

# City of Kansas City, Missouri Disparity Study 2016



**CH** COLETTE  
HOLT  
& ASSOCIATES



## **About the Study Team**

**Colette Holt & Associates** (“CHA”) is a national law and consulting firm specializing in disparity studies, affirmative action contracting programs, expert witness services, compliance monitoring and strategic development related to inclusion, diversity and affirmative action. Founded in 1994, it is led by Colette Holt, J.D., a nationally recognized attorney and expert. In addition to Ms. Holt, the firm consists of Steven C. Pitts, Ph. D., who serves as the team’s economist and statistician, Robert C. Ashby, J.D., former Deputy Counsel at the US Department of Transportation, who serves as special counsel, and Ilene Grossman CHA Firm Administrator. CHA is certified as a Disadvantaged Business Enterprise, Minority-Owned Business Enterprise and a Woman-Owned Business Enterprise by numerous agencies.

**G&H Consulting** (“G&H”) is a Kansas City-based consulting firm specializing in Disadvantaged, Minority and Women Business programs, including outreach, program development, project monitoring and certification issues. G&H was founded in 1996 by the CEO, Gayle Holliday, Ph.D. G&H is certified as a Minority-Owned Business Enterprise.

**Phillips-West Public Relations & Communications** (“P-W”) is a Kansas City-based consulting firm specializing in media planning & relations, public relations & involvement, marketing, public meetings & hearings, government relations, etc. P-W was founded in 1988, by Carrie Stapleton, President. P-W is certified as a Woman-Owned Business Enterprise.

## **Acknowledgements**

We wish to express special appreciation to Phillip Yelder and the staff of the City for their assistance in conducting this study.

# Table of Contents

- I. Executive Summary..... 1
  - A. Study Methodology and Data..... 1
  - B. Study Findings..... 1
    - 1. KCMO’s Small Business Inclusion Programs ..... 1
      - a. Race- and Gender-Neutral Program Elements ..... 1
      - b. KCMO’s M/WBE Program ..... 2
      - c. New Initiatives..... 4
      - d. Business Owners’ Experiences with KCMO’s Programs ..... 4
    - 2. KCMO’s Utilization of M/WBEs in its Markets..... 5
    - 3. Analysis of Economy-Wide Race and Gender Disparities in KCMO’s Market..... 12
    - 4. Qualitative Evidence of Race and Gender Barriers in KCMO’s Market..... 13
    - 5. Recommendations for KCMO’s Small Business Inclusion Programs..... 13
- II. Legal Standards for KCMO’s Business Inclusion Programs..... 17
  - A. Summary of Constitutional Standards..... 17
  - B. City of Richmond v. J.A. Croson Co..... 19
  - C. Establishing a “Strong Basis in Evidence” for KCMO’s Minority- and Women-Owned Business Enterprise Program..... 22
    - 1. Define KCMO’s Market Areas ..... 23
    - 2. Examine Disparities between M/WBE Availability and KCMO’s Utilization of M/WBEs..... 23
    - 3. Examine the Results in KCMO’s Unremediated Markets..... 25
    - 4. Analyze Economy-Wide Evidence of Race- and Gender-Based Disparities ..... 26
    - 5. Evaluate Anecdotal Evidence of Race- and Gender-Based Barriers ..... 27
  - D. Narrowly Tailoring a Minority-Owned and Women-Owned Business Enterprise Procurement Program for KCMO..... 28
    - 1. Consider Race- and Gender-Neutral Remedies ..... 28
    - 2. Set Targeted MBE and WBE Goals ..... 29
    - 3. Ensure Flexibility of Goals and Requirements ..... 30
    - 4. Review Program Eligibility Over-Inclusiveness and Under-Inclusiveness ..... 30
    - 5. Evaluate the Burden on Third Parties..... 31
    - 6. Examine the Duration and Review of the Program..... 32
- III. KCMO’s Small Business Inclusion Programs..... 33
  - A. Administration of KCMO’s Small Business Inclusion Programs..... 33
  - B. KCMO’s Race- and Gender- Neutral Measures to Reduce Barriers..... 33
    - 1. Outreach and Training ..... 33
    - 2. Small Local Business Enterprise Program ..... 34
  - C. Minority Women Business Enterprise Program ..... 35
  - D. New Initiatives..... 40
  - E. Experiences with KCMO’s Small Business Inclusion Programs ..... 40
    - 1. Access to information about contracting opportunities and the Program ..... 40

2.	Payment.....	41
3.	Small business assistance initiatives.....	41
4.	Program certification policies and processes.....	42
5.	KCMO's SLBE Program for Water Department contracts.....	43
6.	Meeting M/WBE contract goals .....	43
7.	Program monitoring and compliance .....	44
8.	Statutory agencies M/WBE program implementation .....	46
F.	Conclusion.....	47
IV.	UTILIZATION AND AVAILABILITY ANALYSIS FOR KANSAS City, Missouri.....	48
A.	Contract Data Sources and Sampling Method .....	48
B.	KCMO's Product and Geographic Markets .....	48
1.	KCMO's Product Market.....	48
2.	KCMO's Geographic Market .....	54
C.	KCMO's Utilization of M/WBEs .....	55
1.	Availability of M/WBEs in KCMO's Market.....	71
a.	Methodological Framework .....	71
b.	Estimation of M/WBE Availability.....	72
D.	Analysis of Race and Gender Disparities in KCMO's Utilization of Minority- and Women-Owned Business Enterprises .....	84
V.	Analysis of Disparities in KCMO's Economy.....	88
A.	Introduction.....	88
B.	Summary of Findings.....	90
1.	Disparities in Firm Sales and Payroll.....	90
2.	Disparities in Wages and Business Earnings .....	91
3.	Disparities in Business Formation .....	92
C.	Disparate Treatment in the Marketplace: Evidence from the Census Bureau's 2012 Survey of Business Owners .....	94
1.	All SBO Industries.....	95
2.	Construction.....	99
3.	Professional, Scientific and Technical Services.....	99
4.	Information .....	100
5.	Services .....	101
6.	Goods .....	101
D.	Disparate Treatment in the Marketplace: Evidence from the Census Bureau's 2010 - 2014 American Community Survey.....	102
1.	All Industries in Kansas City Metropolitan Area .....	104
a.	Business Formation Rates .....	104
b.	Differences in Wage and Salary Incomes .....	105
c.	Differences in Business Earnings.....	106
d.	Conclusion .....	106
2.	The Construction Industry in Kansas City Metropolitan area .....	107

a.	Business Formation Rates .....	107
b.	Differences in Wage and Salary Incomes .....	108
c.	Differences in Business Earnings.....	109
d.	Conclusion .....	109
3.	The Construction-Related Services Industry in Kansas City Metropolitan Area .....	109
a.	Business Formation Rates .....	109
b.	Differences in Wage and Salary Incomes .....	111
c.	Differences in Business Earnings.....	111
d.	Conclusion .....	112
4.	The Information Technology Industry in Kansas City Metropolitan Area.....	112
a.	Business Formation Rates .....	112
b.	Differences in Wage and Salary Incomes .....	113
c.	Differences in Business Earnings.....	114
d.	Conclusion .....	115
5.	The Services Industry in Kansas City Metropolitan Area .....	115
a.	Business Formation Rates .....	115
b.	Differences in Wage and Salary Incomes .....	116
c.	Differences in Business Earnings.....	117
d.	Conclusion .....	117
6.	The Goods Industry in Kansas City Metropolitan area.....	118
a.	Business Formation Rates .....	118
b.	Differences in Wage and Salary Incomes .....	119
c.	Differences in Business Earnings.....	119
d.	Conclusion .....	120
VI.	QUALITATIVE EVIDENCE OF RACE AND GENDER DISCRIMINATION IN KCMO'S MARKET .....	121
A.	Discriminatory Attitudes and Negative Perceptions of Competence .....	122
B.	Obtaining Work on an Equal Basis.....	122
C.	Conclusion.....	124
VII.	RECOMMENDATIONS FOR THE CITY OF KANAS CITY, MISSOURI'S BUSINESS INCLUSION PROGRAMS .....	125
A.	Enhance Race- and Gender-Neutral Measures .....	125
1.	Augment the City's Electronic Contracting Data Collection and Monitoring System.....	125
2.	Increase Outreach to M/WBEs and Small Firms.....	126
3.	Require Department and Statutory Agency Contracting and Goal Forecasts .....	126
4.	Continue to Review Contract Sizes and Scopes .....	126
5.	Continue the SLBE and the SLBE Water Services Department Engineering Professional Services Programs.....	127
6.	Expand Financing Programs .....	127
7.	Expand Supportive Services to M/WBEs and SLBEs .....	127
B.	Continue to Use Race- and Gender-Conscious Measures to Implement the M/WBE Program .....	127
1.	Increase Resources for Monitoring, Accountability and Transparency.....	128
2.	Use the Study to Set the MBE and WBE Annual Goals.....	128
3.	Use the Study to Set Narrowly Tailored Contract Specific Goals.....	128

4. Apply the M/WBE Program Elements and Administration Fully to the Statutory Agencies.....	128
5. Continue to Narrowly Tailor M/WBE Program Eligibility Standards.....	129
6. Update the Policy on Counting M/WBE Participation Towards Contract Goals.....	130
7. Provide Training to Prime Vendors on the Contract Goal Compliance Process.....	130
8. Implement the Mentor-Protégé Program .....	130
C. Conduct Regular M/WBE Program Reviews .....	131
D. Develop Performance Measures for Program Success.....	131
Appendix A: Further Explanation of the Multiple Regression Analysis .....	133
Appendix B: Further Explanation of the Probit Regression Analysis .....	134
Appendix C: Significance Levels.....	135
Appendix D: Additional Data from the Analysis of the Survey of Business Owners.....	136

## **I. EXECUTIVE SUMMARY**

Colette Holt & Associates (CHA) was retained by the City of Kansas City, Missouri (KCMO or City) to perform a study to determine the availability of Minority- and Women-Owned Business Enterprises (M/WBEs) in its market area and evaluate its small business inclusion programs. The agency was part of a study consortium consisting of KCMO, the Kansas City Area Transportation Authority, Jackson County, Missouri and the Kansas City Public Schools. The objective was to meet the requirements of strict constitutional scrutiny applicable to M/WBE programs and national best practices. We analyzed purchase order and contract data for calendar years 2008 through 2013.

### **A. Study Methodology and Data**

The methodology for this study embodies the constitutional principles of *City of Richmond v. Croson*, and best practices for designing race- and gender-conscious and small business contracting programs. The CHA approach has been specifically upheld by courts. It is also the approach developed by Ms. Holt for the National Academy of Sciences that is now the recommended standard for designing legally defensible disparity studies.

We determined the availability of M/WBEs in the City's geographic and industry market area. We further analyzed disparities in the wider economy, where affirmative action is rarely practiced, to evaluate whether barriers continue to impede opportunities for minorities and women when remedial intervention is not imposed. We gathered anecdotal data on M/WBEs' experiences with the agency's small business inclusion programs. We examined race- and gender-based barriers throughout the economy through focus groups with business owners and stakeholders, and interviews with agency staff. We also evaluated KCMO's small business inclusion programs for their effectiveness and conformance with strict constitutional scrutiny and national standards for M/WBE programs.

Based on the results of these extensive analyses, we make recommendations for narrowly tailoring KCMO's small business inclusion programs.

### **B. Study Findings**

#### **1. KCMO's Small Business Inclusion Programs**

##### **a. Race- and Gender-Neutral Program Elements**

Kansas City's M/WBE program<sup>1</sup> was established in 1996 to encourage utilization of small business enterprises owned and controlled by minority, women, and disadvantaged individuals on City contracts. The City commissioned a Disparity Study, completed in 2006, that forms the basis for the current M/WBE program.

The program is administered by the Human Relations Department (HRD). HRD consists of five Divisions. The Department is headed by a Director appointed by the City Manager. The Director establishes rules and regulations to implement the program and administers and enforces the program.

To assist with the implementation of the program, the City has established two Boards to provide public input on program elements and operations. The Fairness in City Contracts Board makes recommendations to the Director on methodologies to increase M/WBE utilization on professional services, other contracts, and goods, materials and supplies contracts. The Fairness in Construction Board establishes M/WBE goals on construction contracts over \$300,000; hears and investigates

---

<sup>1</sup> City of Kansas City, Missouri, Code of Ordinances, Chapter 3, Division 2, § 3-421 *et seq* (2017) ("M/WBE Ordinance").

appeals from contractors on compliance issues and makes recommendations to HRD and elected officials.

In addition to contracts awarded by the City directly, the M/WBE Ordinance and HRD's procedures are broadly applicable to other municipal agencies established by statute (statutory agencies). These entities are to adopt M/WBE programs consistent with HRD's program. There are variations between them about how much oversight HRD exercises over the implementation of the inclusion programs.

The City has significant race- and gender-neutral measures to reduce barriers to its contracting opportunities. It conducts extensive outreach to firms, community groups, trade associations, professional organizations and other interested parties. KCMO also provides numerous training opportunities, ranging from how to do business with the City to government contracting forums.

The City implements a Small Local Business Enterprise (SLBE) Program for locally-funded contracts. The program assists certified SLBEs to obtain prime contracts valued below the threshold for the M/WBE program (\$300,000 for construction and \$117,000 for non-construction contracts). SLBEs are eligible for workshops, seminars, and training at no cost; pre-payment of up to 10 percent of the contract amount; the elimination of any contract retainage; and payment every two weeks. In addition, there is a target market for SLBEs, where contracts are set aside for bidding only by SLBE. The City may also apply a price preference to SLBEs' bids on open market contracts.

An element of the SLBE program is the Water Services Department Engineering Professional Services (SLBE-WSDEPS) program. This recent initiative seeks to foster SLBE prime contract opportunities on Department construction-related professional service contracts. The program applies to contracts that were bid starting in late FY 2013.

#### **b. KCMO's M/WBE Program**

KCMO implements a race- and gender-conscious program for a variety of contracts. The M/WBE Ordinance provides:

- Definitions;
- City-wide M/WBE goals;
- M/WBE utilization plan standards for City departments and agencies;
- Procedures for setting goals on individual contracts;
- Requirements for contractor Utilization Plans;
- Counting credit towards meeting M/WBE contract goals, including standards for commercially useful function determinations;
- Standards for waivers of contract goals;
- Elements of joint venture agreements and mentor-protégé programs;
- Standards to determine good faith efforts to meet contract goals;
- Policies for modification of Utilization Plans;
- Contract award processes;
- Criteria for the imposition of liquidated damages;
- Procedures for construction contract compliance;
- Procedures for compliance for all other contracts;
- Reporting by City contractors;
- M/WBE certification and appeals;
- The duties of the HRD Director;
- Criteria for penalties for non-compliance;
- Mandatory mediation of disputes; and
- The severability of provisions.



Based on its 2006 Disparity Study, the City adopted the following goals:

- Construction: 15% MBE; 7% WBE.
- Professional Services: 13% MBE; 8% WBE.
- Other Services: 18% MBE; 10% WBE.
- Materials and Supplies: 14% MBE; 9% WBE.

In addition to the City-wide goals, narrowly tailored contracts goals are set when appropriate by the Fairness in Construction Board on construction contracts with a value of greater than \$300,000. The Director sets goals on non-construction projects with a value greater than \$117,000, and is also authorized to require a bidder or proposer to make “best faith efforts” without setting a numerical M/WBE goal on such solicitations. User departments may request a “waiver” of goals for a specific contract.

The contract goals do not function as quotas. An otherwise eligible bidder may be awarded the contract even if it does not meet the MBE or WBE goal if its makes “good faith efforts” (GFEs) to do so. A bid that fails to meet the goals is rejected as non-responsive unless a waiver has been obtained based on the bidder’s GFEs to meet the goal(s).

The M/WBE Ordinance provides detailed standards for counting M/WBE participation towards a contract goal.<sup>2</sup> The bidder may count the total amount it committed to a certified subcontractor, including lower tier subcontractors, with the following exceptions: it may count only 25 percent of the dollar amount to be paid to a “supplier,”<sup>3</sup> and only 10 percent of the dollar amount to be paid to a “broker.”<sup>4</sup> In a significant departure from the USDOT Disadvantaged Business Enterprise program and the great majority of contracting affirmative action programs, a certified prime contractor or vendor cannot count its own participation towards meeting the goal. Further, a firm must have received its city certification at least 45 days prior to the posting of the solicitation.

Only work performed by a certified subcontractor may be counted towards to goal; work further subcontracted to a non-certified firm must be subtracted form the dollars to be credited towards goal achievement.

To be counted for goal credit, a certified firm must perform a “commercially useful function” (CUF). A CUF is defined as “real and actual services that are a distinct and verifiable element of the contracted work based upon private sector trade or industry standards.”

A prime contractor may submit a request to modify its M/WBE commitments after contract award. The same good faith effort criteria applied at contract award are applicable.

Prime vendors must submit Subcontractor Utilization Reports monthly via KCMO’s online diversity management system, B2GNow.

---

<sup>2</sup> Sec. 3-435(a).

<sup>3</sup> “Supplier” is defined as “An enterprise that owns, operates or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business.” Sec. 3-421(a)(37).

<sup>4</sup> “Supplier broker” is defined as “An enterprise that acts as an agent in negotiating contracts for the purchase of materials, supplies, articles or equipment but does not itself own, operate or maintain a store, warehouse or other establishment where such materials, supplies, articles or equipments [sic] are bought, kept in stock and regularly sold or leased to the public in the usual course of business.” Sec. 3-421(a)(37).

KCMO applies narrowly tailored standards for certification to ensure only those firms that have suffered discrimination in its industry and geographic markets are eligible to participate in the remedial aspects of the program.

To be eligible, a firm must meet four criteria:

1. It must be at least 51 percent woman or minority owned, managed and independently controlled.
2. It has a real and substantial presence in the Kansas City metropolitan area.
3. It meets the business size standards imposed by 13 CFR Part 121.
4. It has been in existence in the Kansas City metropolitan area at least one year prior to its application.

### **c. New Initiatives**

In fiscal year 2015 (after the study period), the City implemented three new programs to benefit small business:

- The Mentor-Protégé Program to develop and build working relationships between business mentors and certified protégés.
- A Small Business Enterprise Program for federally-assisted contracts.
- The Contractors Loan Program, in partnership with Lead Bank of Kansas City and Corner Stone Financial, assists small firms by providing loans and issuing surety bonds to certified contractors. The Bank agrees to service a minimum of 10 new firms, with an interest rate of the New York Prime Rate plus 2 percent. It will also provide general banking services on favorable terms to applicant firms. The Bank will attend City sponsored workshops and trainings for certified firms in the areas of financial, business and economic-related topics.

### **d. Business Owners' Experiences with KCMO's Programs**

To explore the impacts of the City's small business inclusion programs, we interviewed 56 individuals about their experiences and solicited their suggestions for changes. Because KCMO has had a program for many years, participants focused primarily on improvements to existing efforts rather than basic elements such as whether a program is needed, what groups should be included in the program, etc.

*Access to information about contracting opportunities and the programs:* Most participants found it relatively easy to access information about City prime contracting and subcontracting opportunities. However, less sophisticated firms need help to access information. More efforts were requested to educate new parties on the programs.

*Payment:* There were few complaints about payment, either by the City to prime vendors or by prime contractors to subcontractors. A favorable contrast was drawn with other local governments.

*Small business assistance initiatives:* Many M/WBEs welcomed additional assistance for their businesses, such as programs on how to estimate jobs, comply with City paperwork, conduct effective marketing, etc. Majority contractors also noted the need for supportive services and more financial assistance to M/WBEs. Many participants mentioned assistance with obtaining bonding and financing as a major priority. The recent Contractors Loan Program was praised as an example of innovative initiative.

*M/WBE Program certification policies and processes:* In general, owners stated that the City's certification standards and policies are fair and the initial application and recertification processes satisfactory. While a few firms that are not legitimately owned, managed and controlled by the minority or women owner may have once sometimes achieved certification with the City, many interviewees

believed the process has significantly improved and such “front” firms are now rare. Some firms reported delays in processing of initial applications for certification; participants attributed delays to a lack of HRD resources. One proposed solution was to allow outside advocacy groups to conduct some portions of the certification process.

*Small Local Business Program for Water Department contracts:* Several participants, both M/WBEs and majority firms, had very favorable comments on this program, which has led to meaningful opportunities and expanded capabilities.

*Meeting M/WBE contract goals:* While not always easy, most prime firms were able to meet M/WBE contract goals. However, there was confusion and frustration about how the City sets goals on specific contracts. There were also concerns about whether the M/WBE community in Kansas City can meet the burgeoning demand in the construction industry. Several majority firm participants expressed frustration over the City’s policy regarding the test for making “good faith efforts” to meet contract goals. That the City only counts 25 percent of the cost of materials towards goal credit was another point of criticism.

*Program monitoring and compliance:* While the City has made significant strides to ensure program integrity through on site and desk monitoring, participants stated that more emphasis and resources are needed to ensure contractual commitments are met. Specific concerns were raised about ensuring that firms used for credit towards M/WBE contract goals are performing a “commercially useful function.” There were, however, few reports of unauthorized substitutions of certified firms listed at contract award that do not receive the work to which the prime contractor committed, a common finding in disparity studies for other agencies.

*Statutory agencies M/WBE program implementation:* By far, the majority of comments about program improvements related to the “statutory agencies.” There was almost unanimous agreement among M/WBEs and non-M/WBEs that the agencies should outsource the entire M/WBE function, including goal setting and contract performance monitoring, the HRD.

## **2. KCMO’s Utilization of M/WBEs in its Markets**

Strict constitutional scrutiny requires that a local government limit its race-based remedial program to firms doing business in its product and geographic markets. CHA therefore analyzed all directly awarded City-funded contracts during the Study period. The Final Contract Data File for analysis contained a total award amount of \$1,973,581,595 representing 471 contracts to primes; of this amount, 1750 associated subcontracts received \$427,837,762. The Final Contract Data File was used to determine the geographic and product markets for the Study, to estimate the utilization of M/WBEs on those contracts, and to calculate M/WBE availability in KCMO’s marketplace.

