster to award contracts for capital projects with an estimated cost of less than \$500,000. King County agencies will invite at least one SBE to submit a proposal for every FTA assisted project. There is no limit on how much work can be awarded to SBEs through the A/E Roster.
- Using the Small Works Roster to award contracts for construction projects with an estimated cost of less than \$350,000. SBEs are encouraged to register in order to receive direct bidding opportunities. Projects solicited under the roster system are not advertised. Contractors from the roster will be invited, on a rotational basis, to submit bids for a solicited project.

6. DBE Contract Solicitation, Award and Compliance Procedures

Signed Federal Small Business Enterprise Utilization Certification Forms from each proposed SBE must be submitted at the time of bid opening or proposal submission. King County treats DBE compliance as a condition of responsiveness. The County will evaluate the contractor's compliance with the SBE Utilization Requirement against the total price for work performed over the life of the contract. The County follows the counting provisions of the DBE program regulations.

King County applies similar contract monitoring and enforcement policies and procedures to FTA and FAA funded contracts that it applies to its non-federally assisted contracts. Contractors that do not meet the goals specified in their utilization plan must make GFE to contract with another certified DBE or SBE and provide all the necessary documentation. King County conducts regular reviews to ensure that DBEs and SBEs are performing a CUF.

Contractors that fail to comply with program requirements can be deemed to be in breach of contract, which may result in the County withholding progress payments, assessment of liquidated damages, and potential exclusion from future contracting opportunities.

7. Record Keeping

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

King County requires prime contractors to maintain contract records for a minimum of three years, unless otherwise provided by applicable record retention requirements for the County's financial assistance agreement, whichever is longer. These records are available for inspection upon request by any authorized representative of the County or USDOT.

D. King County's Environmental Protection Agency Fair Share Program

King County receives funding from the EPA and participates in the EPA's Fair Share Program at 40 C.F.R. Part 33. Recipients of EPA financial assistance must award a "fair share" of procurement and contracting opportunities to disadvantaged, minority- and woman-owned businesses.

1. Fair Share Program Eligibility

EPA accepts certifications as described in 40 C.F.R. 33.204-33.205 from Disadvantaged, Minority, or Woman Business Enterprises that has been certified by an approved DBE entity or that has been certified by the EPA. Firms must be certified by OMWBE to participate.

2. Fair Share Program Goals and Participation

The EPA and the State of Washington have established Fair Share goals of 10% for MBEs and 6% for WBEs. The consultant agrees to ensure, to the fullest extent possible that, at least the applicable "fair share" objectives are made available to entities owned or controlled by socially and economically disadvantaged individuals and women.

The counting rules are similar to those of the DBE program, except that an MWBE can subcontract up to 49% of its work. Bidders and proposers agree to demonstrate GFE to meet fair share goals when procuring contracts, subcontracts, equipment, services and supplies.

Bidders and proposers must submit the Woman and Minority Business Enterprises Utilization Form listing all MWBEs that will be utilized on the project at the time of bid or proposal submission. If the goal is not met, the bidder or proposer must describe its GFE to meet the Fair Share goals with the bid or no later than one hour after bid opening.²⁰⁸

208. 40 C.F.R. 33 Subpart C.

3. Fair Share Program Monitoring and Compliance

BDCC reviews contract procurement and monitors contractor compliance with the Fair Share requirements. King County applies similar contract monitoring and utilization enforcement policies and procedures to Fair Share contracts that it applies to its non-federally assisted contracts.

E. Technical Assistance and Small Business Supportive Services

The MWBE and SCS Cash Flow Improvement Initiative is part of a larger action plan for implementing the Executive Order for Pro-Equity Contracting (CON-7-28-EO). The MWBE and SCS Cash Flow Improvement Initiative assists MWBEs and small prime contractors to receive payment in two to three days versus at least 30 days.

In addition, King County through the Washington Department of Enterprises partners with several state business advocacy agencies to offer business support to MWBEs and small businesses, including Tabor 100 and the U.S. Department of Commerce Minority Business Development Agency. These agencies publish relevant County bid and proposal opportunities on their websites and host networking events and speaker series. Accounting and tax services, bid and contract assistance, marketing and website expertise are offered at subsidized rates.

F. Vendor Training and Outreach

The County regularly holds pre-bid conferences for construction and architectural and engineering projects for prospective bidders and proposers. Through the E-Procurement Supplier Portal, firms can opt to receive system-generated email notifications of County solicitations that match self-selected NAICS codes. King County also advertises on social media platforms and in print media outlets.

The Supplier Portal offers information about past, current and upcoming solicitations. Firms can view and download documents related to past solicitations and active contracting opportunities. The document holders list details all registered firms that have taken an action in response to a publicly advertised solicitation. This list is continually updated to reflect addendums that are issued and the suppliers that have taken an action in response to the solicitation since the addendum was issued.

The County offers downloadable supplier registration user guides, as well as video tutorials about how to do business with the County, respond to a solicitation, acknowledge an addendum and maintain user profiles.

The County conducts semi-annual two-hour online orientation sessions with tips for submitting successful bids on A&E, construction and goods and services solicitations.

King County participates in contracting conferences and events sponsored by other local government agencies, such as the North Puget Sound Contracting Conference and the City of Seattle's Reverse Vendor Trade Show.

Monthly training specifically directed to MWBEs includes online modules through the DMS system. These include online certification application, contract compliance reporting, how to put together a utilization plan and DMS system training.

G. Staff Training

BDCC staff regularly attend the American Contract Compliance Association's annual National Training Institute, where they receive extensive training on national best practices for M/W/DBE programs. BDCC Staff attend the annual B2Gnow® User Training and LCP Tracker User Conferences. Staff also participate regularly in B2Gnow® online training.

H. Experiences with King County's Contracting Equity Programs

To explore the impacts of race- and gender-neutral contracting policies and procedures and the implementation of King County's contracting, we conducted nine small group interviews with 72 business owners and business and community partner organizations about their experiences and their suggestions for changes. We also collected written comments from 109 minority and woman respondents and non-MWBE businesses about their experiences with the County's programs through an electronic survey. We also received written comments throughout the study period.

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

1. Business Owner and Industry and Community Partner Interviews

a. Contracting Equity Programs

Most MWBEs supported the SCS program and found it helpful to obtain County work.

A lot of primes or general contractors, big engineering firms, big international firms are often coming to us because of our certification status.... We appreciate that, even though we know why it's happening.

The only thing that I have trouble with is figuring out from the County's websites where they need an SCS person. The website has been recently revised, but it's still pretty hard to use.

One owner noted that prime contractors choose to subcontract work only to meet the program requirements or because the work is less desirable.

The only reason they're ever subbing anything is because you make them, or because it's such a high risk operation that they don't want to get into it. So, traffic control would be a good example. They will sub geotech because they want somebody else's insurance on the line. They would never sub hydrogeology, technical editing, drafting, any of these.

A few participants had not benefited from the program.

The SCS program needs to be looked at very carefully. It did not do anything for me. And I do not know anyone who has with MWBE type affiliation has benefited from that program.

One owner stated that the program needs to include larger contracts. This participant felt that the County is not committed to helping MWBEs to grow.

The only time that King County seems to be excited about a MWBE firm being a prime is through their SCS limited scopes of work, which are tiny little projects. Otherwise, their inclusion system, their planning and all that, is designed to keep small firms out. And so, their system has created a glass ceiling for MWBE firms to become primes, or that are primes but are small primes to be competitive with their usual suspects.

The EJS Innovation Plan approach was reported to actually undermine MWBEs seeking work as prime vendors because of the difference in business models between large firms with comprehensive diversity programs and dedicated diversity staffs and small firms that are themselves diverse.

Whenever we're competing for contracts, what we're finding is these larger firms are winning on calls by including us and being able to write these great innovation plans about all of this extra work, because obviously, they have the bandwidth to put on these DBE events, and usually they're just virtual events that actually aren't even really helpful. But they can write these fancy plans and win the work.... And then, often, we're not seeing any work from our several on-call contracts with them. We're a specialized firm and we have had a specialized contract with King County for many, many, many years. And it was partly because of the plan that we took some points from us because we obviously don't do the full extent of DBE outreach, and we're not currently mentoring anybody. We're not even getting mentored by anybody. So, it's hard because that's going against us and it's not actually helping us. And it seems to be actually helping the bigger firms more than the smaller firms that it's designed to help.... You're basically getting scored on how well you can write this innovation plan, as opposed to what they're actually doing for small firms. And it's not really translating to actually helping us. And it seems to be working against us way more than helping.

b. Obtaining County Contracts

Some interviews reported that they have been successful in obtaining County work and enjoyed working with the agency.

King County is actually our favorite client, believe it or not. They pay better, if not better, they pay faster than anybody else we work with. And we work all over the country from Florida, New York, North Carolina, California, Oregon, and I think they're very fair with the requirements that we have to go through. I think working up in the Pacific Northwest is actually a nicer place for us to work as women. We don't get bullied by the prime consultants like we do on the East Coast. And I don't know, it's really nice to be able to confirm payments and see when your prime has been paid, and make sure you've been paid in a prompt manner. We don't get that with any other clients we work with.

My work world winnowed down through larger forces that were coincident with the I-200, to the point where King County was my primary client. And I will say, without

hesitation, the only reason I was ever able to start business, stay in business, and have a healthy career is because of King County.

Others had negative experiences.

King County has not been the easiest to deal with.

There's the actual King County bidding system that is run by Oracle is really outdated and very difficult to operate because bids are submitted on there.

Functioning as a subcontractor lead to serious problems for some SCS firms.

We are currently on a King County Public Works Road projects. It'll be my last project with King County. I will not be able to, I can't afford to do business with that agency, and we've done several projects with them. I can't be put into their meat grinder with no consideration when they have a project that's gone bad and we're on a significant project where the general contractor and the County are fighting over, I believe mostly decisions and the way the project is being managed by King County, we're caught in the middle.... Be careful if you say you really want to work for the County because there is no advocacy. Once you get on the project, you're doomed by contract. Have to be there and you have to perform even if there's nothing to do or if they have ridiculous requirements that I've been doing this for a long time and we're pretty good at it and what we do.... But if you get on a project with King County, they're unlike many of the other agencies, I'll just say that. Be cautious.... This is not my first bad experience on King County projects.

Stay the hell away from King County.... It all boiled down to one engineer with King County in a pissing contest with a large general contractor over millions of dollars in a situation that we have no control over. We are in a different unique experience that we are a sub tier to a larger [trade subcontractor].... We just get savaged.... We did reach out to the diversity piece at King County, had to find them first, drag them off from underneath the bed so they would listen to us. They tried to get involved in things.

Several participants requested more outreach events and information about how to network with County decisionmakers and larger firms.

We have found that King County is definitely more challenging to find opportunities in the other services. So, to answer your question as far as holding events and such, like you were asking, like the Port does or the City of Seattle or other cities do, we've been looking at these diligently for the last two years. We haven't been to any event that was held by King County. We haven't had that opportunity; we haven't seen that opportunity.

I have a big contract with the city [of Seattle] for 11 people, but I have two or three other contracts that it's only one person. But King County has never, not one time, even entertained us. We're on the books. I've reached out to the high people there.... Every time I asked for a card or something, they end up, "Oh, we don't know who handles that."

It would be nice if there was a way that King County actually let these MBE and DBE or WBE firms work and get to know these larger firms, because it's hard to get these relationships.

While the annual events are also helpful, it would be helpful to have a project to project way to interact with these larger firms.

All my information has come from a general, for those types of projects. I don't think I've ever seen anything come from the County.

I rarely see any bid invite for a County job until the day before, or maybe the week before.... for the type of work that we do, I can't do a bid in one day. I might need our estimating staff to spend three weeks, and get sub bids, and get material pricing. For me, working with King County, as far as any of the municipal, state, or federal agencies, they are probably the least that I ever get to do.

I would like to know if King County has any J[ob] O[rder] C[ontracts] contracts or contractors that they've appointed. And if they have, how is it made transparent who those JOC contractors are? Because we are basically a small business

minority owned business relying on the goodwill of general contractors, which I don't think is what we're looking for.

Recent changes to the procurement portal were reported to have made it more difficult to access information on specific contracting opportunities.

About a year or two years ago, they switched the system. So, before they switched the system, I can see a lot of list of project and potential project. I think it's getting harder in the new system to see that list.

[An earlier system allowed you to] easily go in and look and see all the opportunities that were available. You could easily see who got an RFP out or RFQ and who identified themselves as a prime or subs. And that was much easier to do. Now, you can go and find out who, it's more of a roundabout way to do it now.... Some people just may not be as savvy about that stuff and it's a difficult thing. I still think it's difficult. They need to improve that process.

I have been reaching out to the SCS people, or even in the County to say, "Your portal is not working." You go in there and you indicate you are interested in an RFP. And honestly, it just comes back that the RFP has already been issued. That's the last you see of it.

[If] their portal would be much more user-friendly, it would be making their work easier, as well as our work.

I can empathize with a lot of the folks that have a problem finding opportunities, especially with the County's format and how they advertise and solicit their work.... it's not as easy as say WSDOT or the City of Seattle to find their projects to get involved with.... OMWBE and WSDOT, they're a lot more outreach in that regard and so is the city of Seattle.

I'm a bit tech-savvy, but it's a little bit of a job to find where these rosters are, and what they show on the King County site mostly is the upcoming capital projects and the current awards.... It would be far more beneficial to our community, to the DBE and the MWBE community, if there was a better investment in the technology, in the software that went behind making procurement happen. I think that's where they can make the biggest impact, if they put a more centralized focus in the software that supports the end

users. Because the system that the city of Seattle uses, that the Port of Seattle uses, heck, that [State of Washington Department of Enterprise Services] uses for the state, those are very straightforward, navigable systems, whereas this is just a little more cumbersome.

You have to really know and be tech-savvy to be able to get through the [Oracle]system. And, I'm tech-savvy. And, even then, you're just having to click on random things sometimes to get it to work. And then, King County has a separate page webpage that you have to know the URL to, where they actually list who the plan holders are or who the people are that attended the pre-submittal meeting. And that's also really clunky. You have to export all of the projects information just to get one information for just one project.

More support from BDCC was requested.

[The BDCC webpage [should be enhanced to] say, "Hey, how do we inform the people and show them that not only do we certify you here, but we help you get through this process. This is where everyone is coming to look for it and what they're getting on this page is just how do I certify? And that's it." That'd be very helpful.

Where do we find the small stuff for King County? Where do we get in on the medium stuff? For us, we're bonded up to half a million, so we can do anything up to half a million right now, and we're working on growing that. But everything I look at on here is 4M, 6M, 2M, 4M, 140M. So, all of these are things that we'd have to come in as a sub on, and there needs to be help in this area to get our companies in as a sub.

One owner reported a good experience in seeking a debriefing from the County.

One positive thing is that we went after a pursuit and lost, and oftentimes we'll ask for a little follow-up meeting, a little debrief. And typically, with government work, it's been very just short and, oh, well, the other proposals were better. Well, of course. But the last time we went after, and I was just pulling up an email, we had a small team of women at the County who spent over an hour with us going over our proposal point by point and telling us how we

could have improved. So, we thought that was extremely helpful, and we were very appreciative of that. And we had never experienced that in depth of feedback before. And then also, we had requested that when the scorecards were published, to please send them to us, and many, many months later, they sent them to us.... We were just very grateful for that and really felt that maybe they are making a change. Maybe they do really want women-owned firms there. So, I think that was really great to see.

Another was unable to obtain information about the basis for the scores it received on its proposal.

It would be nice to find out why we are not selected. In fact, we were totally ignored. Nobody responded to me [about my request for a debriefing].

Contract size was mentioned as another impediment to SCS' and MWBEs' ability to serve as prime contractors on County jobs. Many participants want to move into the prime role.

They should try breaking those contracts down.

Break up the contracts so that part of the work can be issued on a smaller procurement and let them bid on it ourselves. Then we don't have to go through prime.

Excessive insurance requirements were another barrier reported to discourage MWBE and SCS prime participation.

King County, typically, they expect that everybody use the same limit whether you are sub or you are prime in there. And a lot of time, you know that the project is not that big and we can handle that. We have 10 people in the office, we can handle that. I mean, it's small enough for us to handle that, but a lot of time because of that insurance requirement, the E&O, we will not be able to get that.

A lot of the issues raised regarding contracting and insurance requirements, when we raised that up [with the County], when we were assigning our contracts, basically we heard from the legal department is they will only issue one contract, and everybody, whether you're doing a graphic design project or whether you are a planner doing some plans or an engineer building a \$2B facility, you all are obliged to use the same contract. So, because a lot of women and minority businesses are small, this unduly

obliges us to take on a lot of risk, which is really unfair for us. So, I think system-wide, there needs to be a rethinking of King County's institutional practices that are more sensitive to the needs of small companies, i.e., primarily women and minority businesses.

The process for setting billing rates on consulting contracts was reported to discourage MWBE and SCS firms from obtaining County prime contracts.

The challenges we've had with the County ... [are] getting through the contracting process, their negotiation of rates.... As a small business, I have a different challenge in trying to keep my folks in a larger firm.... And when the market escalates because they can go to another four-letter firm, we have to keep up their salary to get to maintain them as an employee. And so now you go back and you're eating that cost a lot of times.... When we get into the profit percentage situation, it always seems like they are very low with what they're willing to negotiate. And I have had to walk away from a couple contracts there because it didn't pencil out for us to do the work at those rates.... They're not really looking at it from a small business perspective and they're looking at it from, as we're all [name] or [name].... I don't think that they get past the bureaucracy, and really take into account small business.

I used to own basic tools. I will not do that anymore. I rent them because I can charge [the County] for a rental. And I can't charge for equipment I own.

The biggest challenge of working for the county is that they don't understand. I think what they don't understand is that we don't have the same bandwidth from a legal or finance standpoint, and yet we get treated exactly the same as a thousand-person firm. So, for example, when it's time to update annual billing rates, what they do is they say, "Well, we need to see invoices that you've already sent with these billing rates." It's like, "But we're trying to escalate our rates. What if we haven't set one yet, right?" And so, it turns into I think just a lot of what I'd call just "general business hassle" and paperwork that we're not, we can deal with it, but it's just definitely more burdensome because we're trying to meet the requirements, the same requirements that they have for a larger firm.... [In contrast] for example, [Seattle Department of Transportation], they'll just say, "Hey, our

projected escalation this year is X percent, and as long as you're not submitting a rate increase that's more than that, if you do, let's say somebody got promoted or whatever, then yeah, you need to justify that." But we're having to say, "Look, we're trying to escalate and somehow magically we've already billed it to somebody else, and so we're going to try and find an invoice for this project where we had this staff member, but it didn't have that one on it. A lot of our projects are fixed-fee, quite honestly. It's sometimes a real challenge to find hourly invoices that include our whole team enough.

c. Impact of the COVID-19 Pandemic

Most participants reported that the COVID-19 pandemic had little impact on their businesses.

I can't speak to any negative impacts [from the pandemic].

Some owners had benefited from the pandemic.

The pandemic in general was good for business.

Our COVID-19 impact was actually, it helped us grow into a different model of training. We usually do frontline training in the field, and we were able to really help build training modules online and serve a different purpose.

One effect of the shutdowns was to make it harder to connect with government staff and receive timely information and answers to questions.

One of the biggest things that we see that happened in the government side of the house would be a lot of turnover on things like inspectors who retired or quit. And then everything just became a little bit harder. Because the state employees who are in charge of doing permits typically were staying home and you have a black box of information, so you mail in something to the state to a PO box, and it's checked once a week and just all the timelines for every government interaction extended and there are no consequences. Consequences is the wrong word, but there's no ability to fight that. You're just like, "Oh, it is what it is and it's the pandemic." But now, it's not the pandemic and it hasn't reverted back to anything reasonable.

2. Electronic Survey Responses

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

a. Impact of the SCS and DBE Programs

Overall, M/W/DBE respondents supported the County's SCS and DBE programs. Many stated the programs have been instrumental in obtaining contracts with the County.

Being a small services-based company, having set-asides promotes large contractors to use us in their projects, also in working directly for the county.

[The] contract requirements from [general contractors have helped my business].

Contractors have to look for company like ours to do the job.

I have been solicited as a WBE and SCS for several KC jobs as a subcontractor so the prime could meet their goals.

I was selected to work on two projects due to my DBE status.

SCS and DBE certification have directly resulted in primes reaching out to us and including us on multiple occasions. These opportunities have enabled us to build capabilities and grow the business.

It allowed me access to contracts under a prime. Very helpful.

It allowed us to participate in contracts at some level.

It does help us get most projects to keep us busy. It would be extremely challenging for us to bid a project if not for the SCS or DBE goals. As said previously, most projects were awarded to big firms.

It has given us opportunities to bid on projects we might not have been considered for before.

It has helped tremendously. We have a good relationship with most King County representatives. Use of SCS consultant rosters should be encouraged.

It has helped with making the contractors look outside of who they usually deal with and give us an opportunity to complete.

It has put us in a sought-after position.

Due to the limited number of women owned firms in our sector of the industry, certification brings us to the table where historically we have not been.

It helped our business work with general contractors that would not have typically worked with us, due to our size. Now that we are in with these [general contractors] we are able to bid smaller sized projects.

It helps give us a leg up on other larger landscape firms in the bidding process.

The King County WBE program has been beneficial as it opened the door to many opportunities and companies that may not have looked in our direction.

King County's SCS program and DBE program have been wonderful for our business. They have provided us with valuable opportunities that have significantly contributed to our growth and success, as well as the success of our staff. These programs have been instrumental in helping us expand our reach and develop our business. We are truly grateful for the support they've offered.

I definitely get more contacts from large businesses needing support.

Encouraged primes to hire me due to my SCS status.

Getting us exposure and helping us meet firms bidding.

We currently receive recommendations.

Several M/W/DBE firms found the County's DBE program especially helpful in obtaining work. Some did not find the SCS program as helpful.

DBE goals help remind larger primes to diversify their teams.

DBE program to some extent but not at all the SCS program. Have not received a single opportunity through SCS although I know there has been work done by very selected firms.

SCS didn't do any good. However, the DBE is very helpful in obtaining WSDOT projects.

The DBE program has been spectacular and has enable our firm to grow from 35 employees in 2012 to 70 employees in 2023. This is in large part due to Sound Transit work, and work on the King County Children and Family Justice Center, Port of Seattle (SeaTac) and Seattle Tunnel projects, all of which had DBE requirements.

We haven't had any experience with King County's SCS program yet, but others have reached out to us since we are DBE with OMWBE. In the end, any award depends on lowest (responsible) bid regardless of any certification.

A few minority owners were unaware of the SCS certification and program.

I was unaware of this certification and I have not been informed of its existence.

No idea what an SCS is.

Never heard of [SCS].

Not sure what that [SCS] designation is.

Several M/W/DBEs did not find the County's SCS or ESJ program helpful.

Based on my experience in the last 4 years and previously with my ex-employer, we never got any opportunities as SCS. The SCS program has been used to hire the consultants who has good relationship with the County PMs- who are their buddies. The process is not fair and transparent at all. I request to overhaul the SCS system and use only the MWBE.DBE program.

SCS program needs to be implemented in more useful manner where small business can operate in a positive competing environment and thrive.

These programs have not made any positive difference.

My company has yet to be awarded any King County projects to date.

It let the agency know that we exist. But without full support and commitment to execute firm business from the departments, the efforts are being undermined.

We would like the opportunity to work on King County job sites. We just feel like the Large Contractors are Favored more than us Small Family owned and operated companies.

Several minority and woman-owned firms thought the process required for OMWBE certification was too cumbersome. The SCS certification process was seen as less onerous.

Make the whole process similar for companies who obtain certifications. The current process is very confusing and even when you get certification, you have to figure out how to use it.

King County's SCS program is good, but certain RFQs require OMWBE certification, which does not allow us to submit our services OMWBE certification is too complicated, and King County would receive more consultant proposals if SCS requirements were based on King County certification, not state certification.

Last that I remember, it felt a bit onerous to complete additional paperwork beyond that required by the State's OMWBE program, so I decided not to.

OMWBE's requirements were too arduous, despite efforts.

We don't want our financial information disclosed.

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

The personal net worth component of the SCS program is too low. I don't think it should include retirement accounts such as IRA balances and 401k balances. Those are not liquid and do not help the worker during their working years. The personal net worth limit needs to be adjusted for inflation yearly. The previous limit dated back to the 1990's.

We hope that King County reconsider tying women owned businesses to their disadvantaged business. In our current world \$1.32M in assets for retirement is very little due to the typical life span. There are very few women in our sector of the Construction industry and we will not qualify as a WBE for our renewal even though we are 100% women owned and operated due having to also being a disadvantaged business.

Some non-M/W/DBEs complimented the County's management of the programs.

Great support from KC.

We enjoy working with GCs for your projects!

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

Making the MBE/DBE goals as selection criteria - without [as]inspirational without any selection points. Encourage and perhaps incentivize the primes to have [utilize] DBE/SCS/MBE who live and pay tax in Washington.

It would be helpful if DBE goals were always mandatory. Otherwise, primes will invite us to an outreach event, but they will not actually try to work with us.

Include selection criteria points for DBE participation.

Several veteran firms want the County to impose goals for their firms.

KC needs to budget VE in their prime contracts—it should be a part of 35% design and the design team PM should be budgeted to participate during the full week. VE shouldn't be a check-the-box-for-funding exercise or an afterthought.

Contract goals for participation by veteran owned businesses.

b. Outreach and Access to Information

All types of firms requested more outreach and opportunities to network with primes and County staff.

Contractors reaching out to us directly to schedule jobs.

More advertisement on RFPs.

KC helping to connect my biz w/ prime contractors.

Marketing processes since the pandemic as made it particular more difficult for small firms to connect with decision makers and get less information about projects before the come our thereby, increase barriers to getting work.

Opportunities to meet with project managers and develop relationships with agency staff.

Opportunities to meet with project managers and develop relationships with agency staff.

More opportunities to meet new primes.

c. Access to King County Contracting Opportunities

Some M/W/DBE respondents requested more opportunities to perform on smaller projects and to perform as prime contractors.

Small and quick turn over projects.

Encourage leadership as primes.

Still almost impossible to start as a General Contractor when competing against bigger and better funded companies.

Several M/W/DBEs suggested that the County's contracting process for setting staff rates could be improved.

Improve the contracting process. It is incredibly cumbersome. Annual rate adjustments based on cost-of-living increases are too little and too late to keep pace with the job market. Move to rates not-to-exceed by staff classification. This will reduce administrative and more accurately reflect staff costs.

King County's process for establishing hourly rates is incredibly time consuming and especially burdensome for small business. We have to prove that we have already billed another agency at a new rate? What if we haven't billed at a certain staff level or it's a new year with new rates? What if we only have an existing invoice for a private sector client? KC doesn't seem to understand this and we have had to spend a bunch back and forth.

It would be beneficial if King County could consider raising the maximum allowed hourly rate for senior staff within the program SCS.

These costs, combined with King County's billing rate structure and restrictions on marking up subcontractor costs, significantly limits the ability of our firm to remain profitable when working on King County projects. Efforts to streamline these processes, and provide a bit more latitude in rate structures would help make working for King County a more desirable client.

It would be beneficial if King County could consider raising the maximum allowed hourly rate for senior staff within the program. SCS companies often face challenges when competing with publicly held companies, especially in terms of offering competitive salaries. This change would foster a more competitive environment and further empower these businesses to thrive within the program.

Small businesses supported changes to make contracting requirements less burdensome.

Increase opportunities for small businesses to compete by limiting the burdens of overhead that smaller companies are less able to absorb than larger ones. For instance, weekly in person meetings versus allowing conference calls or video calls has been extremely helpful as a small contractor.

The bureaucracy for my small business is often overwhelming. It's difficult to make time for the forms, record keeping, etc. mandated by the County, and at the same time do the work I'm contracted to do. Not sure what the solution is, but dang it's a lot of seemingly unnecessary effort and time spent on what often feels like dead ends and ignored documentation.

We'd love to work with King County. Your contract procedures have been a real road-block for us.

Less paperwork requirements on projects to be able to perform the work effectively. Too much time is spent on meeting "requirements" such as apprentice, payment reporting, sub approvals, certified payrolls, and other social equity components and takes away from our ability to perform work effectively and for the lowest cost.

Each year there is becoming more and more administrative requirements.

Less agency red tape.

The proposal/interview efforts, scoping/contract negotiation efforts, and project management administrative efforts for pursuing and executing engineering projects for King County are disproportionately high when compared to most other municipal organizations.

d. Monitoring Program Compliance

M/W/DBEs requested more oversight of the County's procurement practices.

I think in order for the DBE programs to be more effective there needs to be a monitoring system in place to ensure the companies that are completing the bids are actually getting the jobs and being paid. We have gotten contracts for a small amount \$54,000 of a billion-dollar project, just to say they gave us something.

An independent, detailed forensic analysis of the process of business procurement deployment needs to be done. Look into On Call contracts. Review the top 10 professional contractors to record how much of their business is brokering business to SCS firms. Ask SCS firms how they are being treated instead of asking the large firms about how they treat SCS firms.

Several M/W/DBEs requested more oversight to ensure prime contractors comply with goal requirements once the contract is awarded.

SCS program needs more "teeth" - checks and balances to ensure that the primes deliver on their promises to the SCS firms; provide mentorship and support Otherwise, we will be out of business or doing business elsewhere.

King County should monitor Prime Contractors to make sure proper budget is allocated and prompt payments are made.

The programs have helped with exposure to jobs that are available, however, a lot of the companies have meetings to get our DBE information and do not give us the work after.

e. Payments

Some M/W/DBEs reported slow payments by the County. This caused cash flow issues for subcontractors that are paid when the prime contractor is paid.

Release payments more promptly. King County is the slowest agency when it comes to payment in our experience. Both WSDOT and Sound Transit have them beat by 2-3 months.

Prompt payment [is a recommendation I would like to share].

All 2nd or 3rd tier small contractor get paid within 30-days.

It would be great if [the] Prime Consultant makes on-time payment to SCS firms. Cash flow for firms like ours is very important.

f. Project Labor and Community Workforce Agreements

Project Labor and Community Workforce Agreements (“CWAs”) were barriers to some small construction firms obtaining work for King County.

Community Workforce Agreements, PLA, and unions simply drive the costs up for everyone.

CWAs are not ideal for small businesses. Employees do not like them, as money is taken from their paycheck and given to a union that they are not a part of, and there is a tremendous amount of paper work that has to be filled out for weeks, months, years at a time. It's a hassle in every way that matters. It's also frustrating when unions make companies use their hall members and expect our own employees to stay off the job.

It makes us think twice about bidding on KC projects. Union participation is a lot of work for smaller contractors and since we are not signatory, the fringe benefit packages provided by the union often don't apply to my employees given their limited hours.

It's a pain in the ass. Everyone I talk to hates it. Not even sure what it accomplishes.

Makes it difficult for the small business who do not have the money nor resources to hire untrained employees. I have several subs that refuse to do CWA work based on this and the paperwork/union involvement. Unions should be training CWA people before they come onto a job site. This would allow small businesses to access those CWA personal. Untrained people make costly mistakes that the small business owners cannot absorb.

We are a minority union company in a seasonal business, trying to hire employees that have signed up with the union. It is very difficult to get employees to come to work

in the first place, let alone, trying to hire from SPECIFIC zip codes and from SPECIFIC ethnic groups. When we do get that employee, 90% of them have failed the King County background checks. It is a formula for disaster and failure. We get what is available for hire at the time we need it.

Eliminate the CWA for small business owners. Reduce the amount of paperwork required. Revamp the union Assent process, small business owners don't have the time to sit through 1.5-hour meetings and do double entry on the payroll systems.

The CWA unfairly benefits large union contractors to the detriment of small businesses who the unions may be unable to support. We have sent in worker requests and in 4 years of CWA projects have never had the Union send someone to our site. We must supply all of our workers and the workers must give a portion of their check to the union. It is not fair or right to the workers.

Many non-M/W/DBEs reported similar issues with CWAs.

Get rid of the CWA's. Prevailing wage is paid to employees regardless. Let employees keep their fringe benefits earned without paying union dues and joining one union.

Stop using the CWA; it doesn't support nonunion employees. Joining a union should not be required to work on King County projects.

As a non-union signatory it has added overhead costs to the company and drained a significant amount of money out of employee paychecks to cover union fees for benefits which the employees do not qualify for.

Cost to perform work has increased in order to comply with staffing and paperwork requirements directly related to the CWA. Adding additional, non-essential staff & craft to meet requirements.

Our people don't get vested with the Union, because there is not enough hours for their work. Therefore, the Union keeps their benefit money. It's a bad deal.

We are non-union with 25+ employees who don't want to join the union. The CWA only lets us use 3 of our employees. We have a good, qualified crew who we want to

keep employed the CWA does not let us. It also requires us to use Union workers who don't like us because we are nonunion. We would not trust them to not sabotage our work. We have experience with union employees in the past who work against us.

g. Experiences with business supportive services

Businesses who had participated in business support services generally found them helpful.

In reaching out to the administrative services available to DBEs, the accounting resource significantly helped us in understanding the WSDOT rating system and how to set-up our accounting GLs to track the correct activities on timesheets resulting in better records and an increase in our WSDOT rate. This led to better profits in local government work and therefore an increase in volume in the government sector as we could do this profitably.

My experience [with supportive services] has been very good and encouraging.

We have done several programs with the University of Washington and are working with a consultant through Tabor 100. We are grateful for these opportunities as they help us learn more about how to be successful and we also get to meet new people and network with them.

When put on by OMWBE or other agencies like that, it is a wealth of information.

h. Experiences with mentor-protégé programs and teaming arrangements

Mentor-protégé programs and joint ventures were possible approaches to help M/W/DBEs. Those that participated in these programs generally reported good experiences.

The mentor program really helped but are [sic] too short. It seems like the program only runs long enough for the politicians to get cry [sic] for the program.

Having a mentor in the same field partner with the US on government contracts [was helpful].

The SBA Mentor-Protege program is very good. WSDOT, King County, and others should adopt it.

Less favorable experiences were reported by a small number of M/W/DBE firms.

Maybe assistance with having the right mentor that could truly help us grown from a very small business to a medium sized business (or larger than we are). That would involve assisting with finding opportunities, assisting with proposal efforts, assisting with hiring some key personnel to satisfy the requirements.

I have marginally benefitted from the Mentor-Protege Program in which I participated.

JVs with other firms have been okay depending on the contract. Horrible experience with an 8(a) JV we entered, but that was due to a business owner that wasn't good at managing her own business nor the JV.

The DBE Mentor protege through the SBA has been challenging. The firm we entered into a relationship with likely wasn't prepared to be a strong mentor like some of the similar sized companies. The other experiences have been positive.

Non-M/W/DBE firms reported mixed experiences with mentor-protégé programs.

We have been both a Mentor and Mentee and found the programs generally rewarding.

We have had multiple informal partnerships with larger consulting firms. Marginally successful, overall.

I. Conclusion

Overall, M/W/DBEs were able to access the County's contracting equity programs. Prime contractors were generally able to comply with requirements of the programs. The programs were generally supported by participants and were viewed as important to the growth and development of M/W/DBEs. While many M/W/DBEs experienced disruption in business operations during the COVID-19 pandemic, most have recovered with little residual impact.

However, there are some challenges to address:

- ESJ Innovation Plan requirements that are obstacles to M/W/DBEs seeking work as a prime vendors.

- SCS firms primarily work as subcontractors on County projects.
- M/W/DBEs have difficulties accessing the County decisionmakers and larger firms necessary to facilitate relationships.
- Vendors found it frustrating to access information and contracting opportunities through the procurement portal.
- Contract size limits SCS firms' and MWBEs' abilities to serve as prime vendors.
- Excessive insurance requirements discourage MWBE and SCS prime participation.
- The process for setting billing rates impedes MWBE and SCS firms from obtaining County prime contracts.
- Administrative requirements make the contracting process burdensome.
- Slow payments cause cash flow issues for subcontractors.
- Project Labor and Community Workforce Agreements are burdensome for smaller contractors.

IV. UTILIZATION, AVAILABILITY AND DISPARITY ANALYSES FOR KING COUNTY

A. Contract Data Overview

We analyzed data from King County’s locally funded; U.S. Department of Transportation federal aid contracts through the Federal Transit Administration (“FTA”) and the Federal Aviation Authority (“FAA”); and Environmental Protection Agency (“EPA”) funded contracts for fiscal years 2018 through 2022. We received contract records from the County that contained 2,851 contracts, worth \$656,620,351. To conduct the analysis, we constructed all the fields necessary where they were missing in King County’s contract records (e.g., industry type; zip codes; six-digit North American Industry Classification System (“NAICS”) codes of prime contractors and subcontractors; payments, race; gender; etc.). These results were used to create the overall Final Contract Data File (“FCDF”) and one FCDF for each funding source.

B. Summary of Findings

Table 4-1 presents the distribution of the FCDFs across the four funding sources.

Table 4-1: Summary of Findings: Distribution of the FCDF Across Funding Sources

Funding Source	Share of FCDF
King County	83.8%
FTA	8.2%
EPA	7.4%
FAA	0.6%
TOTAL	100.0%

Source: CHA analysis of King County data

King County’s geographic market area for contracts funded by all four funding sources was found to consist of the three counties that make up the Seattle metropolitan area: King County, Pierce County and Snohomish County. For the

remainder of this Chapter, we will refer to the geographic market as the Seattle Metropolitan Statistical Area (“MSA”).

**Table 4-2: Summary of Findings: Seattle MSA Share of Final Contract Data File
(by funding source)**

Funding Source	Seattle MSA Share of FCDF
King County	81.4%
FTA	83.3%
EPA	95.8%
FAA	100.0%

Source: CHA analysis of King County data

Tables 4-3 through 4-6 present data on utilization and weighted availability for each funding source. In addition, Tables 4-3 and 4-4 present data on disparity ratios for King County and FTA funded contracts. At the County’s request, we disaggregated the results for locally funded contracts into construction and architecture/engineering and related professional services. These data are provided in Appendix D.

We did not calculate disparity results for EPA funded contracts because Congress has already determined that a race- and gender-conscious approach is warranted and there were not enough contracts to perform the analysis for FAA funded contracts.

**Table 4-3: Summary of Findings: King County Funded Contracts
(2,437 Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE
Utilization	4.7%	2.2%	4.3%	5.2%	8.4%	24.9%	75.1%
Weighted Availability	2.3%	2.4%	3.2%	2.6%	6.7%	17.2%	82.8%
Disparity Ratio	203.3%***	94.2%***	133.0%***	205.0%***	125.9%***	145.1%***	90.7%***

Source: CHA analysis of King County data

**** Statistically significant at the 0.001 level*

**Table 4-4: Summary of Findings: FTA Funded Contracts
(283 Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE
Utilization	3.4%	1.8%	8.9%	0.7%	6.6%	21.4%	78.6%
Weighted Availability	1.5%	1.4%	2.8%	1.0%	6.7%	13.5%	86.5%
Disparity Ratio	225.9%	121.1%	321.6%***	64.8% [‡]	98.9%***	158.9%***	90.8%***

Source: CHA analysis of King County data

[‡] Indicates substantive significance

*** Statistically significant at the 0.001 level

**Table 4-5: Summary of Findings: FAA Funded Contracts
(28 Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE
Utilization	2.1%	0.0%	5.6%	0.0%	4.4%	12.1%	87.9%
Weighted Availability	1.7%	1.4%	2.5%	1.6%	5.5%	12.8%	87.2%

Source: CHA analysis of King County data

**Table 4-6: Summary of Findings: EPA Funded Contracts
(103 Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE
Utilization	5.4%	1.7%	9.6%	0.3%	13.4%	30.4%	69.6%
Weighted Availability	3.3%	2.9%	4.1%	4.7%	8.6%	23.6%	76.4%

Source: CHA analysis of King County data

The analysis presents the following results for each funding source:

- Contract Data Overview.
- Geographic and Product Market for King County Contracts.
- Utilization of firms in King County's Geographic and Product Market.
- Availability of MWBEs/DBEs for the Geographic and Product Markets.

- Disparity Analysis of King County and FTA funded contracts.

Because the methodology for the data analysis is identical across each funding source, we detail the methodology for King County funded contracts; in order to avoid repetition, we present only the tables for FTA, FAA, and EPA funded contracts.

C. King County Funded Contracts: Contract Data Overview

Tables 4-7 and 4-8 provide data on the FCDF for King County funded contracts.

Table 4-7: Final Contract Data File
Number of Contracts (King County Funded)

Contract Type	Total Contracts	Share of Total Contracts
Prime Contracts	296	12.1%
Subcontractor	2,141	87.9%
TOTAL	2,437	100.0%

Source: CHA analysis of King County data

Table 4-8: Final Contract Data File
Net Dollar Value of Contracts (King County Funded)

Business Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contracts	\$301,350,928	54.8%
Subcontractor	\$248,914,276	45.2%
TOTAL	\$550,265,205	100.0%

Source: CHA analysis of King County data

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

- The determination of the geographic and product markets for the analysis.
- The estimation of the utilization of MWBEs by King County.
- The calculation of the unweighted and weighted availability of MWBEs in King County's marketplace.

- The examination of concentration of contract dollars among MWBEs and non-MWBEs.
- The presentation of the disparity analysis.

1. Geographic and Product Market for King County Funded Contracts

As discussed in Chapter II, the federal courts²⁰⁹ (and the U.S. Department of Transportation DBE regulations²¹⁰ and Guidance²¹¹ for the DBE program) require that a recipient narrowly tailor any race- and gender-conscious program to its geographic market area. This element of the analysis must be empirically established.²¹² The accepted approach is to analyze those detailed industries, as defined by six-digit NAICS codes,²¹³ that make up at least 75% of the prime contract and subcontract payments for the study period.²¹⁴ The determination of the County's geographic and product market required three steps:

- Develop the FCDF to determine the product market. Table 4-3 presents these results.
- Identify the geographic market.
- Determine the product market constrained by the geographic parameters. Table 4-4 presents these results.

a. Final Contract Data File for King County Funded Contracts

The FCDF, which establishes King County's product market, consisted of 102 NAICS codes, with a total contract dollar value of \$550,265,205. Table 4-9 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.

209. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 508 (1989) (Richmond was specifically faulted for including minority contractors from across the country in its program based on the national evidence that supported the USDOT DBE program); see 49 C.F.R. §26.45(c); <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise> ("D. Explain How You Determined Your Local Market Area.... your local market area is the area in which the substantial majority of the contractors and subcontractors with which you do business are located and the area in which you spend the substantial majority of your contracting dollars.").

