

Disparity Study Report

Overview

On May 1, 2012, the Board of County Commissioners (BCC) passed Resolution R-397-12, directing the Administration to issue a solicitation for a disparity study of Black, Hispanic and Women-owned Business Enterprises participation in County contracts issued by the Public Works and Waste Management and the Water and Sewer Departments. On May 14, 2013, the BCC directed the expansion of the disparity study to include the Internal Services, Public Housing and Community Development, and Parks, Recreation and the Open Spaces Departments in the study. The study period included prime contracts and subcontracts awarded from January 1, 2007 to December 31, 2011. The BCC approved the award of RFP 830 to complete a comprehensive disparity study to Mason Tillman Associates, Ltd., (Manson Tillman), the top scoring firm.

Mason Tillman obtained the data to conduct this study from project files and electronic databases compiled by the County. Also, Mason Tillman conducted researches (Chambers of Commerce lists, business and trade organization membership directories, contractors' websites and surveys) to reconstruct the ethnicity and gender information.

Executive Summary

Relevant legal analysis presents the case law applicable to business affirmative action programs and the methodology based on those cases required for the study.

I. Study Overview:

The purpose of the Disparity Study was to determine whether or not there was statistically significant underutilization in the award of the County's prime contracts and subcontracts to businesses owned by minorities and women (M/WBEs) in the market area during the study period. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs should be relatively close to the corresponding proportion of available M/WBEs in the relevant market area. If the available M/WBE prime contractors or subcontractors are underutilized, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event which is less probable.

Prime contracts and subcontracts awarded from January 1, 2007 to December 31, 2011 constituted the universe of prime contracts and subcontracts studied. The analyzed contracts were classified into the four industries: Construction, Architecture and Engineering, Professional Services, and Goods and Other Services.

II. Methodology:

The *City of Richmond v. J.A. Croson Co.*¹ (*Croson*) and related case law provided the legal framework for conducting the Disparity Study. Specifically, two United States decisions, *Croson* and *Adarand v. Peña*² (*Adarand*), raised the standard by which federal courts review both local and federal government minority business enterprise and disadvantaged business enterprise contracting programs.

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

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

Government agencies such as the County, as set forth in *Croson*, may adopt race-conscious programs only as a remedy for identified statistical findings of discrimination and the remedy must impose a minimal burden upon unprotected classes. *Croson* ruled that an inference of discrimination can be made *prima facie* if the disparity is statistically significant. For this study, this analysis was applied to M/WBEs by ethnicity and gender within each industry.

The analysis of disparity was disaggregated into nine ethnic and gender groups. The nine groups are listed in the table below:

Business Ethnic and Gender Groups

Ethnicity and Gender Category	Definition
African American Businesses	Businesses owned by male and female African Americans
Asian American Businesses	Businesses owned by male and female Asian Americans
Hispanic American Businesses	Businesses owned by male and female Hispanic Americans
Native American Businesses	Businesses owned by male and female Native Americans
Women Business Enterprises	Businesses owned by Caucasian females
Minority Business Enterprise	Businesses owned by African American, Asian American, Hispanic American, and Native American males and females
Minority and Women Business Enterprise	Businesses owned by Minority males, Minority females, and Caucasian females
Non-Minority Male Business Enterprise	Businesses owned by Caucasian males and businesses that could not be identified as minority or female-owned

III. Notable Findings:

A. Utilization Analysis

The objective of the utilization analysis is to determine the level of M/WBE utilization as prime and subcontractors.

Prime Contractor Utilization Analysis

The County issued 6,401 contracts during the study period. The contract awards during the study period totaled \$1.84 billion. The table on the next page summarizes the prime contractor utilization analysis by the percent of prime contract dollars awarded to each ethnic and gender group.