We first determined the City’s product market. Tables A and B present the NAICS codes, the label for each NAICS code, and the industry percentage distribution of spending across NAICS codes, for contracts with and contracts without subcontracting opportunities, respectively. Chapter IV provides tables disaggregated by dollars paid to prime contractors and dollars paid to subcontractors on contracts with subcontracting opportunities.

**Table A: Industry Percentage Distribution of All Contracts with Subcontracting Opportunities by Dollars Paid**

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
236220	Commercial and Institutional Building Construction	24.4%	24.4%
237310	Highway, Street, and Bridge Construction	18.4%	42.8%
541330	Engineering Services	8.2%	51.0%
238210	Electrical Contractors and Other Wiring Installation Contractors	6.1%	57.0%
237110	Water and Sewer Line and Related Structures Construction	5.9%	62.9%
238220	Plumbing, Heating, and Air Conditioning Contractors	3.9%	66.8%
622110	General Medical and Surgical Hospitals	3.1%	70.0%
562119	Other Waste Collection	2.4%	72.4%
334210	Telephone Apparatus Manufacturing	1.9%	74.3%
238110	Poured Concrete Foundation and Structure Contractors	1.8%	76.1%
812930	Parking Lots and Garages	1.7%	77.8%
562111	Solid Waste Collection	1.6%	79.4%
541511	Custom Computer Programming Services	1.5%	80.9%
562998	All Other Miscellaneous Waste Management Services	1.1%	82.0%
531312	Nonresidential Property Managers	1.1%	83.1%
238120	Structural Steel and Precast Concrete Contractors	0.9%	84.0%
561612	Security Guards and Patrol Services	0.9%	84.9%
541320	Landscape Architectural Services	0.9%	85.7%
484110	General Freight Trucking, Local	0.8%	86.5%
561730	Landscaping Services	0.6%	87.2%

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
562212	Solid Waste Landfill	0.6%	87.8%
541310	Architectural Services	0.6%	88.4%
531210	Offices of Real Estate Agents and Brokers	0.6%	88.9%
238910	Site Preparation Contractors	0.5%	89.4%
238990	All Other Specialty Trade Contractors	0.5%	89.9%
327320	Ready Mix Concrete Manufacturing	0.4%	90.3%
<b>TOTAL</b>			<b>100.00%</b> <sup>5</sup>

Source: CHA analysis of KCMO data.

**Table B: Industry Percentage Distribution of Contracts by Dollars Paid, Contracts without Subcontracting Opportunities**

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	29.1%	29.1%
488210	Support Activities for Rail Transportation	13.7%	42.7%
441310	Automotive Parts and Accessories Stores	12.1%	54.9%
424690	Other Chemical and Allied Products Merchant Wholesalers	5.9%	60.8%
562211	Hazardous Waste Treatment and Disposal	5.5%	66.3%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	4.7%	70.9%
561311	Employment Placement Agencies	2.7%	73.7%
444120	Paint and Wallpaper Stores	2.6%	76.2%
517911	Telecommunications Resellers	2.5%	78.7%

<sup>5</sup> Agency spending across another 137 NAICS codes comprised 9.7% of all spending.

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
423610	Automobile and Other Motor Vehicle Merchant Wholesalers	1.7%	80.4%
336360	Motor Vehicle Seating and Interior Trim Manufacturing	1.7%	82.1%
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use	1.4%	83.5%
325311	Nitrogenous Fertilizer Manufacturing	1.0%	84.5%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.9%	85.4%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	0.9%	86.3%
327320	Ready-Mix Concrete Manufacturing	0.9%	87.1%
<b>TOTAL</b>			<b>100.00%</b>

Source: CHA analysis of KCMO data.

To determine the relevant geographic market area, we applied the well accepted standard of identifying the firm locations that account for at least 75 percent of contract and subcontract dollar payments in the contract data file.<sup>6</sup> Location was determined by ZIP code and aggregated into counties as the geographic unit.

Spending in Missouri accounted for 77.9% and in Kansas accounted for 14.45 of the City's total spend, for a total of 92.4% of all contract dollars paid in KCMO's unconstrained product market. Within spending in these two states, 6 counties (Buchanan, Cass, Clay, and Jackson Counties in Missouri; Johnson, and Wyandotte Counties in Kansas) captured 94.6% of all KCMO spending. Therefore, these 6 counties constituted the geographic market area from which we drew our availability data. Table C presents data on how the contract dollars were spent across the two state's counties.

**Table C: Distribution of Contracts in KCMO's Product Market within Missouri and Kansas by County**

State	County	Pct Total Contract Dollars Paid	Cumulative Pct Total Contract Dollars
MO	Jackson County	57.4%	57.4%
MO	Clay County	11.7%	69.2%

<sup>6</sup> National Disparity Study Guidelines, p. 49.

State	County	Pct Total Contract Dollars Paid	Cumulative Pct Total Contract Dollars
KS	Johnson County	8.7%	77.8%
MO	Cass County	7.0%	84.9%
KS	Wyandotte County	6.1%	91.0%
MO	Buchanan County	3.7%	94.6%

Source: CHA analysis of KCMO data.

The next step was to determine the dollar value of the City's utilization of M/WBEs in its market area, as measured by payments to prime firms and associated subcontractors and disaggregated by race and gender. To fill in the City's missing records for payments to all subcontractors, we contacted the prime vendors to describe in detail their contract and associated subcontracts, including race, gender and dollar amount paid to date. This was a very lengthy process. We further developed a Master D/M/WBE Directory based upon lists solicited from government agencies and private organizations. We used the results of this extensive data collection process to assign minority or woman status to the ownership of each firm in the analysis that was otherwise unclassified.

Table D presents the distribution of contract dollars by all industry sectors. Chapter IV provides detailed breakdowns of these results.

**Table D: Distribution of Contract Dollars by M/WBE Status (share of total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
236220	0.8%	6.4%	1.9%	2.7%	11.8%	4.2%	84.0%	100.0%
237110	0.0%	0.4%	0.0%	0.0%	0.4%	1.3%	98.3%	100.0%
237310	5.6%	1.5%	0.1%	0.8%	8.0%	8.6%	83.4%	100.0%
237990	66.4%	0.0%	0.0%	0.0%	66.4%	0.0%	33.6%	100.0%
238110	8.8%	21.3%	3.2%	37.0%	70.3%	11.5%	18.3%	100.0%
238120	41.7%	0.0%	28.7%	7.0%	77.4%	0.7%	21.9%	100.0%
238140	1.2%	15.7%	0.0%	0.0%	16.9%	72.6%	10.5%	100.0%
238160	6.9%	0.0%	0.0%	0.0%	6.9%	40.3%	52.8%	100.0%
238210	31.3%	1.0%	0.0%	0.0%	32.3%	38.0%	29.7%	100.0%
238220	21.2%	11.0%	0.0%	0.0%	32.2%	30.8%	37.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
238310	3.0%	0.0%	0.0%	0.0%	3.0%	5.4%	91.6%	100.0%
238320	24.7%	5.4%	9.3%	0.0%	39.4%	8.2%	52.4%	100.0%
238330	0.1%	0.0%	0.0%	0.0%	0.1%	94.9%	5.0%	100.0%
238390	0.0%	75.2%	0.0%	0.0%	75.2%	0.0%	24.8%	100.0%
238910	18.8%	0.0%	0.0%	4.8%	23.6%	11.0%	65.4%	100.0%
238990	0.3%	0.0%	5.6%	0.0%	5.9%	11.8%	82.3%	100.0%
325311	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
327320	0.0%	0.0%	73.2%	0.0%	73.2%	0.0%	26.8%	100.0%
332312	0.0%	58.6%	0.0%	0.0%	58.6%	0.0%	41.4%	100.0%
334210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
334512	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
336360	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423390	99.9%	0.0%	0.0%	0.0%	99.9%	0.0%	0.1%	100.0%
423610	0.0%	36.0%	0.0%	0.0%	36.0%	0.3%	63.7%	100.0%
423720	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%
424690	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424720	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
441310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
444120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484110	78.7%	1.1%	0.0%	0.0%	79.9%	20.1%	0.0%	100.0%
484121	73.7%	0.0%	0.0%	0.0%	73.7%	26.3%	0.0%	100.0%
484220	76.6%	0.0%	0.0%	0.0%	76.6%	23.4%	0.0%	100.0%
488210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%



NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
517911	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
531312	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541310	6.0%	1.5%	0.0%	0.7%	8.2%	30.8%	61.0%	100.0%
541320	0.0%	0.0%	0.0%	4.5%	4.5%	33.0%	62.5%	100.0%
541330	9.7%	1.3%	5.1%	1.6%	17.8%	7.7%	74.5%	100.0%
541370	65.2%	0.0%	0.0%	33.0%	98.2%	0.0%	1.8%	100.0%
541511	0.0%	72.4%	0.0%	0.0%	72.4%	0.0%	27.6%	100.0%
541990	66.1%	0.0%	0.0%	0.0%	66.1%	33.9%	0.0%	100.0%
561311	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561612	28.3%	0.0%	0.0%	0.0%	28.3%	0.0%	71.7%	100.0%
561730	14.0%	1.7%	0.0%	0.0%	15.7%	45.2%	39.1%	100.0%
562111	0.0%	0.0%	0.0%	0.0%	0.0%	0.7%	99.3%	100.0%
562119	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562211	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562212	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562998	10.3%	0.0%	0.0%	0.0%	10.3%	0.1%	89.6%	100.0%
622110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
812930	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
<b>Total</b>	<b>7.1%</b>	<b>3.4%</b>	<b>1.5%</b>	<b>1.7%</b>	<b>13.7%</b>	<b>13.5%</b>	<b>72.8%</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data.

Using the “custom census” approach to estimating availability and the further assignment of race and gender using the Master Directory and other sources, we determined the aggregated availability of M/WBEs, weighted by the City’s spending in its geographic and industry markets, to be 29.1%. Table E presents the weighted availability data for all product sectors combined for the racial and gender categories.

**Table E: Aggregated Weighted Availability**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	TOTAL
TOTAL	7.1%	4.0%	1.6%	1.9%	14.7%	14.4%	71.0%	100.0%

Source: CHA analysis of KCMO data; Hoovers; CHA Master Directory.

We then calculated disparity ratios comparing the City’s utilization of M/WBEs as prime contractors and subcontractors to the availability of these firms in its market areas.

**Table F: Disparity Ratios by Demographic Group, All Sectors**

Demographic Group	Disparity Ratio
Black	99.3%
Hispanic	83.3%
Asian	96.7%
Native American	89.7%
MBE	93.4%
WBE	94.2%
Non-MWBE	102.5%

Source: CHA analysis of KCMO data.

None of these results were statistically or substantive significant for all sectors as a whole. This reflects the results of the City’s current program, which is achieving parity for minorities and women.

### **3. Analysis of Economy-Wide Race and Gender Disparities in KCMO’s Market**

We explored the Census Bureau data and literature relevant to how discrimination in the Kansas City market and throughout the wider economy affects the ability of minorities and women to fairly and fully engage in the City’s prime contract and subcontract opportunities.

We analyzed the following data and literature:

- Data from the Census Bureau’s Survey of Business Owners indicate very large disparities between M/WBE firms and non-M/WBE firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), or the payroll of employer firms.
- Data from the Census Bureau’s American Community Survey (“ACS”) indicate that Blacks, Hispanics, Native Americans, Asian/Pacific Islanders, Others, and White women were underutilized relative to White men. Controlling for other factors relevant to business outcomes, wages and business earnings were lower for these groups compared to White men. Data from the ACS further indicate that non-Whites and White women are less likely to form businesses compared to similarly situated White men.

- The literature on barriers to access to commercial credit and the development of human capital further reports that minorities 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.

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. Taken together with anecdotal data, this is the type of proof that addresses whether, in the absence of M/WBE contract goals, KCMO will be a passive participant in the discriminatory systems found throughout Missouri. These economy-wide analyses are relevant and probative to whether the agency may continue to employ narrowly tailored race- and gender-conscious measures to ensure equal opportunities to access its contracts and associated subcontracts. These results are especially important for an agency like the City that has been implementing a race- and gender-conscious program for many years, such that disparities in the results of its own contracting activities are not necessarily indicative of what would occur if its remedial market interventions cease.

#### **4. Qualitative Evidence of Race and Gender Barriers in KCMO's Market**

In addition to quantitative data, the courts look to anecdotal evidence of firms' marketplace experiences to evaluate whether the effects of current or past discrimination continue to impede opportunities for M/WBEs such that race-conscious measures are supportable. To explore this type of anecdotal evidence, we interviewed 56 participants. Most reported that, while progress has been made in reducing barriers on the basis of race and gender, significant inequities remain obstacles to full and fair opportunities. M/WBE contract goals remain necessary to level the playing field.

- *Discriminatory attitudes and negative perceptions of competence:* Many minority and female owners reported that agencies and other firms display negative attitudes about the competency and professionalism of minorities and women. The assumption is that minority firms are less qualified. Women faced continuing sexist remarks and conduct.
- *Obtaining work on an equal basis:* There was unanimous agreement that annual and contract goals remain necessary to level the playing field and equalize opportunities. M/WBEs sought the right to compete on a fair and equal basis. Without goals, M/WBEs believed they would be shut out of KCMO's and the overall Kansas City area market. Only a handful of Kansas City area large firms apply the same process for private sector work as they do for government projects with goals. Minorities who spoke up about discrimination faced retaliation. Prime contracts were especially difficult to obtain. M/WBEs that did receive prime contracts sometimes felt they were subjected to a double standard. Some WBEs reported that unions were another source of discrimination.

#### **5. Recommendations for KCMO's Small Business Inclusion Programs**

The Study results fully support the City's continuing compelling interest in implementing its race- and gender-conscious M/WBE program. The statistical data and the anecdotal testimony provide a sufficient basis for the continued use of narrowly tailored remedial race- and gender-based measures to ensure full and fair access by all firms to City prime contracting and associated subcontracting opportunities.

KCMO's business inclusion programs have most of the hallmarks of narrowly tailored measures, and its initiatives are generally well crafted and properly implemented. KCMO implements many effective race- and gender-neutral measures to reduce discriminatory barriers. The City is a national leader in using best practices for M/WBE program design and administration. Its policies and procedures are clear and fairly administered; its certification efforts ensure that few fraudulent firms obtain program eligibility; its staff is well respected and active in the community; and it has achieved significant levels of utilization of

minority, women and small local businesses as prime vendors and subcontractors. The major obstacle to an even higher level of performance and service is lack of financial and personnel resource.

This leaves room for improvement. We therefore suggest enhancements to the City's existing measures and new initiatives to increase opportunities for M/WBEs and other small businesses. The following recommendations seek to provide additional approaches to ensure the programs conform to strict scrutiny and national best practices for M/WBE programs.

- *Augment the B2GNow electronic data collection and monitoring system:* The system has been in place for several years, and with the assistance of City personnel and the system's vendor staff, we were able to extract valuable contract data on the City's prime vendors and certified subcontractors. However, full information on the non-certified firms was not collected, resulting in months of delay for this Report. We therefore urge the City to collect full information on all firms working on its contracts. We also suggest the City implement the contract/project-specific goal setting module available as part of the current system to set narrowly tailored goals using the data from this Study as the starting point. This will not only tie the program's implementation to its evidentiary basis but also increase consistency and transparency of the contract goal setting process. Another enhancement of the system would be to allow prime vendors to submit verified subcontractor utilization plans online.
- *Increase outreach to M/WBEs and small firms:* As is the case with many governments, the study revealed that M/WBEs are receiving few opportunities in several industry codes. We suggest that special outreach be conducted to firms in those sectors. KCMO should further conduct outreach to firms certified by the State of Missouri located in the Kansas City metropolitan area. The City might also work with private advocacy groups to ensure the organizations' members are fully aware of the City's programs and how to access opportunities.
- *Require department and statutory agency contracting and goal forecasts:* Annual or semi-annual City department and statutory agency contracting forecasts will assist all firms. Further, the M/WBE Ordinance requires departments to provide annual plans and goals for M/WBE participation. This mandate should be rigorously enforced, with departments held accountable for outreach and good faith efforts to include M/WBEs and SLBEs as both prime vendors and subcontractors.
- *Continue to review contract sizes and scopes:* The City has made strides to "unbundle" some construction contracts into smaller segments by dollars and scopes of work. These efforts, especially the SLBE program, should continue.
- *Continue the SLBE and the SLBE Water Services Department Engineering Professional Services programs:* These efforts were generally praised by business owners and stakeholders. However, only 5 city departments have participated in the SLBE program. Specific efforts should be made to expand the departments and industries using this procurement method. Departments should be required to include the use of SLBE contracts in their annual procurement forecast and regularly report to HRD on their progress.
- *Expand financing and bonding programs:* To address barriers to access to bonding and working capital, the City has recently developed a City-sponsored financing assistance program in partnership with Lead Bank and Corner Stone Financial. Larger loans and bonds to increase capacity are needed, and special efforts should be made to include firms in a variety of industries and ensure that all groups have access to these resources.
- *Expand supportive services and technical assistance to M/WBEs and SLBEs:* Both M/WBEs and larger prime contractors reported that small firms often lack the "back office" support or experience to address the complexities of government contracting. We there recommend KCMO partner with other agencies to provide training sessions and support for activities such as estimating subcontract bids or quotes; submitting certified payrolls; invoicing; safety compliance; accounting; and legal services. Participants reported that the City's Overflow Control University Training Program for Water Department contracts was very useful. The

Missouri Department of Transportation (MoDOT) also has an excellent supportive services program. Perhaps the City can expand its current program, and/or work with MoDOT to leverage resources.

- *Use the study to set the overall annual MBE goal and WBE goal:* The availability estimates in Chapter IV should be the basis for consideration of overall, annual spending targets for City funds. We found the availability of MBEs to be 14.7 percent, and the availability of WBEs to be 14.4 percent. While few disparities between M/WBE availability and the City's utilization of these firms were substantively or statistically significant, this reflects the effects of KCMO's longstanding and successful implementation of its small business inclusion programs. The other evidence in this Report strongly suggests that should these efforts be discontinued or diminished, minorities and women would face discriminatory barriers remediated by the City's programs. This is the type of "passive participation" evidence that the courts have recognized supports race- and gender-conscious programs.
- *Use the study to set narrowly tailored MBE and WBE contract goals:* The detailed availability estimates in the study should serve as the starting point for contract goal setting. KCMO should weigh the estimated scopes of the contract by the availability of M/WBEs in those scopes in the study, and then adjust the result based on current market conditions. The City's existing B2GNow electronic system has an optional goal setting module that should be employed to ensure consistency and transparency of this critical element of narrow tailoring. Further, KCMO should bid some contracts that it determines have significant opportunities for M/WBE participation without goals. These "control contracts" can illuminate whether certified firms are used or even solicited in the absence of goals, as suggested by the study data. The development of some unremediated markets data will be probative of whether contract goals remain needed to level the playing field for minorities and women.
- *Apply the M/WBE program elements and administration fully to the statutory agencies:* By far the most broadly shared comments about program improvements were directed at the implementation of the program by the agencies. In particular, interviewees cited very low goals, weak compliance oversight and few sanctions for failures to meet contractual commitments as major issues in need of attention. We therefore recommend that the agencies outsource to HRD the operations of program implementation. This will ensure that M/WBEs have full and fair access to compete for all taxpayer funded projects subject to the ordinance.
- *Continue to narrowly tailor M/WBE program eligibility standards:* Current standards for program eligibility comport with the case law on the elements of a narrowly tailored ordinance. To update these standards, we suggest the City lengthen the recertification period; eliminate the requirement that a firm be in business at least one year before it is eligible to apply for certification; certify firms owned by minority females as both MBEs and WBEs; eliminate the requirement that a firm must have received its City certification at least 45 days prior to the issuance of the city's solicitation; and adopt a personal net worth test along the lines of the USDOT DBE program requirements.
- *Update the policy on counting M/WBE participation towards contract goals:* There are two areas where we recommend updating how M/WBE participation is counted towards meeting contract goals. First, the City should follow the DBE regulations and definitions and count firms that supply materials as "regular dealers" at 60 percent of the dollar value of the contract. Second, the City should count M/WBE prime vendors' self-performance towards meeting the contract goal. The unusual restriction fails to recognize that barriers to prime contracting opportunities are the most difficult for minority and women businesses to overcome. The DBE program has always permitted prime contractors to count self-performance towards meeting contract goals, and no court has suggested that this is somehow fails strict constitutional scrutiny or gives M/WBE prime vendors an "unfair" advantage.
- *Provide training to prime vendors on the contract goal compliance process:* Many prime vendors stated that they were either unaware of the standards for submitting documentation

of good faith efforts to meet contract goals, or believed that the City will not award a contract to a bidder that did not meet the goal(s), regardless of the bidder's good faith efforts to do so. The City should therefore review and revise its bid documents and other instructions to bidder and provide training on compliance with these provisions.

- *Implement the Mentor-Protégé program:* The M/WBE Ordinance authorizes a Mentor-Protégé program, and HRD is in the process of implementing these provisions. The Mentor-Protégé Guidelines in Appendix D to 49 C.F.R. Part 26, which govern MoDOT's program, are an excellent the starting point.
- *Conduct regular M/WBE program reviews:* The City should conduct a full and thorough review of the evidentiary basis for the Program approximately every five to seven years. A sunset date is also required by the courts.
- *Develop Performance Measures for Program Success:* The City should develop quantitative performance measures for overall success of its programs. These could include progress towards meeting the overall, annual MBE and WBE goals; tracking good faith efforts waivers; increased bids/proposals from certified firms; increased variety of types of contracts awarded to M/WBE prime vendors and subcontractors; graduation from the programs, etc.