210. 49 C.F.R. §26.45(c).

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

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

213. www.census.gov/eos/www/naics.

214. 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*").

**Table 4-9: Industry Percentage Distribution of King County Contracts by Dollars
(King County Funded)**

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541330	Engineering Services	14.2%	14.2%
236220	Commercial and Institutional Building Construction	11.6%	25.8%
237310	Highway, Street, and Bridge Construction	10.1%	35.9%
238210	Electrical Contractors and Other Wiring Installation Contractors	10.1%	46.0%
238910	Site Preparation Contractors	8.7%	54.6%
237110	Water and Sewer Line and Related Structures Construction	5.0%	59.6%
238220	Plumbing, Heating, and Air-Conditioning Contractors	4.7%	64.3%
237130	Power and Communication Line and Related Structures Construction	3.3%	67.6%
238990	All Other Specialty Trade Contractors	3.1%	70.8%
237990	Other Heavy and Civil Engineering Construction	2.7%	73.5%
541990	All Other Professional, Scientific, and Technical Services	2.3%	75.8%
541310	Architectural Services	2.0%	77.8%
238160	Roofing Contractors	1.7%	79.5%
541620	Environmental Consulting Services	1.7%	81.2%
541420	Industrial Design Services	1.6%	82.8%
484220	Specialized Freight (except Used Goods) Trucking, Local	1.6%	84.4%
238140	Masonry Contractors	1.3%	85.6%
541370	Surveying and Mapping (except Geophysical) Services	1.1%	86.8%
541611	Administrative Management and General Management Consulting Services	1.1%	87.9%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.8%	88.8%
238120	Structural Steel and Precast Concrete Contractors	0.8%	89.6%
561730	Landscaping Services	0.8%	90.4%
561990	All Other Support Services	0.8%	91.1%
541350	Building Inspection Services	0.7%	91.9%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541320	Landscape Architectural Services	0.7%	92.5%
562910	Remediation Services	0.6%	93.2%
238320	Painting and Wall Covering Contractors	0.6%	93.8%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.5%	94.3%
238110	Poured Concrete Foundation and Structure Contractors	0.4%	94.7%
541380	Testing Laboratories	0.4%	95.1%
238390	Other Building Finishing Contractors	0.4%	95.5%
238310	Drywall and Insulation Contractors	0.4%	95.9%
423710	Hardware Merchant Wholesalers	0.4%	96.2%
488490	Other Support Activities for Road Transportation	0.3%	96.6%
541820	Public Relations Agencies	0.3%	96.9%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.3%	97.1%
238350	Finish Carpentry Contractors	0.2%	97.4%
238150	Glass and Glazing Contractors	0.2%	97.6%
541720	Research and Development in the Social Sciences and Humanities	0.2%	97.8%
236210	Industrial Building Construction	0.2%	98.0%
541511	Custom Computer Programming Services	0.1%	98.1%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.1%	98.2%
562998	All Other Miscellaneous Waste Management Services	0.1%	98.4%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	0.1%	98.5%
238170	Siding Contractors	0.1%	98.6%
561110	Office Administrative Services	0.1%	98.7%
238330	Flooring Contractors	0.1%	98.8%
423440	Other Commercial Equipment Merchant Wholesalers	0.1%	98.9%
238290	Other Building Equipment Contractors	0.1%	99.0%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
238130	Framing Contractors	0.1%	99.1%
541618	Other Management Consulting Services	0.1%	99.2%
531210	Offices of Real Estate Agents and Brokers	0.1%	99.2%
924110	Administration of Air and Water Resource and Solid Waste Management Programs	0.1%	99.3%
333515	Cutting Tool and Machine Tool Accessory Manufacturing	0.1%	99.4%
541921	Photography Studios, Portrait	0.1%	99.4%
541690	Other Scientific and Technical Consulting Services	0.1%	99.5%
237120	Oil and Gas Pipeline and Related Structures Construction	0.1%	99.5%
561790	Other Services to Buildings and Dwellings	0.1%	99.6%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	0.05%	99.6%
561320	Temporary Help Services	0.03%	99.7%
541810	Advertising Agencies	0.02%	99.7%
213111	Drilling Oil and Gas Wells	0.02%	99.7%
518210	Data Processing, Hosting, and Related Services	0.02%	99.7%
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	0.02%	99.8%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	0.02%	99.8%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.02%	99.8%
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	0.02%	99.8%
541512	Computer Systems Design Services	0.02%	99.8%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.02%	99.8%
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	0.01%	99.9%
561410	Document Preparation Services	0.01%	99.9%
541612	Human Resources Consulting Services	0.01%	99.9%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
423840	Industrial Supplies Merchant Wholesalers	0.01%	99.9%
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	0.01%	99.9%
813312	Environment, Conservation and Wildlife Organizations	0.01%	99.9%
541614	Process, Physical Distribution, and Logistics Consulting Services	0.01%	99.9%
531312	Nonresidential Property Managers	0.01%	99.9%
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	0.01%	99.9%
541410	Interior Design Services	0.01%	99.95%
424710	Petroleum Bulk Stations and Terminals	0.01%	99.96%
561720	Janitorial Services	0.01%	99.97%
561612	Security Guards and Patrol Services	0.01%	99.97%
541199	All Other Legal Services	0.01%	99.98%
532210	Consumer Electronics and Appliances Rental	0.004%	99.98%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	0.003%	99.98%
237210	Land Subdivision	0.002%	99.99%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	0.002%	99.99%
541830	Media Buying Agencies	0.002%	99.99%
113310	Logging	0.002%	99.99%
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	0.002%	99.99%
221320	Sewage Treatment Facilities	0.001%	99.99%
562111	Solid Waste Collection	0.001%	99.995%
423390	Other Construction Material Merchant Wholesalers	0.001%	99.996%
562991	Septic Tank and Related Services	0.001%	99.997%
711510	Independent Artists, Writers, and Performers	0.001%	99.998%
423220	Home Furnishing Merchant Wholesalers	0.001%	99.998%
424120	Stationery and Office Supplies Merchant Wholesalers	0.0004%	99.999%
532420	Office Machinery and Equipment Rental and Leasing	0.0004%	99.999%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
561710	Exterminating and Pest Control Services	0.0003%	99.9996%
541340	Drafting Services	0.0003%	99.9999%
488410	Motor Vehicle Towing	0.0001%	99.99998%
423420	Office Equipment Merchant Wholesalers	0.00002%	100.00000%
TOTAL			100.0%

Source: CHA analysis of King County data

b. Geographic Market for King County Funded Contracts

To determine the geographic market area, we applied the standard of identifying the firm locations that account for close to 75% of contract and sub-contract dollar payments in the FCDF.²¹⁵ Firm location was determined by zip code and aggregated into counties as the geographic unit. The Seattle MSA (King, Pierce, and Snohomish Counties) captured 81.4% of the FCDF. Therefore, we used the Seattle MSA as the geographic market.

2. Utilization of Firms in King County’s Geographic and Product Market for King County Funded Contracts

Having determined the County’s geographic market area, the next step was to determine the dollar value of its utilization of MWBE firms²¹⁶ as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. There were 87 NAICS codes after constraining the FCDF by the geographic market; the dollar value of the contracts in these codes was \$446,230,346.

Table 4-10 presents these data. We note that the contract dollar shares in Table 4-10 are equivalent to the weight of spending in each NAICS code. These

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

216. For our analysis, the term “W/MBE” or “DBE” includes firms that are certified by government agencies and minority- and woman-owned firms that are not certified. The inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts and that supports the remedial nature of these programs. *See Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 723 (7th Cir. 2007) (The “remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net.”).

data were used to calculate weighted availability²¹⁷ from unweighted availability, as discussed below.

**Table 4-10: NAICS Code Distribution of Contract Dollars in King County’s Constrained Product Market
(King County Funded)**

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
541330	Engineering Services	\$70,761,944	15.9%
237310	Highway, Street, and Bridge Construction	\$49,656,044	11.1%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$45,634,444	10.2%
236220	Commercial and Institutional Building Construction	\$44,355,024	9.9%
238910	Site Preparation Contractors	\$42,300,268	9.5%
237110	Water and Sewer Line and Related Structures Construction	\$25,493,030	5.7%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$21,671,234	4.9%
238990	All Other Specialty Trade Contractors	\$15,506,578	3.5%
237990	Other Heavy and Civil Engineering Construction	\$13,749,551	3.1%
237130	Power and Communication Line and Related Structures Construction	\$11,200,663	2.5%
541990	All Other Professional, Scientific, and Technical Services	\$8,603,304	1.9%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$8,309,330	1.9%
541310	Architectural Services	\$7,084,085	1.6%
238140	Masonry Contractors	\$6,938,710	1.6%
541620	Environmental Consulting Services	\$6,278,982	1.4%
541370	Geophysical Surveying and Mapping Services	\$5,310,495	1.2%
238160	Roofing Contractors	\$4,626,552	1.0%

217. See “Tips for Goal Setting in the Disadvantaged Business Enterprise Program” (“F. Wherever Possible, Use Weighting. Weighting can help ensure that your Step One Base Figure is as accurate as possible. While weighting is not required by the rule, it will make your goal calculation more accurate. For instance, if 90% of your contract dollars will be spent on heavy construction and 10% on trucking, you should weight your calculation of the relative availability of firms by the same percentages.”) (emphasis in the original), <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
541611	Administrative Management and General Management Consulting Services	\$4,383,476	1.0%
541420	Industrial Design Services	\$4,002,512	0.9%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	\$3,806,282	0.9%
561990	All Other Support Services	\$3,727,878	0.8%
541320	Landscape Architectural Services	\$3,633,204	0.8%
541350	Building Inspection Services	\$3,455,756	0.8%
562910	Remediation Services	\$3,352,468	0.8%
561730	Landscaping Services	\$2,784,965	0.6%
238120	Structural Steel and Precast Concrete Contractors	\$2,525,445	0.6%
541380	Testing Laboratories	\$1,986,177	0.4%
423710	Hardware Merchant Wholesalers	\$1,977,188	0.4%
488490	Other Support Activities for Road Transportation	\$1,875,506	0.4%
238310	Drywall and Insulation Contractors	\$1,857,655	0.4%
238110	Poured Concrete Foundation and Structure Contractors	\$1,849,792	0.4%
238390	Other Building Finishing Contractors	\$1,639,365	0.4%
541820	Public Relations Agencies	\$1,576,561	0.4%
238320	Painting and Wall Covering Contractors	\$1,424,518	0.3%
238190	Other Foundation, Structure, and Building Exterior Contractors	\$1,083,904	0.2%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	\$1,081,551	0.2%
541720	Research and Development in the Social Sciences and Humanities	\$875,460	0.2%
238350	Finish Carpentry Contractors	\$758,852	0.2%
541511	Custom Computer Programming Services	\$751,595	0.2%
562998	All Other Miscellaneous Waste Management Services	\$672,442	0.2%
238150	Glass and Glazing Contractors	\$619,846	0.1%
423830	Industrial Machinery and Equipment Merchant Wholesalers	\$618,366	0.1%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	\$587,729	0.1%
561110	Office Administrative Services	\$576,045	0.1%
238330	Flooring Contractors	\$569,961	0.1%
423440	Other Commercial Equipment Merchant Wholesalers	\$520,714	0.1%
541618	Other Management Consulting Services	\$425,207	0.1%
238290	Other Building Equipment Contractors	\$415,477	0.1%
924110	Administration of Air and Water Resource and Solid Waste Management Programs	\$385,722	0.1%
238130	Framing Contractors	\$376,591	0.1%
531210	Offices of Real Estate Agents and Brokers	\$362,505	0.1%
541690	Other Scientific and Technical Consulting Services	\$310,345	0.1%
237120	Oil and Gas Pipeline and Related Structures Construction	\$295,179	0.1%
561790	Other Services to Buildings and Dwellings	\$280,136	0.1%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	\$179,898	0.04%
236210	Industrial Building Construction	\$137,575	0.03%
541810	Advertising Agencies	\$135,168	0.03%
213111	Drilling Oil and Gas Wells	\$132,104	0.03%
518210	Data Processing, Hosting, and Related Services	\$125,888	0.03%
541921	Photography Studios, Portrait	\$99,445	0.02%
561410	Document Preparation Services	\$70,728	0.02%
541612	Human Resources Consulting Services	\$70,000	0.02%
531312	Nonresidential Property Managers	\$54,477	0.01%
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	\$53,296	0.01%
541410	Interior Design Services	\$45,408	0.01%
541614	Process, Physical Distribution, and Logistics Consulting Services	\$42,681	0.01%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	\$42,579	0.01%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
561720	Janitorial Services	\$22,973	0.01%
561320	Temporary Help Services	\$16,048	0.004%
561612	Security Guards and Patrol Services	\$13,336	0.003%
541512	Computer Systems Design Services	\$10,913	0.002%
541830	Media Buying Agencies	\$9,750	0.002%
113310	Logging	\$9,358	0.002%
221320	Sewage Treatment Facilities	\$7,950	0.002%
562111	Solid Waste Collection	\$7,656	0.002%
423840	Industrial Supplies Merchant Wholesalers	\$6,210	0.001%
423390	Other Construction Material Merchant Wholesalers	\$6,109	0.001%
562991	Septic Tank and Related Services	\$4,583	0.001%
711510	Independent Artists, Writers, and Performers	\$4,423	0.001%
423220	Home Furnishing Merchant Wholesalers	\$3,402	0.001%
237210	Land Subdivision	\$3,269	0.001%
424120	Stationery and Office Supplies Merchant Wholesalers	\$2,418	0.001%
532420	Office Machinery and Equipment Rental and Leasing	\$2,207	0.0005%
561710	Exterminating and Pest Control Services	\$1,749	0.0004%
813312	Environment, Conservation and Wildlife Organizations	\$1,654	0.0004%
488410	Motor Vehicle Towing	\$354	0.0001%
423420	Office Equipment Merchant Wholesalers	\$123	0.00003%
TOTAL		\$446,230,346	100.0%

Source: CHA analysis of King County data

Tables 4-11 and 4-12 present data on King County's MWBE utilization, measured in contract dollars and percentage of contract dollars.

**Table 4-11: Distribution of King County Contract Dollars by Race and Gender
(King County Funded) (total dollars)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
113310	\$0	\$0	\$0	\$0	\$0	\$0	\$9,358	\$9,358
213111	\$0	\$0	\$0	\$0	\$0	\$0	\$132,104	\$132,104
221320	\$0	\$0	\$7,950	\$0	\$0	\$7,950	\$0	\$7,950
236210	\$132,937	\$0	\$0	\$0	\$0	\$132,937	\$4,638	\$137,575
236220	\$581,839	\$141,662	\$14,073	\$156,661	\$148,448	\$1,042,683	\$43,312,342	\$44,355,024
237110	\$22,448	\$0	\$133,419	\$0	\$2,375	\$158,243	\$25,334,788	\$25,493,030
237120	\$0	\$16,850	\$0	\$0	\$278,329	\$295,179	\$0	\$295,179
237130	\$0	\$0	\$0	\$1,864,208	\$702,453	\$2,566,661	\$8,634,002	\$11,200,663
237210	\$0	\$0	\$3,269	\$0	\$0	\$3,269	\$0	\$3,269
237310	\$283,885	\$4,473,185	\$380,531	\$10,945,313	\$423,161	\$16,506,075	\$33,149,968	\$49,656,043
237990	\$43,639	\$0	\$0	\$0	\$567,786	\$611,425	\$13,138,126	\$13,749,551
238110	\$0	\$11,688	\$0	\$0	\$173,853	\$185,541	\$1,664,251	\$1,849,792
238120	\$0	\$64,701	\$41,677	\$398,582	\$1,237,171	\$1,742,131	\$783,314	\$2,525,445
238130	\$40,033	\$0	\$0	\$0	\$0	\$40,033	\$336,558	\$376,591
238140	\$0	\$0	\$15,800	\$6,654,048	\$0	\$6,669,848	\$268,862	\$6,938,709
238150	\$0	\$0	\$0	\$0	\$0	\$0	\$619,846	\$619,846
238160	\$863,816	\$668,812	\$710,925	\$0	\$1,596,392	\$3,839,946	\$786,606	\$4,626,552
238190	\$0	\$210,942	\$0	\$0	\$234,145	\$445,087	\$638,817	\$1,083,904
238210	\$7,246,548	\$610,838	\$200,385	\$911,452	\$8,154,151	\$17,123,374	\$28,511,070	\$45,634,444
238220	\$851,132	\$0	\$256,592	\$49,504	\$618,643	\$1,775,871	\$19,895,362	\$21,671,234
238290	\$0	\$0	\$0	\$0	\$45,613	\$45,613	\$369,864	\$415,477

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
238310	\$0	\$0	\$14,967	\$0	\$171,984	\$186,951	\$1,670,704	\$1,857,655
238320	\$44,369	\$70,262	\$217,544	\$0	\$106,238	\$438,413	\$986,106	\$1,424,518
238330	\$5,350	\$0	\$0	\$0	\$0	\$5,350	\$564,611	\$569,961
238350	\$0	\$36,590	\$0	\$0	\$0	\$36,590	\$722,262	\$758,852
238390	\$38,466	\$218,953	\$0	\$498,332	\$120,067	\$875,818	\$763,547	\$1,639,365
238910	\$486,893	\$214,662	\$3,358,440	\$891,320	\$2,311,969	\$7,263,283	\$35,036,985	\$42,300,269
238990	\$113	\$387,208	\$1,024,380	\$846,243	\$1,635,608	\$3,893,552	\$11,613,026	\$15,506,578
423220	\$0	\$0	\$0	\$0	\$0	\$0	\$3,402	\$3,402
423310	\$0	\$0	\$0	\$0	\$8,006	\$8,006	\$171,892	\$179,898
423320	\$4,890	\$0	\$0	\$0	\$3,113	\$8,002	\$3,798,280	\$3,806,282
423390	\$0	\$0	\$0	\$0	\$4,394	\$4,394	\$1,715	\$6,109
423420	\$0	\$0	\$123	\$0	\$0	\$123	\$0	\$123
423440	\$0	\$0	\$0	\$0	\$0	\$0	\$520,714	\$520,714
423510	\$123,684	\$0	\$558,999	\$0	\$112,222	\$794,906	\$286,645	\$1,081,551
423610	\$0	\$0	\$0	\$0	\$34,005	\$34,005	\$8,574	\$42,579
423710	\$0	\$0	\$0	\$0	\$0	\$0	\$1,977,188	\$1,977,188
423830	\$0	\$0	\$0	\$0	\$0	\$0	\$618,366	\$618,366
423840	\$0	\$0	\$0	\$0	\$0	\$0	\$6,210	\$6,210
424120	\$0	\$0	\$0	\$0	\$2,418	\$2,418	\$0	\$2,418
484220	\$1,543,874	\$1,094,981	\$2,953,197	\$34,642	\$120,475	\$5,747,169	\$2,562,161	\$8,309,330
488410	\$0	\$0	\$0	\$0	\$0	\$0	\$354	\$354
488490	\$0	\$14,722	\$47,843	\$0	\$651,242	\$713,806	\$1,161,700	\$1,875,506
518210	\$0	\$0	\$0	\$0	\$0	\$0	\$125,888	\$125,888

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
531210	\$0	\$82,156	\$0	\$0	\$39,810	\$121,966	\$240,539	\$362,505
531312	\$0	\$0	\$0	\$0	\$0	\$0	\$54,477	\$54,477
532420	\$0	\$0	\$2,207	\$0	\$0	\$2,207	\$0	\$2,207
533110	\$0	\$0	\$0	\$0	\$53,296	\$53,296	\$0	\$53,296
541310	\$13,412	\$825,776	\$1,369,772	\$0	\$299,903	\$2,508,863	\$4,575,222	\$7,084,085
541320	\$8,400	\$22,528	\$40,864	\$0	\$372,347	\$444,140	\$3,189,064	\$3,633,204
541330	\$2,166,330	\$35,100	\$2,792,489	\$11,141	\$2,425,411	\$7,430,471	\$63,331,474	\$70,761,945
541350	\$0	\$0	\$266,081	\$15,001	\$51,968	\$333,050	\$3,122,706	\$3,455,756
541370	\$1,228,695	\$0	\$329,321	\$0	\$1,201,318	\$2,759,334	\$2,551,161	\$5,310,494
541380	\$35,599	\$74,563	\$89,083	\$0	\$508,467	\$707,712	\$1,278,465	\$1,986,177
541410	\$0	\$0	\$0	\$0	\$45,408	\$45,408	\$0	\$45,408
541420	\$73,034	\$0	\$34,727	\$33,740	\$1,626,619	\$1,768,120	\$2,234,392	\$4,002,512
541511	\$0	\$0	\$272,739	\$0	\$0	\$272,739	\$478,856	\$751,595
541512	\$0	\$0	\$0	\$0	\$10,913	\$10,913	\$0	\$10,913
541611	\$2,159,904	\$11,164	\$0	\$0	\$1,701,009	\$3,872,078	\$511,398	\$4,383,476
541612	\$70,000	\$0	\$0	\$0	\$0	\$70,000	\$0	\$70,000
541614	\$0	\$0	\$0	\$0	\$0	\$0	\$42,681	\$42,681
541618	\$0	\$0	\$0	\$0	\$416,736	\$416,736	\$8,472	\$425,207
541620	\$29,453	\$39,751	\$915,543	\$113,867	\$2,598,868	\$3,697,481	\$2,581,501	\$6,278,982
541690	\$0	\$0	\$0	\$0	\$188,628	\$188,628	\$121,717	\$310,345
541720	\$0	\$0	\$0	\$0	\$4,605	\$4,605	\$870,855	\$875,460
541810	\$0	\$0	\$0	\$0	\$0	\$0	\$135,168	\$135,168
541820	\$711,205	\$0	\$0	\$0	\$845,936	\$1,557,141	\$19,420	\$1,576,561

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
541830	\$0	\$0	\$9,750	\$0	\$0	\$9,750	\$0	\$9,750
541921	\$0	\$0	\$70,470	\$0	\$0	\$70,470	\$28,975	\$99,445
541990	\$18,352	\$441,004	\$433,853	\$0	\$4,369,917	\$5,263,126	\$3,340,178	\$8,603,304
561110	\$576,045	\$0	\$0	\$0	\$0	\$576,045	\$0	\$576,045
561320	\$0	\$0	\$0	\$0	\$0	\$0	\$16,048	\$16,048
561410	\$0	\$0	\$0	\$0	\$3,608	\$3,608	\$67,120	\$70,728
561612	\$0	\$0	\$0	\$0	\$13,336	\$13,336	\$0	\$13,336
561710	\$0	\$0	\$0	\$0	\$0	\$0	\$1,749	\$1,749
561720	\$0	\$0	\$0	\$0	\$6,195	\$6,195	\$16,778	\$22,973
561730	\$783,940	\$53,470	\$539,454	\$0	\$439,910	\$1,816,775	\$968,190	\$2,784,965
561790	\$0	\$0	\$0	\$0	\$106,776	\$106,776	\$173,360	\$280,136
561990	\$762,931	\$0	\$1,975,968	\$0	\$19,971	\$2,758,870	\$969,008	\$3,727,878
562111	\$0	\$0	\$0	\$0	\$0	\$0	\$7,656	\$7,656
562910	\$0	\$211,533	\$0	\$0	\$321,782	\$533,314	\$2,819,153	\$3,352,468
562991	\$0	\$0	\$0	\$0	\$0	\$0	\$4,583	\$4,583
562998	\$84,851	\$0	\$0	\$0	\$0	\$84,851	\$587,591	\$672,442
711510	\$0	\$0	\$0	\$0	\$4,423	\$4,423	\$0	\$4,423
811310	\$0	\$0	\$0	\$0	\$0	\$0	\$587,729	\$587,729
813312	\$0	\$0	\$0	\$0	\$1,654	\$1,654	\$0	\$1,654
924110	\$0	\$0	\$0	\$0	\$381,263	\$381,263	\$4,459	\$385,722
TOTAL	\$21,036,067	\$10,033,102	\$19,082,434	\$23,424,054	\$37,524,338	\$111,099,994	\$335,130,352	\$446,230,346

Source: CHA analysis of King County data

**Table 4-12: Percentage Distribution of King County Contract Dollars by Race and Gender
(King County Funded) (share of total dollars)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
113310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
213111	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
221320	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
236210	96.6%	0.0%	0.0%	0.0%	0.0%	96.6%	3.4%	100.0%
236220	1.3%	0.3%	0.0%	0.4%	0.3%	2.4%	97.6%	100.0%
237110	0.1%	0.0%	0.5%	0.0%	0.0%	0.6%	99.4%	100.0%
237120	0.0%	5.7%	0.0%	0.0%	94.3%	100.0%	0.0%	100.0%
237130	0.0%	0.0%	0.0%	16.6%	6.3%	22.9%	77.1%	100.0%
237210	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
237310	0.6%	9.0%	0.8%	22.0%	0.9%	33.2%	66.8%	100.0%
237990	0.3%	0.0%	0.0%	0.0%	4.1%	4.4%	95.6%	100.0%
238110	0.0%	0.6%	0.0%	0.0%	9.4%	10.0%	90.0%	100.0%
238120	0.0%	2.6%	1.7%	15.8%	49.0%	69.0%	31.0%	100.0%
238130	10.6%	0.0%	0.0%	0.0%	0.0%	10.6%	89.4%	100.0%
238140	0.0%	0.0%	0.2%	95.9%	0.0%	96.1%	3.9%	100.0%
238150	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238160	18.7%	14.5%	15.4%	0.0%	34.5%	83.0%	17.0%	100.0%
238190	0.0%	19.5%	0.0%	0.0%	21.6%	41.1%	58.9%	100.0%
238210	15.9%	1.3%	0.4%	2.0%	17.9%	37.5%	62.5%	100.0%
238220	3.9%	0.0%	1.2%	0.2%	2.9%	8.2%	91.8%	100.0%
238290	0.0%	0.0%	0.0%	0.0%	11.0%	11.0%	89.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
238310	0.0%	0.0%	0.8%	0.0%	9.3%	10.1%	89.9%	100.0%
238320	3.1%	4.9%	15.3%	0.0%	7.5%	30.8%	69.2%	100.0%
238330	0.9%	0.0%	0.0%	0.0%	0.0%	0.9%	99.1%	100.0%
238350	0.0%	4.8%	0.0%	0.0%	0.0%	4.8%	95.2%	100.0%
238390	2.3%	13.4%	0.0%	30.4%	7.3%	53.4%	46.6%	100.0%
238910	1.2%	0.5%	7.9%	2.1%	5.5%	17.2%	82.8%	100.0%
238990	0.0%	2.5%	6.6%	5.5%	10.5%	25.1%	74.9%	100.0%
423220	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423310	0.0%	0.0%	0.0%	0.0%	4.5%	4.5%	95.5%	100.0%
423320	0.1%	0.0%	0.0%	0.0%	0.1%	0.2%	99.8%	100.0%
423390	0.0%	0.0%	0.0%	0.0%	71.9%	71.9%	28.1%	100.0%
423420	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
423440	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423510	11.4%	0.0%	51.7%	0.0%	10.4%	73.5%	26.5%	100.0%
423610	0.0%	0.0%	0.0%	0.0%	79.9%	79.9%	20.1%	100.0%
423710	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423830	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423840	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424120	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
484220	18.6%	13.2%	35.5%	0.4%	1.4%	69.2%	30.8%	100.0%
488410	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
488490	0.0%	0.8%	2.6%	0.0%	34.7%	38.1%	61.9%	100.0%
518210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
531210	0.0%	22.7%	0.0%	0.0%	11.0%	33.6%	66.4%	100.0%
531312	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
532420	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
533110	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541310	0.2%	11.7%	19.3%	0.0%	4.2%	35.4%	64.6%	100.0%
541320	0.2%	0.6%	1.1%	0.0%	10.2%	12.2%	87.8%	100.0%
541330	3.1%	0.0%	3.9%	0.0%	3.4%	10.5%	89.5%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
541350	0.0%	0.0%	7.7%	0.4%	1.5%	9.6%	90.4%	100.0%
541370	23.1%	0.0%	6.2%	0.0%	22.6%	52.0%	48.0%	100.0%
541380	1.8%	3.8%	4.5%	0.0%	25.6%	35.6%	64.4%	100.0%
541410	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541420	1.8%	0.0%	0.9%	0.8%	40.6%	44.2%	55.8%	100.0%
541511	0.0%	0.0%	36.3%	0.0%	0.0%	36.3%	63.7%	100.0%
541512	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541611	49.3%	0.3%	0.0%	0.0%	38.8%	88.3%	11.7%	100.0%
541612	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541614	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541618	0.0%	0.0%	0.0%	0.0%	98.0%	98.0%	2.0%	100.0%
541620	0.5%	0.6%	14.6%	1.8%	41.4%	58.9%	41.1%	100.0%
541690	0.0%	0.0%	0.0%	0.0%	60.8%	60.8%	39.2%	100.0%
541720	0.0%	0.0%	0.0%	0.0%	0.5%	0.5%	99.5%	100.0%
541810	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541820	45.1%	0.0%	0.0%	0.0%	53.7%	98.8%	1.2%	100.0%
541830	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541921	0.0%	0.0%	70.9%	0.0%	0.0%	70.9%	29.1%	100.0%
541990	0.2%	5.1%	5.0%	0.0%	50.8%	61.2%	38.8%	100.0%
561110	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
561320	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561410	0.0%	0.0%	0.0%	0.0%	5.1%	5.1%	94.9%	100.0%
561612	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
561710	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561720	0.0%	0.0%	0.0%	0.0%	27.0%	27.0%	73.0%	100.0%
561730	28.1%	1.9%	19.4%	0.0%	15.8%	65.2%	34.8%	100.0%
561790	0.0%	0.0%	0.0%	0.0%	38.1%	38.1%	61.9%	100.0%
561990	20.5%	0.0%	53.0%	0.0%	0.5%	74.0%	26.0%	100.0%
562111	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562910	0.0%	6.3%	0.0%	0.0%	9.6%	15.9%	84.1%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
562991	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562998	12.6%	0.0%	0.0%	0.0%	0.0%	12.6%	87.4%	100.0%
711510	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
811310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
813312	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
924110	0.0%	0.0%	0.0%	0.0%	98.8%	98.8%	1.2%	100.0%
TOTAL	4.7%	2.2%	4.3%	5.2%	8.4%	24.9%	75.1%	100.0%

Source: CHA analysis of King County data

3. Availability of M/WBEs in its Geographic and Product Market for King County Funded Contracts

Estimates of the availability of M/WBEs in King County’s geographic and product market are a critical component of King County’s compliance with its constitutional obligations under strict scrutiny (and under 49 C.F.R. Part 26 for the DBE program). The availability estimates must reflect the number of “ready, willing and able” firms that can perform the specific types of work required for King County’s prime contracts and associated subcontracts.²¹⁸ These availability estimates are compared to the utilization percentage of dollars received by MWBEs to determine whether minority- and woman-owned firms achieve parity. Availability estimates are also crucial for King County to set narrowly tailored aspirational MWBE contract goals for its W/MBE program as well as narrowly tailored triennial and DBE contract goals.

We applied the “custom census” approach, with refinements, to estimate availability. The courts and the National Model Disparity Study Guidelines²¹⁹ have recognized this methodology as superior to the other methods for at least four reasons:

- First, it provides an internally consistent and rigorous “apples to apples” comparison between firms in the availability numerator and those in the denominator. Other approaches often have different definitions for the firms in the numerator (*e.g.*, certified or firms that respond to a survey) and the denominator (*e.g.*, registered vendors or the Census Bureau’s County Business Patterns data).

218. 49 C.F.R. §25.45(c).

219. *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.

- 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 King County’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-MWBE firms because of the very discrimination sought to be remedied by race-conscious contracting programs. Racial and gender differences in these “capacity” factors are the outcomes of discrimination and it is therefore inappropriate as a matter of economics and statistics to use them as “control” variables in a disparity study.²²⁰
- Fourth, it has been upheld by every court that has reviewed it, including most recently in the successful defense of the Illinois Tollway’s DBE program, for which we served as testifying experts.²²¹

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

First, we eliminated any duplicate entries in the geographically constrained FCDF. Some firms received multiple contracts for work performed in the same NAICS codes. Without this elimination of duplicate listings, the availability database would be artificially large. This list of unique firms comprised the first component of the Study’s availability determination.

To develop the Master M/W/DBE Directory, we utilized the State of Washington’s Office of Minority Women Business Enterprise certification list of DBEs

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

221. *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).

and MWBEs and the King County Contract Data File. We limited the firms we used in our analysis to those operating within King County’s geographic and product market.

We next developed a custom database from Hoovers, a Dun & Bradstreet company, for minority- and woman-owned firms and non-MWBE firms. Hoovers maintains a comprehensive, extensive and regularly updated listing of all firms conducting business. The database includes a vast amount of information on each firm, including location and detailed industry codes, and is the broadest publicly available data source for firm information. We purchased the information from Hoovers for the firms in the NAICS codes located in King County’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.²²² 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 King County’s contracts.

Tables 4-13 through 4-15 present data on:

- The unweighted availability percentages by race and gender and by NAICS codes for firms in the product market for County funded contracts;
- The weights used to adjust the unweighted numbers;²²³ and
- The final estimates of the weighted averages of the individual six-digit level NAICS availability estimates in the County’s market area.

We “weighted” the availability data for two reasons. First, weighting also reflects the importance of the availability of a demographic group in a particu-

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

223. These weights are equivalent to the share of contract dollars presented in the previous section.

lar NAICS code, that is, how important that NAICS code is to the County's King County funded contracting patterns.²²⁴ For example, in a hypothetical NAICS Code 123456, the total available firms are 100 and 60 of these firms are MWBE firms; hence, MWBE availability would be 60%. However, if the County spends only one percent of its King County 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 County spent 25% of its King County contract dollars in NAICS Code 123456, then the same availability would carry a greater weight. For an extended explanation of how unweighted and weighted availability are calculated, please see Appendix E.

Second, this comports with national best practices, case law and USDOT Guidance. The weighted availability represents the share of total possible contractors for each demographic group, weighted by the distribution of contract dollars across the NAICS codes in which the County spends its locally funded contract dollars.

To calculate the weighted availability for each NAICS code, we first determined the unweighted availability for each demographic group in each NAICS code, presented in Table 4-13. In the previous example, the unweighted availability for MWBE firms in NAICS Code 123456 is 60%. We then multiplied the unweighted availability by the share of the County's spending in that NAICS code, presented in Table 4-14. This share is the *weight*. Using the previous example, where the County's spending in NAICS Code 123456 was one percent, the component of MWBE weighted availability for NAICS Code 123456 would be 0.006: 60% multiplied by one percent. We say "the component of MWBE firm weighted availability for NAICS Code 123456" because this process is repeated for each NAICS code and then the components are summed to generate an overall weighted availability estimate. The results of this calculation are presented in Table 4-15.

**Table 4-13: Unweighted MWBE Availability for King County Contracts
(King County Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
113310	0.8%	0.0%	0.0%	0.8%	2.5%	4.1%	95.9%	100.0%
213111	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
221320	0.0%	0.0%	4.3%	0.0%	0.0%	4.3%	95.7%	100.0%
236210	6.7%	1.0%	8.7%	4.8%	7.7%	28.8%	71.2%	100.0%

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

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
236220	2.9%	2.7%	4.9%	2.9%	5.2%	18.7%	81.3%	100.0%
237110	3.8%	3.3%	6.0%	6.6%	9.6%	29.2%	70.8%	100.0%
237120	4.4%	2.2%	11.1%	6.7%	11.1%	35.6%	64.4%	100.0%
237130	3.6%	8.4%	9.6%	10.8%	7.2%	39.8%	60.2%	100.0%
237210	0.1%	0.0%	0.2%	0.1%	0.6%	1.0%	99.0%	100.0%
237310	4.2%	5.6%	4.5%	5.3%	8.6%	28.2%	71.8%	100.0%
237990	5.3%	3.8%	5.6%	6.0%	10.5%	31.2%	68.8%	100.0%
238110	0.9%	1.8%	1.7%	1.2%	3.4%	8.9%	91.1%	100.0%
238120	4.1%	11.5%	6.6%	4.1%	9.0%	35.2%	64.8%	100.0%
238130	0.4%	1.0%	0.3%	0.2%	1.2%	3.1%	96.9%	100.0%
238140	0.7%	1.4%	0.5%	0.7%	2.8%	6.1%	93.9%	100.0%
238150	0.8%	0.8%	0.8%	0.0%	7.8%	10.2%	89.8%	100.0%
238160	0.2%	0.9%	0.2%	0.0%	2.6%	3.9%	96.1%	100.0%
238190	7.1%	8.8%	7.1%	2.7%	6.2%	31.9%	68.1%	100.0%
238210	1.4%	0.8%	1.5%	0.5%	3.3%	7.4%	92.6%	100.0%
238220	0.6%	0.4%	0.6%	0.4%	2.4%	4.3%	95.7%	100.0%
238290	3.3%	3.3%	0.0%	1.7%	15.0%	23.3%	76.7%	100.0%
238310	0.7%	3.0%	0.7%	0.0%	2.4%	6.8%	93.2%	100.0%
238320	0.5%	0.9%	0.4%	0.1%	2.8%	4.7%	95.3%	100.0%
238330	2.3%	1.6%	1.6%	0.3%	5.5%	11.4%	88.6%	100.0%
238350	1.7%	4.5%	2.2%	0.6%	2.8%	11.7%	88.3%	100.0%
238390	2.5%	3.8%	1.9%	1.9%	5.3%	15.4%	84.6%	100.0%
238910	2.5%	2.6%	3.1%	3.8%	8.2%	20.2%	79.8%	100.0%
238990	0.7%	0.8%	0.7%	0.5%	2.0%	4.8%	95.2%	100.0%
423220	0.0%	0.0%	0.0%	0.0%	10.9%	10.9%	89.1%	100.0%
423310	0.4%	0.2%	0.2%	0.0%	3.3%	4.1%	95.9%	100.0%
423320	0.5%	1.0%	1.0%	1.9%	3.3%	7.6%	92.4%	100.0%
423390	7.6%	1.5%	7.6%	1.5%	13.6%	31.8%	68.2%	100.0%
423420	1.0%	1.0%	2.0%	0.0%	5.9%	9.8%	90.2%	100.0%
423440	0.3%	0.0%	0.0%	0.0%	4.1%	4.3%	95.7%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
423510	0.4%	0.4%	1.5%	0.0%	6.8%	9.1%	90.9%	100.0%
423610	0.8%	0.8%	0.8%	1.7%	5.6%	9.7%	90.3%	100.0%
423710	0.0%	0.8%	0.0%	0.0%	5.3%	6.1%	93.9%	100.0%
423830	0.6%	0.5%	0.3%	0.2%	3.4%	4.9%	95.1%	100.0%
423840	1.2%	0.0%	0.9%	0.0%	4.7%	6.8%	93.2%	100.0%
424120	0.0%	0.0%	1.0%	0.0%	16.7%	17.7%	82.3%	100.0%
484220	6.5%	3.6%	3.8%	7.1%	13.4%	34.4%	65.6%	100.0%
488410	0.0%	0.0%	0.2%	0.0%	2.0%	2.2%	97.8%	100.0%
488490	7.9%	1.6%	3.2%	1.6%	11.1%	25.4%	74.6%	100.0%
518210	1.2%	0.6%	1.7%	0.2%	6.4%	10.0%	90.0%	100.0%
531210	0.1%	0.1%	0.2%	0.0%	2.1%	2.5%	97.5%	100.0%
531312	0.0%	0.0%	0.0%	0.0%	0.4%	0.5%	99.5%	100.0%
532420	10.0%	0.0%	20.0%	0.0%	0.0%	30.0%	70.0%	100.0%
533110	4.9%	0.0%	4.9%	0.0%	6.6%	16.4%	83.6%	100.0%
541310	0.7%	0.8%	1.5%	0.2%	8.3%	11.5%	88.5%	100.0%
541320	0.3%	0.2%	0.5%	0.0%	4.4%	5.4%	94.6%	100.0%
541330	1.1%	0.8%	2.8%	0.5%	5.4%	10.6%	89.4%	100.0%
541350	0.3%	0.6%	1.9%	0.3%	2.8%	5.9%	94.1%	100.0%
541370	1.9%	4.3%	1.9%	0.8%	10.1%	19.1%	80.9%	100.0%
541380	0.1%	0.5%	1.4%	0.0%	4.6%	6.6%	93.4%	100.0%
541410	0.2%	0.4%	1.1%	0.2%	27.2%	29.1%	70.9%	100.0%
541420	2.3%	3.4%	5.7%	2.3%	17.0%	30.7%	69.3%	100.0%
541511	0.8%	0.3%	1.0%	0.1%	3.7%	5.9%	94.1%	100.0%
541512	1.3%	0.5%	2.1%	0.3%	4.8%	9.0%	91.0%	100.0%
541611	3.4%	1.1%	2.0%	0.4%	10.1%	16.9%	83.1%	100.0%
541612	7.7%	1.7%	3.1%	1.0%	25.6%	39.1%	60.9%	100.0%
541614	3.7%	1.3%	2.8%	0.2%	21.8%	29.8%	70.2%	100.0%
541618	0.3%	0.1%	0.3%	0.1%	2.7%	3.5%	96.5%	100.0%
541620	2.7%	2.0%	3.3%	1.4%	20.4%	29.7%	70.3%	100.0%
541690	1.5%	1.7%	2.7%	0.4%	13.1%	19.4%	80.6%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
541720	1.1%	1.1%	1.1%	0.0%	9.3%	12.5%	87.5%	100.0%
541810	0.4%	0.8%	0.4%	0.8%	9.0%	11.5%	88.5%	100.0%
541820	3.8%	1.6%	1.9%	0.8%	19.4%	27.4%	72.6%	100.0%
541830	0.0%	0.0%	11.8%	0.0%	23.5%	35.3%	64.7%	100.0%
541921	0.2%	0.0%	0.3%	0.0%	5.0%	5.6%	94.4%	100.0%
541990	0.7%	0.5%	1.6%	0.1%	10.0%	13.0%	87.0%	100.0%
561110	0.4%	0.0%	0.3%	0.0%	1.7%	2.5%	97.5%	100.0%
561320	2.4%	1.8%	4.2%	1.1%	9.0%	18.5%	81.5%	100.0%
561410	5.7%	0.7%	0.7%	0.0%	47.1%	54.3%	45.7%	100.0%
561612	4.1%	1.1%	2.2%	0.4%	2.2%	10.1%	89.9%	100.0%
561710	0.6%	0.3%	0.3%	0.0%	6.4%	7.7%	92.3%	100.0%
561720	2.6%	0.9%	1.3%	0.2%	6.1%	11.0%	89.0%	100.0%
561730	0.9%	1.1%	1.0%	0.7%	5.4%	9.1%	90.9%	100.0%
561790	0.9%	0.4%	0.3%	0.2%	4.5%	6.2%	93.8%	100.0%
561990	0.8%	0.3%	0.8%	0.2%	4.5%	6.7%	93.3%	100.0%
562111	16.7%	6.7%	10.0%	3.3%	3.3%	40.0%	60.0%	100.0%
562910	5.6%	5.6%	7.2%	5.6%	12.0%	36.0%	64.0%	100.0%
562991	0.5%	0.0%	1.0%	0.0%	3.9%	5.4%	94.6%	100.0%
562998	4.3%	0.0%	13.0%	0.0%	21.7%	39.1%	60.9%	100.0%
711510	0.8%	0.1%	0.5%	0.4%	12.0%	13.8%	86.2%	100.0%
811310	0.5%	0.6%	0.3%	0.3%	3.3%	5.0%	95.0%	100.0%
813312	0.0%	0.5%	0.0%	0.5%	1.0%	1.9%	98.1%	100.0%
924110	1.5%	0.0%	0.0%	0.0%	3.0%	4.5%	95.5%	100.0%
TOTAL	0.9%	0.6%	0.9%	0.4%	4.4%	7.1%	92.9%	100.0%

Source: CHA analysis of King County data; Hoovers; CHA Master Directory

These unweighted estimates should be used by the County as the starting point for setting narrowly tailored aspirational MWBE contract goals on County funded contracts.