Prime Contractor Utilization Summary

Ethnicity	Construction	Architecture and Engineering	Professional Services	Goods and Other Services
All Prime Contracts				
African American	1.84%	1.01%	6.14%	9.59%
Asian-Pacific Americans	0.03%	1.27%	10.17%	0.88%
Hispanic Americans	44.15%	25.34%	18.03%	17.74%
Native Americans	0.00%	0.00%	0.00%	0.00%
Caucasian Females	0.21%	3.25%	2.40%	9.66%
Non-Minority Males	53.77%	69.13%	63.26%	62.14%
Prime Contracts Under \$250,000				
African American	14.27%	3.58%	4.32%	10.07%
Asian-Pacific Americans	0.51%	3.84%	0.38%	1.79%
Hispanic Americans	70.71%	49.12%	29.12%	17.26%
Native Americans	0.00%	0.00%	0.00%	0.00%
Caucasian Females	0.35%	3.37%	5.39%	8.55%
Non-Minority Males	14.16%	40.09%	60.80%	62.34%

Subcontractor Utilization Analysis

A total of 2,842 subcontracts were analyzed. The table below summarizes the subcontractor utilization by the percent of subcontracts received by each ethnic and gender group by industry:

Subcontract Utilization Summary

Ethnicity	Construction	Architecture and Engineering	Professional Services
African American	2.76%	7.55%	4.44%
Asian-Pacific Americans	0.24%	4.23%	0.00%
Hispanic Americans	35.28%	56.50%	15.56%
Native Americans	0.08%	0.60%	0.00%
Caucasian Females	2.68%	6.34%	8.89%
Non-Minority Males	58.96%	24.77%	71.11%

B. Market Area Analysis

The County awarded 87.17 percent of the contracts and 84.58 percent of dollars to businesses located in Miami-Dade County. Given the distribution of the awarded contracts and the applicable case law, Miami-Dade County was defined as the market area. The analysis of contracts has been limited to an examination of contracts awarded to available market area businesses.

Market Area Analysis

Market Area	Number of Contracts	Total Dollars	Percent of Contracts	Percent of Dollars
All Industries				
Market Area	5,580	\$1,559,269,599	87.17%	84.58%
Outside Market Area	821	\$284,198,456	12.83%	15.42%
Total	6,401	\$1,843,468,055	100.00%	100.00%

C. Availability Analysis

When considering sources for determining the number of willing and able M/WBEs and non-M/WBEs in the market area, the selection must be based on whether two aspects about the population in question can be gauged from the sources. One consideration is a business interest in doing business with the jurisdiction, as implied by the term “willing,” and the other is its ability or capacity to provide goods or services, as implied by the term “able.” A list of available professional service M/WBEs and non-M/WBEs was compiled.

Prime Contractor Availability Analysis

Ethnicity	All Industries	Construction	Architecture & Engineering	Professional Services	Goods and Other Services
African American	15.03%	15.59%	7.00%	21.71%	15.82%
Asian-Pacific	1.91%	1.06%	4.79%	2.67%	1.38%
Hispanic Americans	57.91%	69.05%	58.56%	53.52%	41.13%
Native Americans	0.03%	0.00%	0.00%	0.00%	0.14%
Caucasian Females	5.56%	3.35%	6.63%	8.57%	7.29%
Non-Minority Males	19.56%	10.95%	23.02%	13.52%	34.25%

Subcontractor Availability Analysis

Ethnicity	Construction	Architecture & Engineering	Professional Services
African American	13.06%	7.06%	20.95%
Asian-Pacific Americans	0.93%	4.82%	2.55%
Hispanic Americans	60.95%	57.66%	52.28%
Native Americans	0.12%	0.17%	0.00%
Caucasian Females	3.40%	6.37%	8.38%
Non-Minority Males	21.53%	23.92%	15.85%

D. Contract Size Analysis

The County’s construction, architecture and engineering, professional services, and goods and other services contracts were analyzed to determine the size of awarded contracts in order to gauge the capacity required to perform on the County’s contracts. The size of the County’s

contracts demonstrates that the majority of the contracts are small, requiring limited capacity to perform.

For the size analysis, the County's contracts were grouped into eight dollar ranges. Each industry was analyzed to determine the number and percentage of contracts that fell within the eight size categories. The size distribution of contracts awarded to Non- Minority Males was then compared to the size distribution of contracts awarded to Caucasian Females, Minority Females, and Minority Males.

The table below depicts all of the industry contracts awarded within the eight dollar ranges. Contracts valued at less than \$25,000 were 61.49 percent. Those less than \$50,000 were 70.22 percent. Those less than \$100,000 were 78.53 percent and those less than \$250,000 were 86.8 percent.