## II. LEGAL STANDARDS FOR KCMO'S BUSINESS INCLUSION PROGRAMS

### A. Summary of Constitutional Standards

To be effective, enforceable, and legally defensible, a race-based program for public contracts must meet the judicial test of constitutional "strict scrutiny." Strict scrutiny is the highest level of judicial review and consists of two elements:

- The government must establish its "compelling interest" in remedying 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.
- Any remedies adopted must be "narrowly tailored" to that discrimination, that is, the program must be directed at the types and depth of discrimination identified.<sup>7</sup>

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

- Statistical evidence of the underutilization of minority 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 as disparity indices, comparable to the type of "disparate impact" analysis used in employment discrimination cases.
- Anecdotal evidence of race-based barriers to the full and fair participation of minority firms in the market area and in seeking contracts with the agency, comparable to the "disparate treatment" analysis used in employment discrimination cases.<sup>8</sup> Anecdotal data can consist of interviews, surveys, public hearings, academic literature, judicial decisions, legislative reports, etc.

The narrow tailoring requirement has been met through the satisfaction of five factors to ensure that the remedy "fits" the evidence:

- The efficacy of race-neutral remedies at overcoming identified discrimination.
- The relationship of numerical benchmarks for government spending to the availability of minority- and women-owned firms and to subcontracting goal setting procedures.
- The congruence between the remedies adopted and the beneficiaries of those remedies.
- Any adverse impact of the relief on third parties.
- The duration of the program.<sup>9</sup>

In *Adarand v. Peña*,<sup>10</sup> the Court extended the analysis of strict scrutiny to race-based federal enactments such as the Disadvantaged Business Enterprise ("DBE") program for federally-assisted transportation contracts.<sup>11</sup> Just as in the local government context, the national government must have a compelling interest for the use of race and the remedies adopted must be narrowly tailored to the evidence relied upon.

---

<sup>7</sup> City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).

<sup>8</sup> *Id.* at 509.

<sup>9</sup> *United States v. Paradise*, 480 U.S. 149, 171 (1987).

<sup>10</sup> *Adarand v. Peña*, 515 U.S. 200 (1995).

<sup>11</sup> While the limitation of the DBE program's benefits to firms owned by "socially and economically disadvantaged" persons is facially race-neutral, the Eighth Circuit and other courts have held that "the program is subject to strict judicial scrutiny, no doubt because the statute employs a race-based rebuttable presumption to define this class of beneficiaries and authorizes the use of race-conscious remedial measures." *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d. 964, 969 (8<sup>th</sup> Cir. 2003), *cert. denied*, 541 U.S. 1041 (2004).

In general, courts have subjected preferences for Women-Owned Business Enterprises (“WBEs”) to “intermediate scrutiny.” Gender-based classifications must be supported by an “exceedingly persuasive justification” and be “substantially related” to the objective.<sup>12</sup> However, appellate courts have applied strict scrutiny to the gender-based presumption of social disadvantage in reviewing the constitutionality of the DBE program.<sup>13</sup> Therefore, we advise that the City evaluate gender-based remedies under the strict scrutiny standard.

Classifications not based on race, ethnicity, religion, national origin or gender are subject to the lesser standard of review of “rational basis” scrutiny, because the courts have held there are no equal protection implications under the Fourteenth Amendment for groups not subject to systemic discrimination.<sup>14</sup> In contrast to strict scrutiny of government action directed towards persons of “suspect classifications” such as racial and ethnic minorities, rational basis means the governmental action must only be “rationally related” to a “legitimate” government interest. Thus, preferences for persons with disabilities, veterans, etc. may be enacted with vastly less evidence than race- or gender-based measures to combat historic discrimination.

Unlike most legal challenges, the defendant has the initial burden of producing “strong evidence” in support of a race-conscious program.<sup>15</sup> 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.<sup>16</sup> “[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.”<sup>17</sup> A plaintiff “cannot meet its burden of proof through conjecture and unsupported criticism of [the government’s] evidence.”<sup>18</sup> For example, in the challenge to the Minnesota and Nebraska DBE programs, the Eighth Circuit held that “plaintiffs presented evidence that the data was susceptible to multiple interpretations, but they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to and participation in highway contracts. Thus, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.”<sup>19</sup> When the statistical information is sufficient to support the inference of discrimination, the plaintiff must prove that the statistics are flawed.<sup>20</sup> A plaintiff cannot rest upon general criticisms of studies or other evidence; it must carry the case that the government’s proof is inadequate to meet strict scrutiny, rendering the legislation or governmental program illegal.<sup>21</sup>

---

<sup>12</sup> Cf. *United States v. Virginia*, 518 U.S. 515 (1996).

<sup>13</sup> *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 720 (7<sup>th</sup> Cir. 2007) (“Northern Contracting III”).

<sup>14</sup> [\*United States v. Carolene Products Co.\*](#), 304 U.S. 144 (1938).

<sup>15</sup> *Aiken v. City of Memphis*, 37 F.3d 1155, 1162 (6<sup>th</sup> Cir. 1994).

<sup>16</sup> *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1166 (10<sup>th</sup> Cir. 2000), cert. granted then dismissed as improvidently granted, 532 U.S. 941 (2001) (“Adarand VII”); *W.H. Scott Construction Co., Inc. v. City of Jackson, Mississippi*, 199 F.3d 206, 219 (5<sup>th</sup> Cir. 1999).

<sup>17</sup> *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 916 (11<sup>th</sup> Cir. 1997).

<sup>18</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 989, cert. denied, 540 U.S. 1027 (2003) (10<sup>th</sup> Cir. 2003).

<sup>19</sup> *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.”)..

<sup>20</sup> *Engineering Contractors II*, 122 F.3d at 916; *Coral Construction Co. v. King County*, 941 F.2d. 910 921 (9<sup>th</sup> Cir. 1991).

<sup>21</sup> *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*, 51 F. Supp. 2d at 1364; *see also Wygant v. Jackson Board of Education*, 476 U.S. 267, 277-278 (1986).



There is no need of formal legislative findings of discrimination,<sup>22</sup> nor “an ultimate judicial finding of discrimination before [a local government] can take affirmative steps to eradicate discrimination.”<sup>23</sup>

To meet strict scrutiny, studies have been conducted that 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 women-owned firms and their actual utilization compared to white male-owned businesses. Quality studies also examine the elements of the agency’s programs to determine whether they are sufficiently narrowly tailored. The following is a detailed discussion of the parameters for conducting studies leading to defensible programs that can establish the State’s compelling interest in remedying discrimination and developing narrowly tailored initiatives.

## **B. City of Richmond v. J.A. Croson Co.**

*City of Richmond v. J.A. Croson Co.* established the constitutional contours of permissible race-based public contracting programs. Reversing long established law, the Supreme 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 benefits these historic victims of discrimination. Strict scrutiny requires that a government entity prove both its “compelling interest” in remedying 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 that required prime contractors awarded City construction contracts to subcontract at least 30 percent of the project to Minority-Owned Business Enterprises (“MBEs”). A business located anywhere in the country which was at least 51 percent owned and controlled by “Black, Spanish-speaking, Oriental, Indian, Eskimo, or Aleut” citizens was eligible to participate. The Plan was adopted after a public hearing at which no direct evidence was presented that the City had discriminated on the basis of race in awarding 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 percent 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) general 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 illegal conduct:

[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.<sup>24</sup>

---

<sup>22</sup> *Webster v. Fulton County, Georgia*, 51 F.Supp.2d 1354, 1364 (N.D. Ga. 1999).

<sup>23</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1522 (10th Cir. 2003).

<sup>24</sup> 488 U.S. at 491-92.

Strict scrutiny of race-based remedies is required to determine whether racial classifications are in fact motivated by either notions of racial inferiority or blatant racial politics. This highest level of judicial review “smokes out” illegitimate uses of race by assuring that the legislative body is pursuing a goal important enough to warrant use of a highly suspect tool.<sup>25</sup> It further ensures that the means chosen “fit” this compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype. The Court made clear that strict scrutiny seeks to expose racial stigma; racial classifications are said to create racial hostility if they are based on notions of racial inferiority.<sup>26</sup>

Race is so suspect a basis for government action that more than “societal” discrimination is required to restrain racial stereotyping or pandering. The Court provided no definition of “societal” discrimination or any guidance about how to recognize the ongoing realities of history and culture in evaluating race-conscious programs. The Court simply asserted that:

[w]hile there is no doubt that the sorry history of both private and public discrimination in this country has contributed to a lack of opportunities for black entrepreneurs, this observation, standing alone, cannot justify a rigid racial quota in the awarding of public contracts in Richmond, Virginia.... [A]n amorphous claim that there has been past discrimination in a particular industry cannot justify the use of an unyielding racial quota. It is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination.<sup>27</sup>

Richmond’s evidence was found to be lacking in every respect. The City could not rely upon the disparity between its utilization of MBE prime contractors and Richmond’s minority population because not all minority persons would be qualified to perform construction projects; general population representation is irrelevant. No data were presented about the availability of MBEs in either the relevant market area or their utilization as subcontractors on City projects. According to Justice O’Connor, the extremely low MBE membership in local contractors’ associations could be explained by “societal” discrimination or perhaps Blacks’ lack of interest in participating as business owners in the construction industry. To be relevant, the City would have to demonstrate statistical disparities between eligible MBEs and actual membership in trade or professional groups. Further, Richmond presented no evidence concerning enforcement of its own anti-discrimination ordinance. Finally, Richmond 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, whereas a local government is 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.”<sup>28</sup>

---

<sup>25</sup> 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 decision maker for the use of race in that particular context.”).

<sup>26</sup> 488 U.S. at 493.

<sup>27</sup> *Id.* at 499.

<sup>28</sup> *Id.* at 510.

The foregoing analysis was applied only to Blacks. The Court then emphasized that there was “absolutely no evidence” 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.”<sup>29</sup>

Having found that Richmond had not presented evidence in support of its compelling interest in remedying discrimination—the first prong of strict scrutiny—the Court went on to make 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 percent quota had no basis in evidence, and was applied regardless of whether the individual MBE had suffered discrimination.<sup>30</sup> Further, Justice O’Connor rejected the argument that individualized consideration of Plan eligibility is too administratively burdensome.

Apparently recognizing that the opinion might be misconstrued to categorically 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.<sup>31</sup>

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.<sup>32</sup> Nor did Richmond attempt to link the remedy it imposed to any evidence specific to the Program; it used the general population of the City rather than any measure of business availability.

Some commentators have taken this dearth of any particularized proof and argued that only the most particularized proof can suffice in all cases. They leap from the Court’s rejection of Richmond’s reliance on only the percentage of Blacks in the City’s population to a requirement that only firms that bid or have the “capacity” or “willingness” to bid on a particular contract at a particular time can be considered in determining whether discrimination against Black businesses infects the local economy.<sup>33</sup>

---

<sup>29</sup> *Id.*

<sup>30</sup> See *Grutter*, 529 U.S. at 336-337 (quotas are not permitted; race must be used in a flexible, non-mechanical way).

<sup>31</sup> 488 U.S. at 509 (citations omitted).

<sup>32</sup> *Id.* at 502.

<sup>33</sup> See, e.g., *Northern Contracting III*, 473 F.3d at 723.

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

[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 (.67%). There were no statistics presented regarding 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*.<sup>34</sup>

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 subcontracting goals based upon the availability of MBEs to perform the scopes of the contract in the government's local market area. In contrast, the DBE Program avoids these pitfalls. Part 26 "provides for a flexible system of contracting goals that contrasts sharply with the rigid quotas invalidated in *Croson*."<sup>35</sup>

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

### **C. Establishing a "Strong Basis in Evidence" for KCMO's Minority- and Women-Owned Business Enterprise Program**

It is well established that disparities in an agency's utilization of Minority- and Women-Owned Business Enterprises ("M/WBEs") and their availability in the relevant marketplace provide a sufficient basis for the consideration of race- or gender-conscious remedies. Proof of the disparate impacts of economic factors on M/WBEs and the disparate treatment of such firms by actors critical to their success will meet strict scrutiny. Discrimination must be shown using statistics and economic models to examine the effects of systems or markets on different groups, as well as by evidence of personal experiences with discriminatory conduct, policies or systems.<sup>36</sup> 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.<sup>37</sup>

*Croson's* admonition that "mere societal" discrimination is not enough to meet strict scrutiny does not apply 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

---

<sup>34</sup> *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 (2<sup>nd</sup> 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").

<sup>35</sup> *Western States Paving Co., Inc. v. Washington Department of Transportation*, 407 F.3d 983, 994 (9<sup>th</sup> Cir. 2005), cert. denied, 546 U.S. 1170 (2006).

<sup>36</sup> *Adarand VII*, 228 F.3d at 1166 ("statistical and anecdotal evidence are appropriate").

<sup>37</sup> *Id.*

discrimination springs from widespread discriminatory attitudes shared by society or is the product of policies, practices, and attitudes unique to the industry... The genesis of the identified discrimination is irrelevant.” There is no requirement to “show the existence of specific discriminatory policies and that those policies were more than a reflection of societal discrimination.”<sup>38</sup>

Nor must the City 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.”<sup>39</sup> 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 have looked to in examining the basis for and determining the constitutional validity of race- and gender-conscious programs and the steps in performing a disparity study necessary to meet these elements.

## **1. Define KCMO’s Market Areas**

The first step is to determine the market areas in which the City operates. *Croson* states that a state or local government may only remedy discrimination within its own contracting market area. The City of Richmond was specifically faulted for including minority contractors from across the country in its program, based on national data considered by Congress.<sup>40</sup> The agency 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.<sup>41</sup>

A commonly accepted definition of geographic market area for disparity studies is the locations that account for at least 75 percent of the agency’s contract and subcontract dollar payments.<sup>42</sup> Likewise, the accepted approach is to analyze those detailed industries that make up at least 75 percent of the prime contract and subcontract payments for the Study period.<sup>43</sup>

## **2. Examine Disparities between M/WBE Availability and KCMO’s Utilization of M/WBEs**

Next, the study must estimate the availability of minorities and women to participate in the City’s contracts and its history of utilizing M/WBEs as prime contractors and associated subcontractors. The primary inquiry is whether there are statistically significant disparities between the availability of M/WBEs and the utilization of such firms on CKMO 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

---

<sup>38</sup> *Concrete Works IV*, 321 F.3d at 976.

<sup>39</sup> *Id.* at 977.

<sup>40</sup> *Croson*, 488 U.S. at 508.

<sup>41</sup> *Concrete Works II*, 36 F.3d at 1520 (to confine data to strict geographic boundaries would ignore “economic reality”).

<sup>42</sup> “*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”).

<sup>43</sup> *Id.* at pp. 50-51.

tailored racial preference might be necessary to break down patterns of deliberate exclusion.<sup>44</sup>

This is known as the “disparity ratio” or “disparity index.” A disparity ratio measures the participation of a group in the government’s contracting opportunities by dividing that group’s utilization by the availability of that group, and multiplying that result by 100%. Courts have looked to disparity indices in determining whether strict scrutiny is satisfied.<sup>45</sup> An index less than 100 percent 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 percent” rule that a ratio less than 80 percent presents a *prima facie* case of discrimination.<sup>46</sup>

The first step is to calculate the availability of minority- and women-owned firms in the government’s geographic and industry market area. 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.<sup>47</sup>

There is no requirement to control for firm size, area of specialization, and whether the firm has bid on agency projects. While it may be true that M/WBEs are smaller in general than white male firms, most construction firms are small and can expand and contract to meet their bidding opportunities. Importantly, size and experience are not race- and gender-neutral variables: “M/WBE construction firms are generally smaller and less experienced *because* of discrimination.”<sup>48</sup> To rebut this inference, a plaintiff must proffer its own study showing that the disparities disappear when such variables are held constant and that controlling for firm specialization explained the disparities. Additionally, *Croson* does not “require disparity studies that measure whether construction firms are able to perform a *particular contract*.”<sup>49</sup>

KCMO need not prove that the statistical inferences of discrimination are “correct.” In upholding Denver’s M/WBE Program, the Tenth Circuit noted that strong evidence supporting Denver’s determination that remedial action was necessary need not have been based upon “irrefutable or definitive” proof of discrimination. Statistical evidence creating inferences of discriminatory motivations was sufficient and therefore evidence of market area discrimination was properly used to meet strict scrutiny. To rebut this type of evidence, the plaintiff must prove by a preponderance of the evidence that such proof does not support those inferences.<sup>50</sup>

---

<sup>44</sup> *Croson*, 488 U.S. at 509; see *Webster*, 51 F.Supp.2d at 1363, 1375.

<sup>45</sup> *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 Corp. v. Hillsborough County*, 908 F.2d 908, 916 (11th Cir. 1990), cert. denied, 498 U.S. 983 (1990).

<sup>46</sup> 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.

<sup>47</sup> *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868, at \*70 (Sept. 8, 2005) (IDOT’s custom census approach was supportable because “discrimination in the credit and bonding markets may artificially reduce the number of M/WBEs”).

<sup>48</sup> *Concrete Works IV*, 321 F.3d at 983 (emphasis in the original).

<sup>49</sup> *Id.* at 987-88 (emphasis in the original).

<sup>50</sup> *Id.* at 971.

Nor must the City demonstrate that the “ordinances will *change* discriminatory practices and policies” in the local market area; such a test would be “illogical” because firms could defeat the remedial efforts simply by refusing to cease discriminating.<sup>51</sup>

Next, KCMO 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.<sup>52</sup>

Similarly, statistical evidence by its nature cannot identify the individuals responsible for the discrimination.<sup>53</sup>

### 3. Examine the Results in KCMO’s Unremediated Markets

The results of contracts solicited without goals are an excellent indicator of whether discrimination continues to impact opportunities in public contracting. Evidence of race and gender discrimination in relevant “unremediated”<sup>54</sup> markets provides an important indicator of what level of actual M/WBE participation can be expected in the absence of City mandated affirmative efforts to contract with M/WBEs.<sup>55</sup> As the Eleventh Circuit has acknowledged, “the program at issue may itself be masking discrimination that might otherwise be occurring in the relevant market.”<sup>56</sup> If M/WBE utilization is below availability in unremediated markets, an inference of discrimination may be supportable. The courts have held that the virtual disappearance of M/WBE participation after programs have been enjoined or abandoned strongly indicates substantial barriers to minority subcontractors, “raising the specter of racial discrimination.”<sup>57</sup> Unremediated markets analysis addresses whether the government has been and continues to be a “passive participant” in such discrimination, in the absence of affirmative action remedies.<sup>58</sup> The court in the challenge to the City of Chicago’s M/WBE program for construction contracts held that the “dramatic decline in the use of M/WBEs when an affirmative action program is terminated, and the paucity of use of such firms when no affirmative action program was ever initiated,” was proof of the City’s compelling interest in employing race- and gender-conscious measures.<sup>59</sup>

---

<sup>51</sup> *Id.* at 973 (emphasis in the original).

<sup>52</sup> *Id.* at 971.

<sup>53</sup> *Id.* at 973.

<sup>54</sup> “Unremediated market” means “markets that do not have race- or gender-conscious subcontracting goals in place to remedy discrimination.” *Northern Contracting II*, at \*36.

<sup>55</sup> See, e.g., *Western States*, 407 F.3d at 992 (Congress properly considered evidence of the “significant drop in racial minorities’ participation in the construction industry” after state and local governments removed affirmative action provisions).

<sup>56</sup> *Engineering Contractors II*, 122 F.3d at 912.

<sup>57</sup> *Adarand VII*, 228 F.3d at 1174.

<sup>58</sup> See also *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 91 F.3d 586, 599-601 (3rd Cir. 1996) (“Philadelphia III”).

<sup>59</sup> *Builders Association of Greater Chicago v. City of Chicago*, 298 F. Supp.2d 725, 737 (N.D. Ill. 2003); see also *Concrete Works IV*, 321 F.3d at 987-988.

Evidence of unremediated markets “sharpens the picture of local market conditions for MBEs and WBEs.”<sup>60</sup>

Therefore, if M/WBEs are “overutilized” because of the entity’s program, that does not end the study’s inquiry. Where the government has been implementing affirmative action remedies, M/WBE utilization reflects those efforts; it does not signal the end of discrimination. Any M/WBE “overutilization” on projects with goals goes only to the weight of the evidence because it reflects the effects of a remedial program. For example, Denver presented evidence that goals and non-goals projects were similar in purpose and scope and that the same pool of contractors worked on both types. “Particularly persuasive” was evidence that M/WBE participation declined significantly when the program was amended in 1989; the utilization of M/WBEs on City projects had been affected by the affirmative action programs that have been in place in one form or another since 1977.

#### **4. Analyze Economy-Wide Evidence of Race- and Gender-Based Disparities**

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 similar non-M/WBEs, their earnings from such businesses, and their access to capital markets are highly relevant to the determination whether the market functions properly for all firms regardless of the race or gender of their ownership. These analyses contributed to the successful defense of Chicago’s construction program.<sup>61</sup> As 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.<sup>62</sup>

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 again demonstrates that *existing* M/WBEs are precluded from competing for public contracts.”<sup>63</sup> 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

---

<sup>60</sup> *Concrete Works II*, 36 F.3d at 1529.

<sup>61</sup> *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003) (holding that City of Chicago’s M/WBE program for local construction contracts met compelling interest using this framework).

<sup>62</sup> *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-69 (10<sup>th</sup> Cir. 2000) (“Adarand VII”), cert. granted then dismissed as improvidently granted, 532 U.S. 941, 534 U.S. 103 (2001).

<sup>63</sup> *Id.*



studies are not flawed because they cannot control for subjective descriptions such as “quality of education,” “culture” and “religion.”