**Table 4-14: Distribution of King County's Spending by NAICS Code
(King County Funded) (the Weights)**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
113310	Logging	0.002%
213111	Drilling Oil and Gas Wells	0.03%
221320	Sewage Treatment Facilities	0.002%
236210	Industrial Building Construction	0.03%
236220	Commercial and Institutional Building Construction	9.9%
237110	Water and Sewer Line and Related Structures Construction	5.7%
237120	Oil and Gas Pipeline and Related Structures Construction	0.1%
237130	Power and Communication Line and Related Structures Construction	2.5%
237210	Land Subdivision	0.001%
237310	Highway, Street, and Bridge Construction	11.1%
237990	Other Heavy and Civil Engineering Construction	3.1%
238110	Poured Concrete Foundation and Structure Contractors	0.4%
238120	Structural Steel and Precast Concrete Contractors	0.6%
238130	Framing Contractors	0.1%
238140	Masonry Contractors	1.6%
238150	Glass and Glazing Contractors	0.1%
238160	Roofing Contractors	1.0%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.2%
238210	Electrical Contractors and Other Wiring Installation Contractors	10.2%
238220	Plumbing, Heating, and Air-Conditioning Contractors	4.9%
238290	Other Building Equipment Contractors	0.1%
238310	Drywall and Insulation Contractors	0.4%
238320	Painting and Wall Covering Contractors	0.3%
238330	Flooring Contractors	0.1%
238350	Finish Carpentry Contractors	0.2%
238390	Other Building Finishing Contractors	0.4%
238910	Site Preparation Contractors	9.5%
238990	All Other Specialty Trade Contractors	3.5%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
423220	Home Furnishing Merchant Wholesalers	0.001%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	0.04%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.9%
423390	Other Construction Material Merchant Wholesalers	0.001%
423420	Office Equipment Merchant Wholesalers	0.00003%
423440	Other Commercial Equipment Merchant Wholesalers	0.1%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.2%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.01%
423710	Hardware Merchant Wholesalers	0.4%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.1%
423840	Industrial Supplies Merchant Wholesalers	0.001%
424120	Stationery and Office Supplies Merchant Wholesalers	0.001%
484220	Specialized Freight (except Used Goods) Trucking, Local	1.9%
488410	Motor Vehicle Towing	0.0001%
488490	Other Support Activities for Road Transportation	0.4%
518210	Data Processing, Hosting, and Related Services	0.03%
531210	Offices of Real Estate Agents and Brokers	0.1%
531312	Nonresidential Property Managers	0.01%
532420	Office Machinery and Equipment Rental and Leasing	0.0005%
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	0.01%
541310	Architectural Services	1.6%
541320	Landscape Architectural Services	0.8%
541330	Engineering Services	15.9%
541350	Building Inspection Services	0.8%
541370	Geophysical Surveying and Mapping Services	1.2%
541380	Testing Laboratories	0.4%
541410	Interior Design Services	0.01%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
541420	Industrial Design Services	0.9%
541511	Custom Computer Programming Services	0.2%
541512	Computer Systems Design Services	0.002%
541611	Administrative Management and General Management Consulting Services	1.0%
541612	Human Resources Consulting Services	0.02%
541614	Process, Physical Distribution, and Logistics Consulting Services	0.01%
541618	Other Management Consulting Services	0.1%
541620	Environmental Consulting Services	1.4%
541690	Other Scientific and Technical Consulting Services	0.1%
541720	Research and Development in the Social Sciences and Humanities	0.2%
541810	Advertising Agencies	0.03%
541820	Public Relations Agencies	0.4%
541830	Media Buying Agencies	0.002%
541921	Photography Studios, Portrait	0.02%
541990	All Other Professional, Scientific, and Technical Services	1.9%
561110	Office Administrative Services	0.1%
561320	Temporary Help Services	0.004%
561410	Document Preparation Services	0.02%
561612	Security Guards and Patrol Services	0.003%
561710	Exterminating and Pest Control Services	0.0004%
561720	Janitorial Services	0.01%
561730	Landscaping Services	0.6%
561790	Other Services to Buildings and Dwellings	0.1%
561990	All Other Support Services	0.8%
562111	Solid Waste Collection	0.002%
562910	Remediation Services	0.8%
562991	Septic Tank and Related Services	0.001%
562998	All Other Miscellaneous Waste Management Services	0.2%
711510	Independent Artists, Writers, and Performers	0.001%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	0.1%
813312	Environment, Conservation and Wildlife Organizations	0.0004%
924110	Administration of Air and Water Resource and Solid Waste Management Programs	0.1%
TOTAL		100.0%

Source: CHA analysis of King County data

Table 4-15 presents the weighted availability results for each of the racial and gender categories. The aggregated availability of MWBE firms, weighted by the County's spending in its geographic and industry markets, is 17.2%.

**Table 4-15: Aggregated Weighted MWBE Availability
(King County Funded)**

Black	Hispanic	Asian	Native American	White Women	MWBE	Non-MWBE	Total
2.3%	2.4%	3.2%	2.6%	6.7%	17.2%	82.8%	100.0%

Source: CHA analysis of King County data; Hoovers; CHA Master Directory

4. Analysis of the Concentration of Contract Dollars among Firms on King County Funded Contracts

In addition to examining the level of MWBE and non-MWBE 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 MWBEs and non-MWBEs their largest shares of earnings. This analysis is important for two reasons. First, to the extent the NAICS codes where the agency spends the largest shares of its funds align with the codes that provide the largest shares of non-MWBE firm earnings AND these NAICS codes are different from the codes that provide large shares of MWBE firms earnings, is indicative that MWBE firms do not enjoy the same position in the agency's marketplace as non-MWBE firms. Second, if an asymmetry exists between agency spending and MWBE firms' earnings, then the high utilization of MWBEs 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.

Three findings stand out. 1) When comparing the top three NAICS codes for the County – as measured by the share of all County spending (the Weight) and the top three NAICS codes for each MWBE, the share of King County funded spending going to the top three codes for Blacks, Hispanics, Asians, and Native Americans exceeded the top three codes for the County. 2) The leading codes for the County were largely different than the top three codes for MWBEs. The minimal overlap means some MWBEs are in a state of precarity whereby a small reduction in the County’s spending would have a disproportionate impact on contract dollars flowing to those MWBEs. 3) In each of the three NAICS codes that provide the most contract dollars to each MWBE group, the code’s share of that group’s overall contract dollars exceeded that code’s share of overall contract dollars received by non-MWBEs. These three findings indicate that the pattern of spending received by MWBEs is markedly different from the pattern of spending by the County.

Table 4-16 presents data on the share of the County’s King County funded contract dollars received by the top three NAICS codes for each demographic group. These shares were derived from the data presented in Tables 4-11 and 4-12. The data in this table represents evidence for the first finding. The three NAICS codes where the County spent most of its contract dollars captured 37.2% of all King County funded spending. While this figure is similar to the share for White women (40.3%), it is less than the share for Blacks (55.0%), Hispanics (63.7%), Asians (47.7%), and Native Americans (83.1%).

**Table 4-16: Comparison of the Share of King County Spending Captured by the Top Three NAICS Codes for Each Demographic Group
(King County Funded)**

Demographic Group	Share of All King County Spending in the Top Three NAICS Codes for Each Group
All	37.2%
Black	55.0%
Hispanic	63.7%
Asian	47.7%
Native American	83.1%
White Woman	40.3%
Non-DBE	42.3%

Source: CHA analysis of King County data

With respect to the second finding, Table 4-17 provides more detail on the data presented in Table 4-16. Table 4-17 lists the top three codes for each

group and their corresponding share of the group's total spending. None of the top three codes were present in all of the leading codes for MWBEs. Engineering Services (NAICS code 541330) was a leading code for Blacks and Asians. Highway, Street, and Bridge Construction (NAICS code 237310) was a leading code for Hispanics and Native Americans. Electrical Contractors and Other Wiring Installation Contractors (NAICS code 238210) was the leading code for Blacks and White Women. When there were similar codes for MWBEs and the County, in two of the instances— Highway, Street, and Bridge Construction and Electrical Contractors and Other Wiring Installation Contractors— the County's share of spending was far less than the share of spending received by the MWBEs in question.

The County spent 11.1% of its County funded dollars in Highway, Street, and Bridge Construction; for Hispanics, spending in this code represented 44.6% of all spending received by Hispanics; for Native Americans, the corresponding figure was 46.7%.

The County spent 10.2% of its County funded dollars in Electrical Contractors and Other Wiring Installation Contractors; for Blacks, spending in this code represented 34.4% of all spending received by Blacks; for White Women, the corresponding figure was 21.7%.

Only in Engineering Services were the results reversed. The County spent 15.9% of its County funded dollars in Engineering Services; for Blacks, spending in this code represented 10.3% of all spending received by Blacks; for Asians, the corresponding figure was 14.6%.

**Table 4-17: Top Three King County Spending NAICS Codes for Each Demographic Group
(King County Funded Contracts)**

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
All			
541330	Engineering Services	15.9%	37.2%
237310	Highway, Street, and Bridge Construction	11.1%	
238210	Electrical Contractors and Other Wiring Installation Contractors	10.2%	
Black			
238210	Electrical Contractors and Other Wiring Installation Contractors	34.4%	55.0%
541330	Engineering Services	10.3%	
541611	Administrative Management and General Management Consulting Services	10.3%	

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
Hispanic			
237310	Highway, Street, and Bridge Construction	44.6%	63.7%
484220	Specialized Freight (except Used Goods) Trucking, Local	10.9%	
541310	Architectural Services	8.2%	
Asian			
238910	Site Preparation Contractors	17.6%	47.7%
484220	Specialized Freight (except Used Goods) Trucking, Local	15.5%	
541330	Engineering Services	14.6%	
Native American			
237310	Highway, Street, and Bridge Construction	46.7%	83.1%
238140	Masonry Contractors	28.4%	
237130	Power and Communication Line and Related Structures Construction	8.0%	
White Woman			
238210	Electrical Contractors and Other Wiring Installation Contractors	21.7%	40.3%
541990	All Other Professional, Scientific, and Technical Services	11.6%	
541620	Environmental Consulting Services	6.9%	
Non-DBE Firm			
541330	Engineering Services	18.9%	42.3%
236220	Commercial and Institutional Building Construction	12.9%	
238910	Site Preparation Contractors	10.5%	

Source: CHA analysis of King County data

Tables 4-18 through 4-22 present data on the third finding: how the County's spending varied across groups. These results illustrate the different levels of concentration of contract dollars among MWBEs compared to non-MWBEs. For each demographic group, we provide the three NAICS codes where the group received the largest share of the County's spending (first presented in Table 4-16). Then, we present the weight for each code derived from the County's overall spending. Finally, we present the share of all group contract dollars and compare that share to the corresponding share received by non-MWBEs.

Table 4-18 presents the three NAICS codes where Black firms received the largest share of their contract dollars. While these codes captured 55.0% of all Black contract dollars, the corresponding figure for non-MWBEs was 27.6%. With respect to the second finding of precarity, NAICS code 541611 is not among the County's leading three NAICS codes. If the County eliminated the 1.0% of spending in that code, the elimination would reduce Black contract dollars by 10.3%.

**Table 4-18: Three NAICS Codes where Black Firms Received the Most Spending
(King County Funded)**

NAICS Code	NAICS Code Label	Weight	Share of Total Black Dollars	Share of Total Non-DBE Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	10.2%	34.4%	8.5%
541330	Engineering Services	15.9%	10.3%	18.9%
541611	Administrative Management and General Management Consulting Services	1.0%	10.3%	0.2%
Total 3-code Share of Total Group Dollars			55.0%	27.6%

Source: CHA analysis of King County data

Table 4-19 presents the three NAICS codes where Hispanic firms received the largest share of their contract dollars. These codes comprised 63.7% of all Hispanic contract dollars; the corresponding figure for non-MWBEs was 12.0%. With respect to the second finding of precarity, NAICS codes 484220 and 541310 are not among the County's leading three NAICS codes. If the County eliminated the 2.5% of spending in those codes, the elimination would reduce Hispanic contract dollars by 19.1%.

**Table 4-19: Three NAICS Codes where Hispanic Firms Received the Most Spending
(King County Funded)**

NAICS Code	NAICS Code Label	Weight	Share of Total Hispanic Dollars	Share of Total Non-DBE Dollars
237310	Highway, Street, and Bridge Construction	11.1%	44.6%	9.9%
484220	Specialized Freight (except Used Goods) Trucking, Local	1.9%	10.9%	0.8%
541310	Architectural Services	1.6%	8.2%	1.4%
Total 3-code Share of Total Group Dollars			63.7%	12.0%

Source: CHA analysis of King County data

Table 4-20 presents the three NAICS codes where Asian-owned businesses received the largest share of their contract dollars. These codes comprised 47.7% of all Asian contract dollars; the corresponding figure for non-MWBEs was 30.1%. With respect to the second finding of precarity, NAICS code 484550 is not among the County's leading three NAICS codes. If the County eliminated the 1.9% of spending in that code, the elimination would reduce Asian contract dollars by 15.5%.

**Table 4-20: Three NAICS Codes where Asian Firms Received the Most Spending
(King County Funded)**

NAICS Code	NAICS Code Label	Weight	Share of Total Asian Dollars	Share of Total Non-DBE Dollars
238910	Site Preparation Contractors	9.5%	17.6%	10.5%
484220	Specialized Freight (except Used Goods) Trucking, Local	1.9%	15.5%	0.8%
541330	Engineering Services	15.9%	14.6%	18.9%
Total 3-code Share of Total Group Dollars			47.7%	30.1%

Source: CHA analysis of King County data

Table 4-21 presents the three NAICS codes where Native American firms received the largest share of their contract dollars. While these codes captured 83.1% of all Native American contract dollars, the corresponding figure for non-MWBE firms was 12.5%. With respect to the second finding of precarity, NAICS codes 238140 and 237130 are not among the County's leading three NAICS codes. If the County eliminated the 4.1% of spending in those codes, the elimination would reduce Native American contract dollars by 36.4%.

**Table 4-21: Three NAICS Codes where Native American Firms Received the Most Spending
(King County Funded)**

NAICS Code	NAICS Code Label	Weight	Share of Total Native American Dollars	Share of Total Non-DBE Dollars
237310	Highway, Street, and Bridge Construction	11.1%	46.7%	9.9%
238140	Masonry Contractors	1.6%	28.4%	0.1%
237130	Power and Communication Line and Related Structures Construction	2.5%	8.0%	2.6%
Total 3-code Share of Total Group Dollars			83.1%	12.5%

Source: CHA analysis of King County data

Table 4-22 presents the three NAICS codes where White woman firms received the largest share of their contract dollars. These codes comprise 40.3% of all White woman contract dollars; the corresponding figure for non-MWBE firms was 10.3%. With respect to the second finding of precarity, NAICS codes 541990 and 541620 are not among the County’s leading three NAICS codes. If the County eliminated the 3.3% of spending in those codes, the elimination would reduce White women contract dollars by 18.5%.

Table 4-22: Three NAICS Codes where White Woman Firms Received the Most Spending (King County Funded)

NAICS Code	NAICS Code Label	Weight	Share of Total White Woman Dollars	Share of Total Non-DBE Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	10.2%	21.7%	8.5%
541990	All Other Professional, Scientific, and Technical Services	1.9%	11.6%	1.0%
541620	Environmental Consulting Services	1.4%	6.9%	0.8%
Total 3-code Share of Total Group Dollars			40.3%	10.3%

Source: CHA analysis of King County data

The data presented in Tables 4-16 through 4-22 support the inference that regardless of any statistical disparities between contract utilization and weighted availability, the experiences of MWBE firms with respect to participation in King County procurements were significantly different than the experiences of non-MWBE firms.

5. Disparity Analysis of King County Funded 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 mea-

sure 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.²²⁵ 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.²²⁶ 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 225 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 4-23 presents the disparity ratios for each demographic group. None of the disparity ratios are substantively significant. The disparity ratios all groups except Blacks are statistically significant at the 0.001 level.

**Table 4-23: Disparity Ratios by Demographic Group
(King County Funded)**

	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE
Disparity Ratio	203.3%	94.2%***	133.0%***	205.0%***	125.9%***	145.1%***	90.7%***

Source: CHA analysis of King County data

**** Statistically significant at the 0.001 level*

225. 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.").

226. 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.

In the face of the high MWBE disparity ratios, CHA further explored the data to see if any anomalies might shed light on these results. We focused on five NAICS codes with significant County spend and examined three data points: the NAICS code share of total MWBE contract dollars; the MWBE share of total NAICS code contract dollars; and the unweighted MWBE availability in the NAICS code. We examined whether there were any codes where a MWBE received a large share of its total dollars and the MWBE received a large share of King County funded contract dollars (utilization). Having identified any such codes, we then compared the utilization to the unweighted MWBE availability. If there were codes where the County spent significant funds and a MWBE received a large share of all these funds, that might explain the high disparity ratio where the utilization greatly exceeded the unweighted availability. This would result from any high unweighted ratio of utilization to availability where the overall weight was large because of a disproportionate impact on the overall weighted availability.

Table 4-24 presents the five NAICS codes (out of a total of 87 NAICS codes) where the County spent 56.6% of all locally funded contract dollars.

**Table 4-24: Targeted NAICS codes
(King County Funded)**

NAICS	NAICS Code Description	Pct Total Contract Dollars
541330	Engineering Services	15.9%
237310	Highway, Street, and Bridge Construction	11.1%
238210	Electrical Contractors and Other Wiring Installation Contractors	10.2%
236220	Commercial and Institutional Building Construction	9.9%
238910	Site Preparation Contractors	9.5%

Source: CHA analysis of King County data

Tables 4-25 through 4-29 present the results of our exploration.

In NAICS code 541330 (Table 4-25), Blacks and Asians received a large share of their total contract dollars from this code (10.3% and 14.6%, respectively). The ratio of contract dollars utilization over unweighted availability was high (276.8% and 138.8%, respectively).

**Table 4-25: Exploring the Disparity Ratios
(NAICS Code: 541330; Weight: 15.9%) (King County Funded)**

	Black	Hispanic	Asian	Native American	White Woman
NAICS Code Share of Total MWBE Contract Dollars	10.3%	0.3%	14.6%	0.0%	6.5%
MWBE Share of Total NAICS Code Contract Dollars	3.1%	0.0%	3.9%	0.0%	3.4%
Unweighted MWBE Availability	1.1%	0.8%	2.8%	0.5%	5.4%
Ratio of DBE Share of Contract Dollars to MWBE Availability	276.8%	6.0%	138.8%	3.3%	63.8%

Source: CHA analysis of King County data

In NAICS code 237310 (Table 4-26), Hispanics and Native Americans received a large share of their total contract dollars from this code (44.6% and 46.7%, respectively). The ratio of contract dollars utilization over unweighted availability was high (162.2%; 418.8%).

**Table 4-26: Exploring the Disparity Ratios
(NAICS Code: 237310; Weight: 11.1%) (King County Funded)**

	Black	Hispanic	Asian	Native American	White Woman
NAICS Code Share of Total MWBE Contract Dollars	1.3%	44.6%	2.0%	46.7%	1.1%
MWBE Share of Total NAICS Code Contract Dollars	0.6%	9.0%	0.8%	22.0%	0.9%
Unweighted MWBE Availability	4.2%	5.6%	4.5%	5.3%	8.6%
Ratio of DBE Share of Contract Dollars to MWBE Availability	13.5%	162.2%	16.9%	418.8%	9.9%

Source: CHA analysis of King County data

In NAICS code 238210 (Table 4-27), Blacks and White women received a large share of their total contract dollars from this code (34.4% and 21.7%, respectively). The ratio of contract dollars utilization over unweighted availability was high (1157.4%; 549.2%).

Table 4-27: Exploring the Disparity Ratios
(NAICS Code: 238210; Weight: 10.2%) (King County Funded)

	Black	Hispanic	Asian	Native American	White Woman
NAICS Code Share of Total MWBE Contract Dollars	34.4%	6.1%	1.1%	3.9%	21.7%
MWBE Share of Total NAICS Code Contract Dollars	15.9%	1.3%	0.4%	2.0%	17.9%
Unweighted MWBE Availability	1.4%	0.8%	1.5%	0.5%	3.3%
Ratio of DBE Share of Contract Dollars to MWBE Availability	1157.4%	170.7%	29.5%	424.6%	549.2%

Source: CHA analysis of King County data

In NAICS code 236220 (Table 4-28), we did not find any instances where this code provided high shares of total contract dollars to any MWBE.

Table 4-28: Exploring the Disparity Ratios
(NAICS Code: 236220; Weight: 9.9%) (King County Funded)

	Black	Hispanic	Asian	Native American	White Woman
NAICS Code Share of Total MWBE Contract Dollars	2.8%	1.4%	0.1%	0.7%	0.4%
MWBE Share of Total NAICS Code Contract Dollars	1.3%	0.3%	0.0%	0.4%	0.3%
Unweighted MWBE Availability	2.9%	2.7%	4.9%	2.9%	5.2%
Ratio of DBE Share of Contract Dollars to MWBE Availability	44.8%	11.7%	0.6%	12.1%	6.5%

Source: CHA analysis of King County data

In NAICS code 238910 (Table 4-29), Asians received a large share of their total contract dollars from this code (17.6%). The ratio of contract dollars utilization over unweighted availability was high (256.1%).

**Table 4-29: Exploring the Disparity Ratios
(NAICS Code: 238910; Weight: 9.5%) (King County Funded)**

	Black	Hispanic	Asian	Native American	White Woman
NAICS Code Share of Total MWBE Contract Dollars	2.3%	2.1%	17.6%	3.8%	6.2%
MWBE Share of Total NAICS Code Contract Dollars	1.2%	0.5%	7.9%	2.1%	5.5%
Unweighted MWBE Availability	2.5%	2.6%	3.1%	3.8%	8.2%
Ratio of DBE Share of Contract Dollars to MWBE Availability	45.6%	19.2%	256.1%	55.6%	67.0%

Source: CHA analysis of King County data

These results suggest that the high disparity ratios found in Table 4-23 could be explained by the high concentration of MWBE contract dollars in these five codes where the County spent a significant share of its King County contract dollars.

D. Federal Transit Administration Funded Contracts: Contract Data Overview

Because the methodology behind these calculations mirrors what was done for our analysis of King County funded contract data, we dispense with detailed explanations. For the analyses of USDOT funded contracts, we use the term “DBE” to comply with the conventions of the regulations at 49 C.F.R. Part 26.

Tables 4-30 and 4-31 provide data on the resulting FCDF for FTA funded contracts.

**Table 4-30: Final Contract Data File
Number of Contracts (FTA Funded)**

Contract Type	Total Contracts	Share of Total Contracts
Prime Contracts	40	14.1%
Subcontractor	243	85.9%
TOTAL	283	100.0%

Source: CHA analysis of King County data

Table 4-31: Final Contract Data File
Net Dollar Value of Contracts (FTA Funded)

Business Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contracts	\$35,269,589	65.9%
Subcontractor	\$18,277,946	34.1%
TOTAL	\$53,547,536	100.0%

Source: CHA analysis of King County data

1. Geographic and Product Market for FTA Funded Contracts

a. Final Contract Data File for FTA Funded Contracts

Table 4-32 presents the FCDF for FTA funded contracts. It consisted of 33 NAICS codes, with a total contract dollar value of \$53,547,536.

Table 4-32: Industry Percentage Distribution of King County Contracts by Dollars
(FTA Funded)

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541330	Engineering Services	49.1%	49.1%
541990	All Other Professional, Scientific, and Technical Services	13.4%	62.5%
236220	Commercial and Institutional Building Construction	7.1%	69.6%
237310	Highway, Street, and Bridge Construction	5.1%	74.7%
541370	Surveying and Mapping (except Geophysical) Services	4.5%	79.2%
238220	Plumbing, Heating, and Air-Conditioning Contractors	3.5%	82.7%
541620	Environmental Consulting Services	3.0%	85.7%
541310	Architectural Services	2.7%	88.3%
561990	All Other Support Services	2.3%	90.7%
541420	Industrial Design Services	2.2%	92.8%
238210	Electrical Contractors and Other Wiring Installation Contractors	2.0%	94.8%
541611	Administrative Management and General Management Consulting Services	0.9%	95.8%
541820	Public Relations Agencies	0.8%	96.6%
238910	Site Preparation Contractors	0.6%	97.2%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	0.4%	97.6%
237990	Other Heavy and Civil Engineering Construction	0.4%	98.0%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
444190	Other Building Material Dealers	0.3%	98.3%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.3%	98.5%
541380	Testing Laboratories	0.3%	98.8%
541350	Building Inspection Services	0.2%	99.0%
518210	Data Processing, Hosting, and Related Services	0.2%	99.2%
541511	Custom Computer Programming Services	0.2%	99.3%
541320	Landscape Architectural Services	0.1%	99.5%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.1%	99.6%
541612	Human Resources Consulting Services	0.1%	99.7%
541720	Research and Development in the Social Sciences and Humanities	0.1%	99.8%
561730	Landscaping Services	0.1%	99.9%
237130	Power and Communication Line and Related Structures Construction	0.1%	99.95%
562998	All Other Miscellaneous Waste Management Services	0.01%	99.97%
238130	Framing Contractors	0.01%	99.98%
238990	All Other Specialty Trade Contractors	0.01%	99.99%
238110	Poured Concrete Foundation and Structure Contractors	0.01%	99.997%
488490	Other Support Activities for Road Transportation	0.003%	100.0%
TOTAL		100.0%	

Source: CHA analysis of King County data

b. Geographic Market for FTA Funded Contracts

The Seattle MSA captured 83.3% of the FCDF. Therefore, we used the Seattle MSA as the geographic market.

2. Utilization of Firms in the Geographic and Product Market for FTA Funded Contracts

Similar to the analysis of County funded contract dollars, after having determined the County's geographic market, the next step in the analysis of FTA funded contract dollars was to determine the dollar value of its utilization of DBEs as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. There were 30 NAICS codes after constraining the FCDF by the geographic market; the dollar value of the contracts in these codes was \$44,440,629. Table 4-33 presents these data. As explained in the section on King County funded contracts, these contract dollar shares in Table

4-33 are equivalent to the weight of spending in each NAICS code and they will be used to calculate weighted availability from unweighted availability.

**Table 4-33: NAICS Code Distribution of Contract Dollars in King County's Constrained Product Market
(FTA Funded)**

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
541330	Engineering Services	\$24,880,242	56.0%
236220	Commercial and Institutional Building Construction	\$3,456,723	7.8%
541990	All Other Professional, Scientific, and Technical Services	\$3,145,820	7.1%
237310	Highway, Street, and Bridge Construction	\$2,687,386	6.0%
541370	Surveying and Mapping (except Geophysical) Services	\$2,145,573	4.8%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$1,868,458	4.2%
541620	Environmental Consulting Services	\$1,460,263	3.3%
541310	Architectural Services	\$1,339,316	3.0%
561990	All Other Support Services	\$1,236,094	2.8%
541611	Administrative Management and General Management Consulting Services	\$409,369	0.9%
238910	Site Preparation Contractors	\$297,666	0.7%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$230,487	0.5%
237990	Other Heavy and Civil Engineering Construction	\$187,593	0.4%
541380	Testing Laboratories	\$136,720	0.3%
541820	Public Relations Agencies	\$129,324	0.3%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	\$123,539	0.3%
541420	Industrial Design Services	\$105,156	0.2%
541511	Custom Computer Programming Services	\$86,175	0.2%
541350	Building Inspection Services	\$76,044	0.2%
541320	Landscape Architectural Services	\$71,845	0.2%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	\$66,105	0.1%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$62,959	0.1%
541612	Human Resources Consulting Services	\$61,071	0.1%
518210	Data Processing, Hosting, and Related Services	\$60,442	0.1%
541720	Research and Development in the Social Sciences and Humanities	\$55,927	0.1%
561730	Landscaping Services	\$47,582	0.1%
238130	Framing Contractors	\$6,696	0.02%
238110	Poured Concrete Foundation and Structure Contractors	\$3,800	0.01%
488490	Other Support Activities for Road Transportation	\$1,828	0.004%
238990	All Other Specialty Trade Contractors	\$425	0.001%
TOTAL		\$44,440,629	100.0%

Source: CHA analysis of King County data

Tables 4-34 and 4-35 present data on King County's DBE firm utilization, measured in contract dollars and percentage of contract dollars.

**Table 4-34: Distribution of King County Contract Dollars by Race and Gender
(total dollars) (FTA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE
236220	\$76,267	\$63,535	\$18,715	\$0	\$537,397	\$695,914	\$2,760,809
237310	\$0	\$503,760	\$0	\$0	\$5,171	\$508,931	\$2,178,455
237990	\$0	\$0	\$187,593	\$0	\$0	\$187,593	\$0
238110	\$0	\$0	\$0	\$0	\$0	\$0	\$3,800
238130	\$0	\$0	\$0	\$0	\$0	\$0	\$6,696
238210	\$0	\$0	\$29,953	\$0	\$0	\$29,953	\$200,534
238220	\$0	\$0	\$0	\$0	\$0	\$0	\$1,868,458
238910	\$0	\$0	\$0	\$0	\$0	\$0	\$297,666
238990	\$0	\$0	\$0	\$0	\$0	\$0	\$425

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
423320	\$0	\$0	\$0	\$0	\$0	\$0	\$66,105	\$66,105
484220	\$0	\$0	\$42,824	\$20,135	\$0	\$62,959	\$0	\$62,959
488490	\$0	\$0	\$0	\$0	\$0	\$0	\$1,828	\$1,828
518210	\$0	\$0	\$32,938	\$0	\$0	\$32,938	\$27,504	\$60,442
541310	\$0	\$0	\$0	\$26,879	\$12,705	\$39,584	\$1,299,732	\$1,339,316
541320	\$0	\$0	\$0	\$0	\$71,845	\$71,845	\$0	\$71,845
541330	\$2,783	\$0	\$768,629	\$0	\$1,568,049	\$2,339,461	\$22,540,782	\$24,880,243
541350	\$0	\$76,044	\$0	\$0	\$0	\$76,044	\$0	\$76,044
541370	\$716,491	\$0	\$1,383,490	\$0	\$33,003	\$2,132,984	\$12,589	\$2,145,573
541380	\$0	\$136,720	\$0	\$0	\$0	\$136,720	\$0	\$136,720
541420	\$70,467	\$0	\$0	\$0	\$0	\$70,467	\$34,689	\$105,156
541511	\$0	\$0	\$86,175	\$0	\$0	\$86,175	\$0	\$86,175
541611	\$334,253	\$0	\$2,278	\$37,814	\$13,888	\$388,232	\$21,137	\$409,369
541612	\$0	\$0	\$13,013	\$38,978	\$0	\$51,990	\$9,080	\$61,071
541620	\$732	\$0	\$35,428	\$0	\$4,628	\$40,787	\$1,419,476	\$1,460,263
541720	\$0	\$0	\$0	\$0	\$55,927	\$55,927	\$0	\$55,927
541820	\$74,215	\$0	\$0	\$0	\$55,110	\$129,324	\$0	\$129,324
541990	\$228,807	\$0	\$1,299,084	\$127,944	\$590,997	\$2,246,832	\$898,988	\$3,145,819
561730	\$23,402	\$0	\$0	\$0	\$0	\$23,402	\$24,180	\$47,582
561990	\$0	\$0	\$13,118	\$40,070	\$0	\$53,188	\$1,182,906	\$1,236,094
811310	\$0	\$0	\$45,996	\$0	\$0	\$45,996	\$77,543	\$123,539
TOTAL	\$1,527,416	\$780,059	\$3,959,234	\$291,819	\$2,948,718	\$9,507,247	\$34,933,382	\$44,440,629

Source: CHA analysis of King County data

**Table 4-35: Percentage Distribution of King County Contract Dollars by Race and Gender
(share of total dollars) (FTA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
236220	2.2%	1.8%	0.5%	0.0%	15.5%	20.1%	79.9%	100.0%
237310	0.0%	18.7%	0.0%	0.0%	0.2%	18.9%	81.1%	100.0%
237990	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
238110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238130	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238210	0.0%	0.0%	13.0%	0.0%	0.0%	13.0%	87.0%	100.0%
238220	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238910	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238990	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423320	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484220	0.0%	0.0%	68.0%	32.0%	0.0%	100.0%	0.0%	100.0%
488490	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
518210	0.0%	0.0%	54.5%	0.0%	0.0%	54.5%	45.5%	100.0%
541310	0.0%	0.0%	0.0%	2.0%	0.9%	3.0%	97.0%	100.0%
541320	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541330	0.0%	0.0%	3.1%	0.0%	6.3%	9.4%	90.6%	100.0%
541350	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541370	33.4%	0.0%	64.5%	0.0%	1.5%	99.4%	0.6%	100.0%
541380	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541420	67.0%	0.0%	0.0%	0.0%	0.0%	67.0%	33.0%	100.0%
541511	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
541611	81.7%	0.0%	0.6%	9.2%	3.4%	94.8%	5.2%	100.0%
541612	0.0%	0.0%	21.3%	63.8%	0.0%	85.1%	14.9%	100.0%
541620	0.1%	0.0%	2.4%	0.0%	0.3%	2.8%	97.2%	100.0%
541720	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541820	57.4%	0.0%	0.0%	0.0%	42.6%	100.0%	0.0%	100.0%
541990	7.3%	0.0%	41.3%	4.1%	18.8%	71.4%	28.6%	100.0%
561730	49.2%	0.0%	0.0%	0.0%	0.0%	49.2%	50.8%	100.0%
561990	0.0%	0.0%	1.1%	3.2%	0.0%	4.3%	95.7%	100.0%
811310	0.0%	0.0%	37.2%	0.0%	0.0%	37.2%	62.8%	100.0%
Total	3.4%	1.8%	8.9%	0.7%	6.6%	21.4%	78.6%	100.0%
TOTAL	3.4%	1.8%	8.9%	0.7%	6.6%	21.4%	78.6%	100.0%

Source: CHA analysis of King County data

3. The Availability of DBEs in the Geographic and Product Market for FTA Funded Contracts

Using the custom census framework explained earlier, we merged three databases (the Final Contract Data File; the Master M/W/DBE Directory compiled by CHA; and Dun & Bradstreet/Hoovers Database) to form an accurate estimate of firms available to work on King County's contracts.

Tables 4-36 through 4-38 present data on:

- The unweighted availability percentages by race and gender and by NAICS codes;
- The weights used to adjust the unweighted numbers;²²⁷ and

227. These weights are equivalent to the share of contract dollars presented in the previous section.

- The final estimates of the weighted averages of the individual six-digit level NAICS availability estimates in the market area.

**Table 4-36: Unweighted DBE Availability for King County Contracts
(FTA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
236220	2.9%	2.7%	4.9%	2.9%	5.2%	18.7%	81.3%	100.0%
237310	4.2%	5.6%	4.5%	5.3%	8.6%	28.2%	71.8%	100.0%
237990	5.3%	3.8%	5.6%	6.0%	10.5%	31.2%	68.8%	100.0%
238110	0.9%	1.8%	1.7%	1.2%	3.4%	8.9%	91.1%	100.0%
238130	0.4%	1.0%	0.3%	0.2%	1.2%	3.1%	96.9%	100.0%
238210	1.4%	0.8%	1.5%	0.5%	3.3%	7.4%	92.6%	100.0%
238220	0.6%	0.4%	0.6%	0.4%	2.4%	4.3%	95.7%	100.0%
238910	2.5%	2.6%	3.1%	3.8%	8.2%	20.2%	79.8%	100.0%
238990	0.7%	0.8%	0.7%	0.5%	2.0%	4.8%	95.2%	100.0%
423320	0.5%	1.0%	1.0%	1.9%	3.3%	7.6%	92.4%	100.0%
484220	6.5%	3.6%	3.8%	7.1%	13.4%	34.4%	65.6%	100.0%
488490	7.9%	1.6%	3.2%	1.6%	11.1%	25.4%	74.6%	100.0%
518210	1.2%	0.6%	1.7%	0.2%	6.4%	10.0%	90.0%	100.0%
541310	0.7%	0.8%	1.5%	0.2%	8.3%	11.5%	88.5%	100.0%
541320	0.3%	0.2%	0.5%	0.0%	4.4%	5.4%	94.6%	100.0%
541330	1.1%	0.8%	2.8%	0.5%	5.4%	10.6%	89.4%	100.0%
541350	0.3%	0.6%	1.9%	0.3%	2.8%	5.9%	94.1%	100.0%
541370	1.9%	4.3%	1.9%	0.8%	10.1%	19.1%	80.9%	100.0%
541380	0.1%	0.5%	1.4%	0.0%	4.6%	6.6%	93.4%	100.0%
541420	2.3%	3.4%	5.7%	2.3%	17.0%	30.7%	69.3%	100.0%
541511	0.8%	0.3%	1.0%	0.1%	3.7%	5.9%	94.1%	100.0%
541611	3.4%	1.1%	2.0%	0.4%	10.1%	16.9%	83.1%	100.0%
541612	7.7%	1.7%	3.1%	1.0%	25.6%	39.1%	60.9%	100.0%
541620	2.7%	2.0%	3.3%	1.4%	20.4%	29.7%	70.3%	100.0%
541720	1.1%	1.1%	1.1%	0.0%	9.3%	12.5%	87.5%	100.0%
541820	3.8%	1.6%	1.9%	0.8%	19.4%	27.4%	72.6%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
541990	0.7%	0.5%	1.6%	0.1%	10.0%	13.0%	87.0%	100.0%
561730	0.9%	1.1%	1.0%	0.7%	5.4%	9.1%	90.9%	100.0%
561990	0.8%	0.3%	0.8%	0.2%	4.5%	6.7%	93.3%	100.0%
811310	0.5%	0.6%	0.3%	0.3%	3.3%	5.0%	95.0%	100.0%
TOTAL	1.4%	0.9%	1.4%	0.7%	5.7%	10.0%	90.0%	100.0%

Source: CHA analysis of King County data; Hoovers; CHA Master Directory

These unweighted estimates should be used by King County as the starting point for setting narrowly tailored DBE contract goals on FTA assisted contracts.

Table 4-37: Distribution of King County's Spending by NAICS Code (the Weights) (FTA Funded)

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
236220	Commercial and Institutional Building Construction	7.8%
237310	Highway, Street, and Bridge Construction	6.0%
237990	Other Heavy and Civil Engineering Construction	0.4%
238110	Poured Concrete Foundation and Structure Contractors	0.01%
238130	Framing Contractors	0.02%
238210	Electrical Contractors and Other Wiring Installation Contractors	0.5%
238220	Plumbing, Heating, and Air-Conditioning Contractors	4.2%
238910	Site Preparation Contractors	0.7%
238990	All Other Specialty Trade Contractors	0.001%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.1%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.1%
488490	Other Support Activities for Road Transportation	0.004%
518210	Data Processing, Hosting, and Related Services	0.1%
541310	Architectural Services	3.0%
541320	Landscape Architectural Services	0.2%
541330	Engineering Services	56.0%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
541350	Building Inspection Services	0.2%
541370	Surveying and Mapping (except Geophysical) Services	4.8%
541380	Testing Laboratories	0.3%
541420	Industrial Design Services	0.2%
541511	Custom Computer Programming Services	0.2%
541611	Administrative Management and General Management Consulting Services	0.9%
541612	Human Resources Consulting Services	0.1%
541620	Environmental Consulting Services	3.3%
541720	Research and Development in the Social Sciences and Humanities	0.1%
541820	Public Relations Agencies	0.3%
541990	All Other Professional, Scientific, and Technical Services	7.1%
561730	Landscaping Services	0.1%
561990	All Other Support Services	2.8%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	0.3%
TOTAL		100.0%

Source: CHA analysis of King County data

Table 4-30 presents the weighted availability results for each of the racial and gender categories. The aggregated availability of DBEs, weighted by King County's spending in its geographic and industry markets, is 13.5%.

**Table 4-38: Aggregated Weighted Availability for King County Contracts
(FTA Funded)**

Black	Hispanic	Asian	Native American	White Women	DBE	Non-DBE	Total
1.5%	1.4%	2.8%	1.0%	6.7%	13.5%	86.5%	100.0%

Source: CHA analysis of King County data; Hoovers; CHA Master Directory

4. Analysis of the Concentration of Contract Dollars among Firms for FTA Funded Contracts

As with King County funded contracts, we examined any asymmetries between the NAICS codes in which King County spends large shares of its FTA funds and the NAICS codes that provide DBEs and non-DBEs the largest shares of their respective earnings.