Prime Contracts Size Analysis

Size		Non-Minority				Minority				Total	
		Females		Males		Females		Males			
		Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
1	\$1 - \$24,999	146	2.28%	1,202	18.78%	849	13.26%	1,739	27.17%	3,936	61.49%
2	\$25,000 - \$49,999	22	0.34%	187	2.92%	79	1.23%	271	4.23%	559	8.73%
3	\$50,000 - \$99,999	16	0.25%	180	2.81%	73	1.14%	263	4.11%	532	8.31%
4	\$100,000 - \$249,999	17	0.27%	186	2.91%	47	0.73%	279	4.36%	529	8.26%
5	\$250,000 - \$499,999	8	0.12%	93	1.45%	34	0.53%	182	2.84%	317	4.95%
6	\$500,000 - \$999,999	14	0.22%	94	1.47%	29	0.45%	157	2.45%	294	4.59%
7	\$1,000,000-\$2,999,999	1	0.02%	40	0.62%	10	0.16%	90	1.41%	141	2.20%
8	\$3,000,000 and greater	1	0.02%	56	0.87%	5	0.08%	31	0.48%	93	1.45%
	Total	225	3.52%	2,038	31.84%	1,126	17.59%	3,012	47.06%	6,401	100.00%

Analysis of Statistically Significant Underutilization

The objective of this section is to determine whether the portion of prime contracts awarded to M/WBE was at parity with each ethnic and gender groups' availability. A test of statistical significance was applied to the group that had a disparity between its utilization and availability. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs should be relatively close to the corresponding proportion of available M/WBEs in the relevant market area. If the ratio of utilized M/WBE prime contractors to available M/WBE prime contractors is less than one, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event which is less probable. This analysis assumes a fair and equitable system.

A disparity analysis was performed on all prime contracts and subcontracts awarded from January 1, 2007 to December 31, 2011. Disparity was found at both the prime contract and subcontract levels for several ethnic and gender groups at both dollar thresholds (above and below \$250,000).

Disparity Findings:

- **Prime Contracts**

As indicated in the table below, disparity was found for African Americans, Asian Americans, Hispanic Americans, Minority Business Enterprises, Women Business Enterprises, and Minority and Women Business Enterprises construction prime contractors for all contracts. Disparity was also found for Asian Americans and Women Business Enterprises construction prime contractors at the formal contract level.

Prime Contract Disparity Summary

Ethnicity/Gender	All Prime Contracts	
	All Prime Contracts	Prime Contracts under \$250,000
African Americans	Statistically Significant Underutilization	Underutilization
Asian Americans	Statistically Significant Underutilization	Statistically Significant Underutilization
Hispanic Americans	Statistically Significant Underutilization	Overutilization
Native Americans	---	---
Minority Business Enterprises	Statistically Significant Underutilization	Underutilization
Women Business Enterprises	Statistically Significant Underutilization	Statistically Significant Underutilization
Minority and Women Business Enterprises	Statistically Significant Underutilization	Underutilization

(---) Denotes an underutilized group with too few available firms to test.

- **Subcontracts**

As indicated in the table below, disparity was found for African American, Hispanic American, Minority Business Enterprise, and Minority and Women Business Enterprise construction subcontractors. Disparity was also found for African American professional services subcontractors.

Subcontract Disparity Summary

Ethnicity / Gender	Construction	Professional Services
African Americans	Statistically Significant Underutilization	Statistically Significant Underutilization
Asian Americans	----	Overutilization
Hispanic Americans	Statistically Significant Underutilization	Underutilization
Native Americans	----	Overutilization
Minority Business Enterprises	Statistically Significant Underutilization	Underutilization
Women Business Enterprises	Underutilization	Underutilization
Minority and Women Business Enterprises	Statistically Significant Underutilization	Underutilization

(----) There were insufficient records to determine statistical disparity.

V. Anecdotal Findings

In addition to requiring a statistical analysis, the United States Supreme Court in *Croson* stated that anecdotal findings, “if supported by appropriate statistical proofs, lend support to a [local entity’s] determination that broader remedial relief [is] justified.” *Croson* authorizes anecdotal inquiries along two lines. The first approach examines barriers attributed to the local entity. Such action is defined as the active participation of the government entity. The second approach examines whether the local entity was essentially a passive participant of exclusion practiced by its prime contractors.