For example, in unanimously upholding the DBE Program for federal-aid transportation contracts, the courts agree that disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms and the disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners are strong evidence of the continuing effects of discrimination.<sup>64</sup> 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.<sup>65</sup>

## 5. Evaluate Anecdotal Evidence of Race- and Gender-Based Barriers

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.”<sup>66</sup> 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.<sup>67</sup> While anecdotal evidence is insufficient standing alone, “[p]ersonal accounts of actual discrimination or the effects of discriminatory practices may, however, vividly complement empirical evidence. Moreover, anecdotal evidence of a [government’s] institutional practices that exacerbate discriminatory market conditions are [sic] often particularly probative.”<sup>68</sup> “[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.”<sup>69</sup>

There is no requirement that anecdotal testimony be “verified” or corroborated, as befits the role of evidence in legislative decision-making as opposed to judicial proceedings. “Plaintiff offers no rationale as to why a fact finder could not rely on the State’s ‘unverified’ anecdotal data. Indeed, a fact finder could very well conclude that anecdotal evidence need not— indeed cannot— be verified because it ‘is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perception.”<sup>70</sup> Likewise, the Tenth Circuit held that “Denver was not required to present

---

<sup>64</sup> *Adarand VII*, 228 F.3d 1147 (10<sup>th</sup> Cir. 2000) (“*Adarand VII*”), cert. granted then dismissed as improvidently granted, 532 U.S. 941, 534 U.S. 103 (2001); *Western States*, 407 F.3d at 993; *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2004 U.S. Dist. LEXIS 3226 at \*64 (N.D. Ill., Mar. 3, 2004) (“*Northern Contracting I*”);

<sup>65</sup> *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.”).

<sup>66</sup> *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 399 (1977).

<sup>67</sup> *Adarand VII*, 228 F.3d at 1168-1172.

<sup>68</sup> *Concrete Works II*, 36 F.3d at 1520, 1530.

<sup>69</sup> *Engineering Contractors II*, 122 F.3d at 926.

<sup>70</sup> *Id.* at 249.

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."<sup>71</sup>

## **D. Narrowly Tailoring a Minority-Owned and Women-Owned Business Enterprise Procurement Program for KCMO**

Even if the City has a strong basis in evidence to believe that race-based measures are needed to remedy identified discrimination, the program must still be narrowly tailored to that evidence. We note that programs that closely mirror those of the U.S. Department of Transportation's Disadvantaged Business Enterprise program<sup>72</sup> have been upheld using that framework.<sup>73</sup> The courts have repeatedly examined the following factors in determining whether race-based remedies are narrowly tailored to achieve their purpose:

- The efficacy of race-neutral remedies at overcoming identified discrimination;
- The relationship of numerical benchmarks for government spending to the availability of minority- and women-owned firms and to subcontracting goal setting procedures;
- The flexibility of the program requirements, including the provision for good faith efforts to meet goals and contract specific goal setting procedures;
- The congruence between the remedies adopted and the beneficiaries of those remedies;
- Any adverse impact of the relief on third parties; and
- The duration of the program.<sup>74</sup>

### **1. Consider Race- and Gender-Neutral Remedies**

Race- and gender-neutral approaches are a necessary component of a defensible and effective M/WBE program<sup>75</sup> and the failure to seriously consider such remedies has been fatal to several programs.<sup>76</sup> 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 KCMO 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.<sup>77</sup> Further, governments have a duty to ferret out and punish discrimination against minorities and women by their contractors, staff, lenders, bonding companies or others.<sup>78</sup>

---

<sup>71</sup> *Concrete Works IV*, 321 F.3d at 989.

<sup>72</sup> 49 C.F.R. Part 26.

<sup>73</sup> See, e.g., *Midwest Fence Corp. v. Illinois Department of Transportation, Illinois State Toll Highway Authority et al*, 840 F.3d 942 (7<sup>th</sup> Cir. 2016) (upholding the Illinois Tollway's program for state funded contracts modeled after Part 26 and based on CHA's expert testimony).

<sup>74</sup> *United States v. Paradise*, 480 U.S. 149, 171 (1987); see also *Sherbrooke*, 345 F.3d at 971-972.

<sup>75</sup> *Croson*, 488 U.S. at 507 (Richmond considered no alternatives to race-based quota); *Drabik II*, 214 F.3d at 738; *Philadelphia III*, 91 F.3d at 609 (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).

<sup>76</sup> 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.

<sup>77</sup> See 49 CFR § 26.51.0.

<sup>78</sup> *Croson*, 488 U.S. at 503 n.3; *Webster*, 51 F.Supp.2d at 1380.

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 it predicts will be met through such measures has been central to the holdings that the DBE program regulations meet narrow tailoring.<sup>79</sup>

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.<sup>80</sup> 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.”<sup>81</sup>

## 2. Set Targeted MBE and WBE Goals

Numerical goals or benchmarks for M/WBE participation must be substantially related to their availability in the relevant market.<sup>82</sup> For example, the DBE program regulations require 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.<sup>83</sup> “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*.”<sup>84</sup>

Goals can be set at various levels of particularity and participation. The City may set an overall, aspirational goal for its annual, aggregate spending. Annual goals can be further disaggregated by race and gender. Approaches range from a single M/WBE or DBE goal that includes all racial and ethnic minorities and nonminority women,<sup>85</sup> to separate goals for each minority group and women.<sup>86</sup> We note, however, that Ohio’s Program was specifically faulted for lumping together all “minorities,” with the court questioning the legitimacy of forcing African American contractors to share relief with recent Asian immigrants.<sup>87</sup>

The Eighth Circuit has recognized that goal setting is not an absolute science. In holding the DBE regulations to be narrowly tailored, the court noted that “[t]hrough 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.”<sup>88</sup> However, sheer speculation cannot form the basis for an enforceable measure.<sup>89</sup>

It is settled case law that goals for a particular solicitation should reflect the particulars of the contract, not reiterate annual aggregate targets; goals must be contract specific. “Standard” goals are not defensible. Contract goals must be based upon availability of M/WBEs to perform the anticipated scopes of the contract, location, progress towards meeting annual goals, and other factors. Not only is

---

<sup>79</sup> See, e.g., *Sherbrooke*, 345 F.3d. at 973

<sup>80</sup> *Grutter*, 529 U.S. at 339.

<sup>81</sup> *Coral Construction*, 941 F.2d at 923.

<sup>82</sup> *Webster*, 51 F.Supp.2d at 1379, 1381 (statistically insignificant disparities are insufficient to support an unexplained goal of 35 percent M/WBE participation in County contracts); see also *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*”).

<sup>83</sup> 49 C.F.R. § 26.45.

<sup>84</sup> *Id.*

<sup>85</sup> See 49 C.F.R. §26.45(h) (overall goal must not be subdivided into group-specific goals).

<sup>86</sup> See *Engineering Contractors II*, 122 F.3d at 900 (separate goals for Blacks, Hispanics and women).

<sup>87</sup> *Associated General Contractors of Ohio v. Drabik*, 214 F.3d 730, 737 (6th Cir. 2000) (“*Drabik II*”); see also *Western States*, 407 F.3d at 998 (“We have previously expressed similar concerns about the haphazard inclusion of minority groups in affirmative action programs ostensibly designed to remedy the effects of discrimination.”).

<sup>88</sup> *Sherbrooke*, 345 F.3d. at 972.

<sup>89</sup> *BAGC v. Chicago*, 298 F.Supp.2d at 740 (City’s MBE and WBE goals were “formulistic” percentages not related to the availability of firms).

this legally mandated,<sup>90</sup> 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, there is no option to avoid meeting narrow tailoring because to do so would be more burdensome.

### 3. Ensure Flexibility of Goals and Requirements

It is imperative that remedies not operate as fixed quotas.<sup>91</sup> A 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.<sup>92</sup> Further, firms that meet the goals cannot be favored over those who made good faith efforts. In *Croson*, the Court refers approvingly to the contract-by-contract waivers used in the USDOT’s DBE program.<sup>93</sup> This feature has been central to the holding that the DBE program meets the narrow tailoring requirement.<sup>94</sup>

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

The over- or under-inclusiveness of those persons to be included in the City’s program is an additional consideration, and goes to whether the remedies truly target the evil identified. The “fit” between the problem and the remedy manifests in three ways: which groups to include, how to define those groups, and which persons will be eligible to be included within those groups.

The groups to include must be based upon the evidence.<sup>95</sup> 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.”<sup>96</sup> 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.”<sup>97</sup> 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.<sup>98</sup> Therefore, remedies should be limited to those firms that have suffered actual harm in the market area.<sup>99</sup>

Next, the firm’s owner(s) must be disadvantaged. 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 must meet the Small Business Administration’s size definitions for its industry, have been central to the courts’ holdings that it is narrowly tailored.<sup>100</sup>

---

<sup>90</sup> See *Sherbrooke*, 345 F.3d at 972; *Coral Construction*, 941 F.2d at 924.

<sup>91</sup> See 49 C.F.R. 26.43 (quotas are not permitted and setaside contracts may be used only in limited and extreme circumstances “when no other method could be reasonably expected to redress egregious instances of discrimination”).

<sup>92</sup> See, e.g., *BAGC v. Chicago*, 298 F. Supp.2d at 740 (“Waivers are rarely or never granted...The City program is a rigid numerical quota...formulistic percentages cannot survive strict scrutiny.”).

<sup>93</sup> 488 U.S. at 508; see also *VII*, 228 F.3d at 1181.

<sup>94</sup> See, e.g., *Sherbrooke*, 345 F.3d. at 972.

<sup>95</sup> *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990, 1007-1008 (3rd Cir. 1993) (“*Philadelphia II*”) (strict scrutiny requires data for each minority group; data was insufficient to include Hispanics, Asians or Pacific Islanders or Native Americans).

<sup>96</sup> *Webster*, 51 F.Supp.2d at 1380–1381.

<sup>97</sup> *Builders Association of Greater Chicago v. County of Cook*, 256 F.3d 642, 646 (7th Cir. 2001).

<sup>98</sup> *Concrete Work IV*, 321 F.3d at 971 (Denver introduced evidence of bias against each group; that is sufficient).

<sup>99</sup> *H. B. Rowe Co. v. Tippett*, 615 F.3d 233, 254 (4<sup>th</sup> Cir. 2010) (“[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.”).

<sup>100</sup> *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 v. City of New Haven*, 791 F.Supp. 941, 948 (D.

“[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.”<sup>101</sup> Further, anyone must be able challenge the disadvantaged status of any firm.<sup>102</sup>

## 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.<sup>103</sup> However, “innocent” parties can be made to share some of the burden of the remedy for eradicating racial discrimination.<sup>104</sup> The burden of compliance need not be placed only upon those firms directly responsible for the discrimination. The proper focus is whether the burden on third parties is “too intrusive” or “unacceptable.”

Burdens must be proven, and cannot constitute mere speculation by a plaintiff.<sup>105</sup> “Implementation of the race-conscious contracting goals for which TEA-21 provides will inevitably result in bids submitted by non-DBE firms being rejected in favor of higher bids from DBEs. Although this places a very real burden on non-DBE firms, this fact alone does not invalidate TEA-21. If it did, all affirmative action programs would be unconstitutional because of the burden upon non-minorities.”<sup>106</sup>

Narrow tailoring does permit certified firms acting as prime contractors to count their self-performance towards meeting contract goals, if the study finds discriminatory barriers to prime contract opportunities and there is no requirement that a program be limited only to the subcontracting portions of contracts. The DBE program regulations provide this remedy for discrimination against DBEs seeking prime work,<sup>107</sup> and the regulations do not limit the application of the program to only subcontracts.<sup>108</sup> The trial court in upholding the Illinois DOT’s DBE program explicitly recognized that barriers to subcontracting opportunities affect the ability of DBEs also 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

---

Conn. 1992), *vacated on other grounds*, 41 F.3d 62 (2nd Cir. 1992) (definition of “disadvantage” was vague and unrelated to goal).

<sup>101</sup> *Id.* at 973.

<sup>102</sup> 49 C.F.R. §26.87.

<sup>103</sup> See *Engineering Contractors Assoc. of South Florida, Inc. v. Metropolitan Dade County* (“*Engineering Contractors I*”), 943 F.Supp. 1546, 1581-1582 (S.D. Fla. 1996) (County chose not to change its procurement system).

<sup>104</sup> *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.”).

<sup>105</sup> *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).

<sup>106</sup> *Western States*, 407 F.3d at 995.

<sup>107</sup> 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.”).

<sup>108</sup> 49 C.F.R. § 26.45(a)(1).

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.<sup>109</sup>

## 6. Examine the Duration and Review of the Program

Race-based programs must have duration limits. A race-based remedy must “not last longer than the discriminatory effects it is designed to eliminate.”<sup>110</sup> The unlimited duration and lack of review were factors in the court’s holding that the City of Chicago’s M/WBE construction program was no longer narrowly tailored; Chicago’s program was based on 14-year-old information, which while it supported the program adopted in 1990, no longer was sufficient standing alone to justify the City’s efforts in 2004.<sup>111</sup> How old is too old is not definitively answered,<sup>112</sup> but governments would be wise to analyze data at least once every five or six years.

In contrast, the USDOT DBE program’s periodic review by Congress has been repeatedly held to provide adequate durational limits.<sup>113</sup> 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 5 years.”<sup>114</sup>

---

<sup>109</sup> *Northern Contracting II*, 2005 U.S. Dist. LEXIS 19868 at 74.

<sup>110</sup> *Adarand III*, 515 U.S. at 238.

<sup>111</sup> *BAGC v. Chicago*, 298 F.Supp.2d at 739.

<sup>112</sup> 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) (fourteen-year-old evidence of discrimination “too remote to support a compelling governmental interest.”).

<sup>113</sup> See *Western States*, 407 F.3d at 995.

<sup>114</sup> *Rowe*, 615 F.3d at 253.

### **III. KCMO'S SMALL BUSINESS INCLUSION PROGRAMS**

This Chapter describes the City of Kansas City Missouri's (KCMO or City) Minority- and Women-Owned Business Enterprise (M/WBE) and Small Local Business Enterprise (SLBE) inclusion programs for locally funded contracts.

#### **A. Administration of KCMO's Small Business Inclusion Programs**

KCMO's M/WBE and SLBE programs are administered by the Human Relations Department (HRD). HRD consists of five Divisions:

- The Administration Division is primarily responsible for the day-to-day administration of the contracting and small business inclusion programs.
- The Civil Rights Division ensures that all City residents have equal access, opportunity and fair treatment in housing, employment and public accommodations.
- The Minority Women Disadvantaged Business Enterprises (MWDDBE)/Small Local Business Enterprises (SLBE) / Construction Workforce Compliance/Affirmative Action Division administers these various programs, discussed below.
- The Contract Compliance/Prevailing Wage Compliance Division is responsible for monitoring, compliance, oversight, enforcement, training and assisting construction contractors with prevailing wage requirements, construction workforce and other hiring requirements.
- The Section 3 Division administers the City's federal requirements related to Section 3 of the Housing and Urban Development Act.<sup>115</sup> The Section 3 Division certifies businesses and individuals as Section 3 Business Enterprises or Section 3 Workers.

The Department is headed by a Director appointed by the City Manager. The Director establishes rules and regulations and administers and enforces the programs. The Director is authorized to recommend and apply various sanctions, such as suspension, revocation, debarment, etc.

In addition to contracts awarded by the City directly, the M/WBE Ordinance and HRD's procedures are broadly applicable to other municipal agencies established by statute (statutory agencies). The Ordinance applies to leases of City property for development; projects under tax increment financing; and projects under tax abatement entitles.<sup>116</sup> Covered entities include the Economic Development Commission (EDC); the Tax Increment Financing Commission (TIFC); the Land Clearance for Redevelopment Authority (LCRA); and the Planned Industrial Expansion Authority (PIEA). These entities are to adopt M/WBE programs consistent with HRD's program. There are variations between them about how much oversight HRD exercises over the implementation of the inclusion programs.

#### **B. KCMO's Race- and Gender- Neutral Measures to Reduce Barriers**

##### **1. Outreach and Training**

To achieve the maximum feasible portion of its overall MBE and WBE goals through race-neutral means, KCMO hosts and participates in outreach activities with partner organizations such as the Missouri Department of Transportation. The city regularly engages the media, and communicates

---

<sup>115</sup> 24 CFR § 135.30

<sup>116</sup> Sec. 3-425.

opportunities and policy updates via its website. It hosts annual Civil Rights/Fair Housing Summits, as well as Kansas City Government Contracting and Procurement Forums.

While the City does not directly provide business development programs, it does conduct equal employment and contracting program training to small and medium sized businesses. MWDBE Pre-Certification Workshops are held throughout the year to educate firms regarding the certification process and contracting opportunities. KCMO also engages 23 minority- or women-business oriented groups through distribution of its MWDBE Report issued by the Human Relations Department.

## **2. Small Local Business Enterprise Program**

In 2013, the City adopted a race- and gender-neutral Small Local Business Enterprise (SLBE) program to assist certified SLBEs to obtain prime contracts valued below the threshold for the M/WBE program (\$300,000 for construction and \$117,000 for non-construction contracts).<sup>117</sup> The Program is designed to foster growth for minority, women and small businesses through competitive bidding on prime contracts in a sheltered market environment.

The Director, in consultation with the user Department, is responsible for determining City contracts that will be procured using this method. In addition, the program specifically applies to any development, redevelopment, or urban renewal plan that receives economic incentives.

SLBEs are eligible for workshops, seminars, and training at no cost. SLBEs are encouraged to bid on KCMO projects through notification of contracting opportunities that do not have MWDBE goals.

The SLBE program is not goal based. There are two types of contract preferences in this program.

- Target market for SLBEs: An invitation to bid or request for proposals is set aside for bidding only by SLBE. There must be at least three SLBEs to perform the work of the contract. Factors the Director considers include the dollar amount of the contract; the primary scope of work; the City's utilization of SLBEs to date; the amount of the bid incentive awarded on past contracts of a similar nature; the amount of the bid incentive reasonably anticipated as being needed for purposes of enabling SLBEs to effectively compete for the contract; and the ability of the City department or agency to fund any increased cost that may reasonably be expected to arise as a result of the application of a bid incentive.
- A bid incentive: SLBEs receive a bid price preference not to exceed five percent. Factors the Director considers include the dollar amount of the contract; the scopes of work to be performed; the city's utilization of SLBEs to date; the amount of the bid incentive awarded on past contracts of a similar nature; the amount of the bid incentive reasonably anticipated as being needed for purposes of enabling SLBEs to effectively compete for the contract; and the ability of the City department or agency to fund any increased cost that may reasonably be expected to arise as a result of the application of a bid incentive. The price adjustment is used solely for the purpose of establishing the apparent low bidder. The actual value of the contract will be the amount of the SLBE's actual bid. Bid incentives do not apply to SLBE setaside contracts.

In addition, a SLBE contract award entitles the firm to the pre-payment of up to 10 percent of the contract amount upon the city's issuance of notice to proceed; the elimination of any contract retainage; and correctly documented payment every two weeks.

To be eligible for SLBE certification, an applicant must meet the following criteria:

---

<sup>117</sup> Chapter 3, Article IV, Division 4, Small Local Business Programs.



- The owner must possess at least 51% ownership, management, and control of the business;
- The owner must have the training/expertise to perform the work, and where required, have a license in his or her name;
- The firm must be independent and currently operating;
- The firm's principal place of business must be within the 7 county Greater Kansas City Metropolitan Statistical Area (KCMSA) as defined by the Census Bureau (currently Cass, Clay, Johnson, Jackson, and Platte Counties in Missouri, and Wyandotte and Leavenworth Counties in Kansas);
- The firm maintains full time employees in one or more of the firm's offices within the KCMSA;
- The firm has transacted business more than once in the KCMSA within the last two years; and
- The firm has annual gross receipts that, when added with those of its subsidiary or subsidiaries over three consecutive years, do not exceed 5 percent of the applicable business size standard for the Small Business Administration's General Contractor Classification, NAICS Code 236220 (currently \$1.825 million).

Firms are certified for three years, and must submit annual updates and notification to HRD of any changes in ownership or control.

Another element of the SLBE program is the Water Services Department (WSD) Engineering Professional Services (SLBE-WSDEPS) program. This recent initiative seeks to foster prime contract opportunities on WSD capital professional service contracts for SLBEs in architectural, engineering, and related design services. SLBE-WSDEPS firms are provided with access to specialized technical assistance and training. A SLBE-WSDEPS certified firm's three year gross receipts are capped at \$7.5 million. All other certification standards are required. The program applies to contracts that were bid starting in late FY 2013.

### **C. Minority Women Business Enterprise Program**

Kansas City's M/WBE program is governed by City of Kansas City, Missouri, Code of Ordinances, Chapter 3, Division 2, § 3-421 *et seq* (2017) ("M/WBE Ordinance"). The Program was established in 1996 to encourage utilization of small business enterprises owned and controlled by minority, women, and disadvantaged individuals on City contracts. Prior to the commencement of this Report, the city had commissioned a Disparity Study, completed in 2006, that forms the basis for the current M/WBE program.

Not all City contracts are subject to the M/WBE ordinance, but where applicable, goals are applied. Some exclusions, such as art purchases; City Manager waivers; cooperative agreements; demolitions; emergency contracts; lead abatement activities; leases; sole source contracts; specialty services; tenant reimbursements, etc., may receive waivers.

Many of the program's provisions closely align with the provisions of the USDOT Disadvantaged Business Enterprise program. As discussed in Chapter II, these regulations have been upheld by every court and the city wisely chooses to generally follow them. Elements include requiring that certified firms perform a commercially useful function, bidders must make good faith efforts to meet contract goals, how participation of M/WBEs is counted towards contract goals, etc., discussed below.