Three key findings stand out. 1) The share of contract dollars derived from contracts in the top three NAICS codes for Blacks, Hispanics, Asian, and White women was larger than the share of contract dollars that King County spent in its three largest NAICS codes. The share of total Native American contract dollars from the three codes providing the most business for Native Americans was roughly the same as for King County. 2) While the leading codes for White women were identical to the leading codes for the County and two codes overlapped between Asians and the County, there was no overlap between the NAICS codes that provide the greatest contracting opportunities for Hispanics and those NAICS codes where King County spends most of its dollars. There was only one code that overlapped between Blacks and Native Americans and the County. Where there was minimal overlap, for Blacks, Hispanics, Asians, and Native Americans, a small reduction in the County's spending would have a disproportionate impact on contract dollars flowing to those DBEs. 3) When examining the three leading NAICS codes for each DBE, their share of DBEs' overall earnings exceeded the share of non-DBE overall earnings from those three codes. The only exception to this pattern was when a leading code was Engineering Services.

These three findings indicate that the pattern of spending received by DBEs is markedly different from the pattern of spending by the County.

With respect to the first finding, Table 4-39 presents data on the share of King County's contract dollars received by the top three NAICS codes for each demographic group.

Table 4-39: Comparison of the Share of King County Spending Captured by the Top Three NAICS Codes for Each Demographic Group (FTA Funded)

Demographic Group	Share of All King County Spending in the Top Three NAICS Codes for Each Group
All	70.8%
Black	83.8%
Hispanic	91.9%
Asian	87.2%
Native American	70.9%
White Woman	91.4%
Non-DBE	78.7%

Source: CHA analysis of King County data

With respect to the second finding, Table 4-40 provides more detail on the data presented in Table 4-39 as it lists the top three codes for each group and their corresponding share of the group's total spending.

Table 4-40: The Top Three King County Spending NAICS Codes for Each Demographic Group (FTA Funded)

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
All			
541330	Engineering Services	56.0%	70.8%
236220	Commercial and Institutional Building Construction	7.8%	
541990	All Other Professional, Scientific, and Technical Services	7.1%	
Black			
541370	Surveying and Mapping (except Geophysical) Services	46.9%	83.8%
541611	Administrative Management and General Management Consulting Services	21.9%	
541990	All Other Professional, Scientific, and Technical Services	15.0%	
Hispanic			

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
237310	Highway, Street, and Bridge Construction	64.6%	91.9%
541380	Testing Laboratories	17.5%	
541350	Building Inspection Services	9.7%	
Asian			
541370	Surveying and Mapping (except Geophysical) Services	34.9%	87.2%
541990	All Other Professional, Scientific, and Technical Services	32.8%	
541330	Engineering Services	19.4%	
Native American			
541990	All Other Professional, Scientific, and Technical Services	43.8%	70.9%
561990	All Other Support Services	13.7%	
541612	Human Resources Consulting Services	13.4%	
White Woman			
541330	Engineering Services	53.2%	91.4%
541990	All Other Professional, Scientific, and Technical Services	20.0%	
236220	Commercial and Institutional Building Construction	18.2%	
Non-DBE Firm			
541330	Engineering Services	64.5%	78.7%
236220	Commercial and Institutional Building Construction	7.9%	
237310	Highway, Street, and Bridge Construction	6.2%	

Source: CHA analysis of King County data

Tables 4-41 through 4-45 present data on the third finding: the leading codes for DBE firms are more important for overall DBE contract dollars compared to those codes' importance to non-DBEs. These results illustrate the different levels of concentration of contract dollars among DBE firms compared to non-DBE firms.

Table 4-41 presents the three NAICS codes where Black firms received the largest share of their contract dollars. NAICS codes 541370 and 541611 are not among the County's leading three NAICS codes. If the County eliminated the 5.7% of spending in that code, the elimination would reduce Black contract dollars by 68.8%.

**Table 4-41: Three NAICS Codes where Black Firms Received the Most Spending
(FTA Funded)**

NAICS Code	NAICS Code Label	Weight	Share of Total Black Dollars	Share of Total Non-DBE Dollars
541370	Surveying and Mapping (except Geophysical) Services	4.8%	46.9%	0.04%
541611	Administrative Management and General Management Consulting Services	0.9%	21.9%	0.1%
541990	All Other Professional, Scientific, and Technical Services	7.1%	15.0%	2.6%
Total 3-code Share of Total Group Dollars			83.8%	2.7%

Source: CHA analysis of King County data

Table 4-42 presents the three NAICS codes where Hispanic firms received the largest share of their contract dollars. With respect to the second finding of precarity, none of these codes are among the County's leading three NAICS codes. If the County eliminated the 6.5% of spending in those codes, the elimination would reduce Hispanic contract dollars by 91.9%.

**Table 4-42: Three NAICS Codes where Hispanic Firms Received the Most Spending
(FTA Funded)**

NAICS Code	NAICS Code Label	Weight	Share of Total Hispanic Dollars	Share of Total Non-DBE Dollars
237310	Highway, Street, and Bridge Construction	6.0%	64.6%	6.2%
541380	Testing Laboratories	0.3%	17.5%	0.0%
541350	Building Inspection Services	0.2%	9.7%	0.0%
Total 3-code Share of Total Group Dollars			91.9%	6.2%

Source: CHA analysis of King County data

Table 4-43 presents the three NAICS codes where Asian firms received the largest share of their contract dollars. With respect to the second finding of precarity, NAICS code 541370 is not among the County's leading three NAICS codes. If the County eliminated the 4.8% of spending in that code, the elimination would reduce Asian contract dollars by 34.9%.

**Table 4-43: Three NAICS Codes where Asian Firms Received the Most Spending
(FTA Funded)**

NAICS Code	NAICS Code Label	Weight	Share of Total Asian Dollars	Share of Total Non-DBE Dollars
541370	Surveying and Mapping (except Geophysical) Services	4.8%	34.9%	0.04%
541990	All Other Professional, Scientific, and Technical Services	7.1%	32.8%	2.6%
541330	Engineering Services	56.0%	19.4%	64.5%
Total 3-code Share of Total Group Dollars			87.2%	67.1%

Source: CHA analysis of King County data

Table 4-44 presents the three NAICS codes where Native American firms received the largest share of their contract dollars. With respect to the second finding of precarity, NAICS codes 561990 and 541612 is not among the County's leading three NAICS codes. If the County eliminated the 2.9% of spending in that code, the elimination would reduce Native American contract dollars by 27.1%.

**Table 4-44: Three NAICS Codes where Native American Firms Received the Most Spending
(FTA Funded)**

NAICS Code	NAICS Code Label	Weight	Share of Total Native American Dollars	Share of Total Non-DBE Dollars
541990	All Other Professional, Scientific, and Technical Services	7.1%	43.8%	2.6%
561990	All Other Support Services	2.8%	13.7%	3.4%
541612	Human Resources Consulting Services	0.1%	13.4%	0.03%
Total 3-code Share of Total Group Dollars			70.9%	6.0%

Source: CHA analysis of King County data

Table 4-45 presents the three NAICS codes where White woman firms received the largest share of their contract dollars. All three codes here are identical to the leading codes for the County.

Table 4-45: Three NAICS Codes where White Woman Firms Received the Most Spending (FTA Funded)

NAICS Code	NAICS Code Label	Weight	Share of Total White Woman Dollars	Share of Total Non-DBE Dollars
541330	Engineering Services	56.0%	53.2%	64.5%
541990	All Other Professional, Scientific, and Technical Services	7.1%	20.0%	2.6%
236220	Commercial and Institutional Building Construction	7.8%	18.2%	7.9%
Total 3-code Share of Total Group Dollars			91.4%	75.0%

Source: CHA analysis of King County data

The data presented in Tables 4-39 through 4-45 support the inference that regardless of any statistical disparities between contract utilization and weighted availability, the experiences of MWBEs/DBEs with respect to participation in County procurements were significantly different than the experiences of non-MWBEs/DBEs. There is minimal overlap between the three NAICS codes that were central to the County's spending and the three most important NAICS codes for the different racial and ethnic groups and White women. In addition, when examining the three most important NAICS codes for MWBEs/DBEs, we found that for each group, the MWBEs/DBEs share of all group earnings exceeded the non-MWBEs/DBEs share of all group earnings in most cases.

5. Disparity Analysis of FTA Funded Contracts

We next calculated disparity ratios for each demographic group, comparing the group's total utilization compared to its total weighted availability. As discussed in Chapter II, this is a requirement under the case law governing the DBE program in the Ninth Circuit Court of Appeals that has jurisdiction over the state of Washington recipients.

Table 4-46 presents the disparity ratios for each demographic group. The disparity ratio for Blacks, Hispanics, Native Americans, and DBE firms is substantively significant. All of the disparity ratios except for Hispanics and Native Americans are statistically significant at the 0.001 level.

**Table 4-46: Disparity Ratios by Demographic Group
(FTA Funded Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE
Disparity Ratio	225.9%	121.1%	321.6%***	64.8%‡	98.9%***	158.9%***	90.8%***

Source: CHA analysis of King County data

‡ Indicates substantive significance

**** Statistically significant at the 0.001 level*

As with the analysis of disparity ratios for King County funded contracts, we explored disparity ratios for FTA funded contracts. Table 4-47 presents the NAICS codes where the County spent a significant share of its FTA funded contract dollars. These four codes (out of a total of 30 NAICS codes) accounted for 76.9% of all FTA funded contract dollars.

**Table 4-47: Targeted NAICS codes
(FTA Funded)**

NAICS	NAICS Code Description	Pct Total Contract Dollars
541330	Engineering Services	56.0%
236220	Commercial and Institutional Building Construction	7.8%
541990	All Other Professional, Scientific, and Technical Services	7.1%
237310	Highway, Street, and Bridge Construction	6.0%

Source: CHA analysis of King County data

Tables 4-48 through 4-51 present the results of our analysis.

In NAICS code 541330 (Table 4-48), Asians and White women received a large share of their total contract dollars from this code (19.4% and 53.2%, respectively). The ratios of contract dollars utilization over unweighted availability were high (108.6% and 117.3%, respectively). These high ratios are particularly instructive because the County spent a very large share of its FTA funds in this code.

**Table 4-48: Exploring the Disparity Ratios
(NAICS Code 541330; Weight 56.0%) (FTA Funded)**

	Black	Hispanic	Asian	Native American	White Woman
NAICS Code Share of Total DBE Contract Dollars	0.2%	0.0%	19.4%	0.0%	53.2%
DBE Share of Total NAICS Code Contract Dollars	0.01%	0.0%	3.1%	0.0%	6.3%
Unweighted DBE Availability	1.1%	0.8%	2.8%	0.5%	5.4%
Ratio of DBE Share of Contract Dollars to DBE Availability	1.0%	0.0%	108.6%	0.0%	117.3%

Source: CHA analysis of King County data

In NAICS code 236220 (Table 4-49), White women received a large share of their total contract dollars from this code (18.2%). The ratio of contract dollars utilization over unweighted availability was high (300.4%).

**Table 4-49: Exploring the Disparity Ratios
(NAICS Code 236220; Weight 7.8%) (FTA Funded)**

	Black	Hispanic	Asian	Native American	White Woman
NAICS Code Share of Total DBE Contract Dollars	5.0%	8.1%	0.5%	0.0%	18.2%
DBE Share of Total NAICS Code Contract Dollars	2.2%	1.8%	0.5%	0.0%	15.5%
Unweighted DBE Availability	2.9%	2.7%	4.9%	2.9%	5.2%
Ratio of DBE Share of Contract Dollars to DBE Availability	75.3%	67.2%	11.1%	0.0%	300.4%

Source: CHA analysis of King County data

In NAICS code 541990 (Table 4-50), Blacks, Asians, Native Americans and White women received a large share of their total contract dollars from this code (15.0%, 32.8%, 43.8%; and 20.0%, respectively). The ratios of contract dollars utilization over unweighted availability were high (1117.2%, 2537.2%, 3123.5% and 187.4%, respectively).

**Table 4-50: Exploring the Disparity Ratios
(NAICS Code 541990; Weight 7.1%) (FTA Funded)**

	Black	Hispanic	Asian	Native American	White Woman
NAICS Code Share of Total DBE Contract Dollars	15.0%	0.0%	32.8%	43.8%	20.0%
DBE Share of Total NAICS Code Contract Dollars	7.3%	0.0%	41.3%	4.1%	18.8%
Unweighted DBE Availability	0.7%	0.5%	1.6%	0.1%	10.0%
Ratio of DBE Share of Contract Dollars to DBE Availability	1117.2%	0.0%	2537.2%	3123.5%	187.4%

Source: CHA analysis of King County data

In NAICS code 237310 (Table 4-51), Hispanics received a large share of their total contract dollars from this code (64.6%). The ratio of contract dollars utilization over unweighted availability was high (337.4%).

**Table 4-51: Exploring the Disparity Ratios
(NAICS Code: 237310; Weight: 6.0%) (FTA Funded)**

	Black	Hispanic	Asian	Native American	White Woman
NAICS Code Share of Total DBE Contract Dollars	0.0%	64.6%	0.0%	0.0%	0.2%
DBE Share of Total NAICS Code Contract Dollars	0.0%	18.7%	0.0%	0.0%	0.2%
Unweighted DBE Availability	4.2%	5.6%	4.5%	5.3%	8.6%
Ratio of DBE Share of Contract Dollars to DBE Availability	0.0%	337.4%	0.0%	0.0%	2.2%

Source: CHA analysis of King County data

E. FAA Funded Contracts: Contract Data Overview

As with the previous analyses for King County and FTA funded contracts, we present the results for FAA funded contracts. We again dispense with any detailed explanations.

Tables 4-52 and 4-53 provide data on the resulting FCDF for King County's FAA funded contracts.

**Table 4-52: Final Contract Data File
Number of Contracts (FAA Funded)**

Contract Type	Total Contracts	Share of Total Contracts
Prime Contracts	6	21.4%
Subcontractor	22	78.6%
TOTAL	28	100.0%

Source: CHA analysis of King County data

**Table 4-53: Final Contract Data File
Net Dollar Value of Contracts (FAA Funded)**

Business Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contracts	\$3,105,570	74.3%
Subcontractor	\$1,073,946	25.7%
TOTAL	\$4,179,517	100.0%

Source: CHA analysis of King County data

1. The Geographic and Product Market for FAA Funded Contracts

a. Final Contract Data File for FAA Funded Contracts

Table 4-41 presents the FCDF for FAA funded contracts. It consisted of 14 NAICS codes, with a total contract dollar value of \$4,179,517.

**Table 4-54: Industry Percentage Distribution of King County Contracts by Dollars
(FAA Funded)**

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	41.4%	41.4%
541330	Engineering Services	24.0%	65.4%
238910	Site Preparation Contractors	20.4%	85.8%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
237110	Water and Sewer Line and Related Structures Construction	6.8%	92.5%
541350	Building Inspection Services	2.2%	94.7%
237310	Highway, Street, and Bridge Construction	1.1%	95.8%
541990	All Other Professional, Scientific, and Technical Services	1.1%	96.9%
541370	Surveying and Mapping (except Geophysical) Services	1.0%	97.9%
561990	All Other Support Services	0.8%	98.7%
541620	Environmental Consulting Services	0.6%	99.3%
238990	All Other Specialty Trade Contractors	0.4%	99.8%
488490	Other Support Activities for Road Transportation	0.2%	99.9%
541720	Research and Development in the Social Sciences and Humanities	0.1%	100.0%
238220	Plumbing, Heating, and Air-Conditioning Contractors	0.02%	100.0%
TOTAL		100.0%	

Source: CHA analysis of King County data

b. Geographic Market for FAA Funded Contracts

The Seattle MSA captured 100.0% of the FCDF.²²⁸ Therefore, we used the Seattle MSA as the geographic market.

2. Utilization of Firms in the Geographic and Product Market for FAA Funded Contracts

As with the analyses for the other funding sources, after having determined the County's geographic market, the next step in the analysis of FAA funded contract dollars was to determine the dollar value of its utilization of DBEs as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. There were 13 NAICS codes after constraining the FCDF by the geographic market; the dollar value of the contracts in these codes was \$4,179,517. Table 4-55 presents these data and the figures are equivalent to the weight of spending in each NAICS code. They will be used to calculate weighted availability from unweighted availability.

228. One firm was headquartered in Spokane, WA. Despite its location, we included it in the analysis because it was a prime contractor and received 29.9% of the FCDF and we felt excluding it would result in an analysis that sharply diverged from the actual County contracting practices with FAA funds.

**Table 4-55: NAICS Code Distribution of Contract Dollars in King County's Constrained Product Market
(FAA Funded)**

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	\$1,729,453	41.4%
541330	Engineering Services	\$1,003,746	24.0%
238910	Site Preparation Contractors	\$851,261	20.4%
237110	Water and Sewer Line and Related Structures Construction	\$283,157	6.8%
541350	Building Inspection Services	\$90,312	2.2%
237310	Highway, Street, and Bridge Construction	\$46,017	1.1%
541990	All Other Professional, Scientific, and Technical Services	\$45,428	1.1%
541370	Surveying and Mapping (except Geophysical) Services	\$42,917	1.0%
561990	All Other Support Services	\$33,450	0.8%
541620	Environmental Consulting Services	\$24,986	0.6%
238990	All Other Specialty Trade Contractors	\$18,451	0.4%
488490	Other Support Activities for Road Transportation	\$6,556	0.2%
541720	Research and Development in the Social Sciences and Humanities	\$3,134	0.1%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$650	0.02%
TOTAL		\$4,179,517	100.0%

Source: CHA analysis of King County data

Tables 4-56 and 4-57 present data on King County's DBE firm utilization, measured in contract dollars and percentage of contract dollars.

**Table 4-56: Distribution of King County Contract Dollars by Race and Gender
(total dollars) (FAA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
237110	\$0	\$0	\$0	\$0	\$0	\$0	\$283,157	\$283,157
237310	\$17,629	\$0	\$0	\$0	\$0	\$17,629	\$28,388	\$46,017
238210	\$0	\$0	\$0	\$0	\$155,460	\$155,460	\$1,573,993	\$1,729,453
238220	\$0	\$0	\$0	\$0	\$650	\$650	\$0	\$650
238910	\$0	\$0	\$0	\$0	\$0	\$0	\$851,261	\$851,261
238990	\$0	\$0	\$0	\$0	\$18,451	\$18,451	\$0	\$18,451
488490	\$0	\$0	\$0	\$0	\$0	\$0	\$6,556	\$6,556
541330	\$5,654	\$0	\$148,693	\$0	\$0	\$154,347	\$849,398	\$1,003,746
541350	\$0	\$0	\$83,723	\$0	\$6,589	\$90,312	\$0	\$90,312
541370	\$42,917	\$0	\$0	\$0	\$0	\$42,917	\$0	\$42,917
541620	\$0	\$0	\$0	\$0	\$0	\$0	\$24,986	\$24,986
541720	\$0	\$0	\$0	\$0	\$0	\$0	\$3,134	\$3,134
541990	\$22,324	\$0	\$0	\$0	\$0	\$22,324	\$23,104	\$45,428
561990	\$0	\$0	\$0	\$0	\$3,195	\$3,195	\$30,255	\$33,450
Total	\$88,524	\$0	\$232,416	\$0	\$184,345	\$505,285	\$3,674,232	\$4,179,517

Source: CHA analysis of King County data

**Table 4-57: Percentage Distribution of King County Contract Dollars by Race and Gender
(share of total dollars) (FAA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
237110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237310	38.3%	0.0%	0.0%	0.0%	0.0%	38.3%	61.7%	100.0%
238210	0.0%	0.0%	0.0%	0.0%	9.0%	9.0%	91.0%	100.0%
238220	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
238910	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238990	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
488490	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541330	0.6%	0.0%	14.8%	0.0%	0.0%	15.4%	84.6%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
541350	0.0%	0.0%	92.7%	0.0%	7.3%	100.0%	0.0%	100.0%
541370	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541620	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541720	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541990	49.1%	0.0%	0.0%	0.0%	0.0%	49.1%	50.9%	100.0%
561990	0.0%	0.0%	0.0%	0.0%	9.6%	9.6%	90.4%	100.0%
Total	2.1%	0.0%	5.6%	0.0%	4.4%	12.1%	87.9%	100.0%

Source: CHA analysis of King County data

3. Availability of DBEs in the Geographic and Product Market for FAA Funded Contracts

Tables 4-58 through 4-60 present data on:

- The unweighted availability percentages by race and gender and by NAICS codes;
- The weights used to adjust the unweighted numbers; and
- The final estimates of the weighted averages of the individual six-digit level NAICS availability estimates in the market area.

Table 4-58: Unweighted DBE Availability for King County Contracts (FAA Funded)

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
237110	3.8%	3.3%	6.0%	6.6%	9.6%	29.2%	70.8%	100.0%
237310	4.2%	5.6%	4.5%	5.3%	8.6%	28.2%	71.8%	100.0%
238210	1.4%	0.8%	1.5%	0.5%	3.3%	7.4%	92.6%	100.0%
238220	0.6%	0.4%	0.6%	0.4%	2.4%	4.3%	95.7%	100.0%
238910	2.5%	2.6%	3.1%	3.8%	8.2%	20.2%	79.8%	100.0%
238990	0.7%	0.8%	0.7%	0.5%	2.0%	4.8%	95.2%	100.0%
488490	7.9%	1.6%	3.2%	1.6%	11.1%	25.4%	74.6%	100.0%
541330	1.1%	0.8%	2.8%	0.5%	5.4%	10.6%	89.4%	100.0%
541350	0.3%	0.6%	1.9%	0.3%	2.8%	5.9%	94.1%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
541370	1.9%	4.3%	1.9%	0.8%	10.1%	19.1%	80.9%	100.0%
541620	2.7%	2.0%	3.3%	1.4%	20.4%	29.7%	70.3%	100.0%
541720	1.1%	1.1%	1.1%	0.0%	9.3%	12.5%	87.5%	100.0%
541990	0.7%	0.5%	1.6%	0.1%	10.0%	13.0%	87.0%	100.0%
561990	0.8%	0.3%	0.8%	0.2%	4.5%	6.7%	93.3%	100.0%
Total	1.1%	0.9%	1.4%	0.7%	5.0%	9.2%	90.8%	100.0%

Source: CHA analysis of King County data; Hoovers; CHA Master Directory

**Table 4-59: Distribution of King County's Spending by NAICS Code
(the Weights) (FAA Funded)**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
237110	Water and Sewer Line and Related Structures Construction	6.8%
237310	Highway, Street, and Bridge Construction	1.1%
238210	Electrical Contractors and Other Wiring Installation Contractors	41.4%
238220	Plumbing, Heating, and Air-Conditioning Contractors	0.02%
238910	Site Preparation Contractors	20.4%
238990	All Other Specialty Trade Contractors	0.4%
488490	Other Support Activities for Road Transportation	0.2%
541330	Engineering Services	24.0%
541350	Building Inspection Services	2.2%
541370	Surveying and Mapping (except Geophysical) Services	1.0%
541620	Environmental Consulting Services	0.6%
541720	Research and Development in the Social Sciences and Humanities	0.1%
541990	All Other Professional, Scientific, and Technical Services	1.1%
561990	All Other Support Services	0.8%
TOTAL		100.0%

Source: CHA analysis of King County data

Table 4-60 presents the weighted availability results for each of the racial and gender categories. The aggregated availability of DBEs, weighted by King County's spending in its FTA geographic and industry markets, is 12.8%.

**Table 4-60: Aggregated Weighted Availability for King County Contracts
(FAA Funded)**

Black	Hispanic	Asian	Native American	White Women	DBE	Non-DBE	Total
1.7%	1.4%	2.5%	1.6%	5.5%	12.8%	87.2%	100.0%

Source: CHA analysis of King County data; Hoovers; CHA Master Directory

4. Disparity Analysis for FAA Funded Contracts

Because there were only 28 FAA funded contracts, we did not have enough data to conduct a disparity analysis.

F. EPA Funded Contracts: Contract Data Overview

As with the previous analyses, we present the results for EPA funded contracts. We again dispense with any detailed explanations.

Tables 4-61 and 4-62 provide data on the resulting FCDF for the County's EPA funded contracts.

**Table 4-61: Final Contract Data File
Number of Contracts (EPA Funded)**

Contract Type	Total Contracts	Share of Total Contracts
Prime Contracts	5	4.9%
Subcontractor	98	95.1%
TOTAL	103	100.0%

Source: CHA analysis of King County data

**Table 4-62: Final Contract Data File
Net Dollar Value of Contracts (EPA Funded)**

Business Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contracts	\$31,171,803	64.1%
Subcontractor	\$17,456,291	35.9%
TOTAL	\$48,628,094	100.0%

Source: CHA analysis of King County data

1. Geographic and Product Market for EPA Funded Contracts

a. Final Contract Data File for King County's EPA Funded Contracts

Table 4-63 presents the FCDF for EPA funded contracts. It consisted of 32 NAICS codes, with a total contract dollar value of \$48,628,094.

**Table 4-63: Industry Percentage Distribution of King County Contracts by Dollars
(EPA Funded)**

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
238910	Site Preparation Contractors	36.3%	36.3%
237110	Water and Sewer Line and Related Structures Construction	33.3%	69.5%
484220	Specialized Freight (except Used Goods) Trucking, Local	7.8%	77.3%
237310	Highway, Street, and Bridge Construction	4.9%	82.2%
561730	Landscaping Services	4.0%	86.3%
238210	Electrical Contractors and Other Wiring Installation Contractors	2.2%	88.5%
238990	All Other Specialty Trade Contractors	1.8%	90.3%
561990	All Other Support Services	1.7%	91.9%
238290	Other Building Equipment Contractors	1.2%	93.2%
237990	Other Heavy and Civil Engineering Construction	1.2%	94.4%
236220	Commercial and Institutional Building Construction	1.1%	95.4%
488490	Other Support Activities for Road Transportation	0.9%	96.3%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.7%	97.0%
541370	Surveying and Mapping (except Geophysical) Services	0.7%	97.8%
238220	Plumbing, Heating, and Air-Conditioning Contractors	0.5%	98.3%
541380	Testing Laboratories	0.5%	98.8%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.3%	99.1%
237130	Power and Communication Line and Related Structures Construction	0.1%	99.3%
541990	All Other Professional, Scientific, and Technical Services	0.1%	99.4%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.1%	99.5%
541350	Building Inspection Services	0.1%	99.6%
423390	Other Construction Material Merchant Wholesalers	0.1%	99.6%
238110	Poured Concrete Foundation and Structure Contractors	0.1%	99.7%
238140	Masonry Contractors	0.1%	99.8%
561612	Security Guards and Patrol Services	0.1%	99.8%
541611	Administrative Management and General Management Consulting Services	0.1%	99.9%
541620	Environmental Consulting Services	0.04%	99.9%
541330	Engineering Services	0.04%	99.97%
562910	Remediation Services	0.01%	99.98%
238320	Painting and Wall Covering Contractors	0.01%	99.99%
541340	Drafting Services	0.01%	99.995%
561720	Janitorial Services	0.005%	100.0%
TOTAL		100.0%	

Source: CHA analysis of King County data

b. Geographic Market for EPA Funded Contracts

The Seattle MSA captured 95.8% of the FCDF. Therefore, we used the Seattle MSA as the geographic market.

2. Utilization of Firms in the Geographic and Product Market for EPA Funded Contracts

As with the analyses for the other funding sources, after having determined the County's geographic market, the next step in the analysis of EPA funded contract dollars was to determine the dollar value of its utilization of MWBEs as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. There were 30 NAICS codes after constraining the FCDF by the geographic market; the dollar value of the contracts in these codes was \$46,586,518.

**Table 4-64: NAICS Code Distribution of Contract Dollars in King County's Constrained Product Market
(EPA Funded)**

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
238910	Site Preparation Contractors	\$17,610,628	37.8%
237110	Water and Sewer Line and Related Structures Construction	\$16,169,576	34.7%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$3,289,665	7.1%
237310	Highway, Street, and Bridge Construction	\$2,371,656	5.1%
561730	Landscaping Services	\$1,840,199	4.0%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$1,065,116	2.3%
238990	All Other Specialty Trade Contractors	\$652,439	1.4%
237990	Other Heavy and Civil Engineering Construction	\$517,917	1.1%
561990	All Other Support Services	\$479,306	1.0%
488490	Other Support Activities for Road Transportation	\$435,463	0.9%
236220	Commercial and Institutional Building Construction	\$391,186	0.8%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	\$355,940	0.8%
541370	Surveying and Mapping (except Geophysical) Services	\$352,444	0.8%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$266,626	0.6%
541380	Testing Laboratories	\$240,186	0.5%
238190	Other Foundation, Structure, and Building Exterior Contractors	\$159,038	0.3%
237130	Power and Communication Line and Related Structures Construction	\$63,140	0.1%
541990	All Other Professional, Scientific, and Technical Services	\$52,266	0.1%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	\$50,650	0.1%
541350	Building Inspection Services	\$45,582	0.1%
423390	Other Construction Material Merchant Wholesalers	\$43,045	0.1%
238140	Masonry Contractors	\$29,412	0.1%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
561612	Security Guards and Patrol Services	\$28,260	0.1%
238110	Poured Concrete Foundation and Structure Contractors	\$25,340	0.1%
541620	Environmental Consulting Services	\$18,089	0.04%
541330	Engineering Services	\$17,525	0.04%
562910	Remediation Services	\$7,120	0.02%
238320	Painting and Wall Covering Contractors	\$3,580	0.01%
541340	Drafting Services	\$2,775	0.01%
561720	Janitorial Services	\$2,350	0.01%
TOTAL		\$46,586,518	100.0%

Source: CHA analysis of King County data

Tables 4-65 and 4-66 present data on the County's MWBE firm utilization, measured in contract dollars and percentage of contract dollars.

**Table 4-65: Distribution of King County Contract Dollars by Race and Gender
(total dollars) (EPA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
236220	\$348,491	\$0	\$0	\$0	\$18,763	\$367,254	\$23,932	\$391,186
237110	\$847,490	\$15,831	\$0	\$0	\$109,167	\$972,488	\$15,197,087	\$16,169,576
237130	\$0	\$0	\$0	\$63,140	\$0	\$63,140	\$0	\$63,140
237310	\$0	\$754,566	\$0	\$67,891	\$330,057	\$1,152,514	\$1,219,142	\$2,371,656
237990	\$0	\$0	\$160,177	\$0	\$0	\$160,177	\$357,740	\$517,917
238110	\$0	\$0	\$0	\$0	\$25,340	\$25,340	\$0	\$25,340
238140	\$0	\$0	\$0	\$0	\$0	\$0	\$29,412	\$29,412
238190	\$0	\$12,807	\$0	\$0	\$0	\$12,807	\$146,231	\$159,038
238210	\$964,152	\$0	\$0	\$0	\$76,980	\$1,041,132	\$23,984	\$1,065,116
238220	\$0	\$0	\$0	\$0	\$0	\$0	\$266,626	\$266,626
238320	\$0	\$0	\$0	\$0	\$0	\$0	\$3,580	\$3,580
238910	\$0	\$0	\$486,725	\$0	\$3,335,248	\$3,821,973	\$13,788,655	\$17,610,629
238990	\$0	\$5,080	\$485,751	\$6,196	\$48,507	\$545,534	\$106,904	\$652,439

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
423320	\$34,659	\$0	\$0	\$0	\$0	\$34,659	\$321,280	\$355,940
423390	\$0	\$0	\$0	\$0	\$43,045	\$43,045	\$0	\$43,045
423990	\$0	\$0	\$0	\$0	\$0	\$0	\$50,650	\$50,650
484220	\$320,380	\$0	\$2,969,285	\$0	\$0	\$3,289,665	\$0	\$3,289,665
488490	\$0	\$0	\$0	\$0	\$0	\$0	\$435,463	\$435,463
541330	\$0	\$0	\$0	\$0	\$17,525	\$17,525	\$0	\$17,525
541340	\$0	\$0	\$0	\$0	\$0	\$0	\$2,775	\$2,775
541350	\$0	\$0	\$0	\$0	\$0	\$0	\$45,582	\$45,582
541370	\$0	\$0	\$290,534	\$0	\$0	\$290,534	\$61,909	\$352,444
541380	\$0	\$0	\$0	\$0	\$2,777	\$2,777	\$237,409	\$240,186
541620	\$0	\$18,089	\$0	\$0	\$0	\$18,089	\$0	\$18,089
541990	\$0	\$0	\$0	\$0	\$0	\$0	\$52,266	\$52,266
561612	\$0	\$0	\$0	\$0	\$0	\$0	\$28,260	\$28,260
561720	\$0	\$0	\$0	\$0	\$0	\$0	\$2,350	\$2,350
561730	\$0	\$0	\$82,190	\$0	\$1,751,759	\$1,833,949	\$6,250	\$1,840,199
561990	\$0	\$0	\$0	\$0	\$479,306	\$479,306	\$0	\$479,306
562910	\$0	\$7,120	\$0	\$0	\$0	\$7,120	\$0	\$7,120
Total	\$2,515,173	\$813,493	\$4,474,662	\$137,226	\$6,238,476	\$14,179,029	\$32,407,489	\$46,586,518

Source: CHA analysis of King County data

**Table 4-66: Percentage Distribution of King County Contract Dollars by Race and Gender
(share of total dollars) (EPA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
236220	89.1%	0.0%	0.0%	0.0%	4.8%	93.9%	6.1%	100.0%
237110	5.2%	0.1%	0.0%	0.0%	0.7%	6.0%	94.0%	100.0%
237130	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
237310	0.0%	31.8%	0.0%	2.9%	13.9%	48.6%	51.4%	100.0%
237990	0.0%	0.0%	30.9%	0.0%	0.0%	30.9%	69.1%	100.0%
238110	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
238140	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
238190	0.0%	8.1%	0.0%	0.0%	0.0%	8.1%	91.9%	100.0%
238210	90.5%	0.0%	0.0%	0.0%	7.2%	97.7%	2.3%	100.0%
238220	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238320	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238910	0.0%	0.0%	2.8%	0.0%	18.9%	21.7%	78.3%	100.0%
238990	0.0%	0.8%	74.5%	0.9%	7.4%	83.6%	16.4%	100.0%
423320	9.7%	0.0%	0.0%	0.0%	0.0%	9.7%	90.3%	100.0%
423390	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
423990	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484220	9.7%	0.0%	90.3%	0.0%	0.0%	100.0%	0.0%	100.0%
488490	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541330	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541340	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541350	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541370	0.0%	0.0%	82.4%	0.0%	0.0%	82.4%	17.6%	100.0%
541380	0.0%	0.0%	0.0%	0.0%	1.2%	1.2%	98.8%	100.0%
541620	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541990	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561612	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561720	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561730	0.0%	0.0%	4.5%	0.0%	95.2%	99.7%	0.3%	100.0%
561990	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
562910	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
Total	5.4%	1.7%	9.6%	0.3%	13.4%	30.4%	69.6%	100.0%

Source: CHA analysis of King County data

3. Availability of M/WBEs in the Geographic and Product Market for EPA Funded Contracts

Tables 4-67 through 4-69 present data on:

- The unweighted availability percentages by race and gender and by NAICS codes for the EPA funded product market;

- The weights used to adjust the unweighted numbers; and
- The final estimates of the weighted averages of the individual six-digit level NAICS availability estimates in the market area.

**Table 4-67: Unweighted MWBE Availability for King County Contracts
(EPA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
236220	2.9%	2.7%	4.9%	2.9%	5.2%	18.7%	81.3%	100.0%
237110	3.8%	3.3%	6.0%	6.6%	9.6%	29.2%	70.8%	100.0%
237130	3.6%	8.4%	9.6%	10.8%	7.2%	39.8%	60.2%	100.0%
237310	4.2%	5.6%	4.5%	5.3%	8.6%	28.2%	71.8%	100.0%
237990	5.3%	3.8%	5.6%	6.0%	10.5%	31.2%	68.8%	100.0%
238110	0.9%	1.8%	1.7%	1.2%	3.4%	8.9%	91.1%	100.0%
238140	0.7%	1.4%	0.5%	0.7%	2.8%	6.1%	93.9%	100.0%
238190	7.1%	8.8%	7.1%	2.7%	6.2%	31.9%	68.1%	100.0%
238210	1.4%	0.8%	1.5%	0.5%	3.3%	7.4%	92.6%	100.0%
238220	0.6%	0.4%	0.6%	0.4%	2.4%	4.3%	95.7%	100.0%
238320	0.5%	0.9%	0.4%	0.1%	2.8%	4.7%	95.3%	100.0%
238910	2.5%	2.6%	3.1%	3.8%	8.2%	20.2%	79.8%	100.0%
238990	0.7%	0.8%	0.7%	0.5%	2.0%	4.8%	95.2%	100.0%
423320	0.5%	1.0%	1.0%	1.9%	3.3%	7.6%	92.4%	100.0%
423390	7.6%	1.5%	7.6%	1.5%	13.6%	31.8%	68.2%	100.0%
423990	0.2%	0.1%	0.5%	0.3%	4.5%	5.5%	94.5%	100.0%
484220	6.5%	3.6%	3.8%	7.1%	13.4%	34.4%	65.6%	100.0%
488490	7.9%	1.6%	3.2%	1.6%	11.1%	25.4%	74.6%	100.0%
541330	1.1%	0.8%	2.8%	0.5%	5.4%	10.6%	89.4%	100.0%
541340	9.6%	3.8%	15.4%	1.9%	23.1%	53.8%	46.2%	100.0%
541350	0.3%	0.6%	1.9%	0.3%	2.8%	5.9%	94.1%	100.0%
541370	1.9%	4.3%	1.9%	0.8%	10.1%	19.1%	80.9%	100.0%
541380	0.1%	0.5%	1.4%	0.0%	4.6%	6.6%	93.4%	100.0%
541620	2.7%	2.0%	3.3%	1.4%	20.4%	29.7%	70.3%	100.0%
541990	0.7%	0.5%	1.6%	0.1%	10.0%	13.0%	87.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	MWBE	Non-MWBE	Total
561612	4.1%	1.1%	2.2%	0.4%	2.2%	10.1%	89.9%	100.0%
561720	2.6%	0.9%	1.3%	0.2%	6.1%	11.0%	89.0%	100.0%
561730	0.9%	1.1%	1.0%	0.7%	5.4%	9.1%	90.9%	100.0%
561990	0.8%	0.3%	0.8%	0.2%	4.5%	6.7%	93.3%	100.0%
562910	5.6%	5.6%	7.2%	5.6%	12.0%	36.0%	64.0%	100.0%
Total	1.3%	1.0%	1.5%	0.8%	5.0%	9.7%	90.3%	100.0%

Source: CHA analysis of King County data; Hoovers; CHA Master Directory

**Table 4-68: Distribution of King County's Spending by NAICS Code
(the Weights) (EPA Funded)**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
236220	Commercial and Institutional Building Construction	0.8%
237110	Water and Sewer Line and Related Structures Construction	34.7%
237130	Power and Communication Line and Related Structures Construction	0.1%
237310	Highway, Street, and Bridge Construction	5.1%
237990	Other Heavy and Civil Engineering Construction	1.1%
238110	Poured Concrete Foundation and Structure Contractors	0.1%
238140	Masonry Contractors	0.1%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.3%
238210	Electrical Contractors and Other Wiring Installation Contractors	2.3%
238220	Plumbing, Heating, and Air-Conditioning Contractors	0.6%
238320	Painting and Wall Covering Contractors	0.01%
238910	Site Preparation Contractors	37.8%
238990	All Other Specialty Trade Contractors	1.4%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.8%
423390	Other Construction Material Merchant Wholesalers	0.1%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.1%
484220	Specialized Freight (except Used Goods) Trucking, Local	7.1%
488490	Other Support Activities for Road Transportation	0.9%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
541330	Engineering Services	0.04%
541340	Drafting Services	0.01%
541350	Building Inspection Services	0.1%
541370	Surveying and Mapping (except Geophysical) Services	0.8%
541380	Testing Laboratories	0.5%
541620	Environmental Consulting Services	0.04%
541990	All Other Professional, Scientific, and Technical Services	0.1%
561612	Security Guards and Patrol Services	0.1%
561720	Janitorial Services	0.01%
561730	Landscaping Services	4.0%
561990	All Other Support Services	1.0%
562910	Remediation Services	0.02%
TOTAL		100.0%

Source: CHA analysis of King County data

Table 4-69 presents the weighted availability results for each of the racial and gender categories. The aggregated availability of MWBE firms, weighted by King County's spending in its geographic and industry markets, is 23.6%.

**Table 4-69: Aggregated Weighted Availability for King County Contracts
(EPA Funded)**

Black	Hispanic	Asian	Native American	White Women	MWBE	Non-MWBE	Total
3.3%	2.9%	4.1%	4.7%	8.6%	23.6%	76.4%	100.0%

Source: CHA analysis of King County data; Hoovers; CHA Master Directory

G. Conclusion

This Chapter examines King County's utilization of minority- and woman-owned firms compared to non-MWBEs and provides estimates of the availability of MWBE firms and non-MWBE firms to perform the types of goods and services utilized by King County. CHA conducted this analysis separately for its contracts from four distinct funding sources: King County; FTA; FAA; and EPA. At the County's request, we disaggregated the results for locally funded contracts into construc-

tion and architecture/engineering and related professional services. These data are provided in Appendix D.

In addition, the Chapter tested King County and FTA funded contracts for whether there are significant disparities in the results of utilization compared to availability. We also analyzed locally funded and FTA funded contract data to compare the NAICS code concentration of MWBE to non-MWBE firms on King County contracts. We found that, in general, MWBEs received contracting opportunities that starkly differ from non-MWBEs. The NAICS codes that provided most of the contract dollars received by minority and woman-owned businesses were different from the codes where the County spent its funds. Further, the codes that generated the most funds for non-MWBEs generated few funds for MWBEs.

V. ANALYSIS OF DISPARITIES IN KING COUNTY'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.²²⁹

This Chapter explores the data and literature relevant to how discrimination in King County's economy affects the ability of minorities and women to fairly and fully engage in the County's construction and construction-related services contract opportunities. First, we analyze the rates at which minority- and woman-owned business enterprises ("MWBEs") in the Washington economy form these types of firms and their earnings from those firms. Then, we analyze state-wide data to see if MWBE firms' share of all firms in these industries 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 likely results of King County discontinuing the application of its equity tools is an analysis of disparities independent of King County's intervention through its contracting equity programs.