The patterns and practices evident in the interviewee accounts have been grouped into 17 categories. The categories are as follows:

- Racial and Gender Barriers
- Sexual and Racial Harassment
- Disparate Standards of Review
- Difficulty with the Contracting Community
- Presence of a Good Old Boys Network
- Impediments to the Bid Process
- Inadequate Lead Time to Prepare Bids
- Problems with Supplier Agreements
- Difficulty Meeting Prequalification Requirements
- Barriers to Financial Resources
- Criteria for Bonding
- Late Payments from the County
- Late Payments from Prime Contractors
- Implementation of the Community Small Business Enterprise Program

- Exemplary County Business Practices
- Contrasts between Public Sector and Private Sector Experiences
- CSBE and M/WBE Program Enhancements

VI. Recommendations

Race and gender-neutral recommendations are offered to increase M/WBE access to the County's prime and subcontracts and to track, monitor, report, and verify M/WBE prime contractor and subcontractor utilization. The recommended strategies address all industries and apply to all ethnic and gender groups. The recommendations are derived from an analysis of the County's Small Business Enterprise Program, a review of the County's web page, anecdotal interviews, and government and corporate best management practices.

1) Administrative Strategies:

- Standardize SBE Goals throughout all County Departments
- Standardize and the Dissemination of the County's Procurement Procedures to all Departments
- Authorization to Approve Subcontractor Waivers
- Evaluate Staff Compliance with the SBE Program
- Expand the Advisory Board's Function
- Establish a SBE Ombudsperson Position

2) Pre-Award Recommendations:

- Expand Unbundling Policy
- Establish a Direct Purchase Program for Construction Contracts
- Promote Diversity in Distributorships
- Advertise Small Contracts Bond Provisions
- Pay Mobilization to Subcontractors
- Disseminate the Procedures for the County's Equitable Distribution
- Program for Architecture and Engineering Consultants
- Maintain Virtual Plan Room
- Revise Insurance Requirements
- Review Selection Panel Process
- Distribute Bid Protest Procedures
- Enhance M/WBE Outreach Campaign

3) Post-Award Recommendations:

- Institute a Payment Verification Program
- Publish Prime Contractor Payments
- Track All Subcontractors
- Conduct Routine Post-Award Contract Compliance Monitoring
- Assess Penalties for Not Achieving the M/WBE and SBE Contract Goals
- Publish M/WBE Utilization Reports
- Develop Contract Opportunities Forecast

4) Website Recommendations:

- Provide Accessibility for Visually Impaired Individuals
- Provide Option to Enlarge Text
- Provide Text-to-Speech Feature

- Offer Mobile-Optimized Website
- 5) **Data Management Strategies:**
- Track and Monitor M/WBE and SBE Prime and Subcontractors in on Centralized Financial Management System
 - Use a Unique Identifier for all Contracts Regardless of Procurement Type
 - Track and Monitor Pre-Award Subcontractor Commitments
 - Improve Oversight of Noncompetitively Bid Contracts
 - Uniformly Capture Ethnicity and Gender for Contractors/Vendors
 - Require a M/WBE Utilization Plan with the Bid
 - Track, Verify, and Report M/WBE Participation Monthly by Task Order
 - Assess Penalties for Not Achieving the Project Goal Set on Each Task

Demographics of the County Population

According to the 2010 United States Census Data:

- Miami-Dade County's total population was 2,496,435 persons
- Male: 1,208,364 (48.4%)
- Female: 1,288,071 (51.6%)

According to the 2012 Demographic, Economic and Housing Characteristics of Commission Districts prepared by the Planning Research Section of the Regulatory and Economic Resources Department (dated March 2014, utilizing Census 2010 United States Census Data) the total population may be broken down into the following racial/ethnicity categories:

- Hispanic – 1,623,859 (65.6%)
- White – 383,551 (15.4%)
- Black – 425,650 (17.1%)
- Asian – 35,841 (1.4%)
- Two or more races and other – 27,534 (1.1%)

Demographics per the Disparity Study (2012) vs. current demographics (2013)

People Quick Facts	Miami-Dade County Disparity Study Report (2012 US Census Bureau)	Miami-Dade County (2013-US Census Bureau)
Population (estimate)	2.5 million	2.6 million
Black or African American	19.20%	19.00%
American Indian and Alaska Native, Native Hawaiian and Other Pacific Islander	0.40%	0.30%
Asian alone, percent	1.70%	1.70%
Two or More Races	1.20%	1.20%
Hispanic or Latino	64.30%	65.60%
White alone, not Hispanic or Latino	16.30%	15.20%
Female persons	-----	51.40%

Source: US Census Bureau State & County Quick Facts: Miami-Dade County, Florida. <http://quickfacts.census.gov/qfd/states/12/12086.html>