The M/WBE Ordinance provides:

- Definitions;
- City-wide M/WBE goals;

- M/WBE utilization plan standards for City departments and agencies;
- Procedures for setting goals on individual contracts;
- Requirements for contractor Utilization Plans;
- Counting credit towards meeting M/WBE contract goals;
- Standards for waivers of contract goals;
- Elements of joint venture agreements and mentor-protégé programs;
- Standards to determine good faith efforts to meet contract goals;
- Policies for modification of Utilization Plans;
- Contract award processes;
- Criteria for the imposition of liquidated damages;
- Procedures for construction contract compliance;
- Procedures for compliance for all other contracts;
- Reporting by City contractors;
- M/WBE certification and appeals;
- The duties of the HRD Director;
- Criteria for penalties for non-compliance;
- Mandatory mediation of disputes; and
- The severability of provisions.

The City has established two Boards to provide public input on program elements and operations.

- The Fairness in City Contracts Board consists of 7 members appointed by the Mayor. It makes recommendations to the Director on methodologies to increase MWBE utilization on professional services, other contracts, and goods, materials and supplies contracts. Members serve a four-year term.
- The Fairness in Construction Board consists of 7 members and 6 alternates appointed by the Mayor. The Board establishes MWBE goals on construction contracts over \$300,000; hears and investigates appeals from contractors on issues such as contract goal waivers, M/WBE substitutions prior to award, modification of Utilization Plans prior to bid award, determinations on MWBE contract credit; imposition of liquidated damages; etc.; and makes recommendations to HRD and elected officials. Members serve a four-year term.

Based on the 1996 Disparity Study, KCMO adopted the following City-wide goals to be used by departments and agencies.

Construction	Professional Services	Other Services	Materials and Supplies
African American 9%	African American 8%	African American 13%	African American 9%
Hispanic American/Latino American 5%	Hispanic American/Latino American 3%	Hispanic American/Latino American 3%	Hispanic American/Latino American 3%
Native American/Asian American/Pacific Islander American 1%	Native American/Asian American/Pacific Islander American 2%	Native American/Asian American/Pacific Islander American 2%	Native American/Asian American/Pacific Islander American 2%
White women 7%	White women 8%	White women 10%	White women 9%

Each City department and agency submits to the Director an annual MBE/WBE utilization plan for the next fiscal year that includes agency MBE and WBE goals, and any other relevant or necessary information. Departments and agencies are to use good faith efforts to obtain M/WBE participation and

shape the scope, specifications and size of a contract to enhance participation. Each department director, as part of his or her annual evaluation, is reviewed concerning program implementation. In the event a deficiency is found, HRD will work with the director to identify prohibiting factors and offer any assistance necessary to successfully implement the program.<sup>118</sup>

In addition to the City-wide goals, narrowly tailored goals are to be established on individual contracts when deemed practical by the Director.<sup>119</sup> Goals are expressed as a percentage of the total contract price for MBEs (as a group not subdivided by race and ethnicity) and WBEs. The Fairness in Construction Board, upon recommendation of the Director, sets goals on construction contracts with a value of greater than \$300,000. The Director sets goals on non-construction projects with a value greater than \$117,000, and is also authorized to require a bidder or proposer to make good faith efforts without setting a numerical M/WBE goal on such solicitations. User departments may request a "waiver" of goals for a specific contract.

Contract goals are based upon the following factors:

- The scope of work;
- The number and types of MBEs and WBEs available to perform such work, or portions of it;
- Whether the contract can be structured to create potential opportunities for MBEs and WBEs to participate as subcontractors, service providers and/or suppliers;
- The level of participation of MBEs and WBEs in similar contracts awarded by other city departments and agencies, and on local projects awarded by the state and federal governments;
- The city department's or agency's progress toward meeting its annual MBE and WBE goals and its expectations as to how future contracts will be used toward meeting such goals; and
- The potential dollar amount of the contract.

When goals have been established for a contract, each bidder or proposer must submit a notarized contractor Utilization Plan that includes the names and addresses of each MBE or WBE that will participate in the contract; the work to be performed by each MBE and/or WBE and the amounts each is to be paid for such work. Bid shopping is specifically prohibited.<sup>120</sup>

The M/WBE Ordinance provides detailed standards for counting M/WBE participation towards a contract goal.<sup>121</sup> The bidder may count the total amount it committed to a certified subcontractor, including lower tier subcontractors, with the following exceptions: it may count only 25 percent of the dollar amount to be paid to a "supplier,"<sup>122</sup> and only 10 percent of the dollar amount to be paid to a "broker."<sup>123</sup> In a significant departure from the USDOT Disadvantaged Business Enterprise program and the great majority of contracting affirmative action programs, a certified prime contractor or vendor

---

<sup>118</sup> Sec. 3-429.

<sup>119</sup> Sec. 3-431.

<sup>120</sup> Sec. 3-433.

<sup>121</sup> Sec. 3-435(a).

<sup>122</sup> "Supplier" is defined as "An enterprise that owns, operates or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business." Sec. 3-421(a)(37).

<sup>123</sup> "Supplier broker" is defined as "An enterprise that acts as an agent in negotiating contracts for the purchase of materials, supplies, articles or equipment but does not itself own, operate or maintain a store, warehouse or other establishment where such materials, supplies, articles or equipments [sic] are bought, kept in stock and regularly sold or leased to the public in the usual course of business." Sec. 3-421(a)(37).

cannot count its own participation towards meeting the goal. Further, a firm must have received its city certification at least 45 days prior to the posting of the solicitation.

Only work performed by a certified subcontractor may be counted towards to goal; worked further subcontracted to a non-certified firm must be subtracted from the dollars to be credited towards goal achievement.

To be counted for goal credit, a certified firm must perform a “commercially useful function” (CUF). A CUF is defined as “real and actual services that are a distinct and verifiable element of the contracted work based upon private sector trade or industry standards.”<sup>124</sup> Following the outlines of the DBE program regulations,<sup>125</sup> the City examines many factors to determine a CUF.

The contract goals do not function as quotas. An otherwise eligible bidder may be awarded the contract even if it does not meet the MBE or WBE goal if its makes “good faith efforts” (GFEs) to do so. GFEs are defined as those that “given all relevant circumstances, a bidder or proposer actively and aggressively demonstrates in attempting to meet the prescribed goals.”<sup>126</sup> Again, following the elements of the DBE regulations<sup>127</sup>, the Director considers several factors in determining whether a bidder has made GFEs. Documentation of GFEs must be submitted at the time specified in the solicitation but in any event, before the submission of the Utilization Plan.

A bid that fails to meet the goals is rejected as non-responsive unless a waiver has been obtained based on the bidder’s GFEs to meet the goal(s). A finding of failure to make GFEs may be appealed to the Fairness In Construction Board.

Increases in MWBE participation after submission of the contractor utilization plan does not count toward meeting contract goals, unless otherwise permitted by the City.

A prime contractor may submit a request to modify its M/WBE commitments after contract award but prior to making the actual substitution and within a reasonable timeframe from learning that a modification or substitution is necessary. The same GFEs criteria applied at contract award are applicable to post-award modification and substitution requests. Substitutions may be made when the Director finds that adequate GFEs was made.

Prime vendors must submit Subcontractor Utilization Reports monthly via KCMO’s online diversity management system, B2GNow, detailing their payments to certified subcontractors or subconsultants. The City also maintains the right to audit subcontract agreements to ensure the inclusion of program requirements.

To close out a contract regarding MWBE requirements, the contractor must submit the Contractor Affidavit for Final Payment Form; the Subcontractor Affidavit(s) for Final Payment Form; and the Final B2Gnow Monthly Contract Audit Report with all payment audits confirmed.

If a contractor fails to meet the MWBE goals stated in its Utilization Plan, the monetary difference between the amount of the MWBE goals in the Utilization Plan and the amount actually paid to MWBEs may be deducted from the contractor’s payments as liquidated damages. If the contractor acted in good faith and for reasons beyond its control the MWBE participation stated in the approved utilization plan is not met, no deductions for liquidated damages will be assessed.

---

<sup>124</sup> Sec. 3-421(a)(11).

<sup>125</sup> 49 C.F.R. § 26.55.

<sup>126</sup> Sec. 3-441(a).

<sup>127</sup> Appendix A to 49 C.F.R. Part 26.

Any claim or dispute between a contractor, subcontractor or supplier that remains unresolved after 30 calendar days is subject to mandatory mediation conducted in accordance with the rules of the Uniform Mediation Act. The firms share equally the expense of the mediator's fee.<sup>128</sup>

KCMO applies narrowly tailored standards for certification to ensure only those firms that have suffered discrimination in its industry and geographic markets are eligible to participate in the remedial aspects of the program.<sup>129</sup> As with other elements of the M/WBE program, the City largely mirrors the provisions of the USDOT DBE program.<sup>130</sup>

An applicant for MBE or WBE certification must demonstrate by written documentation or affidavit that it has suffered from past race or gender discrimination in the City of Kansas City market area and in the applicable trade or industry. "Minority" is defined as a person who is a citizen or lawful permanent resident of the United States and who is African American; Hispanic American and/or Latino American; Asian and/or Pacific Islander American; or Native American.<sup>131</sup> The firm must have its principal place of business in the Kansas City metropolitan area; maintain full-time employees in one or more of the firm's offices within the Kansas City metropolitan area; and have transacted business more than once in the Kansas City metropolitan area within the last three years. The City applies the business size standards imposed by 13 CFR Part 121. Finally, the applicant must have been in existence in the Kansas City metropolitan area at least one year prior to its application.

The firm seeking certification has the burden of demonstrating to the Director, by a preponderance of the evidence, that it meets all the requirements for certification. The Director determines whether individuals and firms have met their burden by considering all the facts in the record, viewed as a whole.

Certification is good for three years. Applications for renewal following the three-year period and annual updates are required. Ownership and control changes are to be reported within a reasonable timeframe.

A firm may appeal a denial or revocation of certification by filing a written appeal with the Director within 20 business days of receipt of the notice, stating the reason(s) for the appeal and must include all supporting documentation. Within 10 business days of receipt of the notice, the Director must forward the notice to a neutral hearing officer selected through the city's standard procurement process for a written decision. The decision of the hearing officer is binding on all parties, subject to the right of appeal as provided by law.

An applicant found to be ineligible must wait two years to reapply for certification.

MWBE certifications may also be revoked for cause. The certification of a person debarred by the City is automatically terminated or modified in a manner provided by the debarment ordinance. A firm whose certification has been revoked by another governmental entity automatically has its MWBE certification revoked unless the other certifying entity's decision was based on criteria not relevant to the City's requirements.

The certification directory is available online through B2GNow. Approved certifications are added to the system daily. HRD certifications are accepted by the Kansas City Public Schools; the Kansas City Area Transportation Authority for DBE certifications; the Kansas City Port Authority; the United Government

---

<sup>128</sup> Sec. 3-467.

<sup>129</sup> Sec. 3-461.

<sup>130</sup> 49 C.F.R. § 26.61-73.

<sup>131</sup> Sec. 3-421(a)(28).

of Wyandotte County, Kansas; the Missouri Department of Transportation for DBE certifications; and the Kansas City Housing Authority.

## **D. New Initiatives**

In fiscal year 2015 (after the study period), the City implemented three new programs to benefit small business:

- **Mentor-Protégé Program:** This initiative seeks to develop and build working relationships between business mentors and certified protégés. Mentors are to help protégés shorten the learning curve by teaching practical industry skills or by providing guidance or successful business practices.
- **Small Business Enterprise Program for federally-assisted contracts:** This procurement approach involves “unbundling” contracts into smaller-sized packages to permit small firms to compete amongst themselves.
- **The Contractors Loan Program in partnership with Lead Bank of Kansas City and Corner Stone Financial:** This program assists small firms by providing loans and issuing surety bonds to certified contractors. The Bank agreed to service a minimum of 10 to 15 new firms from applicants, with an interest rate of the New York Prime Rate plus two percent. It will also provide general banking services on favorable terms to applicant firms. The Bank will also attend City sponsored workshops and trainings for certified firms in the areas of financial, business and economic-related topics.

## **E. Experiences with KCMO’s Small Business Inclusion Programs**

To explore the impacts of race- and gender-neutral contracting policies and procedures and the implementation of the City’s M/WBE and SLBE programs, we interviewed 56 individuals about their experiences and solicited their suggestions for changes. The following are summaries of the topics discussed. Quotations are indented, and have been edited for readability. They are representative of the views expressed during the group interviews.

KCMO has had a program for many years. Participants therefore focused primarily on improvements to existing efforts rather than basic elements such as whether a program is needed, what groups should be included in the program, etc.

### **1. Access to information about contracting opportunities and the Program**

Most business owners and representatives found it relatively easy to access information about City prime contracting and subcontracting opportunities.

The City does a [good] job of putting information out and if you belong to either bidders association, heavy constructions, but for us, minority business development organizations, they put out a lot of information and invitations to bid, that they get directly from general contractors who have to meet participation goals on jobs.

The City conducts outreach to industry groups and other interested organizations.

[The Human Relations Department is] reaching out to the Chambers and some other organizations to recruit small business, minority business.

A few firms or less sophisticated firms need help to access information. More efforts were requested to educate new parties on the program.

Many contractors' businesses are businesses like myself, there's not one person dedicated to doing [the marketing] function. So it's often really confusing to get to that portal person. Because they may have a general diversity supplier e-mail but that person may not be [the right person].... People aren't educated enough to understand on the supplier side how to actually get in there.

Partnering with the City to educate even the board [of our professional organization] and our members more on the issues would be beneficial.

## **2. Payment**

There were few complaints about payment, either by the City to prime vendors or by prime contractors to subcontractors. A favorable contrast was drawn with other local governments.

You probably have a better chance of getting paid on the City of Kansas City, Missouri work than you do the School District, Jackson County, or any of the other entities.

## **3. Small business assistance initiatives**

Many M/WBEs welcomed additional assistance for their businesses, such as programs on how to estimate jobs, comply with City paperwork, effective marketing, etc.

Estimating is the biggest single need I encounter with the people I deal with.... The Builders Association program is the Cadillac but you're not going to do that in a couple of one-hour seminars. Additionally, if you're not willing to buy some software, if you're still taking off everything by hand and use some paper plans, you're not going to get there.

How to help the City and how the City can help us? They need more services for minorities to understand how to do the paperwork and training.

I've seen a lessening in supportive services. That's one of the things the City used to offer a lot more assistance in the way of educational programs or more specific one-on-one programs than I think they do now.

Majority contractors also noted the need for supportive services.

Legal counsel, accounting assistance...especially legal services [are needed] because a lot of people don't know how to evaluate the contracts that they are getting from the general contractors or the subcontractors and the next thing you know is that they have problems, they have issues because the contract is really in the favor of the general contractor or subcontractor.... People buy QuickBooks and they don't have a clue of how to set it up, and they set it up and it is garbage in and garbage out.

There was acknowledgment that KCMO has some program elements to assist M/WBEs. More education would bolster these efforts.

The City of Kansas City, Missouri does have in their contracts that the general shall not give a more onerous or stringent contract to the subs than the prime contract [with the City]. As a lawyer, you know that if you're a sub and you're not aware of that and you're not savvy enough to read a contract or have an attorney read a contract for you, you agree to more stringent requirements within a contract, you're liable for that. That's one of the education issues.

The one thing I will say about the unions, by and large, is we always got good workforce from the unions. They came with the kinds of training disciplines in the various disciplines of work that we need. That's important because there is no vehicle out here that allows [M/WBEs] to have the competency of trained employees.

Many firm participant's mentioned assistance with obtaining bonding and financing was a major priority for M/WBEs and other small firms. The recent initiative with Lead Bank was praised as an example of the type of innovative program owners found useful.

The City has created partnerships with banks here. They have taken their own initiative in regards to the City projects.

Large majority firms agreed that more financial assistance is needed.

The most challenges I see...is how to finance those projects.

[M/WBEs need] some kind of program to help finance those projects. To give opportunity to minorities, more contracts to work directly with any entity of the government.

Programs [like the lending program through Lead Bank] are actually very pragmatic. I think they're making a difference.

#### **4. Program certification policies and processes**

In general, owners stated that the City's certification standards and policies are fair and the initial application and recertification processes satisfactory.

I've been certified for probably eleven years with the City of Kansas City, Missouri. I have to say the City was very thorough in my certification, very thorough. They made drop by visits to make sure I was working in the business, that I was in the office, that I was doing decision making.

My experience with the process was excellent.... I understand why they want to make sure that you're legit.... There's a lot of fraud.

When I have a problem, I call HRD. He gets right back with me. All my recertifications go through really smooth, if they needed something else.

Some firms reported delays in processing of initial applications for certification.

It took me a year to get my proper certification and my NAICS codes.

Participants attributed delays to a lack of resources in the Human Relations Department.

[There are only] two people who [conduct certification reviews], and that's not their only job.... I'm not going to blame anybody in those offices because I think they are so overwhelmed with the amount of work they have to produce. And unfortunately, dealing with people like me shooting e-mails at them every two seconds and making calls going, look it's been six weeks.... As important as that process is, the amount of people they have trying to get through all that, there's going to be errors and its human errors.

[It's] just [a lack of] resources.



One proposed solution was to allow outside advocacy groups to conduct some portions of the certification process.

It's a staffing issue with Kansas City, Missouri, because they have their own certification. We're not saying change that certification.... [Applicants] still have to abide by the City statut[e]s and the size [standards].... If there's somebody that is doing the same due diligence, why are we not partnering?... The [advocacy organization] would help in all areas as one piece of an affidavit saying all this information that we are turning over to the City is honest and forthright.

While firms that are not legitimately owned, managed and controlled by the minority or women owner once achieved certification with the City, many interviewees believed the process has significantly improved and such "front" firms are now rare.

I think the City of Kansas City does an excellent job of weeding those folks out [who are not legitimate M/WBEs].

A few others disagreed.

Some of the larger contractors have pass through minority and women contractors that they foster and use. It's not a mentoring. It's purely they will use them as fronts.

## **5. KCMO's SLBE Program for Water Department contracts**

Several participants, both M/WBEs and majority firms, had very favorable comments on the City's SLBE program. The elements of the race- and gender-neutral small business setaside and subcontracting goals have lead to meaningful opportunities and expanded capabilities.

I have a lot of subcontracts on both [standard City contracts and through the SLBE program].

They've really done a good job in this area. Because they did a training program for minority and women A[rchitecture] and E[ngineering] concerns, for them to be able to compete for Water Department work.... it's called Overflow Control University Training Program.

## **6. Meeting M/WBE contract goals**

While not always easy. most prime firms were able to meet M/WBE contract goals on City projects.

It's doable.

However, there was confusion and frustration about how the City sets goals on specific contracts.

One of the biggest issues I see is the lack of understanding of a construction industry inside of Kansas City, Missouri.... The construction industry is so detailed and specific that those employees don't understand really what availability means,... They really don't understand what a contractor will self-perform and what they would sub out to an MBE/WBE.

If there was a way to figure out what their bonding capacity would be and maybe then look at the numbers in that regard, it might help [to set accurate contract goals].... There's only so many contractors to perform that work [on very large projects].

There were concerns about whether the M/WBE community in Kansas City can meet the burgeoning demand in the construction industry.

That's the issue, is the capacity of what the firms can do.

Some of the developers have run into that, that there's companies that they know of and they're aware of but they're not certified. And so there's a lot of work going on now in Kansas City, a lot more than there was a couple of years ago and the pool is really small now. There's not enough of them to go around.

Several majority firm participants expressed frustration over the City's policy regarding the test for making "good faith efforts" to meet contract goals.

There's a lot of confusion over [the standard for making a good faith effort to meet a contract goal]. If there are nine measures, do I have to meet five of the nine so I hit a majority? Do I have to hit eight of the nine? How is that analyzed? I think there's a lot of confusion particularly amongst the people going into the MBE/WBE program, the contractors, on how does this determination that I have or have not made a best faith effort, how does that happen?

Every case is different. You can't say that you know, if they missed one of them, one of the nine issues, they probably still demonstrated best faith effort. It's almost always very clear the contractor either didn't care or in fact did, and just missed a couple of issues.

The certification list says "yes, they're certified minority female owned business", but does not necessarily tell you that there are people performing the work.... And so what that becomes is a risk for the general contractor.... It's a business decision, you're bidding this job that you're going build it for an x amount of money, in y amount of time, and now you're telling me I gotta take a risk on this sub, and, if something's wrong with the work the sub performs, the City's not going go after that sub. The city's going to come after me and tell me to tear that out and replace it at my cost.

The City has a good faith effort policy. But that is a name only. They will not do a waiver.

If [the list of actions defining good faith efforts is] not followed exactly, if you miss one of the items, you did not do good faith efforts.

That the City only counts 25 percent of the cost of materials towards goal credit was another source of frustration.

Twenty-five [percent credit for materials] is too low.

## **7. Program monitoring and compliance**

It is crucial that the City monitor firms' compliance with their Utilization Plans to ensure that goals are being met or that the contractor is making good faith efforts to do so. While the City has made significant strides to ensure program integrity through on site and desk monitoring, more emphasis and resources were reported to be needed to ensure contractual commitments are met.

They have a responsibility, both desk audit and field monitoring, to make sure that the [certified] contractors so named are actually performing the work.

They have that B2G system. I religiously filled out the stuff on that. I have a lot of respect for [the Human Relations Department] but I think they just don't have enough people for

them to check some of that stuff.... I mean it's not my place to figure out what kind of mistakes they made and time is a premium when you're this small. I thought I did what I was supposed to do. The purpose of the B2G system is if there's a disparity, you're supposed to talk it out and see if there is a problem and then report it in.

The City staff does the prevailing wage in the compliance department. They have the other section of HRD that is doing the compliance for the MBE WBE. They're not talking to each other.

[Human Relations Department staff are] quality people and they want to do a good job but they don't have enough people. They do what they can to get done in the 8-hour day.