The courts have repeatedly held that analysis of disparities in the rate of at which minorities and women form businesses in the government agency's markets as compared to similar non-MWBEs, disparities in MWBE earnings, and barriers to access to capital markets are highly relevant to a determination of whether market outcomes are affected by race or gender ownership status.²³⁰ Similar analyses

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

230. See the discussion in Chapter II of the legal standards applicable to contracting affirmative action programs.

supported the successful legal defense of Illinois' Disadvantaged Business Enterprise ("DBE") program from constitutional challenge.²³¹

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.²³²

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.²³³ As recognized by a federal court of appeals, "[e]vidence that private discrimination results in barriers to business formation is relevant because it demonstrates that DBEs are precluded *at the*

231. *Midwest Fence Corp. v. Illinois Department of Transportation, Illinois State Toll Highway Authority et al*, 840 F.3d 942 (7th Cir. 2016) (upholding the King County's program for state funded contracts modeled after Part 26 and based on CHA's expert testimony, including about disparities in the overall Illinois construction industry); *see also Midwest Fence Corp. v. Illinois Department of Transportation, Illinois State Toll Highway Authority et al*, 2015 WL 1396376 at * 21 (N.D. Ill.) ("Colette Holt [& Associates'] updated census analysis controlled for variables such as education, age, and occupation and still found lower earnings and rates of business formation among women and minorities as compared to White men."); *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003) (holding that City of Chicago's DBE program for local construction contracts satisfied "compelling interest" standards using this framework).

232. *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).

233. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868, at *64 (Sept. 8, 2005).

outset from competing for public goods contracts. Evidence of barriers to fair competition is also relevant because it again demonstrates that *existing* DBEs are precluded from competing for public contracts.”²³⁴

To explore the question of whether firms owned by non-Whites and White women face disparate treatment in King County’s construction and construction-related services 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.²³⁵ 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.

We used King County, Pierce County, and Snohomish County (as we did in Chapter IV) 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 King County’s marketplace.²³⁶

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

234. *Id.*

235. Data from 2017-2021 American Community Survey are the most recent for a five-year period.

236. Possible disparities in wages are important to explore because of the relationship between wages and business formation. Research by Alicia Robb and others indicate non-White firms rely on their own financing to start businesses compared to White firms who rely more heavily on financing provided by financial institutions. To the extent non-Whites face discrimination in the labor market, they would have reduced capacity to self-finance their entrepreneurial efforts and, hence, impact business formation. *See, for example*, Robb’s “Access to Capital among Young Firms, Minority-owned Firms, Woman-owned Firms, and High-tech Firms” (2013), [https://www.sba.gov/sites/default/files/files/rs403tot\(2\).pdf](https://www.sba.gov/sites/default/files/files/rs403tot(2).pdf).

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.²³⁷ Because detailed ABS data was only available at the state level, the State of Washington is the geographic level of analysis here. With the ABS data, six key variables are used in this analysis:

1. The number of all firms
2. The sales and receipts of all firms
3. The number of firms with employees (employer firms)
4. The sales and receipts of all employer firms
5. The number of paid employees
6. The annual payroll of employer firms

CHA examined these data in two ways: First, we calculated the minority- and woman-owned business share of each variable. Second, we calculated three disparity ratios for each grouping of minority- and woman-owned businesses and for the grouping of firms that are not non-White- or White woman-owned:

1. Ratio of sales and receipts share for all firms over the share of total number of all firms.
2. Ratio of sales and receipts share for employer firms over the share of total number of employer firms.
3. Ratio of annual payroll share over the share of total number of employer firms.

We explored the data to see if an MWBE's share of sales/receipts and payroll approximates its share of firms. For example, Black firms might represent 10% of all firms but the sales for Black firms might capture just 2% of the sales of all firms. The ratio of Black share of sales over Black share of firms would be .2% (2% divided by 10%), indicating that the sales levels for Black firms in the industry is less than one would expect given the number of Black firms in the industry. A ratio of one to one, is interpreted as a sign of parity.

Results of the analysis of the ABS data indicate that non-Whites' and White women's share of all employer firms is greater than their share of sales, payrolls, and employees. This supports the conclusion that barriers to business success disproportionately affect non-Whites and White women.

237. 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 was that the 2018 ABS sampled approximately 850,000 firms, which allowed a more complete set of data to be released. In the ABS conducted in 2019-2022, the sample was reduced to 300,000 firms; consequently, the detailed statistics presented in the 2018 ABS could not be reproduced. The 2023 ABS will return to the 2018 sample size of 850,000.

B. Disparate Treatment in King County’s Marketplace: Evidence from the Census Bureau’s 2017 - 2021 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 King County’s contracting equity programs (discussed in Chapter III). In this section, we used the Census Bureau’s ACS data to explore this and other aspects of this 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. To obtain robust results from our analysis, we used the file that combines the most recent data available for years 2017 through 2021.²³⁸ With this rich data set, our analysis can establish with greater certainty any causal links between race, gender and economic outcomes.

The Census Bureau classifies Whites, Blacks, Native Americans, and Asians as racial groupings. CHA developed a fifth grouping, “Other”, to capture individuals who are not a member of the above four racial categories. In addition, Hispanics are an ethnic category whose members could be of any race, *e.g.*, Hispanics could be White or Black. To avoid double counting – *i.e.*, an individual could be counted once as Hispanic and once as White – CHA developed non-Hispanic subset racial categories: non-Hispanic Whites; non-Hispanic Blacks; non-Hispanic Native Americans; non-Hispanic Asians; and non-Hispanic Others. When those five groups are added to the Hispanic group, the entire population is counted and there is no double-counting. When Whites are disaggregated into White men and White women,

238. Initially, the Census Bureau contacted approximately 3.5M households. For the analysis reported in this Chapter, we examined over 290,000 observations. For more information about the ACS PUMS, see <https://www.census.gov/programs-surveys/acs/>.

those groupings are non-Hispanic White men and non-Hispanic White women. For ease of exposition, the groups in this report are referred to as Black, Native American, Asian, Other, White women, and White men, while the actual content is the non-Hispanic subset of these racial groups.

Often, the general public sees clear associations between race, gender, and economic outcomes and assumes this association reflects a tight causal connection. However, economic outcomes are determined by a broad set of factors including, and extending beyond, race and gender. To provide a simple example, two people who differ by race or gender may receive different wages. This difference may simply reflect that the individuals work in different industries. If this underlying difference is not known, one might assert the wage differential is the result of race or gender difference. To better understand the impact of race or gender on wages, it is important to compare individuals of different races or genders who work in the same industry. Of course, wages are determined by a broad set of factors beyond race, gender, and industry. With the ACS PUMS, we have the ability to include a wide range of additional variables such as age, education, occupation, and residence in the analysis.

We employed a multiple regression statistical technique to process 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 examined how variations in the race, gender, and industry of individuals impact the wages and other economic outcomes received by individuals. The technique allows us to determine the effect of changes in one variable, assuming that the other determining variables are the same. That is, we compare individuals of different races, but of the same gender and in the same industry; or we compare individuals of different genders, but of the same race and the same industry; or we compare individuals in different industries, but of the same race and gender. We determine the impact of changes in one variable (*e.g.*, race, gender or industry) on another variable (wages), “controlling for” the movement of any other independent variables.

With respect to the second result of regression analysis, we determine the statistical significance of the relationship between the dependent variable and independent variable. For example, the relationship between gender and wages might exist (*e.g.*, holding all other factors constant, women earn less than men), but we find that it is not statistically different from zero. In this case, we are not confident that there is not any relationship between the two variables. If the relationship is not statistically different from zero, then a variation in the independent variable

has no impact on the dependent variable. The regression analysis allows us to say with varying degrees of statistical confidence that a relationship is different from zero. If the estimated relationship is statistically significant at the 0.05 level, that indicates that we are 95% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.01 level, that indicates that we are 99% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.001 level, that indicates that we are 99.9% confident that the relationship is different from zero.²³⁹ If a result is non-zero but the result is not statistically significant, then we cannot rule out zero being the true result. Note: this does not mean the result is wrong, only that there is not a statistically significant level of confidence in the result.

In the following presentation of results, each sub-section first reports data on the share of a demographic group that forms a business (business formation rates); the probabilities that a demographic group will form a business relative to White men (business formation probabilities); the differences in wages received by a demographic group relative to White men (wage differentials); and the differences in business earnings received by a demographic group relative to White men (business earnings differentials). Because the ACS contained limited observations for certain groups in particular industries, we were unable to provide reliable estimates for business outcomes for these groups. However, there were always sufficient observations in the sample of wage earners in each group in each industry to permit us to develop reliable estimates. We developed these results using data from the U.S. Bureau of the Census' ACS for King County, Pierce County, and Snohomish County (referred henceforth as the "Three-County Seattle MSA") which was determined to be the geographic market in Chapter IV.

1. All Industries in the Three-County Seattle MSA

One method of exploring differences in economic outcomes is to examine the rate at which different demographic groups form businesses. Table 5-1 presents these results. As stated above, the business formation rate represents the share of a population that forms businesses. When developing industry-specific rates, we examine the population that works in that particular industry and identify what share of that sub-population form businesses. For example, Table 5-1 indicates that 2.9% of Blacks in the across all industry form businesses; this is less than the 5.5% business formation rate for White men. There were low numbers of Native American firms in the ACS sample; consequently, reliable estimates of firm outcomes could not be made for these groups. In Table 5-1, this is indicated by the symbol "-----".²⁴⁰ Overall, this table indicates

239. Most social scientists do not endorse utilizing a confidence level of less than 95%. Appendix C explains more about statistical significance.

240. This symbol was used through the chapter when there were insufficient observations to establish reliable estimates.

that White men have higher business formation rates compared to all other demographic groups.

Table 5-2 utilizes probit regression analysis to examine the probability of forming a business after controlling for important factors beyond race and gender.²⁴¹ This table indicates that Blacks, Hispanics, Asians, and White women are less likely to form businesses compared to similarly situated White men. The reduced probabilities of business formation ranged from 1.7% to 0.6%. Only the coefficients for Blacks, Hispanics, Asians, and White women was statistically significant and the significance level varied from 0.001 to 0.05. 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.²⁴²

Tables 5-3 and 5-4 present these data on wage and salary incomes and business earnings respectively. Table 5-3 indicates that all MWBE groups earn less than White men with the range of coefficients from -28.7% to 11.3%. All coefficients were statistically significant at the 0.001 or 0.01 level. Table 5-4 indicates business earnings for Blacks, Hispanics, Others, and White women were less than White men and those coefficients were statistically significant.

Table 5-1: Business Formation Rates, All Industries, 2017 - 2021

Demographic Group	Business Formation Rates
Black	2.9%
Hispanic	3.3%
Native American	-----
Asian/Pacific Islander	4.0%
Other	3.6%
White Women	4.4%
MWBE	3.9%
White Male	5.5%

Source: CHA calculations from the American Community Survey

241. Appendix B provides a “Further Explanation of Probit Regression Analysis.”

242. See Appendix A for more information on multiple regression statistical analysis.

**Table 5-2: Business Formation Probability Differentials for Selected Groups
Relative to White Men, All Industries, 2017 - 2021**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-1.7%**
Hispanic	-1.4%**
Native American	-----
Asian/Pacific Islander	-0.8%*
Other	0.6%
White Women	-1.1%***

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 5-3: Wage Differentials for Selected Groups Relative to White Men
All Industries, 2017 - 2021**

Demographic Group	Wages Relative to White Men (% Change)
Black	-26.4%***
Hispanic	-11.3%***
Native American	-28.7%***
Asian/Pacific Islander	-21.0%***
Other	-23.9%***
White Women	-26.4%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

**Table 5-4: Business Earnings Differentials for Selected Groups Relative to White Men
All Industries, 2017 - 2021**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-107.0% ^a ***
Hispanic	-42.4%*
Native American	-----

Demographic Group	Earnings Relative to White Men (% Change)
Asian/Pacific Islander	7.3%
Other	-113.0%*
White Women	-53.8%***

a. The proper way to interpret a coefficient that is less than negative 100% (e.g., the value of the coefficient for White Women in Table 5-7), is the percentage amount non-M/WBEs earn that is more than the group in question. In this case, White men earn 107% more than Blacks.

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

* Indicates statistical significance at the 0.05 level

The Construction Industry in the Three-County Seattle MSA

Tables 5-5 through 5-8 present the analysis of data in the Construction industries. There was not sufficient information to examine business outcomes for Black, Native Americans and Others. Table 5-5 indicates that White men have higher business formation rates compared to Hispanics, Asians, and White women. Table 5-6 presents data on the probability of forming a business after controlling for important factors beyond race and gender. This table indicates that Hispanics and White women are less likely to form businesses compared to similarly situated White men. The reduced probabilities of business formation are 4.5% for Hispanics and 2.1% for White women. Only the coefficient for Hispanics was statistically significant and it was statistically significant at the 0.05 level.

Another way to measure equity is to examine how the wage and salary incomes and business earnings of particular demographic groups compare to White men. Tables 5-7 and 5-8 present data on the differentials in wage and salary incomes and business earnings respectively. Table 5-7 indicates that all DBE groups earn less than White men with the range of coefficients from -48.2% to -17.6%. All coefficients except those for Others were statistically significant. Table 5-8 indicates that while Hispanics and White women receive business earning less than White men, none of coefficients were statistically significant.

Table 5-5: Business Formation Rates
Construction, 2017 - 2021

Demographic Group	Business Formation Rates
Black	-----
Hispanic	4.0%
Native American	-----
Asian/Pacific Islander	9.1%
Other	-----
White Women	9.3%
MWBE	6.0%
White Male	11.0%

Source: CHA calculations from the American Community Survey

Table 5-6: Business Formation Probability Differentials for Selected Groups
Relative to White Men, Construction, 2017 - 2021

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-----
Hispanic	-4.5%*
Native American	-----
Asian/Pacific Islander	0.2%
Other	-----
White Women	-2.1%

Source: CHA calculations from the American Community Survey

* Indicates statistical significance at the 0.05 level

Table 5-7: Wage Differentials for Selected Groups Relative to White Men
Construction, 2017 - 2021

Demographic Group	Wages Relative to White Men (% Change)
Black	-48.2%***
Hispanic	-20.7%***
Native American	-35.8%*

Demographic Group	Wages Relative to White Men (% Change)
Asian/Pacific Islander	-18.5%**
Other	-17.6%
White Women	-29.7%***

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 5-8: Business Earnings Differentials for Selected Groups Relative to White Men
Construction, 2017 - 2021**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-----
Hispanic	-96.9%
Native American	-----
Asian/Pacific Islander	15.6%
Other	-----
White Women	-86.8%

Source: CHA calculations from the American Community Survey

2. The Construction-Related Services Industry in the Three-County Seattle MSA

Tables 5-9 through 5-12 present the analysis of data in the Construction-Related Services industries. There were insufficient observations of Blacks, Hispanics, Native Americans, Asians, and Others to allow for proper analysis of business outcomes. Table 5-9 indicates that White women formed businesses at a lower rate (6.6%) than White men (7.8%). Examining the business formation probabilities (Table 5-10) – once again controlling for age education and gender – White women had a slightly larger probability to form businesses compared to White men, but this result was not statistically significant. Table 5-11 present data on wage differentials: Blacks, Hispanics, Asians, Others and White women earned less than White men. Only the coefficients for Asians (-29.3%) and White women (-28.2%) were statistically significant; they were statistically significant at the 0.001 level. Business earnings – presented in Table 5-12 – indicate that the coefficient for White women was positive and it was not statistically significant.

**Table 5-9: Business Formation Rates
Construction-Related Services, 2017 - 2021**

Demographic Group	Business Formation Rates
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	6.6%
MWBE	4.8%
White Male	7.8%

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, 2017 - 2021**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	0.05%

Source: CHA calculations from the American Community Survey

**Table 5-11: Wage Differentials for Selected Groups Relative to White Men
Construction-Related Services, 2017 - 2021**

Demographic Group	Wages Relative to White Men (% Change)
Black	-11.8%
Hispanic	-0.2%
Native American	-----

Demographic Group	Wages Relative to White Men (% Change)
Asian/Pacific Islander	-29.3%***
Other	2.3%
White Women	-28.2%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

**Table 5-12: Business Earnings Differentials for Selected Groups Relative to White Men
Construction-Related Services, 2017 - 2021**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	16.8%

Source: CHA calculations from the American Community Survey

Where there are sufficient observations to draw accurate inferences, the data presented in the above Tables indicate that non-Whites and White women form businesses less than White men and their wage and business earnings are less than those of White men. These analyses support the conclusion that barriers to business success do affect non-Whites and White women.

C. Disparate Treatment in King County's Marketplace: Evidence from the Census Bureau's 2017 Annual Business Survey

We further examined whether non-Whites and White women have disparate outcomes when they are active in the State of Washington. The State was the geographic unit of analysis because the ABS does not present data at the sub-state level. 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.²⁴³

With these data, we grouped the firms into the following ownership categories:^{244,245}

- Hispanics
- Non-Hispanic Blacks
- Non-Hispanic Native Americans
- Non-Hispanic Asians
- Non-Hispanic White women
- Non-Hispanic White men
- Firms equally owned by non-Whites and Whites
- Firms equally owned by men and women
- Firms that were either publicly-owned or where the ownership could not be classified

For this analysis, the first four groups were aggregated to form a non-White category. Since our interest is the treatment of non-White-owned firms and White woman-owned firms, the last four groups were aggregated to form one category. To ensure this aggregated group is described accurately, we label this group "not non-White/non-White women". While this label is cumbersome, it is important to be clear this group includes firms whose ownership extends beyond White men, such as firms that are not classifiable or that are publicly traded and thus have no racial ownership. In addition to the ownership demographic data, the Survey also gathers information on the sales, number of paid employees, and payroll for each reporting firm.

We analyzed the ABS data on the following sectors:

- All Industries
- Construction

243. For more information on the Annual Business Survey see <https://www.census.gov/programs-surveys/abs/about.html>.

244. Race and gender labels reflect the categories used by the Census Bureau.

245. 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

The ABS data – a sample of all businesses, not the entire universe of all businesses – required some adjustments. We had to define the sectors at the two-digit North American Industry Classification System (“NAICS”) code level, and therefore our sector definitions do not exactly correspond to the definitions used to analyze the County’s contract data in Chapter IV, where we are able to determine sectors at the six-digit NAICS code level. At a more detailed level, the number of firms sampled in particular demographic and sector cells may be so small that the Census Bureau does not report the information, either to avoid disclosing data on businesses that can be identified or because the small sample size generates unreliable estimates of the universe. We therefore report two-digit data.

We analyzed the ABS data on the All Industries, Construction and Professional, Scientific, and Technical Services. The Professional, Scientific, and Technical Services industry is broader than the Construction-Related Services analyzed in the ACS data, but it is impossible to narrow this category without losing the capacity to conduct race and gender specific analyses. Table 5-13 presents information on which NAICS codes were used to define each sector.²⁴⁶

Table 5-13: Two-Digit NAICS Code Definition of Sector

ABS Sector Label	Two-Digit NAICS Codes
Construction	23
Professional, Scientific, and Technical Services ^a	54

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

Table 5-14 presents data on the percentage share that each group has of the total of each of the following four business outcomes:

1. The number of firms with employees (employer firms)
2. The sales and receipts of all employer firms
3. The number of paid employees

246. The two-digit NAICS code level did not allow us to define and analyze an information technology industry as we did with the ACS data.

4. The annual payroll of employer firms

Panel A of Table 5-14 presents data for the four basic non-White racial groups:

1. Black
2. Hispanic
3. Asian
4. Native American

Panel B of Table 5-14 presents data for the following types of firm ownership:

- Non-White
- White women
- Not non-White/non-White women²⁴⁷

Categories in the second panel are mutually exclusive. Hence, firms that are non-White and equally owned by men and women are classified as non-White and firms that are equally owned by non-Whites and Whites and equally owned by men and women are classified as equally owned by non-Whites and Whites.

Since the central issue is the possible disparate treatment of non-White firms and White woman firms, we calculate three disparity ratios each for Black, Hispanic, Asian, Native American, non-White, and White woman firms respectively (a total of 18 ratios), presented in Table 5-15:

- Ratio of sales and receipts share for all employer firms over the share of total number of all employer firms.
- Ratio of sales and receipts share for employer firms over the share of total number of employer firms.
- Ratio of annual payroll share over the share of total number of employer firms.

For example, the disparity ratio of sales and receipts share for all firms over the share of total number of all employer firms for Black firms is 17.2% (as shown in Table 5-15). This is derived by taking the Black share of sales and receipts for all employer firms (0.1%) and dividing it by the Black share of total number of all employer firms (0.9%) that are presented in Table 5-14.²⁴⁸ If Black-owned

247. Again, while a cumbersome nomenclature, it is important to remain clear that this category includes firms other than those identified as owned by White men.

248. Please note that while the numbers presented in Table 5-14 are rounded to the first decimal place, the calculations resulting in the numbers presented in Table 5-15 are based on the actual (non-rounded) figures. Therefore, the Black ratio presented in Table 5-15 of 17.2% is not the same figure as that which would be derived when you divided 0.1 by 0.9 (the numbers presented in Table 5-14).

firms earned a share of sales equal to their share of total firms, the disparity index would have been 100%. An index less than 100% indicates that a given group is being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission's "80% rule" that a ratio less than 80% presents a *prima facie* case of discrimination.²⁴⁹ Seventeen of the 18 disparity ratios for non-White firms and White woman firms (presented in Table 5-15) are below this threshold.²⁵⁰

Table 5-14: Demographic Distribution of Sales and Payroll Data – Aggregated Groups
All Industries, 2017

	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts - All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
Panel A: Distribution of Non-White Firms				
Black	0.9%	0.1%	0.9%	0.2%
Hispanic	3.9%	0.6%	1.6%	0.9%
Asian	10.5%	2.3%	3.0%	2.6%
Native American	0.5%	0.2%	0.0%	0.2%
Panel B: Distribution of All Firms				
Non-White	15.8%	3.2%	5.5%	3.9%
White Women	15.9%	3.1%	6.2%	4.3%
Not Non-White/Not White Women	68.3%	93.7%	88.3%	91.8%
All Firms	100.0%	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

249. 29 C.F.R. §1607.4(D) ("A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or 80%) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.").

250. Because the data in the subsequent tables are presented for descriptive purposes, significance tests on these results are not conducted.

Table 5-15: Disparity Ratios – Aggregated Groups
All Industries, 2017

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non-White Firms			
Black	17.2%	99.9%	26.3%
Hispanic	15.4%	39.7%	22.5%
Asian	22.1%	28.5%	24.8%
Native American	34.0%	9.7%	45.5%
Panel B: Disparity Ratios for All Firms			
Non-White	20.5%	34.7%	24.9%
White Women	19.4%	39.1%	26.8%
Not Non-White/Not White Women	137.2%	129.3%	134.4%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

This same methodology was used to examine the other four industries. The subsequent sections will just report the number of ratios that are below the 80% threshold.

2. Construction Industry

Tables 5-16 and 5-17 present the analysis for the Construction industry. Twelve of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-17 fall under the 80% threshold.

Table 5-16: Demographic Distribution of Sales and Payroll Data – Aggregated Groups
Construction, 2017

	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts - All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
Panel A: Distribution of Non-White Firms				
Black	0.8%	0.4%	0.6%	0.6%
Hispanic	6.7%	2.4%	4.0%	2.9%
Asian	2.1%	1.2%	1.2%	1.0%

	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)
Native American	0.9%	1.3%	1.5%	1.8%
Panel B: Distribution of All Firms				
Non-White	10.5%	5.4%	7.3%	6.4%
White Women	6.3%	4.2%	5.9%	5.4%
Not Non-White/Not White Women	83.2%	90.4%	86.8%	88.2%
All Firms	100.0%	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

**Table 5-17: Disparity Ratios – Aggregated Groups
Construction, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non-White Firms			
Black	54.8%	79.3%	81.3%
Hispanic	35.9%	60.6%	44.0%
Asian	57.3%	55.9%	46.5%
Native American	143.1%	159.0%	195.2%
Panel B: Disparity Ratios for All Firms			
Non-White	51.1%	69.7%	60.5%
White Women	66.4%	92.7%	85.6%
Not Non-White/Not White Women	108.7%	104.4%	106.1%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

3. Professional, Scientific, and Technical Services Industry

Tables 5-18 and 5-19 present the same analysis for the Professional, Scientific, and Technical Services industry. All of the 18 disparity ratios for non-White

firms and White woman firms presented in Table 5-19 fall under the 80% threshold.

**Table 5-18: Demographic Distribution of Sales and Payroll Data – Aggregated Groups
Professional, Scientific, and Technical Services, 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	1.1%	0.4%	0.6%	0.4%
Hispanic	1.5%	1.1%	1.1%	1.1%
Asian	6.7%	4.9%	4.9%	4.6%
Native American	0.3%	0.2%	0.1%	0.1%
Panel B: Distribution of All Firms				
Non-White	9.6%	6.5%	6.7%	6.1%
White Women	22.3%	6.9%	8.4%	6.1%
Not Non-White/Not White Women	68.2%	86.6%	84.9%	87.8%
All Firms	100.0%	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

**Table 5-19: Disparity Ratios – Aggregated Groups
Professional, Scientific, and Technical Services, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non-White Firms			
Black	32.8%	51.6%	33.6%
Hispanic	72.5%	75.2%	70.4%
Asian	73.3%	72.9%	69.0%
Native American	54.2%	46.6%	36.3%
Panel B: Disparity Ratios for All Firms			
Non-White	67.9%	69.9%	64.1%

	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	30.9%	37.7%	27.4%
Not Non-White/Not White Women	127.1%	124.6%	128.7%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

4. Conclusion

Overall, the analysis of the ABS data presented in the above tables indicate that the non-White share and White woman share of all employer firms is greater than their share of sales, payrolls, and employees. This supports the conclusion that barriers to business success disproportionately affect non-Whites and White women.

D. Evidence of Disparities in Access to Business Capital

Capital is the lifeblood of any business. Participants in the anecdotal data collection universally agreed to this fundamental fact. The interviews with business owners conducted as part of this Study confirmed that small firms, especially minority- and woman-owned firms, had difficulties obtaining needed working capital to perform on County contracts and subcontracts, as well as expand the capacities of their firms. As demonstrated by the analyses of Census Bureau data, above, discrimination may even prevent firms from forming in the first place.

There are extensive federal agency reports and much scholarly work on the relationship between personal wealth and successful entrepreneurship. There is a consensus that disparities in personal wealth translate into disparities in business creation and ownership.²⁵¹ The most recent research highlights the magnitude of the COVID-19 pandemic's disproportionate impact on minority-owned firms.

251. See, e.g., Evans, David S. and Jovanovic, Boyan, "An Estimated Model of Entrepreneurial Choice under Liquidity Constraints," *Journal of Political Economy*, Vol. 97, No. 4, 1989, pp. 808-827; David S. Evans and Linda S. Leighton, "Some empirical aspects of entrepreneurship," *The American Economic Review*, Vol. 79, No. 3, 1989, pp. 519-535.

1. Federal Reserve Board Small Business Credit Surveys²⁵²

The Development Office of the 12 Reserve Banks of the Federal Reserve System has conducted Small Business Credit Surveys (“SBCS”) to develop data on small business performance and financing needs, decisions, and outcomes.

a. 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*,²⁵³ 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.²⁵⁴

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.²⁵⁵

252. This survey offers baseline data on the financing and credit positions of small firms before the onset of the pandemic. See [fedsmallbusiness.org](https://www.fedsmallbusiness.org).

253. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

254. Findings for Native American-owned firms were omitted from the report because sample sizes were too small to make precise estimates for most measures.

255. 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.

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”)²⁵⁶ 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 and cash advance applications declined for the second consecutive year. Other key findings include:

256. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/2022-sbcs-employer-firms-report>.

- 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*²⁵⁷ compiles results from the 2020 SBCS. The SBCS provides data on small business performance, financing needs, and decisions and borrowing outcomes.^{258,259} 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 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, while Florida lifted COVID-19 restrictions relatively quickly, the South Atlantic, including North Carolina, maintained more strict guidelines.

257. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

258. The SBCS is an annual survey of firms with fewer than 500 employees.

259. 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.

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-owned and 91% of Hispanic-owned firms are non-employer firms, compared to 78% of White-owned and 75% of Asian-owned firms.²⁶⁰

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 SBCS²⁶¹ 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

260. The Report notes that a future report will describe findings from the 2020 SBCS for non-employers in greater detail.

261. <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 SBCS²⁶² 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 are representative of the nation's small employer firm demographics.²⁶³

Among the findings for employer firms relevant to discriminatory barriers were the following:

262. Small Business Credit Survey, <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

263. *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.²⁶⁴ 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.²⁶⁵
- 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.²⁶⁶
- 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.²⁶⁷
- 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.²⁶⁸
- Low credit score and lack of collateral were the top reported reasons for denial of applications by Black- and Hispanic-owned firms.²⁶⁹

ii. Non-employer firms²⁷⁰

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 status²⁷¹.

Among the findings for non-employer firms relevant to discriminatory barriers were the following:

264. *Id.* at 3.

265. *Id.* at 4.

266. *Id.* at 5.

267. *Id.* at 6.

268. *Id.* at 9.

269. *Id.* at 15.

270. *Id.* at 18.

271. *Id.* at 18.

- Black-owned firms were more likely to operate at a loss than other firms.²⁷²
- Black-owned firms reported greater financial challenges, such as obtaining funds for expansion, accessing credit and paying operating expenses than other businesses.²⁷³
- Black- and Hispanic-owned firms submitted more credit applications than White-owned firms.²⁷⁴

f. 2016 Small Business Credit Survey

The 2016 Small Business Credit Survey²⁷⁵ 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.²⁷⁶ 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 Firms²⁷⁷

The 2016 SBCS Report on Minority-Owned Firms provided results for White-, Black- or African American-, Hispanic-, and Asian- or Pacific Islander-owned firms.

Demographics²⁷⁸

The Report found that Black-, Asian-, and Hispanic-owned firms tended to be younger and smaller in terms of revenue size, and they were concentrated in different industries. Black-owned firms were concentrated in the healthcare and education industry sectors (24%). Asian-owned firms were concentrated in professional services and real estate (28%). Hispanic-owned firms were concentrated in non-manufacturing goods production and associated services industry, including building trades and Goods (27%). White-owned firms were more evenly distributed

272. *Id.*

273. *Id.* at 19.

274. *Id.* at 20.

275. <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

276. 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.

277. <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

278. 2016 SBCS, at 2.

across several industries but operated most commonly in the professional services industry and real estate industries (19%), and non-manufacturing goods production and associated services industry (18%).²⁷⁹

Profitability Performance Index²⁸⁰

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/Demands²⁸¹

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.

279. *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.

280. *Id.* at 3-4.

281. *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.²⁸²

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 Impact²⁸³

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.

282. The share of minority-owned firms receiving at least some financing was lower across all financing products, compared with non-minority firms.

283. *Id.* at 17.

Non-employer Firms²⁸⁴

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 Firms²⁸⁵

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 Industries²⁸⁶

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.²⁸⁷

Profitability Challenges and Credit Risk Disparities²⁸⁸

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

284. *Id.* at 21.

285. <https://www.newyorkfed.org/medialibrary/media/smallbusiness/2016/SBCS-Report-WomenOwnedFirms-2016.pdf>.

286. 2016 SBCS, at 1-5.

287. Non-manufacturing goods production and associated services refers to firms engaged in Agriculture, Forestry, Fishing, and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Goods; Wholesale Trade; Transportation and Warehousing (NAICS codes: 11, 21, 22, 23, 42, 48-49).

288. *Id.* at 6-7.

by credit risk were driven by woman-owned startups. Among firms older than five years, credit risk was indistinguishable by the owner's gender.

Financial Challenges During the Prior Twelve Months²⁸⁹

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 Differences²⁹⁰

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 Financing²⁹¹

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 Financing²⁹²

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 credits scores more frequently than male-owned firms as their chief

289. *Id.* at 8.
290. *Id.* at 10.
291. *Id.* at 16.
292. *Id.* at 14.

obstacle in securing credit. By contrast, male-owned businesses were more likely to cite performance issues.

Lender Satisfaction²⁹³

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*,²⁹⁴ the number of loans to Black businesses through the SBA's 7(a) program²⁹⁵ decreased 35% in 2020.²⁹⁶ 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.²⁹⁷

Bankers, lobbyists, and other financial professionals attributed the 2020 decline to the impact of the PPP pandemic relief effort.²⁹⁸ 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.²⁹⁹ 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

293. *Id.* at 26.

294. 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.

295. Section 7(a) of the Small Business Act of 1953 (P.L. 83-163, as amended).

296. The total number of 7(a) loans declined 24%.

297. 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.

298. 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.

299. 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.

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 data³⁰⁰ reveal that the number of SBA loans made annually to Black 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 2020.³⁰¹

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.³⁰² 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.³⁰³ 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 Report³⁰⁴

The 2010 Minority Business Development Agency Report, "Disparities in Capital Access Between Minority and non-Minority Owned Businesses: The Trou-

300. The SBA denied the original request for information; however, the publication prevailed on appeal.

301. Data obtained by the *Business Journal* does not include information from lenders who made less than ten loans in 2020.

302. While PPP loans are administered by the SBA, they are disbursed primarily through banks.

303. 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/>.

304. 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>).

bling 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 additional 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.³⁰⁵

It also found, “the largest single factor explaining racial disparities in business creation rates are differences in asset levels.”³⁰⁶

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.³⁰⁷
- 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.³⁰⁸
- 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.³⁰⁹
- 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-

305. *Id.* at 17.

306. *Id.* at 22.

307. *Id.* at 5.

308. *Id.*

309. *Id.*

minority-owned firms. The differences were even larger for loans received by high sales firms.³¹⁰

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 2003.³¹¹ 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.³¹²

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.³¹³
- 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.³¹⁴
- 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.³¹⁵

310. *Id.*

311. <https://www.federalreserve.gov/pubs/oss/oss3/nssbftoc.htm>. These Surveys have been discontinued. They are referenced to provide some historical context.

312. 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).

313. See Bates, T., "Venture Capital Investment in Minority Business," *Journal of Money Credit and Banking* 40, 2-3 (2008).

314. Fairlie, R.W. and Robb, A, *Race and Entrepreneurial Success: Black-, Asian- and White-Owned Businesses in the United States*, (Cambridge: MIT Press, 2008).

315. *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.³¹⁶ 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.³¹⁷

Intergenerational links are also critical to the success of the businesses that do form.³¹⁸ 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.³¹⁹ 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.³²⁰ The U.S. Department of Commerce has reported that the ability to form strategic alliances with other firms is important for success.³²¹ 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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- 316. 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.
 - 317. Hout, M. and Rosen, H. S., “Self-employment, Family Background, and Race,” *Journal of Human Resources*, Vol. 35, No. 4, 2000, pp. 670-692.
 - 318. 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.
 - 319. *Id.*
 - 320. 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.
 - 321. “Increasing MBE Competitiveness through Strategic Alliances” (Minority Business Development Agency, 2008).

have full and fair access to construction and construction-related contracts and associated subcontracts.

VI. QUALITATIVE EVIDENCE OF RACE AND GENDER BARRIERS IN KING COUNTY'S MARKET FOR CONSTRUCTION AND CONSTRUCTION-RELATED SERVICES CONTRACTS

In addition to quantitative data, a disparity study should further explore anecdotal evidence of experiences with discrimination in contracting opportunities in the construction and construction-related services industries. This evidence is relevant to the question of whether despite the operations of the County's contracting equity programs, Woman- and Minority-owned Business Enterprises ("MWBEs") and Disadvantaged Business Enterprises ("DBEs") face discriminatory barriers to their full and fair participation in King County opportunities. Anecdotal evidence also sheds light on the likely efficacy of continuing to use only race- and gender-neutral remedies, designed to benefit all small contractors. As discussed in Chapter II, this type of anecdotal data has been held by the courts to be relevant and probative of whether an agency has a need to use narrowly tailored M/W/DBE contract goals to remedy the effects of past and current discrimination and to create a level playing field for contract opportunities for all firms.

The Supreme Court has held that anecdotal evidence can be persuasive because it "brought the cold [statistics] convincingly to life."³²² 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.³²³ 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

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

323. *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).

of a [government’s] institutional practices that exacerbate discriminatory market conditions are [sic] often particularly probative.”³²⁴ “[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.”³²⁵

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.”³²⁶ 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.”³²⁷

To explore this type of anecdotal evidence of possible discrimination against minorities and women in the County’s geographic and industry markets and the effectiveness of its current race-and gender-neutral measures, we conducted nine small group and individual business owner interviews and interviews with industry and community partner organizations, totaling 72 participants. We also explored experiences of veteran owned business enterprises (“VBEs”) and non-minority, non-female LGBT individuals³²⁸ with discrimination in contracting opportunities. We received written comments throughout the term of the study.

We met with a broad cross section of business owners in the County’s geographic market for the construction and construction-related services industries. 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 County, other government agencies, and in the private sector. We also elicited recommendations for improvements to the

324. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1120, 1530 (10th Cir. 1994).

325. *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 926 (11th Cir. 1997).

326. *H.B. Rowe Co., Inc. v. Tippet*, 615 F.3d 233, 249 (4th Cir. 2010).

327. *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).

328. Gay, bisexual and transgender individuals of color were included with their respective racial or ethnic groups and White lesbians, bisexual and transgender individuals were included with White women.

County's SCS, MWBE, DBE programs for FAA and FTA contracts and the Fair Share Program for EPA funding, discussed in Chapter III.

In addition to exploring discrimination against minorities, the County asked us to examine the possible economic dislocation experienced by M/W/DBEs caused by the COVID-19 pandemic. The results of this qualitative examination indicate that the pandemic negatively affected some firms' revenues and costs, abilities to retain employees and customer base. Many owners have fully recovered; some even benefited. Some, however, are still trying to fully overcome the impact of the pandemic.

In addition to the group interviews, we conducted an electronic survey of firms in the County's market area about MWBEs' experiences in obtaining work, County marketplace conditions, impact of the pandemic and the County's SCS, MWBE and DBE Programs. One hundred and nine net responses were received to the survey. Among MWBEs, 39.7% reported that they still experience barriers to equal contracting opportunities; 29.3% said their competency was questioned because of their race or gender; and 25.9% indicated that they had experienced job-related sexual or racial harassment or stereotyping.

A. Business Owner Interviews

The following are summaries of the issues discussed. Quotations are indented and may have been shortened for readability. The statements are representative of the views expressed by numerous participants.

We have also appended a summary of the anecdotal results from several disparity studies we have conducted in Washington State. These studies are directly relevant and probative of the barriers to success that minority and woman entrepreneurs continue to face in the Washington market.³²⁹

1. Experiences with Discrimination

Some women reported suffering from gender-based discrimination in business opportunities.

Oh, of course [I've experienced discrimination]. Yeah, barriers, harassment. I was not able to borrow money, period.... It was basically, "No, we're not loaning you money because you're a woman. And we don't think women can succeed in this industry. So, you are not a good choice for us." When I started in the industry, I was being paid 20% less than men who had

329. Appendix F: Qualitative Evidence from Washington Disparity Studies.

less experience and fewer credentials. I've been able to document that.

One participant stated that minority owners may face more entrenched biases than White women.

The experiences might differ for woman-owned versus minority businesses. One of the barriers we face straight on is we are not even invited to teams. So, if you're not invited to teams, how can you even talk about having any challenges working with the County? So, obviously, the County hasn't recognized that as an issue and hasn't done anything concrete to increase its utilization and open its opportunity to minority-owned businesses.

There are some [County] departments that have been willfully preferential to White-owned firms, whether they're male or woman-owned businesses. And in my contracting with them, what my experience was experiencing overt hostility towards me as a prime.... I was negotiating a contract with this department that has been only using White firms for their entire history of existence. I was the first minority firm that got contracted with this division. And my experience with the project managers was open hostility and not even openness to discuss and talk about things. And basically, just setting us up to fail.

Hiring more minority and female staff was one suggestion to initiate significant changes.

One of the biggest changes was that King County hired women as engineers, and as they rose in position, they were welcoming. So, the staffing within King County engineering itself was terribly important in changing the culture. In the external culture, which is the four-letter firms, that did not really happen. And, as a consequence, trying to get work through the large firms was virtually impossible.... Firms that I've worked with for 30 years, probably half the projects they put me in on, I never see a dime.... These are firms that I work with on enough projects, how angry do I want them to be at me [if I complain to the agency]?

The one thing that has shown concrete results in terms of contracting with minority businesses is having more minority staff who are open to contracting with minority businesses. Otherwise, we find a very shared, I don't know what the phrase

is, but a shared ethic of not believing minority businesses can deliver on projects. And sometimes it's said overtly, saying, "Well, you've only done three projects."

2. Discrimination on the Basis of Sexual Identity

The few gay men we were able to interview had not encountered many barriers on the basis of sexual preference.

I've had very good luck with the County. I have good friends that I've made over many years there. They all know me.... It's usually just I get it on the qualifications, then tell them later, "Oh, I'm an SCS, so you might want to count that."... I just have so much consulting experience directly with the County over 30 years. I've worked on so many County projects over my lifetime that people just know me now, so that helps a lot. Contractors, on the other hand, are a little weirder. I did lose one contractor because of being gay.... They hired me and then later got rid of me. It was because the superintendent on the job found out.... I might work for them again if they get rid of that other guy.

I have to admit that I've really only had gay problems a couple, three times in my life.

3. Discrimination on the basis of veteran status

The military veterans we interviewed had not suffered any discrimination as the result of having served in the armed forces.

- We've never had any problems that we've ever encountered ... as a veteran-owned business.
- I haven't really experienced any discrimination.
- I do not think we have been discriminated against, but in over 30 years, we have never been given any preference.
- The barriers that we face is just being new companies and trying to get in. There's a lot of stuff carved out for other folks to get in and do business on the small works contracts. WSDOT runs a pretty good program with the VOB. That helps out a lot.... We've never been discriminated against.

One VBE reported that he had lost contracts to WBEs he perceived to be front companies, and that being certified had not resulted in any opportunities.

- We have had to compete head to head against women-owned businesses that got a 5 or 10% pricing advantage while we got none. We have had to

compete for Defense Logistics Agency business against women owned businesses with names like XYZ Company "dba Valley Hotsie." The dba is what gets me.... Washington state encouraged us to register as a certified veteran owned business which we did. That has never done any good either.

4. Impact of the COVID-19 pandemic

Most participants reported that the pandemic had no lasting negative impacts on their ability to compete for work.

I can't speak to any negative impacts [from the pandemic].

Some even benefited.

Our COVID-19 impact was actually, it helped us grow into a different model of training. We usually do frontline training in the field, and we were able to really help build training modules online and serve a different purpose.

The pandemic in general was good for business.