If you get caught, yeah, you're kicked out of the program or there's severe penalties. But there's three maybe four people in the entire city that actually go out and monitor for all contracts to the City. The chances of you getting caught on any given project for any given day are very slim. People weigh that cost versus meeting their goals.

Majority contractors agreed that more monitoring is needed.

The City does not do a good job of monitoring all of it, specifically, just because they don't have the staff or the budget.

There were few reports of unauthorized substitutions of certified listed at contract award that do not receive the work to which the prime contractor committed, a common complaint in other disparity studies.

HRD has reigned [unauthorized substitutions of certified firms with either non-certified subcontractors or the prime vendor] in.

Specific concerns were raised about ensuring that firms used for credit towards M/WBE contract goals are performing a "commercially useful function."

You have companies that exist [as legitimate minority- or women-owned firms] that's a shell to provide labor on a job to meet a participation requirement. The labor they provide is not working under their supervision. The labor that they provide is sometimes qualified, but there's no commercially useful function if all the minority- or woman-owned company does is put three electricians out there.... They have no equipment. The supervision is the telling point. You can't grow a company if you're not training your supervision. I think that's the thing we fight now is companies just providing labor.... It's very difficult to tell if you throw eight laborers in and you run all the material in that's a subtle thing that's happening that I do everything in power to ferret out. The City is not going to catch it. Compliance officers aren't going to catch that.

We've also encountered a lot of pass through companies, front companies, who were there to get a few dollars, a few pieces of silver, in exchange for their name only on that project. The follow up from whatever governing agency is not there to make sure that XYZ company is actually participating in that project.

## 8. Statutory agencies M/WBE program implementation

By far, the majority of comments about program improvements related to the so-called redevelopment “statutory agencies.”<sup>132</sup> As above discussed, the agencies apply the City’s M/WBE ordinance and utilize some, but not all, elements of the City’s program. Some elements are developed and performed within the agencies, not HRD. There was almost unanimous agreement among M/WBEs and non-M/WBEs alike that the agencies should outsource the entire M/WBE function, including goal setting and contract performance monitoring, to HRD.

Alphabet agencies should be under the purview of the City.... The deal is done before we ever see it. So, we really have very little participation.

There are some that let developers dictate to them instead the other way around.

It is a different set of standards if it’s one of the statutory agencies.... We just had a project in this city, Pickwick Towers, a 65 million dollar project that [Land Clearance for Redevelopment Authority] approved the goal over the objections of the Human Relations Department of I think 1.2 minority [participation] and 2.5 WBE [participation], when there was adequate availability of minority and women contractors to meet the City’s standard kind of goal of 15 [percent] and 7 [percent]. They’re diluting the opportunity for minority and women contractors when it comes through the statutory business development organizations, all of whom have different sets of rules..... There ought to be a uniform code that is incorporated in all the development agreements which people in our community never see.... There’s a disconnect. And I realize they’re trying to change some of that now but the insulting part of it was there was more money spent through statutory agencies last year for contracting activities than there were through City departments.... It’s obviously developer driven. By the time we see it the development agreement has already been executed. We’re having a big deal now both with the east patrol, the streetcar and the proposed 800 room convention center hotel. If it’s not in the development agreement there’s very little you can do at that point.... Kansas City’s an inclusive city. We’ve shown that over and over. It has sustained through white mayors, through black mayors, through female mayors. Yet, we allow the statutory organizations to dilute it. They have their own board[s] and they can do what they want.

The statutory agencies feel like they don’t have to follow the rules that the City sets.

There are these alphabet agencies that are really a lot of the work of the development’s coming through them. And they are not being held accountable on a level playing field.... When you can have someone come in, a developer and say, well these are razor thin margins and we’re not able to meet those goals because blah, blah, blah. And with a check of the pen that board can say, okay we’ll waive the goals.

It ought to be one uniform policy.... It would make it a lot simpler.... Inclusion has been a shared goal in Kansas City, but you allow developers to creep.

[For] many of those agencies, beyond the City of Kansas City, Missouri, it’s very difficult to keep in tune with what they’re doing, when they’re doing and how they’re doing.

We’re looking for more centralization and more equity consistency in those agencies.... The City could put more pressure and have more play and have a better role in the

---

<sup>132</sup> The Economic Development Corporation; the Planned Industrial Expansion Authority; the Land Clearance for Redevelopment Authority, the Tax Increment Financing Authority; and the Port Authority.

distribution of consistency amongst those agencies. Event though they don't oversee them, they still do appoint the members. The mayor has all the appointees so he's got the political authority to do what he needs to do. There's a lot of issues there that have come up.

EDS and alphabet agencies [should have] to operate within the City ordinance and goals, otherwise no funding. What happens right now is EDC and the alphabet agencies sort of follow the rules and sort of not. It all depends on what that developer's perception was, which their perception might be we don't have to follow any of these goals. They're still getting City funding and we're getting better at it, but there's a few agencies in town that the lights are out in terms of [inclusion].

## **F. Conclusion**

The program review and the interviews suggest that the City is administering its SLBE and M/WBE programs in conformance with the requirements of strict scrutiny and national best practices. However, several enhancements will make it more effective. These include: increased outreach to M/WBEs; additional supportive and technical assistance services; expanding the Contractors Loan Program to include more firms and more industries; providing additional certification resources; setting contract goals on a more consistent and transparent manner; ensuring that the good faith efforts waiver process is well disseminated and understood; conducting more contract performance monitoring; and moving all aspects of program implementation on statutory agency contracts to HRD.

## IV. UTILIZATION AND AVAILABILITY ANALYSIS FOR KANSAS CITY, MISSOURI

### A. Contract Data Sources and Sampling Method

We analyzed contract data for 2008 through 2013 for KCMO's locally-funded contracts. The Final Contract Data File for analysis contained a total award amount of \$1,973,581,595.70, representing 471 contracts to primes; of this amount, 1,750 associated subcontracts received \$427,837,762.43. The Final Contract Data File was used to determine the geographic and product markets for the analysis, to estimate the utilization of M/WBEs on those contracts, and to calculate M/WBE availability in the City's marketplace.

### B. KCMO's Product and Geographic Markets

#### 1. KCMO's Product Market

As discussed in Chapter II, a defensible disparity study must determine empirically the industries that comprise the City's product or industry market. The accepted approach is to analyze those detailed industries, as defined by 6-digit North American Industry, Classification System ("NAICS") codes<sup>133</sup> that make up at least 75 percent of the prime contract and subcontract payments for the study period.<sup>134</sup> However, for this study, we went further, and applied a "90/90/90" rule, whereby we analyzed NAICS codes that cover over 90 percent of the total contract dollars; over 90 percent of the prime contract dollars; and over 90 percent of the subcontract dollars. We took this approach to assure a comprehensive analysis of KCMO's activities.

Tables 4.1 through 4.4 present the NAICS codes used to define the product market for KCMO's contracts when examining contracts disaggregated by level of contract (*i.e.*, was the firm receiving the contract as a prime vendor or a subcontractor or were there subcontracting opportunities), the label for each NAICS code, and the industry percentage distribution of the number of contracts and spending across NAICS codes and funding source. The results in Tables 4.1 through 4.3 present the City's *unconstrained* product market, which was later constrained by the geographic market area, discussed below.

**Table 4.1 Industry Percentage Distribution of Contracts by Dollars Paid, All Contracts with Subcontracting Opportunities**

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
236220	Commercial and Institutional Building Construction	24.4%	24.4%
237310	Highway, Street, and Bridge Construction	18.4%	42.8%
541330	Engineering Services	8.2%	51.0%

<sup>133</sup> [www.census.gov/eos/www/naics](http://www.census.gov/eos/www/naics).

<sup>134</sup> "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, pp. 50-51 ("National Disparity Study Guidelines").

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	6.1%	57.0%
237110	Water and Sewer Line and Related Structures Construction	5.9%	62.9%
238220	Plumbing, Heating, and Air Conditioning Contractors	3.9%	66.8%
622110	General Medical and Surgical Hospitals	3.1%	70.0%
562119	Other Waste Collection	2.4%	72.4%
334210	Telephone Apparatus Manufacturing	1.9%	74.3%
238110	Poured Concrete Foundation and Structure Contractors	1.8%	76.1%
812930	Parking Lots and Garages	1.7%	77.8%
562111	Solid Waste Collection	1.6%	79.4%
541511	Custom Computer Programming Services	1.5%	80.9%
562998	All Other Miscellaneous Waste Management Services	1.1%	82.0%
531312	Nonresidential Property Managers	1.1%	83.1%
238120	Structural Steel and Precast Concrete Contractors	0.9%	84.0%
561612	Security Guards and Patrol Services	0.9%	84.9%
541320	Landscape Architectural Services	0.9%	85.7%
484110	General Freight Trucking, Local	0.8%	86.5%
561730	Landscaping Services	0.6%	87.2%
562212	Solid Waste Landfill	0.6%	87.8%
541310	Architectural Services	0.6%	88.4%
531210	Offices of Real Estate Agents and Brokers	0.6%	88.9%
238910	Site Preparation Contractors	0.5%	89.4%
238990	All Other Specialty Trade Contractors	0.5%	89.9%

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
327320	Ready Mix Concrete Manufacturing	0.4%	90.3%
<b>TOTAL</b>			<b>100.00%</b> <sup>135</sup>

Source: CHA analysis of KCMO data.

**Table 4.2 Industry Percentage Distribution of Contracts by Dollars Paid, Prime Contracts**

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
236220	Commercial and Institutional Building Construction	27.9%	27.9%
237310	Highway, Street, and Bridge Construction	22.0%	49.9%
541330	Engineering Services	8.2%	58.0%
237110	Water and Sewer Line and Related Structures Construction	7.7%	65.7%
622110	General Medical and Surgical Hospitals	4.2%	69.9%
562119	Other Waste Collection	3.3%	73.1%
334210	Telephone Apparatus Manufacturing	2.6%	75.7%
238210	Electrical Contractors and Other Wiring Installation Contractors	2.5%	78.2%
812930	Parking Lots and Garages	2.3%	80.5%
562111	Solid Waste Collection	2.1%	82.6%
238220	Plumbing, Heating, and Air Conditioning Contractors	1.9%	84.5%
541511	Custom Computer Programming Services	1.9%	86.5%
531312	Nonresidential Property Managers	1.4%	87.9%
562998	All Other Miscellaneous Waste Management Services	1.3%	89.2%

<sup>135</sup> Agency spending across another 137 NAICS codes comprised 9.7% of all spending.



NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
541320	Landscape Architectural Services	1.0%	90.2%
<b>TOTAL</b>			<b>100.00%</b> <sup>136</sup>

Source: CHA analysis of KCMO data

**Table 4.3 Industry Percentage Distribution of Contracts by Dollars Paid, Subcontracts**

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	16.6%	16.6%
236220	Commercial and Institutional Building Construction	14.2%	30.8%
238220	Plumbing, Heating, and Air Conditioning Contractors	9.8%	40.6%
541330	Engineering Services	8.2%	48.8%
237310	Highway, Street, and Bridge Construction	7.8%	56.6%
238110	Poured Concrete Foundation and Structure Contractors	6.6%	63.2%
484110	General Freight Trucking, Local	3.1%	66.3%
238120	Structural Steel and Precast Concrete Contractors	2.7%	69.1%
238910	Site Preparation Contractors	1.9%	70.9%
561730	Landscaping Services	1.8%	72.7%
327320	Ready Mix Concrete Manufacturing	1.6%	74.3%
238330	Flooring Contractors	1.5%	75.8%
238160	Roofing Contractors	1.2%	77.0%
237990	Other Heavy and Civil Engineering Construction	1.1%	78.1%

<sup>136</sup> Agency spending across another 58 NAICS codes comprised 9.8% of all prime contractor spending.

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
484121	General Freight Trucking, Long Distance, Truckload	1.1%	79.2%
561612	Security Guards and Patrol Services	1.0%	80.3%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	1.0%	81.3%
238390	Other Building Finishing Contractors	0.9%	82.1%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.9%	83.0%
541310	Architectural Services	0.8%	83.8%
238140	Masonry Contractors	0.8%	84.6%
541990	All Other Professional, Scientific, and Technical Services	0.8%	85.4%
332312	Fabricated Structural Metal Manufacturing	0.8%	86.2%
541370	Surveying and Mapping (except Geophysical) Services	0.7%	86.9%
423390	Other Construction Material Merchant Wholesalers	0.7%	87.6%
237110	Water and Sewer Line and Related Structures Construction	0.7%	88.3%
238310	Drywall and Insulation Contractors	0.7%	89.0%
238990	All Other Specialty Trade Contractors	0.6%	89.6%
238320	Painting and Wall Covering Contractors	0.5%	90.2%
<b>TOTAL</b>			<b>100.00%</b> <sup>137</sup>

Source: CHA analysis of KCMO data.

<sup>137</sup> Agency spending across another 99 NAICS codes comprised 9.8% of all subcontractor spending.

**Table 4.4 Industry Percentage Distribution of Contracts by Dollars Paid,  
Contracts without Subcontracting Opportunities**

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	29.1%	29.1%
488210	Support Activities for Rail Transportation	13.7%	42.7%
441310	Automotive Parts and Accessories Stores	12.1%	54.9%
424690	Other Chemical and Allied Products Merchant Wholesalers	5.9%	60.8%
562211	Hazardous Waste Treatment and Disposal	5.5%	66.3%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	4.7%	70.9%
561311	Employment Placement Agencies	2.7%	73.7%
444120	Paint and Wallpaper Stores	2.6%	76.2%
517911	Telecommunications Resellers	2.5%	78.7%
423610	Automobile and Other Motor Vehicle Merchant Wholesalers	1.7%	80.4%
336360	Motor Vehicle Seating and Interior Trim Manufacturing	1.7%	82.1%
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use	1.4%	83.5%
325311	Nitrogenous Fertilizer Manufacturing	1.0%	84.5%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.9%	85.4%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	0.9%	86.3%
327320	Ready-Mix Concrete Manufacturing	0.9%	87.1%
<b>TOTAL</b>			<b>100.00%</b>

Source: CHA analysis of KCMO data.

## 2. KCMO's Geographic Market

The courts require that a local government limit the reach of its race- and gender-conscious contracting program to its geographic market area.<sup>138</sup> While it may be that KCMO's jurisdictional boundaries comprise its market area, this element of the analysis must be empirically established.<sup>139</sup>

To determine the relevant geographic market area, we applied the standard of identifying the firm locations that account for at least 75 percent of contract and subcontract dollar payments in the contract data file.<sup>140</sup> Location was determined by ZIP code and aggregated into counties as the geographic unit.

As presented in Table 4.4, spending in Missouri and Kansas accounted for 92.4%% of all contract dollars paid in the City's unconstrained product market. Within the spending in these two states, 6 counties (Buchanan, Cass, Clay, and Jackson Counties in Missouri; Johnson, and Wyandotte Counties in Kansas) captured 94.6% of all KCMO spending. Therefore, these 6 counties constituted the geographic market area from which we drew our availability data. Table 4.5 presents data on how the contract dollars were spent across the two state's counties.

**Table 4.5 Distribution of Contracts in KCMO's Product Market by State**

State	Pct Total Contract Dollars Paid	Cumulative Pct Total Contract Dollars
MO	77.9%	77.9%
KS	14.4%	92.4%
<b>TOTAL</b>		<b>100.0%</b>

Source: CHA analysis of KCMO's data.

**Table 4.6 Distribution of Contracts in KCMO's Product Market within Missouri and Kansas by County**

State	County	Pct Total Contract Dollars Paid	Cumulative Pct Total Contract Dollars
MO	Jackson County	57.4%	57.4%
MO	Clay County	11.7%	69.2%
KS	Johnson County	8.7%	77.8%
MO	Cass County	7.0%	84.9%

<sup>138</sup> *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).

<sup>139</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1520 (10th Cir. 1994) (to confine data to strict geographic boundaries would ignore "economic reality").

<sup>140</sup> National Disparity Study Guidelines, p. 49.

State	County	Pct Total Contract Dollars Paid	Cumulative Pct Total Contract Dollars
KS	Wyandotte County	6.1%	91.0%
MO	Buchanan County	3.7%	94.6%
<b>TOTAL</b>			<b>100.0%</b>

Source: CHA analysis of KCMO data.

### C. KCMO's Utilization of M/WBEs

Having determined the City's product and geographic market areas, the next essential step was to determine the dollar value of KCMO's utilization of M/WBEs as measured by payments to prime firms and subcontractors and disaggregated by race and gender. Although the City utilizes the B2GNow electronic data collection and monitoring system (discussed in Chapter III), it did not enter data for non-M/WBE certified subcontractors. We therefore had to obtain missing data from prime vendors, a very lengthy process.

Table 4.7 presents data on the total contract dollars paid by the City for each NAICS code in the constrained product market and the share the contract dollars comprise of all industries. It is important to note the contract dollar shares are equivalent to the weight of each NAICS code spending. These weights were used to transform data from unweighted availability to weighted availability.

**Table 4.7 NAICS Code Distribution of Contract Dollars  
All Sectors**

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
236220	Commercial and Institutional Building Construction	\$387,660,112	23.8%
237310	Highway, Street, and Bridge Construction	\$282,469,496	17.3%
541330	Engineering Services	\$122,431,698	7.5%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$94,729,090	5.8%
237110	Water and Sewer Line and Related Structures Construction	\$91,468,951	5.6%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	\$85,000,000	5.2%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
238220	Plumbing, Heating, and Air Conditioning Contractors	\$59,087,733	3.6%
622110	General Medical and Surgical Hospitals	\$52,249,254	3.2%
562119	Other Waste Collection	\$41,095,700	2.5%
488210	Support Activities for Rail Transportation	\$40,000,000	2.5%
441310	Automotive Parts and Accessories Stores	\$35,500,000	2.2%
238110	Poured Concrete Foundation and Structure Contractors	\$28,591,107	1.8%
562111	Solid Waste Collection	\$26,537,719	1.6%
562998	All Other Miscellaneous Waste Management Services	\$18,415,163	1.1%
531312	Nonresidential Property Managers	\$18,034,844	1.1%
424690	Other Chemical and Allied Products Merchant Wholesalers	\$17,285,000	1.1%
562211	Hazardous Waste Treatment and Disposal	\$16,081,396	1.0%
561612	Security Guards and Patrol Services	\$14,984,497	0.9%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	\$13,650,000	0.8%
484110	General Freight Trucking, Local	\$13,440,785	0.8%
562212	Solid Waste Landfill	\$10,622,522	0.7%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	\$10,054,501	0.6%
541310	Architectural Services	\$9,549,264	0.6%
327320	Ready Mix Concrete Manufacturing	\$9,339,096	0.6%
238120	Structural Steel and Precast Concrete Contractors	\$8,931,983	0.5%
561730	Landscaping Services	\$8,880,138	0.5%
561311	Employment Placement Agencies	\$8,000,000	0.5%
238910	Site Preparation Contractors	\$7,960,816	0.5%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
238990	All Other Specialty Trade Contractors	\$7,793,387	0.5%
444120	Paint and Wallpaper Stores	\$7,500,000	0.5%
517911	Telecommunications Resellers	\$7,300,000	0.4%
238330	Flooring Contractors	\$6,333,966	0.4%
541320	Landscape Architectural Services	\$5,352,776	0.3%
238160	Roofing Contractors	\$4,954,517	0.3%
336360	Motor Vehicle Seating and Interior Trim Manufacturing	\$4,910,000	0.3%
237990	Other Heavy and Civil Engineering Construction	\$4,826,874	0.3%
484121	General Freight Trucking, Long Distance, Truckload	\$4,714,149	0.3%
812930	Parking Lots and Garages	\$4,053,738	0.2%
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use	\$4,000,000	0.2%
238390	Other Building Finishing Contractors	\$3,754,697	0.2%
238140	Masonry Contractors	\$3,436,218	0.2%
541990	All Other Professional, Scientific, and Technical Services	\$3,408,196	0.2%
332312	Fabricated Structural Metal Manufacturing	\$3,374,967	0.2%
325311	Nitrogenous Fertilizer Manufacturing	\$3,000,000	0.2%
423390	Other Construction Material Merchant Wholesalers	\$2,941,686	0.2%
541370	Surveying and Mapping (except Geophysical) Services	\$2,941,654	0.2%
423830	Industrial Machinery and Equipment Merchant Wholesalers	\$2,625,840	0.2%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	\$2,550,000	0.2%
238320	Painting and Wall Covering Contractors	\$2,345,854	0.1%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
238310	Drywall and Insulation Contractors	\$2,252,641	0.1%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$2,138,150	0.1%
541511	Custom Computer Programming Services	\$983,294	0.1%
334210	Telephone Apparatus Manufacturing	\$480,098	0.0%
<b>Total</b>		<b>\$1,630,023,565</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data.

Tables 4.8a and 4.8b also present the paid contract dollars (total dollars and share of total dollars) by NAICS codes for all industries, this time disaggregated by race and gender.