B. Anecdotal Survey of King County Construction and Construction-related Services Firms

To supplement the interviews, we also conducted an anecdotal electronic survey of firms on our Master M/W/DBE Directory; prime firms on the County's contract data file; and non-minority, non-woman-owned veteran firms and other firms identified through our outreach efforts. We further solicited written comments. The survey was comprised of up to sixty closed- and open-ended questions and replicated the topics discussed in the business owner interviews. Questions focused on doing business in the City's market area, specifically barriers and negative perceptions, access to networks, information and experiences in obtaining work, firm capacity and capacity development, the impact of the COVID-19 pandemic, as well as the County's SCS, MWBE and DBE programs for FAA and FTA contracts and the EPA Fair Share Program.

One hundred and seventy-seven gross responses were received. After accounting for incomplete and non-relevant responses, there were 109 usable responses. Percentage results have been rounded to one decimal place to increase readability. We received only eight useable responses from VBEs and one usable response from an LGBT-owned firm. Information presented for VBE firms is limited to only their profiles. Information presented for the one LGBT response is limited to the Race and Gender Distribution table.

1. Respondents' Profiles

Table 6-1: The race and gender distribution of the 109 respondents is listed below. Minority and woman respondents accounted for 54.1% of respondents; non-minority, non-female veterans for 7.3% of the respondents; LGBT-owned firms for 0.9%; and publicly-held, non-minority, non-female respondents accounted for the remaining 37.6%.

Table 6-1: Race and Gender Distribution

Firm Ownership	#	%
Black or African American	18	16.5%
Hispanic	8	7.3%
Native Hawaiian or Pacific Islander American	1	0.9%
East, Southeast, Subcontinent Asian American	10	9.2%
Native American/ Alaska Native	2	1.8%
Non-Minority Women	20	18.3%
M/W/DBE Total	59	54.1%
Non-Minority, Non-Female Veterans	8	7.3%
Non-Minority, Non-Female LGBT	1	0.9%
Publicly Held, Non-M/W/DBEs	41	37.6%
Total Firms	109	100%

2. Firms' Profiles

Chart 6-1: The type of work performed by the 108³³⁰ respondents is listed below.

330. Only one LGBT-owned firm responded. Therefore, charts are not presented for this group. The total number of respondents drops to 108 when the response from this one LGBT-owned firm is removed.

Chart 6-1: Type of Work

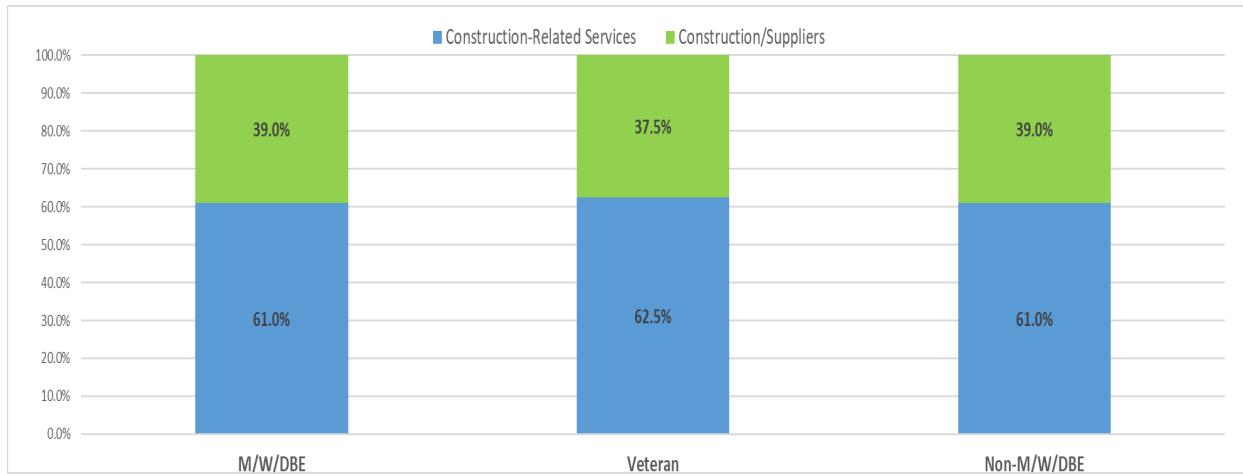


Chart 6-2: Among M/W/DBEs, construction firms and suppliers accounted for 39.0% of the respondents. Construction-related professional services firms accounted for 61.0% of the respondents.

Chart 6-2: M/W/DBE Type of Work

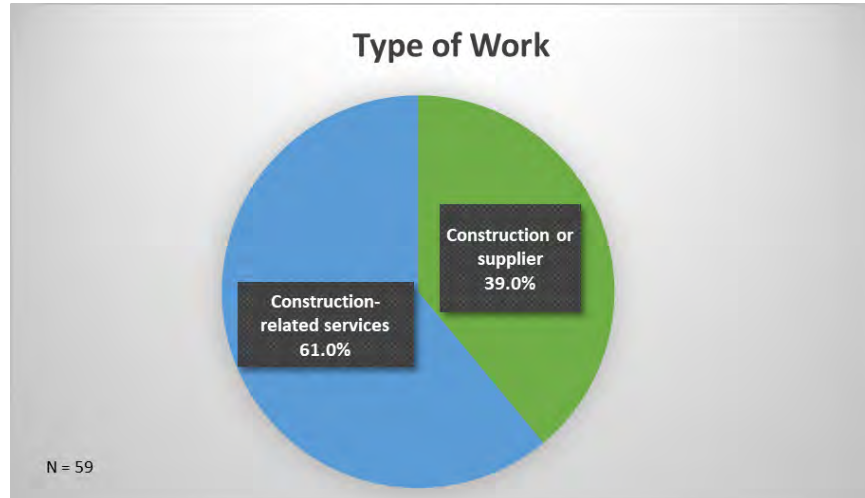


Chart 6-3: Among VBEs, construction firms and suppliers accounted for 37.5% of the respondents. Construction-related professional services firms accounted for 62.5% of the respondents.

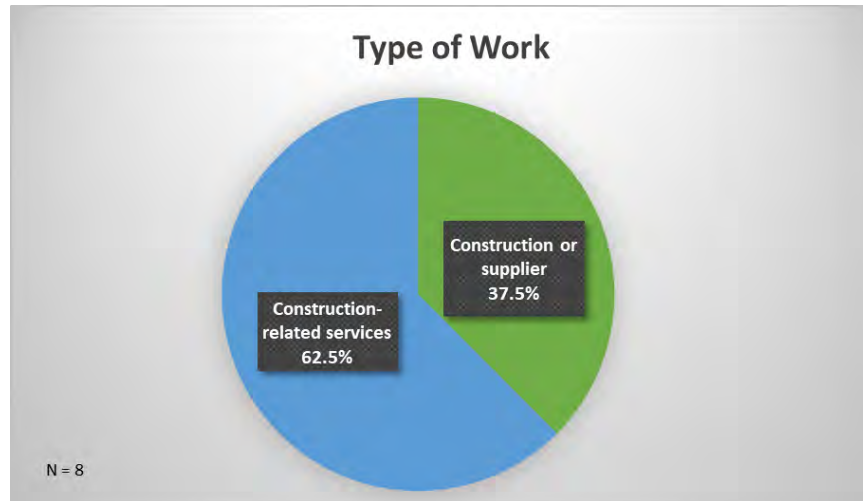
Chart 6-3: VBE Type of Work

Chart 6-4: Among non-M/W/DBE respondents, construction firms accounted for 39.0% of the respondents. Construction-related professional services firms accounted for 61.0% of the respondents.

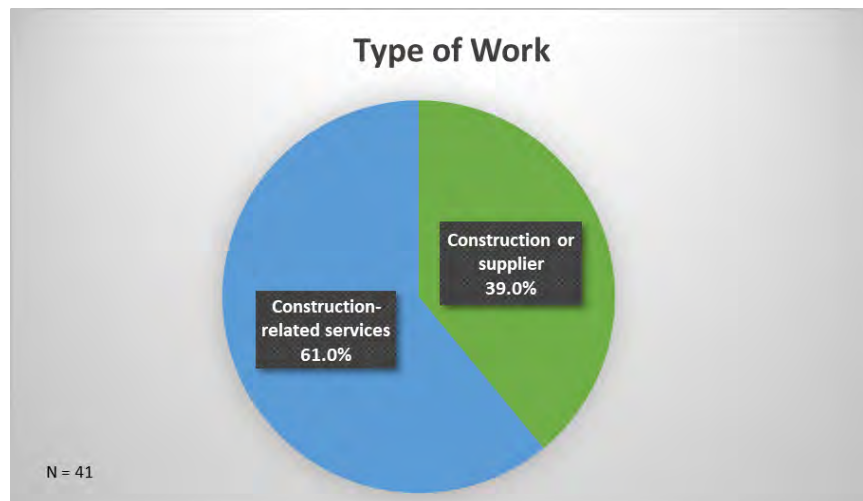
Chart 6-4: Non-M/WDBE Type of Work

Chart 6-5: Almost 95% (94.9%) of M/W/DBE respondents reported that some of their revenues were derived from government work; 20.3% reported up to twenty-five percent; 13.6% reported between twenty-five and fifty percent; 15.3% reported between fifty-one and seventy-five percent; and 45.8% reported between seventy-six and one hundred percent. Government work did not contribute to the gross revenues of 5.1% of the firms.

Chart 6-5: M/W/DBE Revenue from Government Work

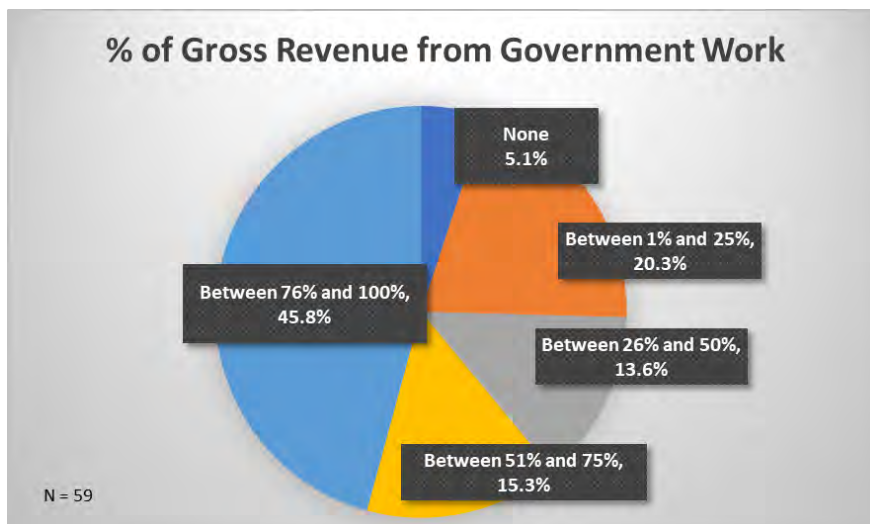


Chart 6-6: Three-quarters (75.0%) of VBEs reported that some of their revenues were derived from government work; 50.0% up to twenty-five percent; 12.5% between fifty-one and seventy-five percent; and 12.5% between seventy-six and one hundred percent. Government work did not contribute to the gross revenues of 25.0% of the firms.

Chart 6-6: VBE Revenue from Government Work

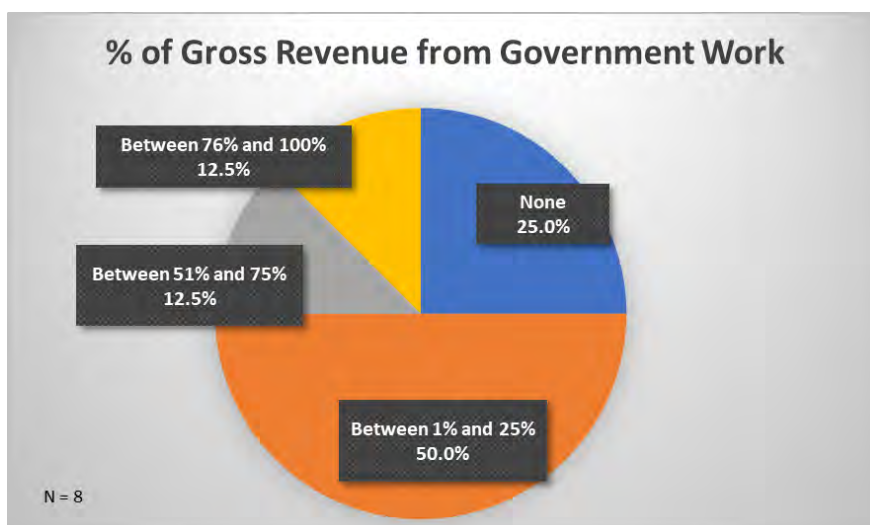


Chart 6-7: All of the non-M/W/DBE respondents reported that some of their revenues were derived from government work; 26.8% up to twenty-five percent; 22.0% between twenty-five and fifty percent; 22.0% between fifty-one

and seventy-five percent; and 29.3% between seventy-six and one hundred percent.

Chart 6-7: Non-M/W/DBE Revenue from Government Work

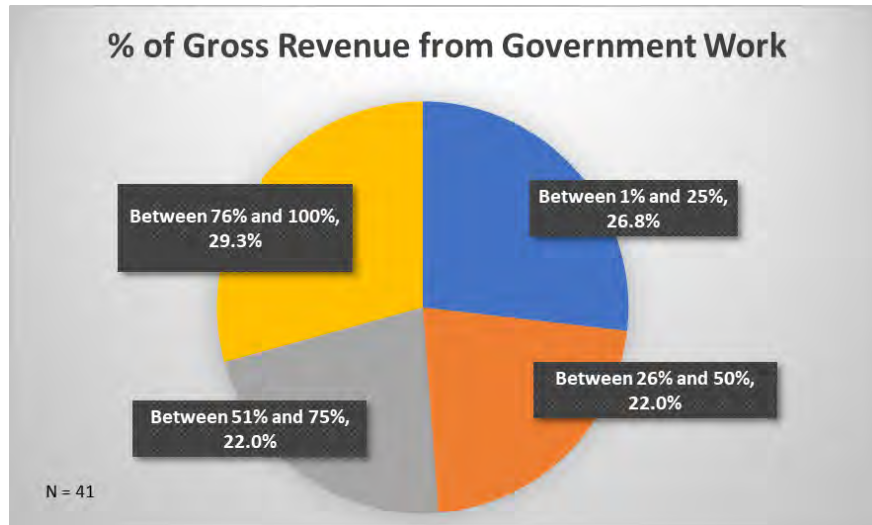


Chart 6-8: Only 15.3% of M/W/DBE firms reported being in business for five years or less; 16.9% for six to ten years; 35.6% for 11 to 20 years; 15.3% for 21 to 30 years; and 16.9% for over 30 years.

Chart 6-8: M/W/DBE Years in Business



Chart 6-9: A quarter (25.0%) of VBEs reported being in business for five years or less; 25.0% for six to ten years; 25.0% for 11 to 20 years; 25.0% for over 30 years.

Chart 6-9: VBE Years in Business

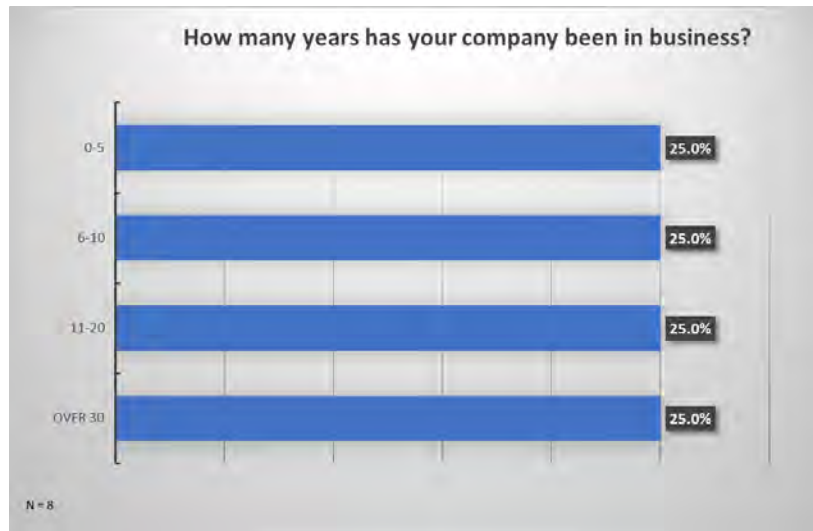


Chart 6-10: Only 2.4% of non-DBE firms reported being in business for five years or less; 4.9% for six to ten years; 22.0% for 21 to 30 years. The majority—41.5%—reported being in business for over 30 years.

Chart 6-10: Non-M/W/DBE Years in Business

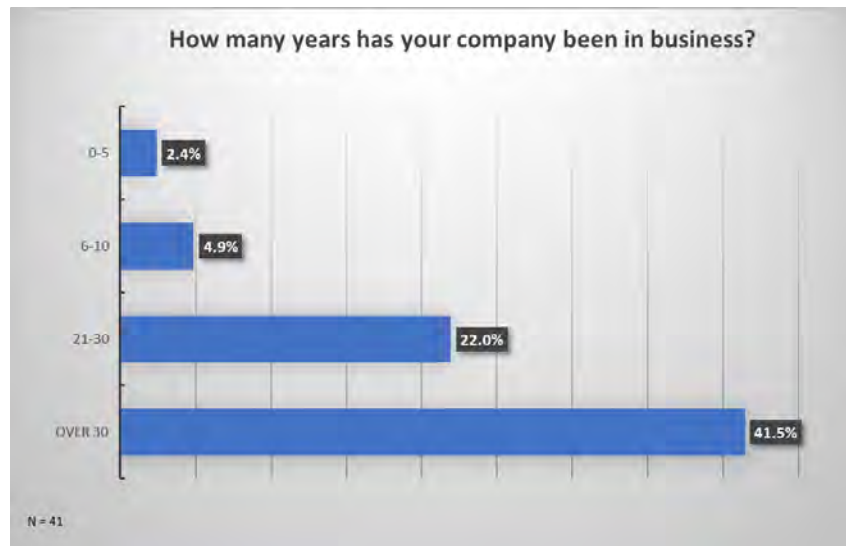


Chart 6-11: Over half (57.6%) of M/W/DBE firms reported having one to five employees; 28.8% reported six to 25 employees; 8.5% reported 26 to 50 employees; 3.4% reported 51 to 100; and 1.7% reported 101 to over 500 employees.

Chart 6-11: M/W/DBE Size of Workforce

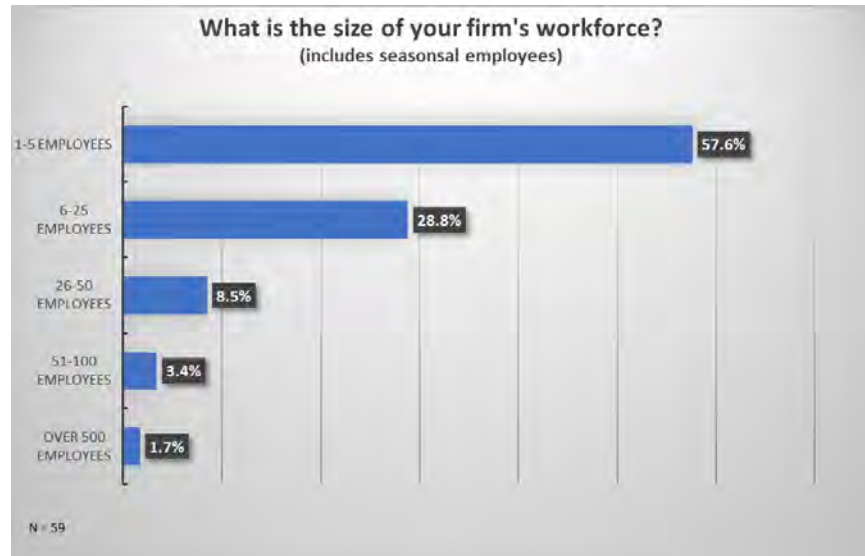


Chart 6-12: A majority (62.5%) of VBEs reported having one to five employees; 12.5% have six to 25 employees; and 25.0% reported having 26 to 50 employees.

Chart 6-12: VBE Size of Workforce



Chart 6-13: Almost twenty percent (19.5%) of non-DBE firms reported having one to five employees; 29.3% reported six to 25 employees; 9.8% reported 26 to 50 employees; 17.1% reported 51 to 100 employees; 14.6% reported 101 to 500 employees; and 9.8% reported over 500 employees.

Chart 6-13: Non-M/W/DBE Size of Workforce



Chart 6-14: Roughly 10% (10.2%) of M/W/DBE respondents indicated their firm was a union signatory.

Chart 6-14: M/W/DBE Union Signatory Status



No VBEs were a union signatory company.

Chart 6-15: Almost 25% (24.4%) of non-M/W/DBEs were union signatories.

Chart 6-15: Non-DBE Union Signatory Status



3. County Contract and Bidding Profile

Chart 6-16: Among M/W/DBEs, 3.4% of the firms had worked on County projects only as a prime contractor or supplier; 50.8% had worked only as a subcontractor or supplier; 27.1% had worked as both a prime contractor or supplier and as a subcontractor; and 18.6% had not done business with the County.

Chart 6-16: M/W/DBE Respondent Contractor Status with the County

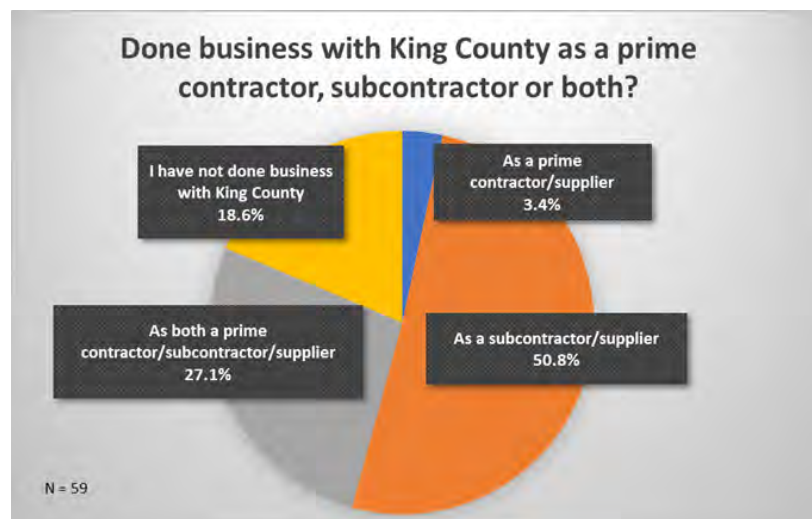


Chart 6-17: Among VBEs, none of the firms had worked on County projects only as a prime contractor or supplier; 50.0% had worked only as a subcontractor or supplier; and 50.0% had not done business with the County.

Chart 6-17: VBE Respondent Contractor Status with the County

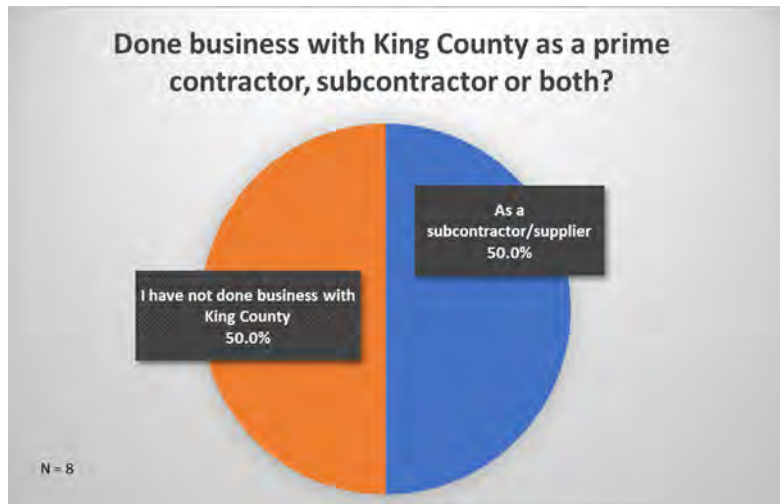


Chart 6-18: Among non-M/W/DBE respondents, 14.6% of the firms had worked on County projects only as a prime contractor or supplier; 29.3% had worked only as a subcontractor or supplier; 51.2% had worked as both a prime contractor or supplier and as a subcontractor; and 4.9% had not done business with the County.

Chart 6-18: Non-M/W/DBE Respondent Contractor Status with the County

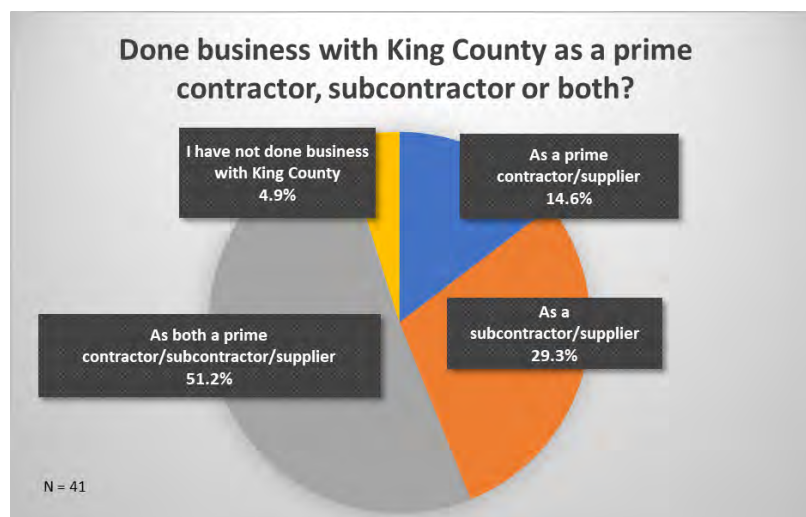


Chart 6-19: Almost four-fifths of the M/W/DBE respondents indicated they were certified as an SCS.

Chart 6-19: SCS Certification Status Among M/W/DBE Respondents



Charts 6-20 and 6-21: Three-quarters (75.9%) of the M/W/DBE respondents were certified as a DBE with OMWBE. In addition, three-fifths (63.8%) were certified as an MBE/WBE/MWBE.

Chart 6-20: DBE Certification Status



Chart 6-21: MBE/WBE/MWBE Certification Status



Chart 6-22: Over 85% of veteran respondents were certified as a VBE with the Washington Department of Veterans Affairs.

Chart 6-22: VBE Certification Status among Veteran Respondents



4. Experiences in King County's Market Area and Obtaining County Work

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

Chart 6-23: Almost two-fifths (39.7%) percent of M/W/DBEs reported that they had experienced race or gender-based barriers to contracting opportunities.

Chart 6-23: Barriers to Contracting Opportunities Based on Race and Gender Experienced by M/W/DBEs



Chart 6-24: Just under 30% (29.3%) of M/W/DBEs answered “Yes” to the question, “Is your competency questioned based on your race and/or gender?”.

Chart 6-24: M/W/DBE Negative Perception of Competency Based on Race or Gender



Chart 6-25: A little over a quarter (25.9%) of M/W/DBEs had experienced job-related sexual or racial harassment or stereotyping.

Chart 6-25: M/W/DBE Industry-Related Sexual or Racial Harassment or Stereotyping

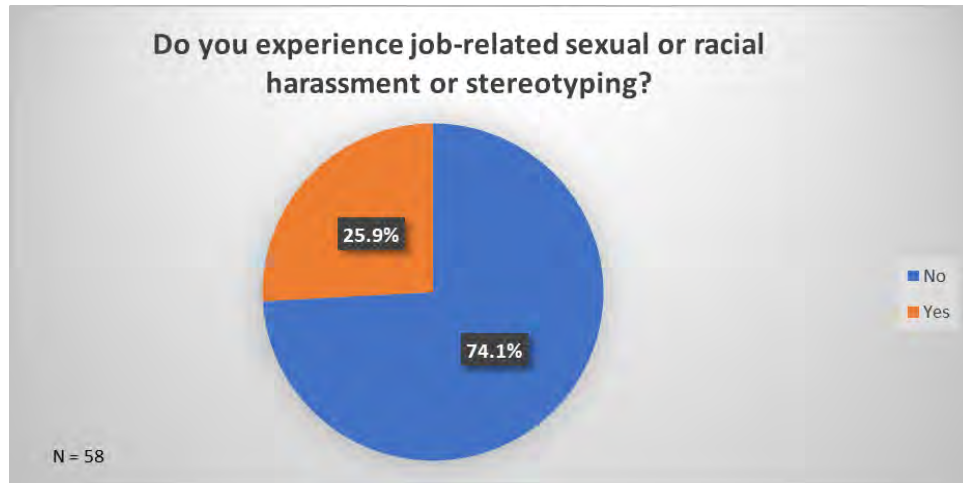


Chart 6-26: Discrimination from suppliers or subcontractors because of their race and/or gender was experienced by almost a fifth (17.2%) of the M/W/DBEs.

Chart 6-26: M/W/DBE Supplier Pricing and Terms Discrimination Based on Race and Gender

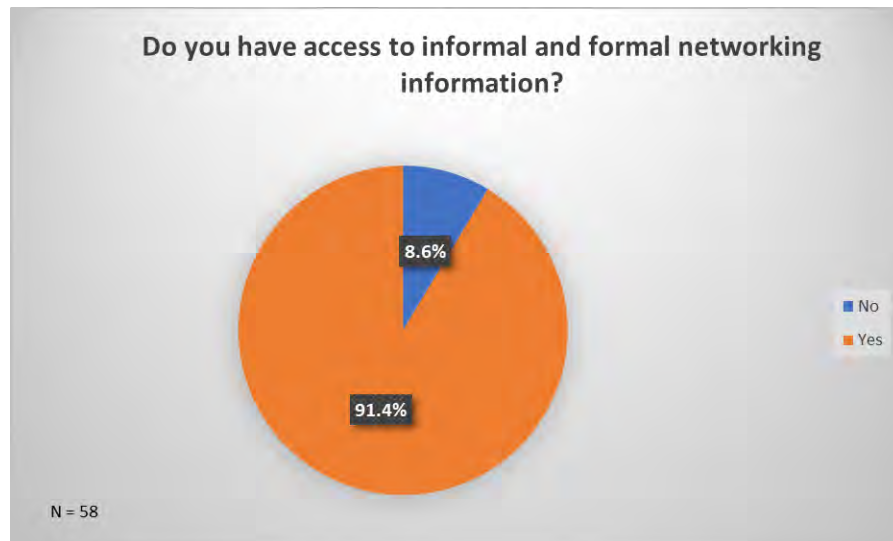


b. Access to Formal/Informal Business and Professional Networks

Chart 6-27: Almost a third (29.3%) of M/W/DBEs reported not having equal access to the same information as non-certified firms in their industry.

Chart 6-27: M/W/DBE Access to the Same Information as non-Certified Firms

Chart 6-28: Limited access to informal and formal networking information was reported by 8.6% of M/W/DBEs.

Chart 6-28: M/W/DBE Access to Informal and Formal Networking Information

c. Access to Financial Supports

Chart 6-29: Of the M/W/DBEs who tried to obtain surety bonding, 8.5% indicated that they faced challenges. Only 2.4% of the non-M/W/DBEs who tried to obtain bonding reported difficulties.

Chart 6-29: M/W/DBE Reported Barriers to Obtaining Bonding

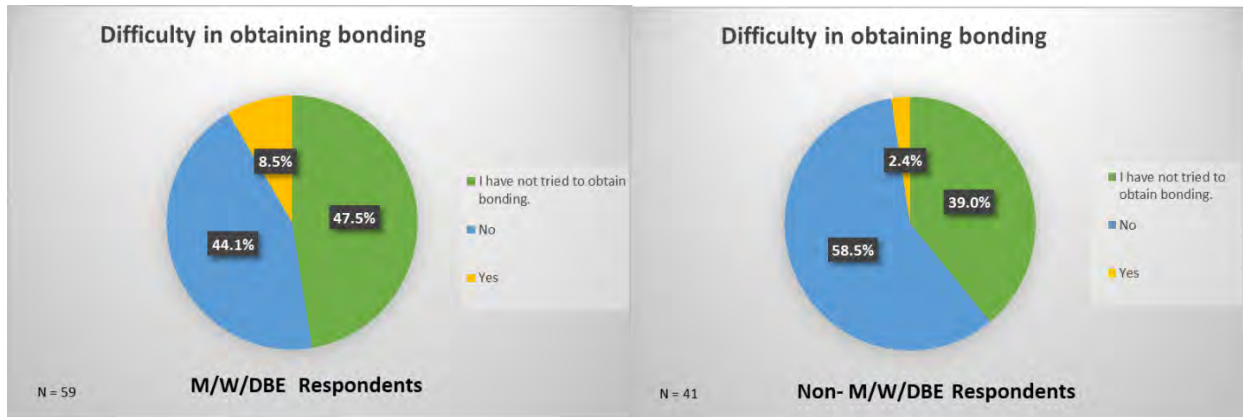


Chart 6-30: Almost a quarter (22.0%) of M/W/DBEs who tried to obtain financing and loans reported barriers in their efforts. By comparison, 4.9% of the non-M/W/DBE who tried to obtain financing reported such difficulties.

Chart 6-30: M/W/DBE Reported Barriers to Obtaining Financing and Loans

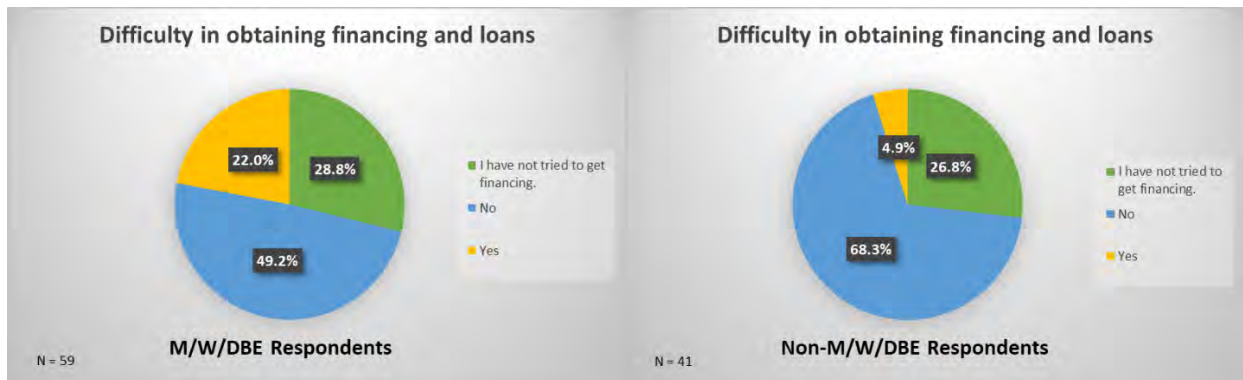
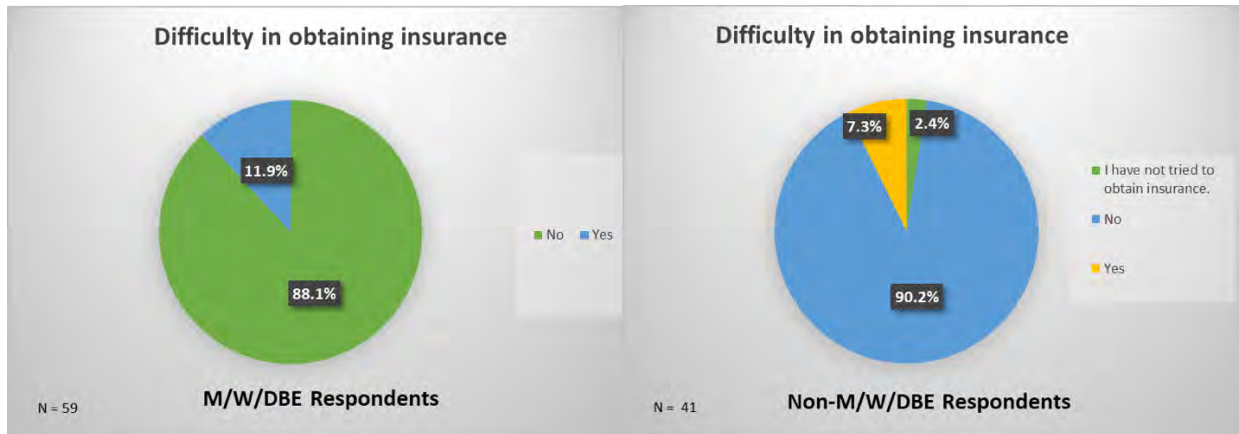


Chart 6-31: Among M/W/DBEs, 11.9% reported experiencing barriers to obtaining insurance. Among non-minority firms, 7.3% reported such difficulties.

Chart 6-31: M/W/DBE Reported Barriers to Obtaining Insurance

d. Obtaining Work on an Equal Basis

Chart 6-32: Almost three-quarters (72.4%) of M/W/DBEs reported that they are solicited for County or government projects with SCS and M/W/DBE goals.

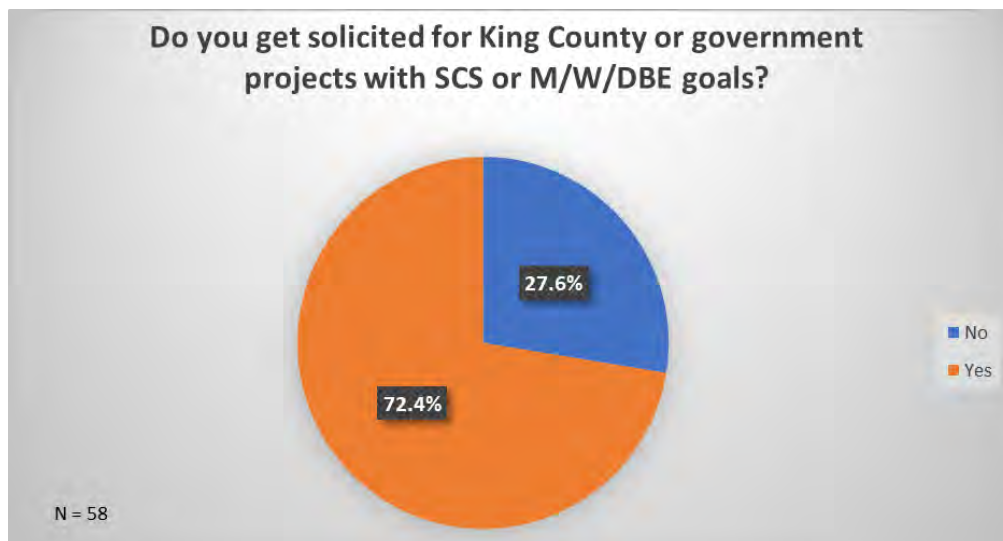
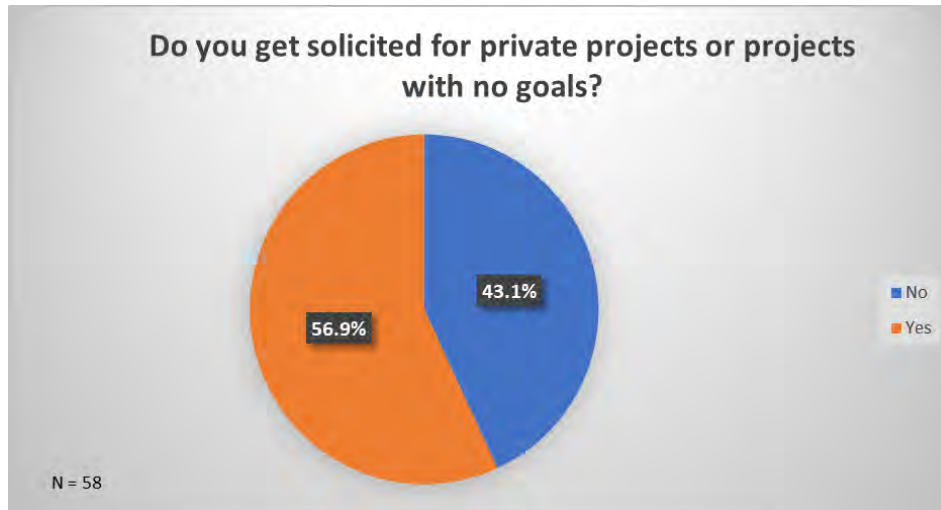
Chart 6-32: M/W/DBE Solicitation for County or Government Projects with SCS or M/W/DBE Goals

Chart 6-33: Less than three-fifths (56.9%) of M/W/DBE respondents reported that they are solicited for private projects or projects without goals.

Chart 6-33: M/W/DBE Solicitation for Private Projects or Projects Without Goals



e. Prompt Payment

Chart 6-34: Of the M/W/DBE contractors who reported doing work for the County, 52.2% said that the County paid them promptly. Prime contractors were reported to pay a little less promptly, with 40.7% of DBE respondents reporting that prime contractors paid within 30 days.

Chart 6-34: Prompt Payment within 30 Days

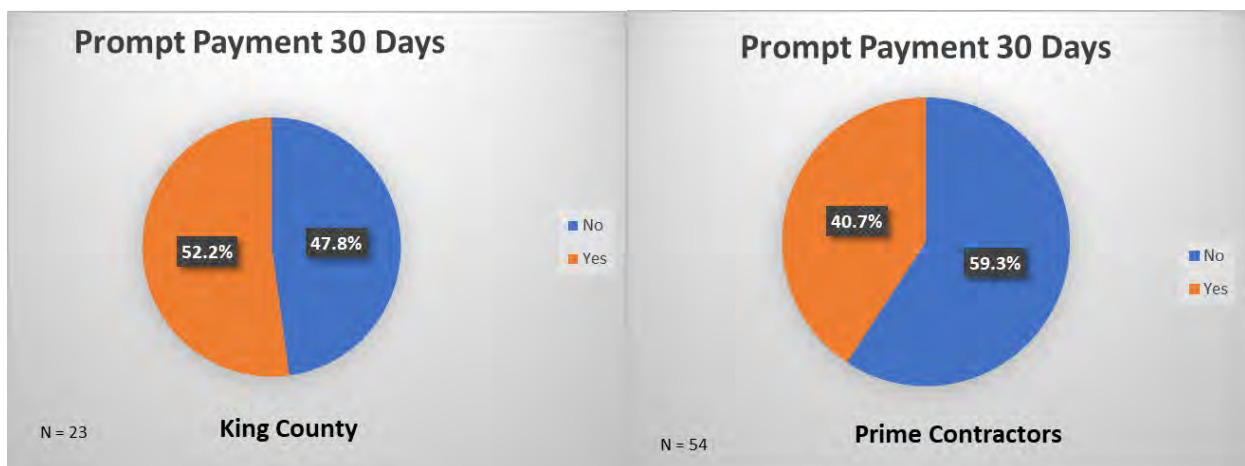
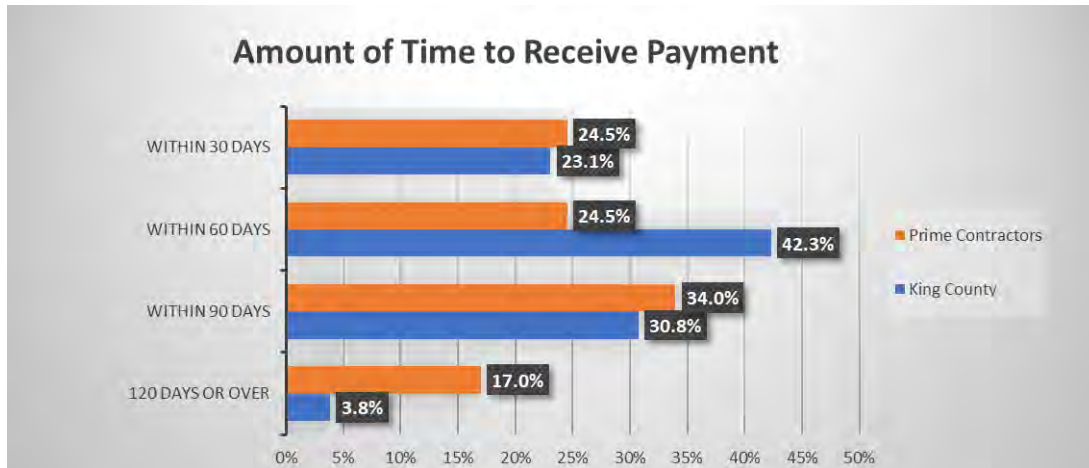


Chart 6-35: Of M/W/DBE contractors performing work for the County, 65.4% reported receiving payment within 60 days; 30.8% were paid within 90 days; and 3.8% were paid in 120 days or later. Prime vendors were reported to pay on a slower schedule: Less than 50% (49.1%) said prime

vendors paid within 60 days; 34.0% reported they were paid within 90 days; and 17.0% reported they were paid within 120 days or later.

Chart 6-35: M/W/DBE Amount of Time to Receive Payment



f. Participation in Supportive Services or Capacity Development Programs

Chart 6-36: Over two-fifths (40.7%) of the M/W/DBE respondents reported they had participated in a business support program. Almost 15% (13.6%) had participated in financing or loan programs. Less than five percent (3.4%) had accessed bonding support programs. Over ten percent (11.9%) had joint ventured with another firm; a large number, 30.5%, had participated in a mentor-protégé program. Nearly ten percent (8.5%) had received support services such as assistance with marketing, estimating, information technology. Almost 60% (59.3%) had not participated in any capacity development programs.

Chart 6-36: M/W/DBE Participation in Supportive Services Programs



g. M/W/DBEs' Capacity to Perform on County Contracts

Chart 6-37: Close to six percent (5.1%) of M/W/DBE respondents indicated their firm was ready, willing and able to perform work on County contracts as a prime contractor or supplier. 59.3% indicated that they were ready, willing and able to perform on County contracts as both a prime contractor or supplier and as a subcontractor; 35.6% indicated they were ready, willing and able to perform work only as a subcontractor or supplier.

Chart 6-37: M/W/DBEs' Readiness to Perform on County Contracts



Chart 6-38: For prime contractor and supplier work, 3.4% reported having all the required professional licensing; for prime, subcontracting, supplier work, 32.2% reported having all the required professional licensing for only subcontractor and supplier work; and 64.4% reported having all the required professional licensing for both prime contractor, supplier and subcontracting work.

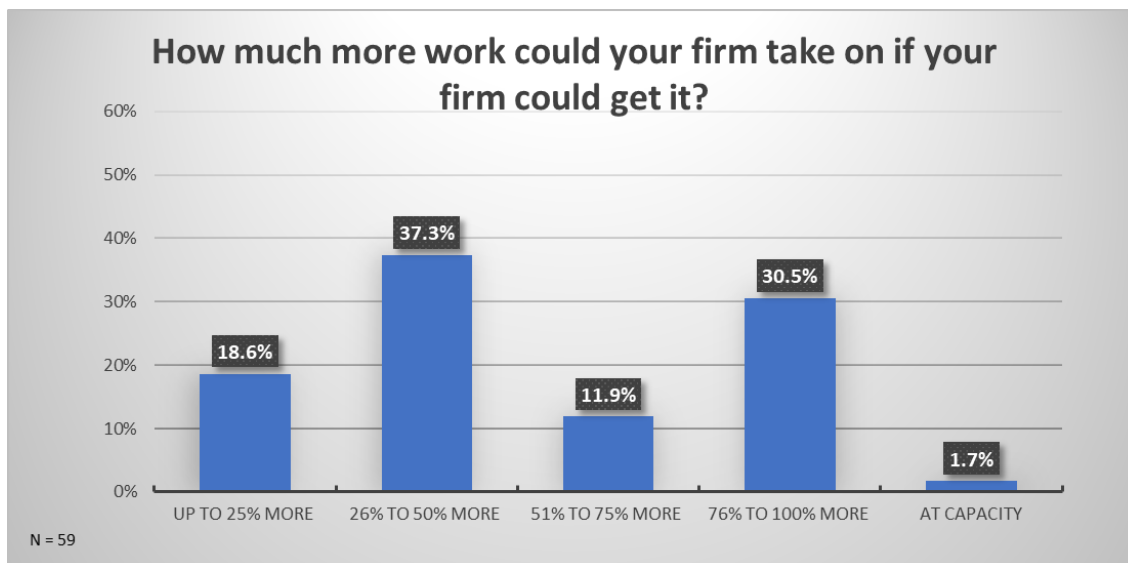
Chart 6-38: M/W/DBE' Professional Licensing Status

Chart 6-39: Over half of the M/W/DBEs (54.2%) reported that the size of contracts they had received was either well or slightly below the amount they are qualified to perform.

Chart 6-39: M/W/DBE's Contract Size vs. Contract Amounts Qualified to Perform

Chart 6-40: Over three quarters (79.7%) of M/W/DBE respondents reported that they could take on between 26 and 100 percent more work if it were offered; 18.6% said they could take on up to twenty-five percent more work; 1.7% were working at full capacity.

Chart 6-40: M/W/DBEs' Capacity for More Work



h. Bonding Capacity

We also surveyed M/W/DBEs' bonding capacity. The availability of surety bonding is another important factor in assessing whether firms could perform more work if they had the opportunities.

Chart 6-41: Over three-quarters (78.8%) of M/W/DBE construction contractors reported being surety bonded.

Chart 6-41: M/W/DBE Construction Firm Surety Bonding Status

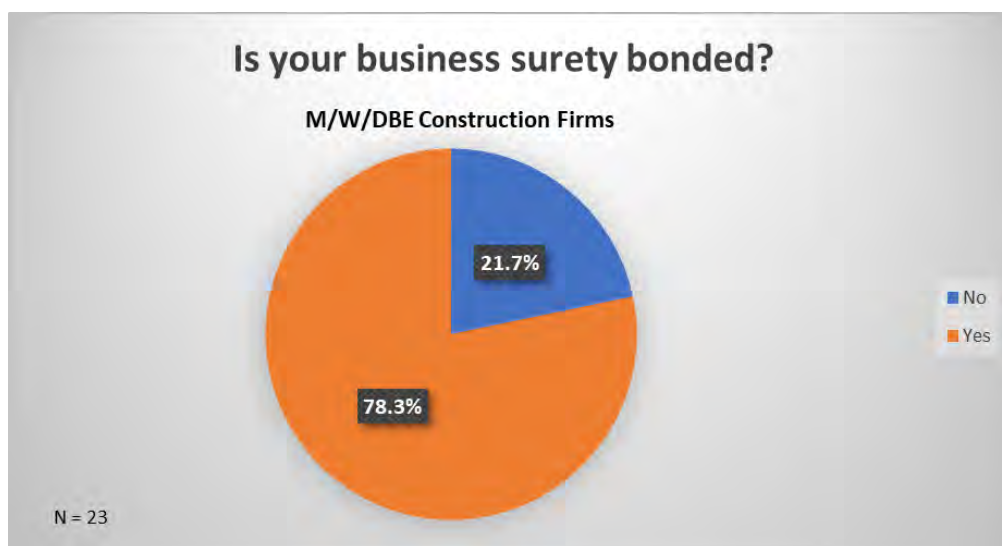


Chart 6-42: Almost ninety percent (87.5%) of non-M/W/DBE construction contractors reported being surety bonded.

Chart 6-42: Non-M/W/DBE Construction Firm Surety Bonding Status

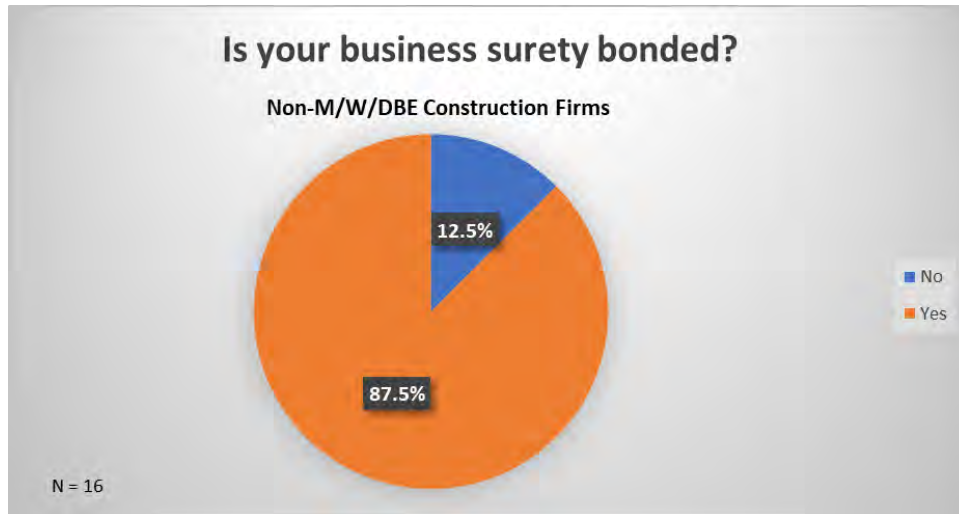


Chart 6-43: Among M/W/DBE construction respondents, well over half, 56.5%, had obtained an aggregate bonding limit between \$500,000 and \$5M; 8.7% had obtained bonding up to \$15M; 4.3% had obtained between \$30M and \$50M; and 4.5% had obtained over \$50M in aggregate surety bonding.³³¹

331. Bonding ranges with zero responses are not displayed on charts 6-43 through 6-46.

Chart 6-43: Maximum Aggregate Bonding Limit for M/W/DBE Construction Firms

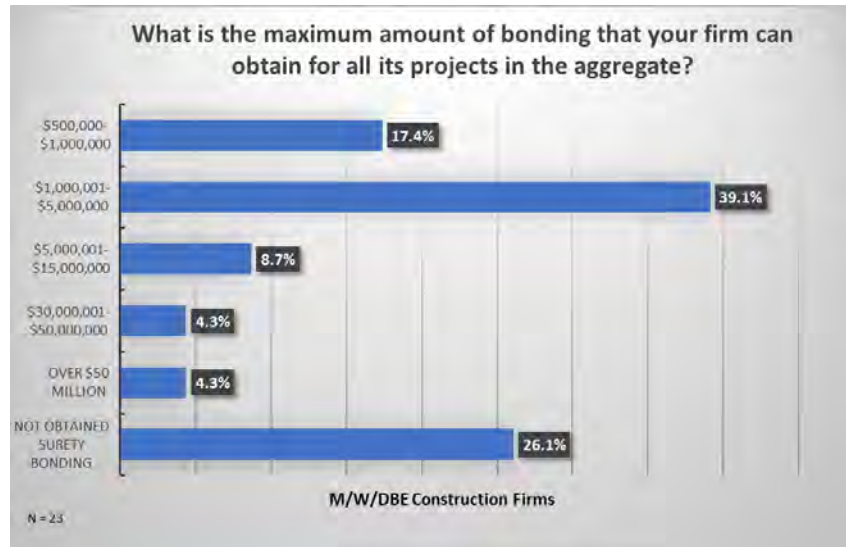


Chart 6-44: Among non-M/W/DBE construction respondents, 62.5% had obtained an aggregate bonding limit between \$500,000 and \$15M; 6.3% had obtained between \$15M and \$30M; and 18.2% had obtained over \$50M in aggregate surety bonding.

Chart 6-44: Maximum Aggregate Bonding Limit for Non-M/W/DBE Construction Firms

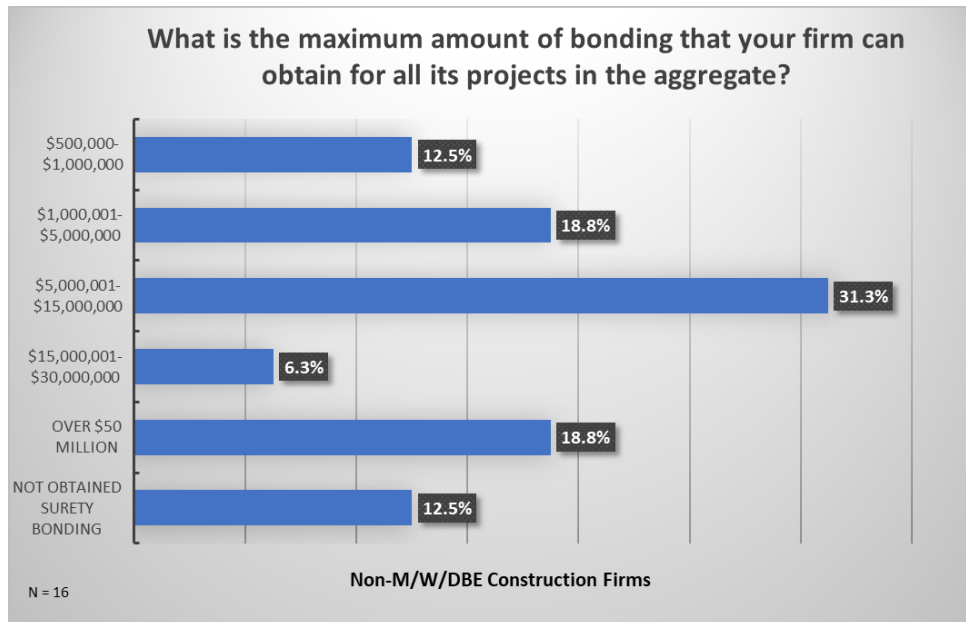


Chart 6-45: Among M/W/DBE construction respondents, 65.2% had an individual contract bonding limit between \$500,000 and \$5M; 4.3% had an

individual contract limit between \$5M and \$15M; 4.3% had an individual contract limit between \$15M to \$30M; and 4.3% had an individual contract limit over \$50M.

Chart 6-45: Individual Contract Bonding Limit for M/W/DBE Construction Firms

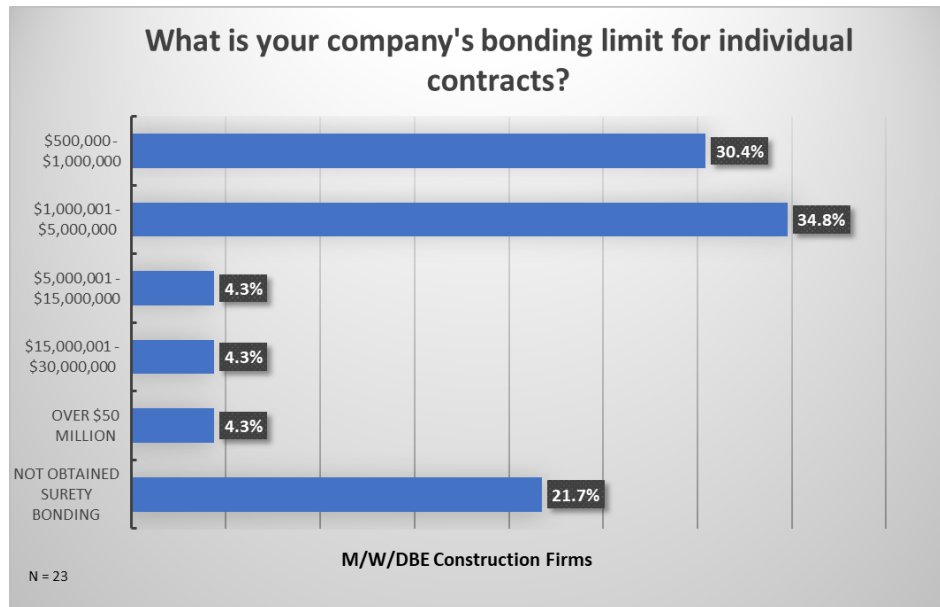
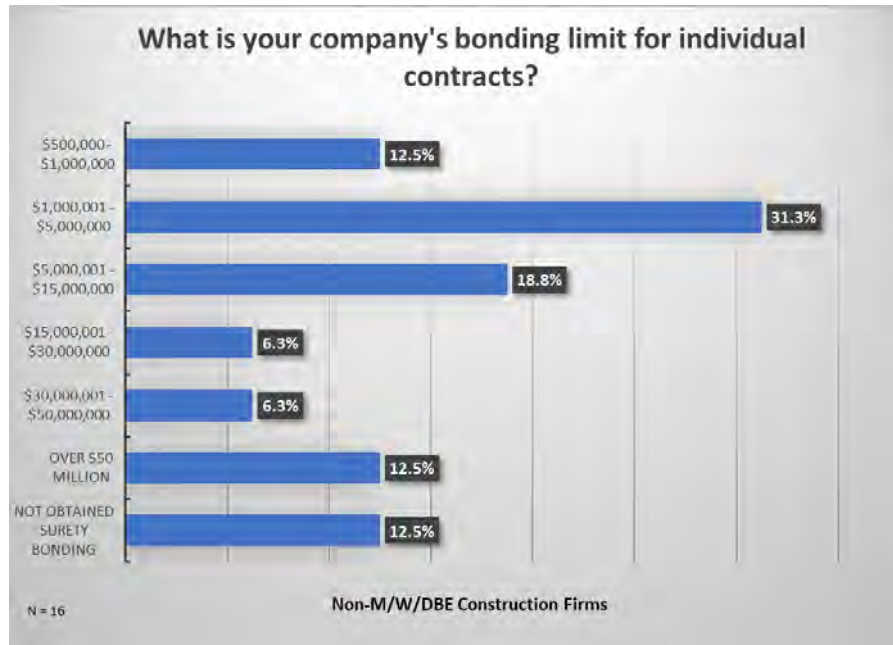


Chart 6-46: Among non-M//WDBE construction respondents, 43.6% had an individual contract bonding limit between \$500,000 and \$5M; 18.8% had a limit between \$5M and \$15M; 6.3% had a limit between \$15M to \$30M; 6.3% had a limit between \$30M to \$50M; and 12.5% had a limit over \$50M.

Chart 6-46: Individual Contract Bonding Limit for Non-M/W/DBE Construction Firms



5. Anecdotal Marketplace Disequilibria Examination

For this Report, King County specifically directed us to examine marketplace changes caused by the COVID-19 pandemic.

Chart 6-47: Almost three-fifths (57.6%) of M/W/DBE firms surveyed experienced a disruption in revenues during the pandemic.

Chart 6-47: Disruption of M/W/DBE Firm Revenues during the COVID-19 Pandemic

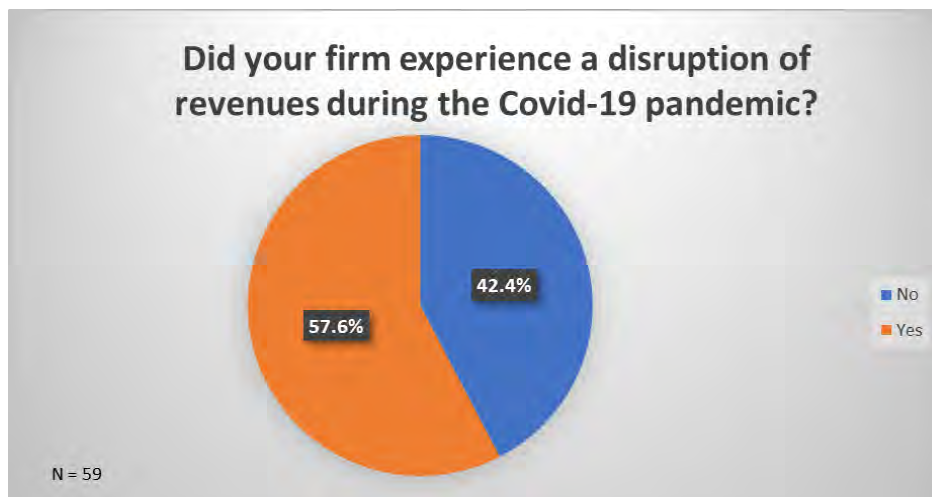


Chart 6-48: Over twenty-five percent (27.1%) of M/W/DBE firms indicated a loss of their customer base during the pandemic.

Chart 6-48: M/W/DBE Customer Base Loss during the COVID-19 Pandemic

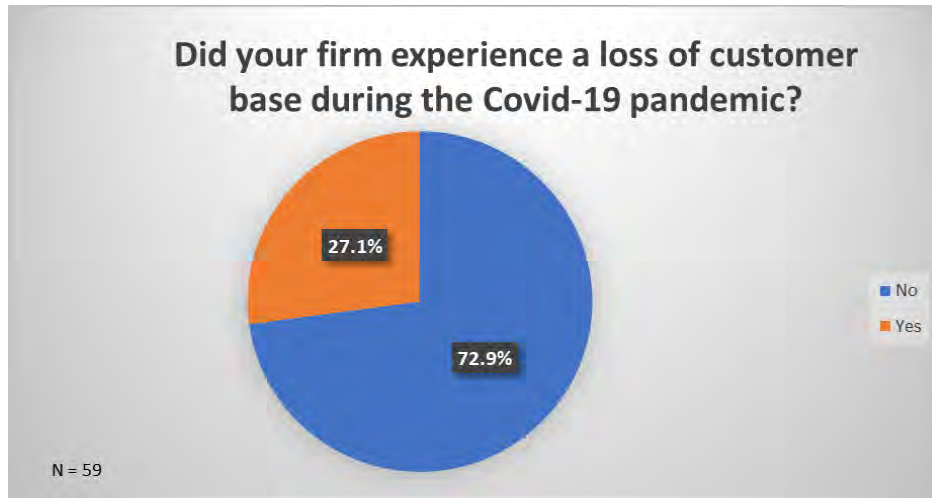


Chart 6-49: Well over a half (59.3%) of M/W/DBE firm respondents experienced workforce shortages during the pandemic.

Chart 6-49: Workforce Shortages Experienced by M/W/DBE Firms during the COVID-19 Pandemic



Chart 6-50: Negative effects on costs during the pandemic were experienced by 42.4% of the M/W/DBE firm respondents.

Chart 6-50: Negative Effects on M/W/DBE Firms' Costs during the COVID-19 Pandemic



Chart 6-51: A fifth (20.3%) of M/W/DBE firms reported not experiencing any negative effects on revenue or costs, a loss of customer base or workforce shortages during the pandemic.

Chart 6-51: M/W/DBE Firms Reporting the Absence Negative Effects During the COVID-19 Pandemic

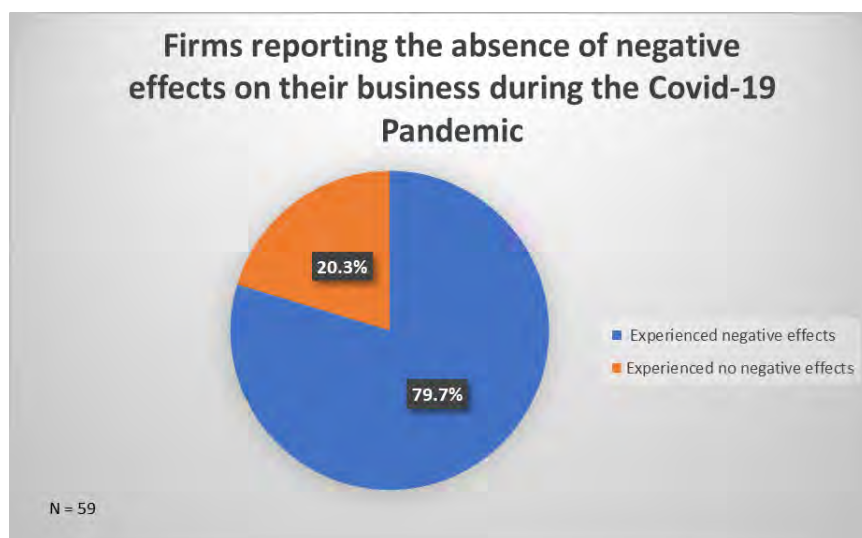


Chart 6-52: Most M/W/DBE firms have fully or partially recovered from the negative effects of the COVID-19 pandemic; 38.6% indicated their business has fully recovered; 54.5% indicate their business has partially recovered; and 6.8% indicate their business has not recovered at all.

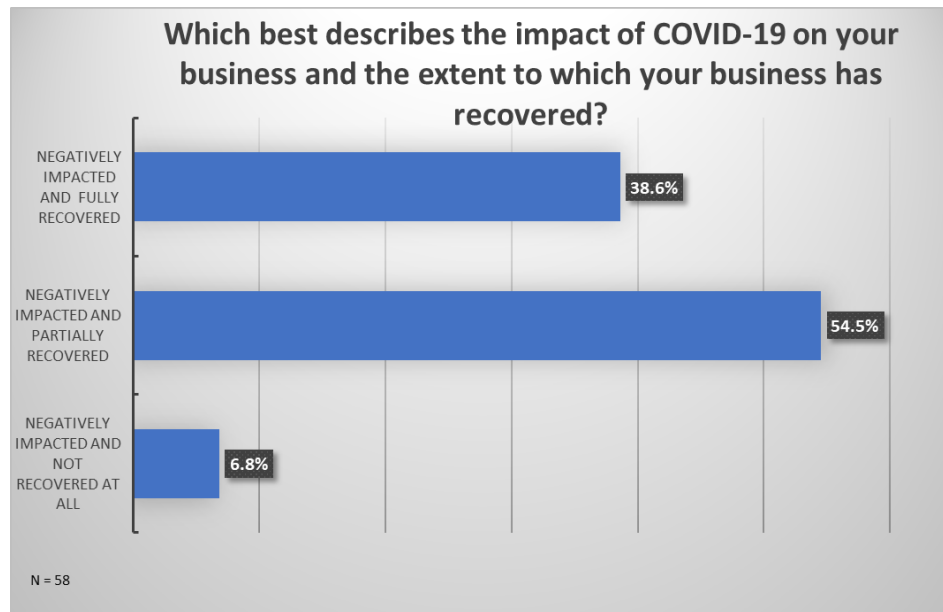
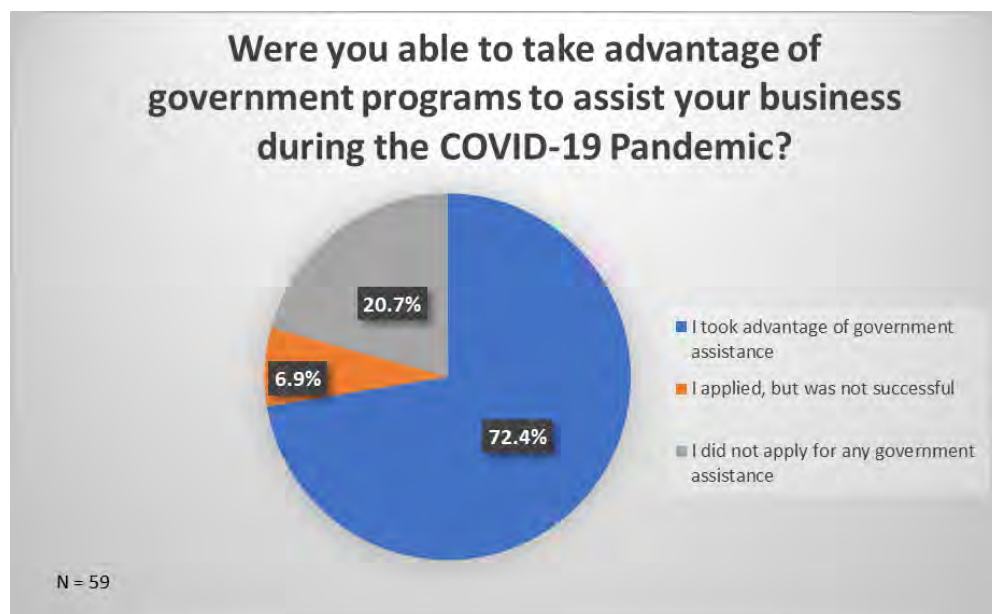
Chart 6-52: M/W/DBE Firm Recovery after the COVID-19 Pandemic

Chart 6-53: A large number, of M/W/DBE firms, 72.4%, reported being able to take advantage of government assistance. A little less than seven percent (6.9%) applied but were not successful in receiving assistance.

Chart 6-53: M/W/DBE Firms Accessing COVID-19 Pandemic Government Assistance

6. Written Survey Responses from Minority and Woman Respondents

The survey also included open-ended response questions. These responses were consistent with the responses received to the survey's closed-ended questions.³³² Responses from minority and woman respondents to these questions have been categorized and are presented below.

a. Systemic Racial Barriers

Many minority respondents reported that fair opportunities to compete for contracts were not available because of systemic racial barriers.

Non-minority firms repeatedly selected over my firm.

There is some entrenched decision-making that leads to race-based barriers in contracting.

This is obviously not a yes or no question because intentions are not often transparent. We have seen what appears to be racial barriers in work proposals in the selection process.

It is in the numbers. You do not have to look far to see the projects that have goals vs. the projects that do not have goals. How many MWBE's do you see on those projects? Also look at private vs. public numbers, how many MWBE's do you see on those projects?

Institutionalized discrimination that is built into the infrastructure of all agencies. To put it very simply, large White owned firms get the majority of the business and others get the 10% of the business of government taxpayer funds.

Not getting enough work because of being a minority contractor.

It's REAL harder [sic] to get info & opportunities if you are a minority for sure.

My firm's growth has been stunted meaning I cannot invest like a non-minority firm. There also seems to routinely be a bias against firms like mine which is shared with others in the field.

332. Closed-ended questions are questions that ask respondents to choose from a distinct set of pre-defined responses.

Well- this is very difficult to quantify. I strongly feel I would have more opportunities if the principals were white with the same qualifications. I think bias is inherent in human blood and we can perhaps do better but can't remove it.

Just being a minority, [has] been harder.

Not given opportunities [as a minority].

Forcing us to do more work for lower fee than they would a white-male firm; treating us as second-class citizens.

Minority business owners reported that they continue to experience negative assumptions and perceptions about their competency and capabilities.

Belief among some that my firm cannot perform as well as a non-minority entity.

People being wary of an African American contractor.

No specific details, but in general we need to work harder or make more efforts to gain trust of clients. I feel it could be due to race or gender.

Our work has been questioned often by lesser qualified staff of the major primes because we are a small MBE firm even with no less than 30 years of experience with our prime engineers.

Several contracts in which the owner believed my product would not be as good as that produced by firms headed by non-minority persons.

b. Gender Bias and Barriers

Many women in construction and engineering reported sexist attitudes and stereotyping about their roles and authority.

We are usually spoken over and they go to a man to get the same answer.

It is difficult to describe the non-tangible gender bias that still exists in the Construction industry. An example of this is where men push back against challenges in the field, they are considered strong and forceful, while women get unreasonable and demanding.

When in meetings I bring a "point"/topic to discuss, but it is only validated when a male just repeats what I just said.

Women are not always as respected as design leaders.

I have not seen or witnessed sexual harassment but have seen stereotyping in the construction field.

I'm a woman who has worked in the A/E industry for over 20 years, there have many incidents [of stereotyping].

Demanding impossible turnaround and then publicly bashing us for not delivering what was above and beyond the scope and reasonable expectations.

Negative biases about their competency was a common experience for many women.

I experience what is called Prove-It-Again bias which is a stereotype that requires women to be more competent in order to be seen as equally competent.

This is frequent for women in engineering. A specific example was when a project manager listed a long list of skills and demanded what my experience was with each skill. Most of the skills listed were not commonly performed by engineers and many were not required for the particular project.

Mostly as a woman that we are not capable of handling large size projects. Only talked to if they think there is a chance of something else happening outside of the office.

Only bias is with older, white male engineers (who do not think female geologists know anything).

Women tend to have to prove themselves more. I see it less now that I am older but still watch it play out with the younger women in my firm vs. men.

Many women found breaking into construction and engineering industry networks particularly challenging.

The engineering and construction management field is very male dominated, so it is a bit hard to break into those areas where long standing relationships already exist.

Engineering and construction are still male-dominated.

Trying to get into a network that is controlled by men.

One woman reported never experiencing sexism and stereotyping.

[I] have never encountered any.

c. Bias Against Smaller Firms

Some M/W/DBE firms reported barriers based on their size.

We have been denied work while holding a contract due to project managers not wanting to use a small company and see us grow.

The DBE has the lesser financial status and therefore is disqualified for large contracts. Some agencies have financial investigations of the firm's financial status that automatically disqualify our firm from large business.

Some of this [lack of access] is partially a size problem in addition to a bias problem.

d. Access to Networks

Many M/W/DBE firms experienced entrenched relationships and networks that impeded their access to information and contract opportunities.

Large white owned firms get information that we are not allowed to have access to. They work on many projects inside the agencies where they network and gather information for their future work.

Non-certified firms are typically larger and able to better access all the information.

They have earlier access and connections to those who will be seeking services.

It's difficult to network and form relationships with general contractors.

Some reported that being in a subcontracting role further exacerbated their access to information.

Oftentimes as a sub we don't have the same access to owner representatives to understand agency needs and upcoming projects early on.

As a subcontracting partner we often have less access to the project management staff and therefore less access to project and upcoming project selection criteria and key information.

Just not being part of established networks, having no understanding of how to get into those networks (thinking of the large primes here).

e. Access to Contract Opportunities

Some minority and woman respondents felt that prime bidders often use them only to meet affirmative action goals.

Oftentimes we are treated as if we are only there because primes need to meet their DBE goals. They don't treat us with the same respect and professionalism they treat larger non-DBE firms with. It also seems as if there is a lack of an interest in developing a relationship with us. They are only using us because they have to. As soon as they are done with us, that is that. They won't bother communicating with us anymore.

We are only considered based on our DBE status. Others non-DBEs are considered for higher levels of work. White-owned firms get preferred status with banking and the agencies.

We are not considered for business outside of being a minority. Our work on projects is limited to DBE requirements that are usually shared with other DBE firms which limits our participation on the project at less than 1% of the contracts.

f. Financial Barriers to Opportunities

Several MWBEs reported they cannot obtain the necessary capital to increase capacity to take on work.

Ability to obtain necessary cash flow to employ staff in advance to propose is difficult to obtain.

Was not able to obtain loan to cover upfront costs of bonding and wages.

We have been trying to get a line of credit with local and national banks- it has been very difficult. We need a [letter of credit] to hire and grow. Banks have been asking for collateral- and we didn't want to involve our houses with business. I think SBA and the banks should give a chance to the entrepreneurs.

No ability to access capital [continues to be a barrier.]

[Lenders] are essentially reluctant to loan to the business when you are in need.

Had to go to multiple sources and had to fight for reconsideration when a loan was initially denied.

Hard to get capital.

As a small firm, it is difficult to get all types and limits of insurance required.

By being a small business, it has been difficult to obtain funding.

Just harder as a small business; not given opportunities.

One M/W/DBE was successful in obtaining bonding through a smaller company.

We have had companies tell us that they could not insure or issue a bond to our company, from larger scaled companies. We went to a smaller company and they provided the bond that we needed with no issues.

The cost of financing and insurance restrict opportunities to take on contracting work.

Some projects require higher insurance premiums that could be cost prohibitive for our firms.

We are a small business. The paperwork and hoops you are required to jump through to meet contract insurance or bonding requirements are quite cumbersome and expensive. We often move on to other work when applying for insurance or bonding becomes too difficult.

Limits on the insurance coverage [required by agencies] is typically not offered by insurance companies to small business.

g. Barriers to Equal Contract Terms

A few M/W/DBEs reported discriminatory supplier pricing.

Supply houses prices [are] always higher.

There are deals that are made on the backside but because we are not part of the good ol' boys network we are not part of the special pricing.

The fact that we are able to obtain better pricing with other large and small public entities, leads us to believe that KC and its large firms discriminated against us based on my gender and possibly due to the fact that I am a naturalized citizen.

h. Impact of the COVID-19 Pandemic

A reduction in contracting work, lower revenues and the higher cost to run a business were frequently cited problems brought about by the pandemic.

Less work, less income.

Loss of contracts, workforce and reduction of opportunities and need to adapt business practices.

Delayed projects and short of workforce and unable to get payroll finance.

Lower revenue, increased cost of job materials and the cost of doing business.

Unable to pay taxes due to clients not paying invoices for over 6 months.

Loss of contracts.

Most consultant contracting opportunities were delayed or shelved entirely, impacting our ability to pursue projects.

During 2021, we could not get a loan to finance our payrolls. Even PPP loan was underpaid after several weeks of back and forth with loan officers.

Could not work on some projects.

Projects got delayed and staff needed to finish existing projects left the firm due to family related COVID issues.

The lack of in-person meetings made it challenging to do business. Several M/W/DBEs reported that it took time to adjust to new technology to conduct business remotely.

Fewer in-person appearances, needed to know more about technology and connecting w/ clients, others.

I facilitate Value Engineering workshops. It took a few months for government agencies to adjust to making them virtual.

I went from being co-located to work at home. Struggled a bit to get technology updated but fine now.

Limited ability to reach out to potential teaming partners and primes. No conferences or in-person meetings during pandemic.

No activities for the first couple of months, and then a retooling to virtual delivery vs. in-person.

We had to completely shift the way we were working, like everyone else - overall we didn't suffer as much as many others did.

Some M/W/DBEs reported supply-chain disruptions and higher material costs that negatively affected their business operations.

Material shortages and delays, escalation of pricing since the material got delayed.

Hard to find masks for dust control, materials went up, employees were scarce.

Cost of goods skyrocketed as a result of the pandemic. We also had to incorporate a number of safety protocols and procedures despite the fact that our work is naturally socially distant and outside.

Costs increased for our own safety expense and our suppliers also trickled down their additional expenses to us.

Price escalation, sick time pay, paying employees to go get covid tests, delay in payments from govt./primes, social distancing rules slowed production on jobsites.

The costs have doubled since the pandemic and many people cannot afford our services anymore.

Many M/W/DBEs experienced labor shortages and the loss of key employees.

Work force has been difficult to come by and employees do not want to move and prefer remote work.

We were fortunate to have work but we did lose opportunities because work force was impacted (limited or refused) for hiring for contract opportunities.

Less work and unable to provide hours to employees.

It was very hard to find qualified employees.

Our labor force impacted on essential jobs by other trades saturating public work projects that pushed our jobs to come in over labor by 700%.

Less work and difficulty in keeping employees on a per diem basis.

Work slowed down drastically, and we were unable to obtain many of our employees.

Loss of work force, disruption of business activities, insecure downtown environment.

Lost all of my employees.

Workforce shortages.

We couldn't find workers to support the business.

We had workforce availability issues.

Continued paradigm shift (e.g., remote work business/hybrid work, new hire "remote" expectations and loss of new hires over the remote work issue). Hiring shortages, changes in customer project/goals in dropping or revising work, loss of executive-level time and effort to tracking, training and revising COVID related mandates and safety rules.

We lost approximately 50% of our staff to early retirement, change of career, moving locations, and some to other firms. It was difficult to find new experienced workers and the younger workers are more transient. Expectation of salaries for existing staff rose significantly, clients pushed back on increase in costs thus having an overall impact on company revenue.

Several M/W/DBEs indicated that employee vaccination mandates further exacerbated staff shortages.

Inability to bring on staff related to vaccination status.

Four of 16 employees refused to become vaccinated and were terminated, as we were required to have vaccinated employees (internal company requirement, and a requirement for contracts).

Labor and staff shortages continue to be a problem for several M/W/DBEs.

Trying to rehire people has been challenging due to increased salary demands, as well as so many people that refuse to do anything other than telework.

We are short 3-5 employees, we are having a hard time replacing these.

A few M/W/DBEs reported that the pandemic did not negatively affect their business operations.

We were just starting our business during COVID, so we were not negatively impacted other than having a hard time contacting gov agency people who were working from home.

It wasn't affected much as I was already working from home and was able to maintain my clients.

My business was not impacted by the Covid-19 pandemic.

Several indicated their businesses benefited from the pandemic.

I got too much work and was overloaded for several years (finally getting out from under it). I know that's not the answer you were expecting but it happened.

I started my business during the pandemic.

C. Conclusion

Evidence reported in the business owner and industry and community partner interviews and the survey results suggested that minorities and women continue to suffer discriminatory barriers to full and fair access to contracts and associated subcontracts in the County's market area. The results of the anecdotal survey in particular indicated M/W/DBEs continue to experience negative perceptions and assumptions about their competency that impede their ability to conduct business. Minorities and women reported they still face challenges related to stereotyping, racial bias and sexism. M/W/DBEs had reduced opportunities to obtain contracts, less access to formal and informal networks, and difficulty in securing financial support relative to non-M/W/DBEs. In contrast, gay White males did not experience discriminatory barriers and white male veteran-owned firms did not experience discriminatory barriers based on their military service.

The anecdotal evidence also indicated a large number of M/W/DBEs are working below their capacity. Many reported they had available labor and staffing

resources to take on additional work. While difficult to obtain, M/W/DBE construction firms reported securing adequate surety bonding in the aggregate and for individual projects to compete for contracts.

The business operations of many M/W/DBE firms were negatively affected by the COVID-19 pandemic. However, most have fully or nearly recovered to pre-pandemic levels of operations. A few M/W/DBE firms found that the pandemic benefited their businesses.

While anecdotal evidence is not a sufficient evidentiary basis to implement race- and gender-conscious remedies for the impediments reported by WMBEs, the results of the qualitative data are the types of evidence that support the County's current pro-equity contracting actions and the consideration of recommendations in this report.