**Table 4.8a Distribution of Contract Dollars by Race and Gender  
All Sectors  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
236220	\$3,166,561	\$24,819,514	\$7,377,390	\$10,434,103	\$45,797,568	\$16,116,778	\$325,745,766	\$387,660,112
237110	\$0	\$385,328	\$0	\$0	\$385,328	\$1,152,389	\$89,931,234	\$91,468,951
237310	\$15,763,171	\$4,207,654	\$190,386	\$2,386,613	\$22,547,823	\$24,324,625	\$235,597,048	\$282,469,496
237990	\$3,207,264	\$0	\$0	\$0	\$3,207,264	\$0	\$1,619,610	\$4,826,874
238110	\$2,517,279	\$6,087,872	\$905,493	\$10,574,699	\$20,085,342	\$3,282,517	\$5,223,247	\$28,591,107
238120	\$3,723,150	\$0	\$2,567,145	\$620,777	\$6,911,071	\$64,000	\$1,956,911	\$8,931,983
238140	\$41,745	\$540,680	\$0	\$0	\$582,425	\$2,493,182	\$360,610	\$3,436,218
238160	\$339,957	\$0	\$0	\$0	\$339,957	\$1,996,844	\$2,617,716	\$4,954,517
238210	\$29,603,680	\$956,722	\$0	\$39,236	\$30,599,638	\$35,984,761	\$28,144,692	\$94,729,090
238220	\$12,530,034	\$6,503,978	\$0	\$0	\$19,034,012	\$18,176,775	\$21,876,946	\$59,087,733
238310	\$67,617	\$0	\$0	\$0	\$67,617	\$121,319	\$2,063,705	\$2,252,641
238320	\$579,650	\$125,862	\$217,881	\$0	\$923,393	\$192,853	\$1,229,608	\$2,345,854
238330	\$5,000	\$0	\$0	\$0	\$5,000	\$6,012,494	\$316,472	\$6,333,966
238390	\$0	\$2,825,249	\$0	\$0	\$2,825,249	\$0	\$929,448	\$3,754,697
238910	\$1,494,936	\$0	\$0	\$380,562	\$1,875,498	\$877,321	\$5,207,998	\$7,960,816
238990	\$24,093	\$0	\$439,476	\$0	\$463,569	\$917,331	\$6,412,487	\$7,793,387



NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
325311	\$0	\$0	\$0	\$0	\$0	\$0	\$3,000,000	\$3,000,000
327320	\$0	\$0	\$6,839,096	\$0	\$6,839,096	\$0	\$2,500,000	\$9,339,096
332312	\$0	\$1,976,750	\$0	\$0	\$1,976,750	\$0	\$1,398,217	\$3,374,967
334210	\$0	\$0	\$0	\$0	\$0	\$0	\$480,098	\$480,098
334512	\$0	\$0	\$0	\$0	\$0	\$0	\$4,000,000	\$4,000,000
336360	\$0	\$0	\$0	\$0	\$0	\$0	\$4,910,000	\$4,910,000
423110	\$0	\$0	\$0	\$0	\$0	\$0	\$2,550,000	\$2,550,000
423390	\$2,937,943	\$0	\$0	\$0	\$2,937,943	\$0	\$3,743	\$2,941,686
423610	\$0	\$3,617,984	\$0	\$0	\$3,617,984	\$28,723	\$6,407,794	\$10,054,501
423720	\$0	\$0	\$0	\$0	\$0	\$0	\$13,650,000	\$13,650,000
423830	\$0	\$0	\$0	\$0	\$0	\$0	\$2,625,840	\$2,625,840
424690	\$0	\$0	\$0	\$0	\$0	\$0	\$17,285,000	\$17,285,000
424720	\$0	\$0	\$0	\$0	\$0	\$85,000,000	\$0	\$85,000,000
441310	\$0	\$0	\$0	\$0	\$0	\$0	\$35,500,000	\$35,500,000
444120	\$0	\$0	\$0	\$0	\$0	\$0	\$7,500,000	\$7,500,000
484110	\$10,579,580	\$153,410	\$0	\$0	\$10,732,990	\$2,703,693	\$4,103	\$13,440,785
484121	\$3,473,929	\$0	\$0	\$0	\$3,473,929	\$1,240,219	\$0	\$4,714,149
484220	\$1,638,778	\$0	\$0	\$0	\$1,638,778	\$499,372	\$0	\$2,138,150
488210	\$0	\$0	\$0	\$0	\$0	\$0	\$40,000,000	\$40,000,000
517911	\$0	\$0	\$0	\$0	\$0	\$0	\$7,300,000	\$7,300,000
531312	\$0	\$0	\$0	\$0	\$0	\$0	\$18,034,844	\$18,034,844
541310	\$572,798	\$145,000	\$0	\$68,000	\$785,798	\$2,942,327	\$5,821,140	\$9,549,264
541320	\$0	\$0	\$0	\$238,320	\$238,320	\$1,769,036	\$3,345,419	\$5,352,776
541330	\$11,864,756	\$1,644,218	\$6,276,460	\$2,015,364	\$21,800,797	\$9,447,408	\$91,183,493	\$122,431,698
541370	\$1,918,206	\$0	\$0	\$969,449	\$2,887,654	\$0	\$54,000	\$2,941,654
541511	\$0	\$711,810	\$0	\$0	\$711,810	\$0	\$271,485	\$983,294
541990	\$2,254,040	\$0	\$0	\$0	\$2,254,040	\$1,154,156	\$0	\$3,408,196
561311	\$0	\$0	\$0	\$0	\$0	\$0	\$8,000,000	\$8,000,000
561612	\$4,247,408	\$0	\$0	\$0	\$4,247,408	\$0	\$10,737,089	\$14,984,497

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
561730	\$1,246,179	\$150,809	\$0	\$0	\$1,396,988	\$4,010,824	\$3,472,326	\$8,880,138
562111	\$0	\$0	\$0	\$0	\$0	\$177,464	\$26,360,255	\$26,537,719
562119	\$0	\$0	\$0	\$0	\$0	\$0	\$41,095,700	\$41,095,700
562211	\$0	\$0	\$0	\$0	\$0	\$0	\$16,081,396	\$16,081,396
562212	\$0	\$0	\$0	\$0	\$0	\$0	\$10,622,522	\$10,622,522
562998	\$1,894,966	\$0	\$0	\$0	\$1,894,966	\$16,278	\$16,503,919	\$18,415,163
622110	\$0	\$0	\$0	\$0	\$0	\$0	\$52,249,254	\$52,249,254
812930	\$0	\$0	\$0	\$0	\$0	\$0	\$4,053,738	\$4,053,738
<b>Total</b>	<b>\$115,692,720</b>	<b>\$54,852,840</b>	<b>\$24,813,327</b>	<b>\$27,727,123</b>	<b>\$223,086,005</b>	<b>\$220,702,689</b>	<b>\$1,186,234,873</b>	<b>\$1,630,023,567</b>

Source: CHA analysis of KCMO data.

**Table 4.8b Distribution of Contract Dollars by Race and Gender  
All Sectors  
(share of total dollars)**

NAICS	Black	Hispanic	Asian	Native	MBE	WBE	Non-	Total
236220	0.8%	6.4%	1.9%	2.7%	11.8%	4.2%	84.0%	100.0%
237110	0.0%	0.4%	0.0%	0.0%	0.4%	1.3%	98.3%	100.0%
237310	5.6%	1.5%	0.1%	0.8%	8.0%	8.6%	83.4%	100.0%
237990	66.4%	0.0%	0.0%	0.0%	66.4%	0.0%	33.6%	100.0%
238110	8.8%	21.3%	3.2%	37.0%	70.3%	11.5%	18.3%	100.0%
238120	41.7%	0.0%	28.7%	7.0%	77.4%	0.7%	21.9%	100.0%
238140	1.2%	15.7%	0.0%	0.0%	16.9%	72.6%	10.5%	100.0%
238160	6.9%	0.0%	0.0%	0.0%	6.9%	40.3%	52.8%	100.0%
238210	31.3%	1.0%	0.0%	0.0%	32.3%	38.0%	29.7%	100.0%
238220	21.2%	11.0%	0.0%	0.0%	32.2%	30.8%	37.0%	100.0%
238310	3.0%	0.0%	0.0%	0.0%	3.0%	5.4%	91.6%	100.0%
238320	24.7%	5.4%	9.3%	0.0%	39.4%	8.2%	52.4%	100.0%
238330	0.1%	0.0%	0.0%	0.0%	0.1%	94.9%	5.0%	100.0%
238390	0.0%	75.2%	0.0%	0.0%	75.2%	0.0%	24.8%	100.0%
238910	18.8%	0.0%	0.0%	4.8%	23.6%	11.0%	65.4%	100.0%
238990	0.3%	0.0%	5.6%	0.0%	5.9%	11.8%	82.3%	100.0%

NAICS	Black	Hispanic	Asian	Native	MBE	WBE	Non-	Total
325311	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
327320	0.0%	0.0%	73.2%	0.0%	73.2%	0.0%	26.8%	100.0%
332312	0.0%	58.6%	0.0%	0.0%	58.6%	0.0%	41.4%	100.0%
334210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
334512	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
336360	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423390	99.9%	0.0%	0.0%	0.0%	99.9%	0.0%	0.1%	100.0%
423610	0.0%	36.0%	0.0%	0.0%	36.0%	0.3%	63.7%	100.0%
423720	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%
424690	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424720	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
441310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
444120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484110	78.7%	1.1%	0.0%	0.0%	79.9%	20.1%	0.0%	100.0%
484121	73.7%	0.0%	0.0%	0.0%	73.7%	26.3%	0.0%	100.0%
484220	76.6%	0.0%	0.0%	0.0%	76.6%	23.4%	0.0%	100.0%
488210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
517911	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
531312	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541310	6.0%	1.5%	0.0%	0.7%	8.2%	30.8%	61.0%	100.0%
541320	0.0%	0.0%	0.0%	4.5%	4.5%	33.0%	62.5%	100.0%
541330	9.7%	1.3%	5.1%	1.6%	17.8%	7.7%	74.5%	100.0%
541370	65.2%	0.0%	0.0%	33.0%	98.2%	0.0%	1.8%	100.0%
541511	0.0%	72.4%	0.0%	0.0%	72.4%	0.0%	27.6%	100.0%
541990	66.1%	0.0%	0.0%	0.0%	66.1%	33.9%	0.0%	100.0%
561311	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561612	28.3%	0.0%	0.0%	0.0%	28.3%	0.0%	71.7%	100.0%
561730	14.0%	1.7%	0.0%	0.0%	15.7%	45.2%	39.1%	100.0%

NAICS	Black	Hispanic	Asian	Native	MBE	WBE	Non-	Total
562111	0.0%	0.0%	0.0%	0.0%	0.0%	0.7%	99.3%	100.0%
562119	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562211	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562212	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562998	10.3%	0.0%	0.0%	0.0%	10.3%	0.1%	89.6%	100.0%
622110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
812930	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
<b>Total</b>	<b>7.1%</b>	<b>3.4%</b>	<b>1.5%</b>	<b>1.7%</b>	<b>13.7%</b>	<b>13.5%</b>	<b>72.8%</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data.

Tables 4-9 through 4-16b presents the same data as the previous three tables, this time disaggregating the data into Construction, Professional Services, Other Services, and Materials and Supplies sectors.

**Table 4.9 NAICS Code Distribution of Contract Dollars  
Construction**

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
236220	Commercial and Institutional Building Construction	\$387,660,112	35.2%
237310	Highway, Street, and Bridge Construction	\$282,469,496	25.7%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$94,729,090	8.6%
237110	Water and Sewer Line and Related Structures Construction	\$91,468,951	8.3%
238220	Plumbing, Heating, and Air Conditioning Contractors	\$59,087,733	5.4%
238110	Poured Concrete Foundation and Structure Contractors	\$28,591,107	2.6%
562111	Solid Waste Collection	\$26,537,719	2.4%
531312	Nonresidential Property Managers	\$18,034,844	1.6%
484110	General Freight Trucking, Local	\$13,440,785	1.2%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	\$10,054,501	0.9%
327320	Ready Mix Concrete Manufacturing	\$9,339,096	0.8%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
238120	Structural Steel and Precast Concrete Contractors	\$8,931,983	0.8%
561730	Landscaping Services	\$8,880,138	0.8%
238910	Site Preparation Contractors	\$7,960,816	0.7%
238990	All Other Specialty Trade Contractors	\$7,793,387	0.7%
444120	Paint and Wallpaper Stores	\$7,500,000	0.7%
238330	Flooring Contractors	\$6,333,966	0.6%
238160	Roofing Contractors	\$4,954,517	0.5%
237990	Other Heavy and Civil Engineering Construction	\$4,826,874	0.4%
484121	General Freight Trucking, Long Distance, Truckload	\$4,714,149	0.4%
238390	Other Building Finishing Contractors	\$3,754,697	0.3%
238140	Masonry Contractors	\$3,436,218	0.3%
423390	Other Construction Material Merchant Wholesalers	\$2,941,686	0.3%
238320	Painting and Wall Covering Contractors	\$2,345,854	0.2%
238310	Drywall and Insulation Contractors	\$2,252,641	0.2%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$2,138,150	0.2%
334210	Telephone Apparatus Manufacturing	\$480,098	0.0%
<b>TOTAL</b>		<b>\$1,100,658,608</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data.

**Table 4.10a Distribution of Contract Dollars by Race and Gender  
Construction  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
236220	\$3,166,561	\$24,819,514	\$7,377,390	\$10,434,103	\$45,797,568	\$16,116,778	\$325,745,766	\$387,660,112
237110	\$0	\$385,328	\$0	\$0	\$385,328	\$1,152,389	\$89,931,234	\$91,468,951
237310	\$15,763,171	\$4,207,654	\$190,386	\$2,386,613	\$22,547,823	\$24,324,625	\$235,597,048	\$282,469,496
237990	\$3,207,264	\$0	\$0	\$0	\$3,207,264	\$0	\$1,619,610	\$4,826,874

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
238110	\$2,517,279	\$6,087,872	\$905,493	\$10,574,699	\$20,085,342	\$3,282,517	\$5,223,247	\$28,591,107
238120	\$3,723,150	\$0	\$2,567,145	\$620,777	\$6,911,071	\$64,000	\$1,956,911	\$8,931,983
238140	\$41,745	\$540,680	\$0	\$0	\$582,425	\$2,493,182	\$360,610	\$3,436,218
238160	\$339,957	\$0	\$0	\$0	\$339,957	\$1,996,844	\$2,617,716	\$4,954,517
238210	\$29,603,680	\$956,722	\$0	\$39,236	\$30,599,638	\$35,984,761	\$28,144,692	\$94,729,090
238220	\$12,530,034	\$6,503,978	\$0	\$0	\$19,034,012	\$18,176,775	\$21,876,946	\$59,087,733
238310	\$67,617	\$0	\$0	\$0	\$67,617	\$121,319	\$2,063,705	\$2,252,641
238320	\$579,650	\$125,862	\$217,881	\$0	\$923,393	\$192,853	\$1,229,608	\$2,345,854
238330	\$5,000	\$0	\$0	\$0	\$5,000	\$6,012,494	\$316,472	\$6,333,966
238390	\$0	\$2,825,249	\$0	\$0	\$2,825,249	\$0	\$929,448	\$3,754,697
238910	\$1,494,936	\$0	\$0	\$380,562	\$1,875,498	\$877,321	\$5,207,998	\$7,960,816
238990	\$24,093	\$0	\$439,476	\$0	\$463,569	\$917,331	\$6,412,487	\$7,793,387
327320	\$0	\$0	\$6,839,096	\$0	\$6,839,096	\$0	\$2,500,000	\$9,339,096
334210	\$0	\$0	\$0	\$0	\$0	\$0	\$480,098	\$480,098
423390	\$2,937,943	\$0	\$0	\$0	\$2,937,943	\$0	\$3,743	\$2,941,686
423610	\$0	\$3,617,984	\$0	\$0	\$3,617,984	\$28,723	\$6,407,794	\$10,054,501
444120	\$0	\$0	\$0	\$0	\$0	\$0	\$7,500,000	\$7,500,000
484110	\$10,579,580	\$153,410	\$0	\$0	\$10,732,990	\$2,703,693	\$4,103	\$13,440,785
484121	\$3,473,929	\$0	\$0	\$0	\$3,473,929	\$1,240,219	\$0	\$4,714,149
484220	\$1,638,778	\$0	\$0	\$0	\$1,638,778	\$499,372	\$0	\$2,138,150
531312	\$0	\$0	\$0	\$0	\$0	\$0	\$18,034,844	\$18,034,844
561730	\$1,246,179	\$150,809	\$0	\$0	\$1,396,988	\$4,010,824	\$3,472,326	\$8,880,138
562111	\$0	\$0	\$0	\$0	\$0	\$177,464	\$26,360,255	\$26,537,719
<b>TOTAL</b>	<b>\$92,940,545</b>	<b>\$50,375,062</b>	<b>\$18,536,866</b>	<b>\$24,435,989</b>	<b>\$186,288,462</b>	<b>\$120,373,484</b>	<b>\$793,996,662</b>	<b>\$1,100,658,608</b>

Source: CHA analysis of KCMO data.

**Table 4.10b Distribution of Contract Dollars by Race and Gender  
Construction  
(share of total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
236220	0.8%	6.4%	1.9%	2.7%	11.8%	4.2%	84.0%	100.0%
237110	0.0%	0.4%	0.0%	0.0%	0.4%	1.3%	98.3%	100.0%
237310	5.6%	1.5%	0.1%	0.8%	8.0%	8.6%	83.4%	100.0%
237990	66.4%	0.0%	0.0%	0.0%	66.4%	0.0%	33.6%	100.0%
238110	8.8%	21.3%	3.2%	37.0%	70.3%	11.5%	18.3%	100.0%
238120	41.7%	0.0%	28.7%	7.0%	77.4%	0.7%	21.9%	100.0%
238140	1.2%	15.7%	0.0%	0.0%	16.9%	72.6%	10.5%	100.0%
238160	6.9%	0.0%	0.0%	0.0%	6.9%	40.3%	52.8%	100.0%
238210	31.3%	1.0%	0.0%	0.0%	32.3%	38.0%	29.7%	100.0%
238220	21.2%	11.0%	0.0%	0.0%	32.2%	30.8%	37.0%	100.0%
238310	3.0%	0.0%	0.0%	0.0%	3.0%	5.4%	91.6%	100.0%
238320	24.7%	5.4%	9.3%	0.0%	39.4%	8.2%	52.4%	100.0%
238330	0.1%	0.0%	0.0%	0.0%	0.1%	94.9%	5.0%	100.0%
238390	0.0%	75.2%	0.0%	0.0%	75.2%	0.0%	24.8%	100.0%
238910	18.8%	0.0%	0.0%	4.8%	23.6%	11.0%	65.4%	100.0%
238990	0.3%	0.0%	5.6%	0.0%	5.9%	11.8%	82.3%	100.0%
327320	0.0%	0.0%	73.2%	0.0%	73.2%	0.0%	26.8%	100.0%
334210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423390	99.9%	0.0%	0.0%	0.0%	99.9%	0.0%	0.1%	100.0%
423610	0.0%	36.0%	0.0%	0.0%	36.0%	0.3%	63.7%	100.0%
444120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484110	78.7%	1.1%	0.0%	0.0%	79.9%	20.1%	0.0%	100.0%
484121	73.7%	0.0%	0.0%	0.0%	73.7%	26.3%	0.0%	100.0%
484220	76.6%	0.0%	0.0%	0.0%	76.6%	23.4%	0.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
531312	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561730	14.0%	1.7%	0.0%	0.0%	15.7%	45.2%	39.1%	100.0%
562111	0.0%	0.0%	0.0%	0.0%	0.0%	0.7%	99.3%	100.0%
<b>TOTAL</b>	<b>8.4%</b>	<b>4.6%</b>	<b>1.7%</b>	<b>2.2%</b>	<b>16.9%</b>	<b>10.9%</b>	<b>72.1%</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data.

**Table 4.11 NAICS Code Distribution of Contract Dollars  
Professional Services**

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
541330	Engineering Services	\$122,431,698	85.2%
541310	Architectural Services	\$9,549,264	6.6%
541320	Landscape Architectural Services	\$5,352,776	3.7%
541990	All Other Professional, Scientific, and Technical Services	\$3,408,196	2.4%
541370	Surveying and Mapping (except Geophysical) Services	\$2,941,654	2.0%
<b>TOTAL</b>		<b>\$143,683,587</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data.

**Table 4.12a Distribution of Contract Dollars by Race and Gender  
Professional Services  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
541310	\$572,798	\$145,000	\$0	\$68,000	\$785,798	\$2,942,327	\$5,821,140	\$9,549,264
541320	\$0	\$0	\$0	\$238,320	\$238,320	\$1,769,036	\$3,345,419	\$5,352,776
541330	\$11,864,756	\$1,644,218	\$6,276,460	\$2,015,364	\$21,800,797	\$9,447,408	\$91,183,493	\$122,431,698
541370	\$1,918,206	\$0	\$0	\$969,449	\$2,887,654	\$0	\$54,000	\$2,941,654
541990	\$2,254,040	\$0	\$0	\$0	\$2,254,040	\$1,154,156	\$0	\$3,408,196
<b>TOTAL</b>	<b>\$16,609,799</b>	<b>\$1,789,218</b>	<b>\$6,276,460</b>	<b>\$3,291,133</b>	<b>\$27,966,609</b>	<b>\$15,312,927</b>	<b>\$100,404,051</b>	<b>\$143,683,587</b>

Source: CHA analysis of KCMO data.



**Table 4.12b Distribution of Contract Dollars by Race and Gender  
Professional Services  
(share of total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
541310	6.0%	1.5%	0.0%	0.7%	8.2%	30.8%	61.0%	100.0%
541320	0.0%	0.0%	0.0%	4.5%	4.5%	33.0%	62.5%	100.0%
541330	9.7%	1.3%	5.1%	1.6%	17.8%	7.7%	74.5%	100.0%
541370	65.2%	0.0%	0.0%	33.0%	98.2%	0.0%	1.8%	100.0%
541990	66.1%	0.0%	0.0%	0.0%	66.1%	33.9%	0.0%	100.0%
<b>TOTAL</b>	<b>11.6%</b>	<b>1.2%</b>	<b>4.4%</b>	<b>2.3%</b>	<b>19.5%</b>	<b>10.7%</b>	<b>69.9%</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data.