VII. RECOMMENDATIONS TO ENHANCE KING COUNTY'S CONTRACTING EQUITY PROGRAMS

The quantitative and qualitative data presented in this study provide a thorough examination of whether disadvantaged, minority- and woman-owned business enterprises (“M/W/DBEs”) operating in King County’s geographic and procurement markets have full and fair opportunities to compete for County construction and construction-related services prime contracts and associated subcontracts. As required by strict constitutional scrutiny, we analyzed evidence of such firms’ utilization by the County as compared to their availability in its market area and any disparities between utilization and availability for locally and FTA funded contracts; presented an analysis of overall marketplace disparities impacting M/W/DBEs in the Puget Sound area; gathered extensive anecdotal data of possible discrimination through interviews and an electronic survey; and reviewed the County’s current contracting equity programs, including its Small Contract and supplier (“SCS”) program and its Disadvantaged Business Enterprise (“DBE”) program for federally assisted transportation contracts. We also provided Appendix F, which presents summaries of anecdotal evidence of discrimination against minority and woman businesses collected during our disparity studies for other Washington state agencies.

Based on these results, case law and national best practices for contracting equity programs, we make the following recommendations to enhance the County’s already successful programs. We acknowledge that many suggestions will require additional staff and costs.

A. Increase Communication and Outreach to M/W/DBEs and SCS Firms

A common complaint from M/W/DBEs and SCS firms was the difficulty in accessing timely information about County opportunities. Even large prime vendors reported that it is challenging to navigate the County’s website to find all relevant solicitations or other necessary information. Attempting to access information on job order contracts was especially frustrating. We therefore recommend that the

County conduct a thorough review of how this portal or other website access operates. The Diversity Management system also has the capability to send eBlasts to certified firms notifying them of opportunities relevant to their industry codes.

Another improvement would be an annual contracting forecast of larger contracts to permit vendors to plan their work and form teams. It is common that groups are formed months in advance of major solicitations and given that small firms usually do not employ large marketing staffs, they need time to contact possible partners and cement relationships.

Further, as is the case with many governments, the study revealed that M/W/DBEs are receiving few opportunities in several subindustry codes. We suggest that special outreach be conducted to firms in those sectors. Activities could include targeted emails about future contracts, matchmaking events focusing on those industries, and identification of firms that are not currently certified, but might be eligible for inclusion, to encourage applications.

B. Focus on Increasing Prime Contract Awards to M/W/DBEs and SCS Firms

Many small firm owners would like to perform as prime vendors on government contracts. Given the size of the County's budget, there are numerous opportunities for smaller firms to participate. While the SCS program has been successful in reducing barriers, the contracts are small and many certified firms perform only at the subcontractor level. Several steps should be implemented:

- Develop a protocol to consider whether to unbundle projects into less complex scopes and lower dollar values. Not only will this permit smaller firms to perform in general, but it will also reduce the barriers of surety bonding and financing projects. Examples could include maintenance and landscaping contracts and smaller design services contracts.
- Review experience requirements with the goal of reducing them to the lowest level necessary to ensure that the bidder or proposer has adequate experience, perhaps by recognizing similar though not identical types of work, including work performed for other governments and private sector clients.
- Ensure debriefings are available upon request for proposers that were unsuccessful. Whether such information is provided seems to vary by the user department, so we suggest this be centralized in Purchasing and a protocol be developed (perhaps with a request form) to ensure small firms have access to information about how to strengthen their proposals.

- Adopt “quick pay” schedules and mobilization payments to subcontractors for construction contracts. Many small firms noted cash flow as a major issue in working on government contracts. This was especially true for King County because of the Community Workforce Agreement, that requires substantial cash outlays to stay in compliance.

C. Enhance Opportunities on Professional Services Projects

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

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

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

D. Review Insurance Requirements

Many small firms, and even some large primes, stated that the County’s standard insurance requirements were impediments to certified businesses’ ability to propose on County contracts or even serve as subcontractors. The “one size fits all” approach or excessive insurance requirements disadvantage smaller firms by making it difficult or even impossible for them to work on projects for which they are fully qualified but do not carry unnecessary coverage. We therefore suggest that

the County do a thorough review of its risk management protocols, with the objective of not requiring more coverage than is truly necessary for the specific project.

E. Enhance the SCS Program and the Equity and Social Justice Innovation Plan

The race- and gender-neutral SCS program and the Equity and Social Justice (“ESJ”) Plan have been quite successful in reducing barriers to County contracts on the basis of race and gender. The disparity results in Chapter IV suggest that for most groups, parity or close to parity has been achieved. Therefore, in addition to recommending the programs be continued, the following enhancements should be considered:

- Develop a BDCC manual that collects all the relevant documents in one place for easy access. This could include the policies and procedures that govern the various programs, as well as forms and instructions. A manual will assist all parties to better understand the various programs and to meet the requirements.
- Adopt “quick pay” schedules and mobilization payments to subcontractors for construction contracts. Many small firms noted cash flow as a major issue in working on government contracts. This was especially true for King County because of the Community Workforce Agreement, that requires substantial cash outlays to stay in compliance.
- Use the study’s MWBE availability estimates to set SCS and ESJ contract goals. The current approach is *ad hoc*, either applying the State of Washington’s overall, annual MBE and WBE goals on ESJ solicitations or a goal developed by the County’s project manager and BDCC for SCS contracts. We recommend a tailored approach that uses the MWBE availability estimates in this report to set any contract goals. This methodology involves four steps:
 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 MWBEs in those scopes, as estimated in this 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 approach will ensure that SCS firms are utilized to the maximum feasible extent. The availability of MWBEs is less than that for certified SCS firms, since SCS certified firms may be owned by White males. This means that the estimate of MWBE availability will be a subset of SCS firms, ensuring that the goal is achievable.

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

- Keep the SCS certification list up to date. Several large bidders reported that they had been rejected as non-responsive because the SCS firm had not renewed its certification, but it was still listed in the Directory.
- Review the relationships of an applicant for SCS certification with non-certified firms during the application process, not during consideration for contract award. It is standard best practice to consider the affiliations of an applicant for a preference during certification³³³, not wait until a bidder is seeking credit for using a certified firm. If a firm is not independent of a larger firm, it should not have been certified at all. Waiting until the contract review stage means issues have to be addressed for each bid or proposal, leading to repetitive questions, uncertainty and possibly less participation in the end because the non-certified bidder might have chosen an eligible business had it known its proposed SCS firm was not eligible for goal credit.
- Drop the requirement for continued SCS certification that the County must assess the contractor's need for additional training, and possibly then require the small contractor to complete up to 15 additional hours annually of business-related training. Aside from how this assessment might be conducted and under what standards, most of the SCS certified firms we interviewed were relatively experienced businesspeople who asked for specific information about doing business with the County, not overall business training. These resources would be better purposed toward targeted supportive services.
- Drop the requirement that a certified MWBE must submit an ESJ Inclusion plan. These small MWBEs are disadvantaged by a system that rewards large firms for working with the very firms sought to be benefited by the Plan but penalizes the MWBEs for lacking the resources or the need for DEI staffs and

333. See 49 C.F.R. §26.71, What rules govern determinations concerning control?

events and mentoring programs. MWBEs should not be marked down for not having programs to benefit themselves.

F. Use the Study to Implement the DBE Program

1. Use the Study to Set the Triennial DBE Goal for FTA and FAA Funded Contracts

49 C.F.R. Part 26 requires a recipient to engage in a two-step process to set a triennial goal for DBE participation.

Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the “relative availability of DBEs”). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination.³³⁴

One approved method to set the triennial goal is to use data from a disparity study. We therefore recommend that the County use the DBE aggregated weighted availability findings in Chapter IV to determine the Step One base figure for the relative availability of DBEs required by §26.45(c)³³⁵ for each funding source. These results are the estimates of total DBE availability that reflect the importance of each subindustry to the County’s overall FTA and FAA funded contracting activity.

Under §26.45(d), the County must perform a Step Two analysis.³³⁶ The County must consider whether to adjust the Step One figure to reflect the effects of the DBE program and the level of DBE availability that would be expected in the absence of discrimination. The County can use the statistical disparities in Chapter V of the rates at which DBEs form businesses as a possible marker of the availability of minority- and woman-owned businesses that would be expected “but for” discrimination. This is the type of “demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.”³³⁷ However, we note that while the DBE regulations have withstood repeated legal attacks, there is no direct case law upholding this type of “but

334. 49 C.F.R. §26.45(b).

335. Table 4-9, Aggregated Weighted Availability.

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

337. 49 C.F.R. §26.45(d)(3); *see also* §23.51.

for” analysis. We therefore advise King County to proceed with caution in using the economy-wide data for an adjustment.

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

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

G. Consider Partnering with Other Agencies and Local Organizations to Provide Bonding, Financing and Technical Assistance Programs

We recommend that the County implement a more robust supportive services program to provide wide ranging support to certified firms. While the County does provide some technical assistance, more could be done. A bonding and working capital element that includes a surety and a lender that agree to bond and finance graduates of the training program would be very helpful. There are some excellent programs that provide this type of support to certified contractors to increase their capacities.³³⁸ Other needed support includes marketing, legal services, accounting services, regulatory compliance and any other aspect of managing a business needed to work on County construction and construction-related services contracts. Engineering firms could benefit from assistance with setting overhead rates and submitting winning proposals. Perhaps the County can partner with WSDOT, Sound Transit, the City of Seattle and the Port of Seattle to increase the availability of these services and the pool of firms that can participate.

H. Develop Performance Measures for Program Success

The County should develop quantitative performance measures for overall success of its SCS, ESJ and DBE programs to evaluate the effectiveness of various

338. An example of a successful supportive services program is that of the Illinois Tollway. <https://www.illinoistollway.com/technicalassistance>.

approaches in reducing any disparities and systemic barriers identified by the study. In addition to meeting goals, possible benchmarks might be:

- Progress toward meeting the overall, annual SCS and DBE goals.
- The number of bids or proposals, industry and the dollar amount of the awards and the goal shortfall, where the bidder was unable to meet the goals and submitted 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 good faith efforts to meet the goal.
- The number, industry and dollar amount of M/W/DBE substitutions during contract performance.
- Increased bidding by certified firms as prime vendors.
- Increased prime contract awards to certified firms.
- Increased “capacity” of certified firms, as measured by bonding limits, size of jobs, profitability, complexity of work, etc.
- Increased variety in the subindustries in which M/W/DBEs are awarded prime contracts and subcontracts.

I. Conduct Regular Program Reviews

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

APPENDIX A:

FURTHER EXPLANATION OF THE MULTIPLE REGRESSION ANALYSIS

As explained in the report, multiple regression statistical techniques seek to explore the relationship between a set of independent variables and a dependent variable. The following equation is a way to visualize this relationship:

$$DV = f(D, I, O)$$

where DV is the dependent variable; D is a set of demographic variables; I is a set of industry & occupation variables; and O is a set of other independent variables.

The estimation process takes this equation and transforms it into:

$$DV = C + (\beta_1 * D) + (\beta_2 * I) + (\beta_3 * O) + \mu$$

where C is the constant term; β_1 , β_2 and β_3 are coefficients, and μ is the random error term.

The statistical technique seeks to estimate the values of the constant term and the coefficients.

In order to complete the estimation, the set of independent variables must be operationalized. For demographic variables, the estimation used race, gender and age. For industry and occupation variables, the relevant industry and occupation were utilized. For the other variables, age and education were used.

A coefficient was estimated for each independent variable. The broad idea is that a person's wage or earnings is dependent upon the person's race, gender, age, industry, occupation, and education. Since this report examined King County, the analysis was limited to data from the three counties that make up the Seattle metropolitan area: King County, Pierce County and Snohomish County. 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 on 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 independent 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 falls 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.³³⁹ 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.

339. 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 King County 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.³⁴⁰ 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.

340. 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: KING COUNTY FUNDED CONTRACTS UTILIZATION ANALYSIS BY INDUSTRY GROUPS

King County requested that CHA aggregate the utilization results into two broad groups: Construction and Architecture and Engineering (“A & E”) Professional Services.

Tables D-1 and D-2 present data on King County’s M/WBE and non-M/WBE utilization, measured in contract dollars and percentage of contract dollars for County funded construction contracts.

Table D-1: Distribution of King County Contract Dollars by Race and Gender
Construction Contracts
King County Funded
Total Dollars

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
113310	\$0	\$0	\$0	\$0	\$0	\$0	\$9,358	\$9,358
213111	\$0	\$0	\$0	\$0	\$0	\$0	\$132,104	\$132,104
221320	\$0	\$0	\$7,950	\$0	\$0	\$7,950	\$0	\$7,950
236210	\$132,937	\$0	\$0	\$0	\$0	\$132,937	\$4,638	\$137,575
236220	\$581,839	\$141,662	\$14,073	\$156,661	\$148,448	\$1,042,683	\$43,312,342	\$44,355,024
237110	\$22,448	\$0	\$133,419	\$0	\$2,375	\$158,243	\$25,334,788	\$25,493,030
237120	\$0	\$16,850	\$0	\$0	\$278,329	\$295,179	\$0	\$295,179
237130	\$0	\$0	\$0	\$1,864,208	\$702,453	\$2,566,661	\$8,634,002	\$11,200,663
237210	\$0	\$0	\$3,269	\$0	\$0	\$3,269	\$0	\$3,269
237310	\$283,885	\$4,473,185	\$380,531	\$10,945,313	\$423,161	\$16,506,075	\$33,149,968	\$49,656,043
237990	\$43,639	\$0	\$0	\$0	\$567,786	\$611,425	\$13,138,126	\$13,749,551
238110	\$0	\$11,688	\$0	\$0	\$173,853	\$185,541	\$1,664,251	\$1,849,792
238120	\$0	\$64,701	\$41,677	\$398,582	\$1,237,171	\$1,742,131	\$783,314	\$2,525,445
238130	\$40,033	\$0	\$0	\$0	\$0	\$40,033	\$336,558	\$376,591
238140	\$0	\$0	\$15,800	\$6,654,048	\$0	\$6,669,848	\$268,862	\$6,938,709
238150	\$0	\$0	\$0	\$0	\$0	\$0	\$619,846	\$619,846
238160	\$863,816	\$668,812	\$710,925	\$0	\$1,596,392	\$3,839,946	\$786,606	\$4,626,552
238190	\$0	\$210,942	\$0	\$0	\$234,145	\$445,087	\$638,817	\$1,083,904
238210	\$7,246,548	\$610,838	\$200,385	\$911,452	\$8,154,151	\$17,123,374	\$28,511,070	\$45,634,444

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
238220	\$851,132	\$0	\$256,592	\$49,504	\$618,643	\$1,775,871	\$19,895,362	\$21,671,234
238290	\$0	\$0	\$0	\$0	\$45,613	\$45,613	\$369,864	\$415,477
238310	\$0	\$0	\$14,967	\$0	\$171,984	\$186,951	\$1,670,704	\$1,857,655
238320	\$44,369	\$70,262	\$217,544	\$0	\$106,238	\$438,413	\$986,106	\$1,424,518
238330	\$5,350	\$0	\$0	\$0	\$0	\$5,350	\$564,611	\$569,961
238350	\$0	\$36,590	\$0	\$0	\$0	\$36,590	\$722,262	\$758,852
238390	\$38,466	\$218,953	\$0	\$498,332	\$120,067	\$875,818	\$763,547	\$1,639,365
238910	\$486,893	\$214,662	\$3,358,440	\$891,320	\$2,311,969	\$7,263,283	\$35,036,985	\$42,300,269
238990	\$113	\$387,208	\$1,024,380	\$846,243	\$1,635,608	\$3,893,552	\$11,613,026	\$15,506,578
423220	\$0	\$0	\$0	\$0	\$0	\$0	\$3,402	\$3,402
423310	\$0	\$0	\$0	\$0	\$8,006	\$8,006	\$171,892	\$179,898
423320	\$4,890	\$0	\$0	\$0	\$3,113	\$8,002	\$3,798,280	\$3,806,282
423390	\$0	\$0	\$0	\$0	\$4,394	\$4,394	\$1,715	\$6,109
423420	\$0	\$0	\$123	\$0	\$0	\$123	\$0	\$123
423440	\$0	\$0	\$0	\$0	\$0	\$0	\$520,714	\$520,714
423510	\$123,684	\$0	\$558,999	\$0	\$112,222	\$794,906	\$286,645	\$1,081,551
423610	\$0	\$0	\$0	\$0	\$34,005	\$34,005	\$8,574	\$42,579
423710	\$0	\$0	\$0	\$0	\$0	\$0	\$1,977,188	\$1,977,188
423830	\$0	\$0	\$0	\$0	\$0	\$0	\$618,366	\$618,366
423840	\$0	\$0	\$0	\$0	\$0	\$0	\$6,210	\$6,210
484220	\$1,543,874	\$1,094,981	\$2,953,197	\$34,642	\$120,475	\$5,747,169	\$2,562,161	\$8,309,330
488410	\$0	\$0	\$0	\$0	\$0	\$0	\$354	\$354
488490	\$0	\$14,722	\$47,843	\$0	\$651,242	\$713,806	\$1,161,700	\$1,875,506

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
561612	\$0	\$0	\$0	\$0	\$13,336	\$13,336	\$0	\$13,336
561710	\$0	\$0	\$0	\$0	\$0	\$0	\$1,749	\$1,749
561720	\$0	\$0	\$0	\$0	\$6,195	\$6,195	\$16,778	\$22,973
561730	\$783,940	\$53,470	\$539,454	\$0	\$439,910	\$1,816,775	\$968,190	\$2,784,965
562910	\$0	\$211,533	\$0	\$0	\$321,782	\$533,314	\$2,819,153	\$3,352,468
562991	\$0	\$0	\$0	\$0	\$0	\$0	\$4,583	\$4,583
811310	\$0	\$0	\$0	\$0	\$0	\$0	\$587,729	\$587,729
Total	\$13,097,857	\$8,501,058	\$10,479,567	\$23,250,305	\$20,243,066	\$75,571,853	\$244,462,501	\$320,034,354

Source: CHA analysis of King County data

Table D-2: Percentage Distribution of King County Contract Dollars by Race and Gender
Construction Contracts
King County Funded
Share of Total Dollars

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
113310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
213111	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
221320	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
236210	96.6%	0.0%	0.0%	0.0%	0.0%	96.6%	3.4%	100.0%
236220	1.3%	0.3%	0.0%	0.4%	0.3%	2.4%	97.6%	100.0%
237110	0.1%	0.0%	0.5%	0.0%	0.0%	0.6%	99.4%	100.0%
237120	0.0%	5.7%	0.0%	0.0%	94.3%	100.0%	0.0%	100.0%
237130	0.0%	0.0%	0.0%	16.6%	6.3%	22.9%	77.1%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
237210	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
237310	0.6%	9.0%	0.8%	22.0%	0.9%	33.2%	66.8%	100.0%
237990	0.3%	0.0%	0.0%	0.0%	4.1%	4.4%	95.6%	100.0%
238110	0.0%	0.6%	0.0%	0.0%	9.4%	10.0%	90.0%	100.0%
238120	0.0%	2.6%	1.7%	15.8%	49.0%	69.0%	31.0%	100.0%
238130	10.6%	0.0%	0.0%	0.0%	0.0%	10.6%	89.4%	100.0%
238140	0.0%	0.0%	0.2%	95.9%	0.0%	96.1%	3.9%	100.0%
238150	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238160	18.7%	14.5%	15.4%	0.0%	34.5%	83.0%	17.0%	100.0%
238190	0.0%	19.5%	0.0%	0.0%	21.6%	41.1%	58.9%	100.0%
238210	15.9%	1.3%	0.4%	2.0%	17.9%	37.5%	62.5%	100.0%
238220	3.9%	0.0%	1.2%	0.2%	2.9%	8.2%	91.8%	100.0%
238290	0.0%	0.0%	0.0%	0.0%	11.0%	11.0%	89.0%	100.0%
238310	0.0%	0.0%	0.8%	0.0%	9.3%	10.1%	89.9%	100.0%
238320	3.1%	4.9%	15.3%	0.0%	7.5%	30.8%	69.2%	100.0%
238330	0.9%	0.0%	0.0%	0.0%	0.0%	0.9%	99.1%	100.0%
238350	0.0%	4.8%	0.0%	0.0%	0.0%	4.8%	95.2%	100.0%
238390	2.3%	13.4%	0.0%	30.4%	7.3%	53.4%	46.6%	100.0%
238910	1.2%	0.5%	7.9%	2.1%	5.5%	17.2%	82.8%	100.0%
238990	0.0%	2.5%	6.6%	5.5%	10.5%	25.1%	74.9%	100.0%
423220	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423310	0.0%	0.0%	0.0%	0.0%	4.5%	4.5%	95.5%	100.0%
423320	0.1%	0.0%	0.0%	0.0%	0.1%	0.2%	99.8%	100.0%
423390	0.0%	0.0%	0.0%	0.0%	71.9%	71.9%	28.1%	100.0%
423420	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
423440	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423510	11.4%	0.0%	51.7%	0.0%	10.4%	73.5%	26.5%	100.0%
423610	0.0%	0.0%	0.0%	0.0%	79.9%	79.9%	20.1%	100.0%
423710	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423830	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
423840	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484220	18.6%	13.2%	35.5%	0.4%	1.4%	69.2%	30.8%	100.0%
488410	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
488490	0.0%	0.8%	2.6%	0.0%	34.7%	38.1%	61.9%	100.0%
561612	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
561710	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561720	0.0%	0.0%	0.0%	0.0%	27.0%	27.0%	73.0%	100.0%
561730	28.1%	1.9%	19.4%	0.0%	15.8%	65.2%	34.8%	100.0%
562910	0.0%	6.3%	0.0%	0.0%	9.6%	15.9%	84.1%	100.0%
562991	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
811310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
Total	4.1%	2.7%	3.3%	7.3%	6.3%	23.6%	76.4%	100.0%

Source: CHA analysis of King County data

Tables D-3 and D-4 present data on King County's M/WBE and non-M/WBE utilization, measured in contract dollars and percentage of contract dollars A&E Professional Services contracts.

Table D-3: Distribution of King County Contract Dollars by Race and Gender
A&E Professional Services Contracts
King County Funded
Total Dollars

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
424120	\$0	\$0	\$0	\$0	\$2,418	\$2,418	\$0	\$2,418
518210	\$0	\$0	\$0	\$0	\$0	\$0	\$125,888	\$125,888
531210	\$0	\$82,156	\$0	\$0	\$39,810	\$121,966	\$240,539	\$362,505
531312	\$0	\$0	\$0	\$0	\$0	\$0	\$54,477	\$54,477
532420	\$0	\$0	\$2,207	\$0	\$0	\$2,207	\$0	\$2,207
533110	\$0	\$0	\$0	\$0	\$53,296	\$53,296	\$0	\$53,296
541310	\$13,412	\$825,776	\$1,369,772	\$0	\$299,903	\$2,508,863	\$4,575,222	\$7,084,085
541320	\$8,400	\$22,528	\$40,864	\$0	\$372,347	\$444,140	\$3,189,064	\$3,633,204
541330	\$2,166,330	\$35,100	\$2,792,489	\$11,141	\$2,425,411	\$7,430,471	\$63,331,474	\$70,761,945
541350	\$0	\$0	\$266,081	\$15,001	\$51,968	\$333,050	\$3,122,706	\$3,455,756
541370	\$1,228,695	\$0	\$329,321	\$0	\$1,201,318	\$2,759,334	\$2,551,161	\$5,310,494
541380	\$35,599	\$74,563	\$89,083	\$0	\$508,467	\$707,712	\$1,278,465	\$1,986,177
541410	\$0	\$0	\$0	\$0	\$45,408	\$45,408	\$0	\$45,408
541420	\$73,034	\$0	\$34,727	\$33,740	\$1,626,619	\$1,768,120	\$2,234,392	\$4,002,512
541511	\$0	\$0	\$272,739	\$0	\$0	\$272,739	\$478,856	\$751,595
541512	\$0	\$0	\$0	\$0	\$10,913	\$10,913	\$0	\$10,913
541611	\$2,159,904	\$11,164	\$0	\$0	\$1,701,009	\$3,872,078	\$511,398	\$4,383,476
541612	\$70,000	\$0	\$0	\$0	\$0	\$70,000	\$0	\$70,000
541614	\$0	\$0	\$0	\$0	\$0	\$0	\$42,681	\$42,681

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
541618	\$0	\$0	\$0	\$0	\$416,736	\$416,736	\$8,472	\$425,207
541620	\$29,453	\$39,751	\$915,543	\$113,867	\$2,598,868	\$3,697,481	\$2,581,501	\$6,278,982
541690	\$0	\$0	\$0	\$0	\$188,628	\$188,628	\$121,717	\$310,345
541720	\$0	\$0	\$0	\$0	\$4,605	\$4,605	\$870,855	\$875,460
541810	\$0	\$0	\$0	\$0	\$0	\$0	\$135,168	\$135,168
541820	\$711,205	\$0	\$0	\$0	\$845,936	\$1,557,141	\$19,420	\$1,576,561
541830	\$0	\$0	\$9,750	\$0	\$0	\$9,750	\$0	\$9,750
541921	\$0	\$0	\$70,470	\$0	\$0	\$70,470	\$28,975	\$99,445
541990	\$18,352	\$441,004	\$433,853	\$0	\$4,369,917	\$5,263,126	\$3,340,178	\$8,603,304
561110	\$576,045	\$0	\$0	\$0	\$0	\$576,045	\$0	\$576,045
561320	\$0	\$0	\$0	\$0	\$0	\$0	\$16,048	\$16,048
561410	\$0	\$0	\$0	\$0	\$3,608	\$3,608	\$67,120	\$70,728
561790	\$0	\$0	\$0	\$0	\$106,776	\$106,776	\$173,360	\$280,136
561990	\$762,931	\$0	\$1,975,968	\$0	\$19,971	\$2,758,870	\$969,008	\$3,727,878
562111	\$0	\$0	\$0	\$0	\$0	\$0	\$7,656	\$7,656
562998	\$84,851	\$0	\$0	\$0	\$0	\$84,851	\$587,591	\$672,442
711510	\$0	\$0	\$0	\$0	\$4,423	\$4,423	\$0	\$4,423
813312	\$0	\$0	\$0	\$0	\$1,654	\$1,654	\$0	\$1,654
924110	\$0	\$0	\$0	\$0	\$381,263	\$381,263	\$4,459	\$385,722
Total	\$7,938,211	\$1,532,043	\$8,602,866	\$173,749	\$17,281,272	\$35,528,141	\$90,667,851	\$126,195,992

Source: CHA analysis of King County data

Table D-4: Percentage Distribution of King County Contract Dollars by Race and Gender**A&E Professional Services Contracts****King County Funded****Share of Total Dollars**

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
424120	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
518210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
531210	0.0%	22.7%	0.0%	0.0%	11.0%	33.6%	66.4%	100.0%
531312	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
532420	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
533110	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541310	0.2%	11.7%	19.3%	0.0%	4.2%	35.4%	64.6%	100.0%
541320	0.2%	0.6%	1.1%	0.0%	10.2%	12.2%	87.8%	100.0%
541330	3.1%	0.0%	3.9%	0.0%	3.4%	10.5%	89.5%	100.0%
541350	0.0%	0.0%	7.7%	0.4%	1.5%	9.6%	90.4%	100.0%
541370	23.1%	0.0%	6.2%	0.0%	22.6%	52.0%	48.0%	100.0%
541380	1.8%	3.8%	4.5%	0.0%	25.6%	35.6%	64.4%	100.0%
541410	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541420	1.8%	0.0%	0.9%	0.8%	40.6%	44.2%	55.8%	100.0%
541511	0.0%	0.0%	36.3%	0.0%	0.0%	36.3%	63.7%	100.0%
541512	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541611	49.3%	0.3%	0.0%	0.0%	38.8%	88.3%	11.7%	100.0%
541612	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541614	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541618	0.0%	0.0%	0.0%	0.0%	98.0%	98.0%	2.0%	100.0%
541620	0.5%	0.6%	14.6%	1.8%	41.4%	58.9%	41.1%	100.0%
541690	0.0%	0.0%	0.0%	0.0%	60.8%	60.8%	39.2%	100.0%
541720	0.0%	0.0%	0.0%	0.0%	0.5%	0.5%	99.5%	100.0%
541810	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541820	45.1%	0.0%	0.0%	0.0%	53.7%	98.8%	1.2%	100.0%
541830	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE	Total
541921	0.0%	0.0%	70.9%	0.0%	0.0%	70.9%	29.1%	100.0%
541990	0.2%	5.1%	5.0%	0.0%	50.8%	61.2%	38.8%	100.0%
561110	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
561320	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561410	0.0%	0.0%	0.0%	0.0%	5.1%	5.1%	94.9%	100.0%
561790	0.0%	0.0%	0.0%	0.0%	38.1%	38.1%	61.9%	100.0%
561990	20.5%	0.0%	53.0%	0.0%	0.5%	74.0%	26.0%	100.0%
562111	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562998	12.6%	0.0%	0.0%	0.0%	0.0%	12.6%	87.4%	100.0%
711510	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%	100.0%	100.0%	0.0%	100.0%
924110	0.0%	0.0%	0.0%	0.0%	98.8%	98.8%	1.2%	100.0%
Total	6.3%	1.2%	6.8%	0.1%	13.7%	28.2%	71.8%	100.0%

Source: CHA analysis of King County data

APPENDIX E:

UNWEIGHTED AND WEIGHTED AVAILABILITY

Central to the analysis, under strict constitutional scrutiny, of an agency's contracting activity is understanding what firms could have received contracts. Availability has two components: unweighted availability and weighted availability. Below we define these two terms; why we make the distinction; and how to convert unweighted availability into weighted availability.

Defining Unweighted and Weighted Availability

Unweighted availability measures a group's share of all firms that could receive a contract or subcontract. If 100 firms could receive a contract and 15 of these firms are minority-owned, then MBE unweighted availability is 15 percent (15/100). *Weighted availability* converts the unweighted availability through the use of a weighting factor: the share of total agency spending in a particular NAICS code. If total agency spending is \$1,000,000 and NAICS Code AAAAAA captures \$100,000 of the total spending, then the weighting factor for NAICS code AAAAAA is 10 percent ($\$100,000/\$1,000,000$).

Why Weight the Unweighted Availability

It is important to understand *why* weighted availability should be calculated. A disparity study examines the overall contracting activity of an agency by looking at the firms that *received* contracts and the firms that *could have received* contracts. A proper analysis does not allow activity in a NAICS code that is not important an agency's overall spending behavior to have a disproportionate impact on the analysis. In other words, the availability of a certain group in a specific NAICS code in which the agency spends few of its dollars should have less importance to the analysis than the availability of a certain group in another NAICS code where the agency spends a large share of its dollars.

To account for these differences, the availability in each NAICS code is weighted by the agency's spending in the code. The calculation of the weighted availability compares the firms that received contracts (utilization) and the firms that could receive contracts (availability). Utilization is a group's share of total spending by an agency; this metric is measure in dollars, *i.e.*,

MBEs received 8 percent of all dollars spent by the agency. Since utilization is measured in dollars, availability must be 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 A contains data on unweighted availability measured by the number of firms:

Table A

NAICS	Black	Hispanic	Asian	Native American	White Women	Non-M/W/DBE	Total
AAAAAA	10	20	20	5	15	400	470
BBBBBB	20	15	15	4	16	410	480
CCCCCC	10	10	18	3	17	420	478
TOTAL	40	45	53	12	48	1230	1428

Unweighted availability measured as the share of firms requires us to divide the number of firms in each group by the total number of firms (the last column in Table A). For example, the Black share of total firms in NAICS code AAAAAA is 2.1 percent (10/470). Table B presents the unweighted availability measure as a group’s share of all firms.

Table B

NAICS	Black	Hispanic	Asian	Native American	White Women	Non-M/W/DBE	Total
AAAAAA	2.1%	4.3%	4.3%	1.1%	3.2%	85.1%	100.0%
BBBBBB	4.2%	3.1%	3.1%	0.8%	3.3%	85.4%	100.0%
CCCCCC	2.1%	2.1%	3.8%	0.6%	3.6%	87.9%	100.0%
TOTAL	2.8%	3.2%	3.7%	0.8%	3.4%	86.1%	100.0%

Table C presents data on the agency's spending in each NAICS code:

Table C

NAICS	Total Dollars	Share
AAAAAA	\$1,000.00	22.2%
BBBBBB	\$1,500.00	33.3%
CCCCCC	\$2,000.00	44.4%
TOTAL	\$4,500.00	100.0%

Each NAICS code's share of total agency spending (the last column in Table C) is the weight from each NAICS code that will be used in calculating the weighted availability. To calculate the overall weighted availability for each group, we first derive the every NAICS code component of a group's overall weighted availability. This is done by multiplying the NAICS code weight by the particular group's unweighted availability in that NAICS code. For instance, to determine NAICS code AAAAAA's component of the overall Black weighted availability, we would multiply 22.2 percent (the NAICS code weight) by 2.1 percent (the Black unweighted availability in NAICS code AAAAAA). The resulting number is 0.005 and this number is found in Table D under the cell which presents NAICS code AAAAAA's share of the Black weighted availability. The procedure is repeated for each group in each NAICS code. The calculation is completed by adding up each NAICS component for a particular group to calculate that group's overall weighted availability. Table D presents this information:

Table D

NAICS	Black	Hispanic	Asian	Native American	White Women	Non-M/W/DBE
AAAAAA	0.005	0.009	0.009	0.002	0.007	0.189
BBBBBB	0.014	0.010	0.010	0.003	0.011	0.285
CCCCCC	0.009	0.009	0.017	0.003	0.016	0.391
TOTAL	0.028	0.029	0.037	0.008	0.034	0.864

To determine the overall *weighted availability*, the last row of Table D is converted into a percentage (*e.g.*, for the Black weighted availability: $0.028 * 100 = 2.8$ percent). Table E presents these results.

Table E

Black	Hispanic	Asian	Native American	White Women	Non-MWBE	Total
2.8%	2.9%	3.7%	0.8%	3.4%	86.4%	100.0%

APPENDIX F:

QUALITATIVE EVIDENCE FROM WASHINGTON DISPARITY STUDIES

In addition to the anecdotal data collected for this study and provided in the Qualitative chapter of this report, Colette Holt & Associates has conducted three disparity studies in the State of Washington over the last several years. These reports that shed light on the experiences of Minority- and Woman-owned Business Enterprises (“MWBEs”) in the Puget Sound area and overall Washington marketplace. The results are quite consistent across agencies, time periods and industries. We interviewed minority and woman owners and non-MWBE representatives about barriers to the full and fair participation of all firms in the procuring agency’s market area. The total number of participants for these interviews was 539 individuals. We also collected comments from 32 organizations representing MWBE and prime, non-MWBE firms in an electronic survey.

This summary of anecdotal reports provides an overview of the following Disparity Studies: the State of Washington 2019 (“State 2019”)³⁴¹; Washington State Airports 2019 (“Airports 2019”)³⁴²; and Washington State Department of Transportation 2017 (“WSDOT 2017”)³⁴³.

1. Discriminatory Attitudes and Negative Perceptions of Competency and Professionalism Continue to Impede the Success of MWBEs

Many minority and woman owners reported being stigmatized by their race and/or gender or being a certified firm. Subtle and overt stereotyping and race and gender discrimination were commonplace. Respondents reported that they often experience negative attitudes concerning their competency, skill,

341. State 2019: <https://omwbe.wa.gov/sites/default/files/public/State%20of%20Washington%20Disparity%20Study%202019%20-%202019%2007%2030%20%281%29.pdf>

342. Airports 2019: <https://wsdot.wa.gov/sites/default/files/2022-02/Washington-State-Airports-Disparity-Study-2019.pdf>

343. WSDOT 2017: <https://wsdot.wa.gov/sites/default/files/2021-10/OEO-DisparityStudy-2017.pdf>

and professionalism. These biases impact all aspects of their attempts to obtain contracts and to be treated equally in performing contract work. The prevailing viewpoint is that MWBEs and smaller firms are less qualified and capable.

They are very entrenched in their mindset as to because you are a person of color, you don't qualify. Period. No matter your degrees and all the certifications and everything. I have certifications as long as your arm but it does not make a difference. (State 2019, page 113)

When I show up for projects, people see an ethnic minority, therefore incompetency. (WSDOT 2017, page 119)

Just because you have that label [of MBE certification], some people have a bad view of that program.... They think that you're not as good because you are an MBE, "You're only getting work because you're an MBE." I don't know how you get rid of that notion. (State 2019, pages 113-114)

[The] majority of time, [people] will hire people who are like themselves. You put a job out for RFQ, right? And you look for the qualifications and you say, "Oh! That person looks like me, or I relate to that person." (Airports 2019, page 128)

Typically, once a contractor realizes I am black and a female, the standards for me and my firm will raise to level that seem unreachable for most businesses. (State 2019, page 129)

It's just this stigma [to being a DBE].... It's a double edge sword. There's the chip on the shoulder of the people you're interfacing with, whether it's a project manager, estimator, typically some white guy that feels like the DBE program shouldn't be in existence. (Airports 2019, page 129)

It's still a man's world and a White man's world. And I'm constantly reminded of that....[there is still a] good ole boys club. (State 2019, page 114)

Being black is often perceived as symbols of limits or a metaphor for "outsider." (State 2019, page 129)

Sexist attitudes were still prevalent.

I've been made fun of lots of times when I show up [as a woman] and I'm the engineer. (State 2019, page 114)

It's still very a man's world. It's very hard to even have a woman project manager.... The good ole boys. That definitely still has an issue, I notice in the construction industry, at least over here on this side of the mountains for eastern Washington. It is definitely a White man's world. (State 2019, page 114)

There's just a different perception when it comes to women in this industry, and I very much think that it's an issue.... The unions, they would all call other males that worked in the office ... I would just pick up that phone, and I'm like, "That is not who you deal with. You deal with me." They would automatically, and it still happens all the time, go to somebody else. Just that undertone of they need to deal with the guy, or whoever, to get something done. (WSDOT 2017, page 120)

I went to wait on a contractor on the counter and I was told "I'll wait for one of the boys." (WSDOT 2017, page 120)

The most overt discrimination that I had since taking over the company was going to a woman-owned bank and talking to a woman new account manager who looked at my VP's name and said, "Oh, are you here to sign this individual up as the new owner?" Rather than myself, who was sitting right in front of her. (State 2019, page 116).

Usually, the older school generation has a harder time working with the females. I know that, so I play off my brother. My brother takes control of that job. (WSDOT 2017, page 121).

I went on the job pre-construction meeting and I'm going to say there was probably about six contractors there. I was the woman. "Oh, who's the chick here?" (State 2019, page 117)

Most of the primes I deal with are male, most of the DOT people I deal with are males. There's no one out there for me to go to that I feel is looking out for my interest, because I'm a female. (WSDOT 2017, page 120)

I received a letter in the mail that said women did not belong in transportation and that I was taking away a job from a man who was supporting his family. It's only about four years ago. I wrote him a letter back. "Dear angry man, of course women belong in transportation. At least we stop and ask for directions." (WSDOT 2017, page 122)

Women also experienced sexual harassment and hostile work environments.

As a woman, I have personally had several encounters – some innocuous, just offensive and a few very scary ones. As a group, harassment occurs implicitly and in insidious ways. (State 2019, page 130)

I try to make contacts and sometimes as a woman it turns into being asked out on a date or hit on or touched inappropriately. (State 2019, page 118)

My first journeyman, he would just start coming up on the ladder behind me and like press himself against me or something. He cup grabbed my ass a few times, and I turned him in. And all he was given was a slap on the wrist. (State 2019, page 117)

2. Lack of Access to Business and Professional Networks and Information Limit MWBEs' Opportunities

Many minority and woman respondents reported difficulty in accessing networks and fostering relationships necessary for professional success. These barriers extended to agency staff. Respondents were unable to gain access to and communicate with key agency decisionmakers.

I want to be able to compete legitimately with [entrenched consultants] or at least get my foot in the door so I can ask to bid on a particular project. [An agency staffer] said, "Well, I don't really know. You just have to talk to people you know." (WSDOT 2017, page 123)

Barriers are subtle and hidden behind pleasantries. They are pervasive and relentless. They are perpetuated by government employees and none are ever held accountable by managers. (State 2019, page 129)

I'm always questioning [WSDOT staff], and they are insulted that I'm questioning them. The prime contractor's insulted that I'm questioning them. (WSDOT 2017, page 120)

The barrier here is the contracting culture [with] some of the smaller airports. The agency staff just wants you to do what they're comfortable with.... They just hang out with [these consultants] at golf courses, in bars. (Airports 2019, page 130)

You need to know who to contact. Who the decision maker's going to be when it comes to putting together your team, or putting together the ultimate proposal. You need to know who

that lead is, who that project manager is, who that decisionmaker is, because if you're talking to anybody else, you're wasting your time. (WSDOT 2017, page 123)

I will not be given all the resources needed to perform the service while other firms will be given ample resources to perform the service. (State 2019, page 129)

Where I have sometimes the most gender [issues] is with WSDOT employees....If you can get your foot in the door and then keep working with [the general contractors] and showing them that you can do a good job. I think they get beyond that gender. (Airports 2019, page 128)

In some trades, minority contractors cannot get the certifications to install certain products and materials. They simply are not allowed because the supplier wants to limit competition, which results in whites having the advantage. (State 2019, page 130)

3. Obtaining Work on an Equal Basis

Respondents reported that institutional and discriminatory barriers continue to exist in the Washington State area marketplaces. They were in almost unanimous agreement that MWBE contract goals remain necessary to level the playing field and equalize opportunities. Race- and gender-neutral approaches alone are viewed as inadequate and unlikely to ensure equal opportunity.

I'd be back at a larger firm [without the DBE program] and subordinate to White men who always want to be "the man". (Airports 2019, page 130)

Without goals there wouldn't be these businesses in the room. (WSDOT 2017, page 123)

Probably 80% of [firm] business is on contracts where primes need to meet a goal, and the same case where if there's not a goal, they don't call and when there's a goal they call. It's every major contractor that operates in this region. (WSDOT 2017, pages 123-124)

The only chance we have here in this room is if there's a goal, they'll call you. Otherwise, they never call you. (WSDOT 2017, page 124)

Unless there's a head shift and they start to see the benefit of the program, the benefit of diversity, the benefit of having

different values and different backgrounds and how that can actually make their project more efficient and better, this is going to continue to be a conversation. (WSDOT 2017, page 119)

It's kind of like a license to hunt. I might not catch anything, but it gave me that license and I get to get out there and do it. (Airports 2019, page 130)