**Table 4.13 NAICS Code Distribution of Contract Dollars  
Other Services**

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
622110	General Medical and Surgical Hospitals	\$52,249,254	25.4%
562119	Other Waste Collection	\$41,095,700	20.0%
488210	Support Activities for Rail Transportation	\$40,000,000	19.4%
562998	All Other Miscellaneous Waste Management Services	\$18,415,163	8.9%
562211	Hazardous Waste Treatment and Disposal	\$16,081,396	7.8%
561612	Security Guards and Patrol Services	\$14,984,497	7.3%
562212	Solid Waste Landfill	\$10,622,522	5.2%
517911	Telecommunications Resellers	\$7,300,000	3.5%
812930	Parking Lots and Garages	\$4,053,738	2.0%
541511	Custom Computer Programming Services	\$983,294	0.5%
<b>TOTAL</b>		<b>\$205,785,563</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data.

**Table 4.14a Distribution of Contract Dollars by Race and Gender  
Other Services  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
488210	\$0	\$0	\$0	\$0	\$0	\$0	\$40,000,000	\$40,000,000
517911	\$0	\$0	\$0	\$0	\$0	\$0	\$7,300,000	\$7,300,000
541511	\$0	\$711,810	\$0	\$0	\$711,810	\$0	\$271,485	\$983,294
561612	\$4,247,408	\$0	\$0	\$0	\$4,247,408	\$0	\$10,737,089	\$14,984,497
562119	\$0	\$0	\$0	\$0	\$0	\$0	\$41,095,700	\$41,095,700
562211	\$0	\$0	\$0	\$0	\$0	\$0	\$16,081,396	\$16,081,396
562212	\$0	\$0	\$0	\$0	\$0	\$0	\$10,622,522	\$10,622,522
562998	\$1,894,966	\$0	\$0	\$0	\$1,894,966	\$16,278	\$16,503,919	\$18,415,163
622110	\$0	\$0	\$0	\$0	\$0	\$0	\$52,249,254	\$52,249,254
812930	\$0	\$0	\$0	\$0	\$0	\$0	\$4,053,738	\$4,053,738
<b>TOTAL</b>	<b>\$6,142,374</b>	<b>\$711,810</b>	<b>\$0</b>	<b>\$0</b>	<b>\$6,854,184</b>	<b>\$16,278</b>	<b>\$198,915,102</b>	<b>\$205,785,563</b>

Source: CHA analysis of KCMO data

**Table 4.14b Distribution of Contract Dollars by Race and Gender  
Other Services  
(share of total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
488210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
517911	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541511	0.0%	72.4%	0.0%	0.0%	72.4%	0.0%	27.6%	100.0%
561612	28.3%	0.0%	0.0%	0.0%	28.3%	0.0%	71.7%	100.0%
562119	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562211	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562212	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562998	10.3%	0.0%	0.0%	0.0%	10.3%	0.1%	89.6%	100.0%
622110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
812930	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
<b>TOTAL</b>	<b>3.0%</b>	<b>0.3%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>3.3%</b>	<b>0.0%</b>	<b>96.7%</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data.

**Table 4.15 NAICS Code Distribution of Contract Dollars  
Materials and Supplies**

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
424720	Nitrogenous Fertilizer Manufacturing	\$85,000,000	47.2%
441310	Fabricated Structural Metal Manufacturing	\$35,500,000	19.7%
424690	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use	\$17,285,000	9.6%
423720	Motor Vehicle Seating and Interior Trim Manufacturing	\$13,650,000	7.6%
561311	Automobile and Other Motor Vehicle Merchant Wholesalers	\$8,000,000	4.4%
336360	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	\$4,910,000	2.7%
334512	Industrial Machinery and Equipment Merchant Wholesalers	\$4,000,000	2.2%
332312	Other Chemical and Allied Products Merchant Wholesalers	\$3,374,967	1.9%
325311	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	\$3,000,000	1.7%
423830	Automotive Parts and Accessories Stores	\$2,625,840	1.5%
423110	Employment Placement Agencies	\$2,550,000	1.4%
<b>TOTAL</b>		<b>\$179,895,807</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data.

**Table 4.16a Distribution of Contract Dollars by Race and Gender  
Materials and Supplies  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
325311	\$0	\$0	\$0	\$0	\$0	\$0	\$3,000,000	\$3,000,000
332312	\$0	\$1,976,750	\$0	\$0	\$1,976,750	\$0	\$1,398,217	\$3,374,967
334512	\$0	\$0	\$0	\$0	\$0	\$0	\$4,000,000	\$4,000,000
336360	\$0	\$0	\$0	\$0	\$0	\$0	\$4,910,000	\$4,910,000
423110	\$0	\$0	\$0	\$0	\$0	\$0	\$2,550,000	\$2,550,000
423720	\$0	\$0	\$0	\$0	\$0	\$0	\$13,650,000	\$13,650,000
423830	\$0	\$0	\$0	\$0	\$0	\$0	\$2,625,840	\$2,625,840
424690	\$0	\$0	\$0	\$0	\$0	\$0	\$17,285,000	\$17,285,000
424720	\$0	\$0	\$0	\$0	\$0	\$85,000,000	\$0	\$85,000,000
441310	\$0	\$0	\$0	\$0	\$0	\$0	\$35,500,000	\$35,500,000
561311	\$0	\$0	\$0	\$0	\$0	\$0	\$8,000,000	\$8,000,000
<b>TOTAL</b>	<b>\$0</b>	<b>\$1,976,750</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,976,750</b>	<b>\$85,000,000</b>	<b>\$92,919,057</b>	<b>\$179,895,807</b>

Source: CHA analysis of KCMO data.

**Table 4.16b Distribution of Contract Dollars by Race and Gender  
Materials and Supplies  
(share of total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
325311	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
332312	0.0%	58.6%	0.0%	0.0%	58.6%	0.0%	41.4%	100.0%
334512	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
336360	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423720	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%
424690	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424720	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
441310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561311	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
<b>TOTAL</b>	<b>0.0%</b>	<b>1.1%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>1.1%</b>	<b>47.2%</b>	<b>51.7%</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data.

## 1. Availability of M/WBEs in KCMO’s Market

### a. Methodological Framework

Estimates of the availability of minority- and female-owned firms in the City’s market area are a critical component of the analysis of possible barriers to equal opportunities to participate in the agency’s contracting activities. These availability estimates are compared to the utilization percentage of dollars received by M/WBEs to examine whether minority- and women-owned firms receive parity.<sup>141</sup> Availability estimates are also crucial for KCMO to set narrowly tailored contract goals.

We applied the “custom census” approach to estimating availability. As recognized by the courts and the National Model Disparity Study Guidelines,<sup>142</sup> this methodology 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) and the denominator (e.g., registered vendors or the Census Bureaus’ County Business Patterns data).

Next, 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. 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. Most 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 women 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

---

<sup>141</sup> For our analysis, the term “M/WBE” includes firms that are certified by the City and minority- and women-owned firms that are not certified. As discussed in Chapter II, the inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts that supports the remedial nature of the programs. See *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 723 (7<sup>th</sup> Cir. 2007) (The “remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net.”).

<sup>142</sup> National Disparity Study Guidelines, pp.57-58.

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.<sup>143</sup>

Fourth, it has been upheld by every court that has reviewed it, including in the recent successful defenses of the Illinois State Toll Highway’s DBE program,<sup>144</sup> and the Illinois Department of Transportation’s DBE program.<sup>145</sup>

**b. Estimation of M/WBE Availability**

To conduct the Custom Census for this study, CHA utilized three different databases:

5. The KCMO Final Contract Data File (described in Section A of this Chapter).
6. A Master M/W/DBE Directory compiled by CHA.
7. Dun & Bradstreet/Hoovers Database downloaded from the companies’ website.

The Master M/WDBE Directory combined the results of an exhaustive search for directories and other lists containing information about minority and women businesses. The resulting list of minority businesses is comprehensive.

We took the following steps to develop the Dun & Bradstreet/Hoovers Database. After compiling the Master M/W/DBE Directory, we limited the firms we used in this Custom Census analysis to those firms operating within the City’s constrained product market. We purchased the firm information from Hoovers for the firms in the NAICS codes located in KCMO’s market area in order to form the Dun & Bradstreet/Hoovers Database. Hoovers, a Dun & Bradstreet company, 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. In the initial download, the data from Hoovers simply identify a firm as being minority-owned.<sup>146</sup> 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.<sup>147</sup>

We merged these three databases to form an accurate estimate of firm availability to the agency. Table 4.17 present data on the unweighted availability by race and gender and by NAICS codes for all industries in the KCMO’s constrained product market.

**Table 4.17 Unweighted Availability  
All Sectors  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native	MBE	WBE	Non- MBE	Total
236220	9.4%	8.7%	2.4%	4.4%	24.9%	17.9%	57.2%	100.0%
237110	6.2%	1.5%	0.2%	2.2%	10.1%	22.0%	67.9%	100.0%

<sup>143</sup> For a detailed discussion of the role of capacity in disparity studies, see the National Disparity Study Guidelines, Appendix B, “Understanding Capacity.”

<sup>144</sup> *Midwest Fence, Corp. v. U.S. Department of Transportation et al*, 1:10-cv-05627 (N. Dist. Ill., March 24, 2015).

<sup>145</sup> *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7<sup>th</sup> Cir. 2007).

<sup>146</sup> The variable is labeled: “Is Minority Owned” and values for the variable can be either “yes” or “no”.

<sup>147</sup> Hoovers was able to provide the detailed information for 75% of the firms. We used the available information to estimate the detailed information for the firms where the data was not provided.

NAICS	Black	Hispanic	Asian	Native	MBE	WBE	Non-	Total
237310	5.6%	6.3%	0.8%	1.5%	14.2%	24.2%	61.5%	100.0%
237990	12.3%	1.7%	0.1%	0.2%	14.3%	5.7%	80.0%	100.0%
238110	10.4%	5.3%	1.9%	3.9%	21.5%	7.5%	71.0%	100.0%
238120	40.3%	2.3%	8.6%	5.4%	56.7%	11.7%	31.7%	100.0%
238140	4.2%	3.1%	0.2%	0.3%	7.8%	11.8%	80.4%	100.0%
238160	2.3%	0.9%	0.2%	0.2%	3.6%	6.1%	90.3%	100.0%
238210	11.6%	2.1%	0.6%	1.3%	15.6%	13.5%	70.8%	100.0%
238220	4.0%	2.5%	0.3%	0.4%	7.3%	9.2%	83.6%	100.0%
238310	5.3%	0.7%	0.3%	0.5%	6.8%	6.3%	86.8%	100.0%
238320	3.9%	0.9%	1.0%	0.4%	6.3%	5.6%	88.1%	100.0%
238330	4.3%	1.7%	0.1%	0.1%	6.2%	26.2%	67.7%	100.0%
238390	3.0%	8.1%	0.3%	0.4%	11.7%	5.3%	83.0%	100.0%
238910	9.6%	1.5%	1.3%	3.2%	15.6%	10.5%	73.8%	100.0%
238990	3.7%	0.8%	0.6%	0.5%	5.6%	8.1%	86.3%	100.0%
325311	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
327320	2.0%	0.7%	52.8%	0.4%	55.9%	1.7%	42.4%	100.0%
332312	1.1%	13.8%	0.2%	0.2%	15.4%	17.3%	67.3%	100.0%
334210	20.0%	0.0%	0.0%	0.0%	20.0%	10.0%	70.0%	100.0%
334512	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
336360	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423110	0.7%	0.2%	0.1%	0.1%	1.2%	5.8%	93.0%	100.0%
423390	9.5%	0.5%	0.2%	0.3%	10.5%	15.8%	73.7%	100.0%
423610	1.8%	3.0%	0.8%	0.4%	6.0%	5.4%	88.7%	100.0%
423720	3.2%	0.5%	0.4%	0.3%	4.4%	7.8%	87.8%	100.0%
423830	1.9%	0.4%	0.4%	0.3%	2.9%	7.3%	89.7%	100.0%
424690	4.5%	0.8%	1.7%	0.6%	7.5%	18.3%	74.2%	100.0%
424720	4.5%	0.4%	0.3%	0.3%	5.6%	8.3%	86.1%	100.0%
441310	0.3%	0.1%	0.1%	0.0%	0.5%	1.8%	97.7%	100.0%
444120	1.9%	0.2%	0.1%	0.1%	2.3%	4.5%	93.2%	100.0%
484110	13.4%	1.2%	0.5%	0.8%	15.9%	7.5%	76.7%	100.0%

NAICS	Black	Hispanic	Asian	Native	MBE	WBE	Non-	Total
484121	9.5%	0.5%	0.2%	1.1%	11.2%	5.6%	83.1%	100.0%
484220	41.1%	1.2%	1.7%	0.7%	44.7%	25.9%	29.4%	100.0%
488210	2.4%	0.5%	0.5%	0.4%	3.8%	5.0%	91.3%	100.0%
517911	1.0%	0.2%	0.2%	0.2%	1.7%	3.3%	95.0%	100.0%
531312	0.2%	0.1%	0.0%	0.0%	0.4%	1.4%	98.2%	100.0%
541310	4.7%	2.1%	1.0%	1.5%	9.3%	13.9%	76.8%	100.0%
541320	1.7%	0.4%	0.2%	0.8%	3.1%	9.6%	87.4%	100.0%
541330	10.9%	2.7%	3.6%	1.5%	18.8%	12.0%	69.2%	100.0%
541370	13.1%	1.4%	1.7%	16.8%	33.0%	3.4%	63.6%	100.0%
541511	6.6%	1.9%	2.2%	1.1%	11.8%	7.4%	80.8%	100.0%
541990	1.3%	0.3%	0.2%	0.2%	2.0%	6.1%	91.8%	100.0%
561311	7.1%	1.4%	1.2%	1.5%	11.2%	17.4%	71.4%	100.0%
561612	6.7%	1.1%	1.3%	0.7%	9.8%	8.0%	82.1%	100.0%
561730	5.7%	0.7%	0.2%	0.5%	7.1%	6.3%	86.6%	100.0%
562111	8.9%	0.7%	0.3%	0.4%	10.3%	31.0%	58.6%	100.0%
562119	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562211	4.9%	1.1%	1.0%	0.8%	7.7%	3.8%	88.5%	100.0%
562212	7.9%	2.7%	1.1%	1.7%	13.3%	0.0%	86.7%	100.0%
562998	28.7%	1.2%	0.5%	0.8%	31.3%	6.3%	62.5%	100.0%
622110	0.0%	0.0%	0.0%	0.0%	0.0%	3.0%	97.0%	100.0%
812930	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
<b>Total</b>	<b>5.9%</b>	<b>1.9%</b>	<b>1.1%</b>	<b>1.1%</b>	<b>10.0%</b>	<b>9.1%</b>	<b>80.9%</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data; Hoovers; CHA Master Directory.

To further meet the constitutional requirement that the availability estimates that will be used to set goals are narrowly tailored, we then weighted the availability estimate for each of the aggregated industries in the NAICS codes by the share of KCMO's spending in each code. Tables 4.18 present these weights for all contracts<sup>148</sup>. Tables 4.19 presents the final estimates of the weighted averages of the individual 6-digit level availability estimates in the City's market area.

<sup>148</sup> These weights are equivalent to the share of contract dollars presented in Table 4.6 above



**Table 4.18 Share of KCMO Spending by NAICS Code  
All Sectors**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
236220	Commercial and Institutional Building Construction	23.8%
237110	Water and Sewer Line and Related Structures Construction	5.6%
237310	Highway, Street, and Bridge Construction	17.3%
237990	Other Heavy and Civil Engineering Construction	0.3%
238110	Poured Concrete Foundation and Structure Contractors	1.8%
238120	Structural Steel and Precast Concrete Contractors	0.5%
238140	Masonry Contractors	0.2%
238160	Roofing Contractors	0.3%
238210	Electrical Contractors and Other Wiring Installation Contractors	5.8%
238220	Plumbing, Heating, and Air Conditioning Contractors	3.6%
238310	Drywall and Insulation Contractors	0.1%
238320	Painting and Wall Covering Contractors	0.1%
238330	Flooring Contractors	0.4%
238390	Other Building Finishing Contractors	0.2%
238910	Site Preparation Contractors	0.5%
238990	All Other Specialty Trade Contractors	0.5%
325311	Nitrogenous Fertilizer Manufacturing	0.2%
327320	Ready Mix Concrete Manufacturing	0.6%
332312	Fabricated Structural Metal Manufacturing	0.2%
334210	Telephone Apparatus Manufacturing	0.0%
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use	0.2%
336360	Motor Vehicle Seating and Interior Trim Manufacturing	0.3%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	0.2%
423390	Other Construction Material Merchant Wholesalers	0.2%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.6%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	0.8%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.2%
424690	Other Chemical and Allied Products Merchant Wholesalers	1.1%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	5.2%
441310	Automotive Parts and Accessories Stores	2.2%
444120	Paint and Wallpaper Stores	0.5%
484110	General Freight Trucking, Local	0.8%
484121	General Freight Trucking, Long Distance, Truckload	0.3%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.1%
488210	Support Activities for Rail Transportation	2.5%
517911	Telecommunications Resellers	0.4%
531312	Nonresidential Property Managers	1.1%
541310	Architectural Services	0.6%
541320	Landscape Architectural Services	0.3%
541330	Engineering Services	7.5%
541370	Surveying and Mapping (except Geophysical) Services	0.2%
541511	Custom Computer Programming Services	0.1%
541990	All Other Professional, Scientific, and Technical Services	0.2%
561311	Employment Placement Agencies	0.5%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
561612	Security Guards and Patrol Services	0.9%
561730	Landscaping Services	0.5%
562111	Solid Waste Collection	1.6%
562119	Other Waste Collection	2.5%
562211	Hazardous Waste Treatment and Disposal	1.0%
562212	Solid Waste Landfill	0.7%
562998	All Other Miscellaneous Waste Management Services	1.1%
622110	General Medical and Surgical Hospitals	3.2%
812930	Parking Lots and Garages	0.2%
<b>Total</b>		<b>100.0%</b>

Source: CHA analysis of KCMO data.

**Table 4.19 Aggregated Weighted Availability  
All Sectors  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	TOTAL
TOTAL	7.1%	4.0%	1.6%	1.9%	14.7%	14.4%	71.0%	100.0%

Source: CHA analysis of KCMO data; Hoovers; CHA Master Directory.

Tables 4-20 through 4-30 presents the same data as the previous three tables, this time disaggregating the data into Construction, Professional Services, Other Services, and Materials and Supplies sectors.

**Table 4.20 Unweighted Availability  
Construction  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
236220	9.4%	8.7%	2.4%	4.4%	24.9%	17.9%	57.2%	100.0%
237110	6.2%	1.5%	0.2%	2.2%	10.1%	22.0%	67.9%	100.0%
237310	5.6%	6.3%	0.8%	1.5%	14.2%	24.2%	61.5%	100.0%
237990	12.3%	1.7%	0.1%	0.2%	14.3%	5.7%	80.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
238110	10.4%	5.3%	1.9%	3.9%	21.5%	7.5%	71.0%	100.0%
238120	40.3%	2.3%	8.6%	5.4%	56.7%	11.7%	31.7%	100.0%
238140	4.2%	3.1%	0.2%	0.3%	7.8%	11.8%	80.4%	100.0%
238160	2.3%	0.9%	0.2%	0.2%	3.6%	6.1%	90.3%	100.0%
238210	11.6%	2.1%	0.6%	1.3%	15.6%	13.5%	70.8%	100.0%
238220	4.0%	2.5%	0.3%	0.4%	7.3%	9.2%	83.6%	100.0%
238310	5.3%	0.7%	0.3%	0.5%	6.8%	6.3%	86.8%	100.0%
238320	3.9%	0.9%	1.0%	0.4%	6.3%	5.6%	88.1%	100.0%
238330	4.3%	1.7%	0.1%	0.1%	6.2%	26.2%	67.7%	100.0%
238390	3.0%	8.1%	0.3%	0.4%	11.7%	5.3%	83.0%	100.0%
238910	9.6%	1.5%	1.3%	3.2%	15.6%	10.5%	73.8%	100.0%
238990	3.7%	0.8%	0.6%	0.5%	5.6%	8.1%	86.3%	100.0%
327320	2.0%	0.7%	52.8%	0.4%	55.9%	1.7%	42.4%	100.0%
334210	20.0%	0.0%	0.0%	0.0%	20.0%	10.0%	70.0%	100.0%
423390	9.5%	0.5%	0.2%	0.3%	10.5%	15.8%	73.7%	100.0%
423610	1.8%	3.0%	0.8%	0.4%	6.0%	5.4%	88.7%	100.0%
444120	1.9%	0.2%	0.1%	0.1%	2.3%	4.5%	93.2%	100.0%
484110	13.4%	1.2%	0.5%	0.8%	15.9%	7.5%	76.7%	100.0%
484121	9.5%	0.5%	0.2%	1.1%	11.2%	5.6%	83.1%	100.0%
484220	41.1%	1.2%	1.7%	0.7%	44.7%	25.9%	29.4%	100.0%
531312	0.2%	0.1%	0.0%	0.0%	0.4%	1.4%	98.2%	100.0%
561730	5.7%	0.7%	0.2%	0.5%	7.1%	6.3%	86.6%	100.0%
562111	8.9%	0.7%	0.3%	0.4%	10.3%	31.0%	58.6%	100.0%
<b>TOTAL</b>	<b>6.8%</b>	<b>2.3%</b>	<b>1.1%</b>	<b>1.1%</b>	<b>11.3%</b>	<b>9.5%</b>	<b>79.2%</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data; Hoovers; CHA Master Directory.

**Table 4.21 Share of KCMO Spending by NAICS Code  
Construction**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
236220	Commercial and Institutional Building Construction	35.2%
237110	Water and Sewer Line and Related Structures Construction	8.3%
237310	Highway, Street, and Bridge Construction	25.7%
237990	Other Heavy and Civil Engineering Construction	0.4%
238110	Poured Concrete Foundation and Structure Contractors	2.6%
238120	Structural Steel and Precast Concrete Contractors	0.8%
238140	Masonry Contractors	0.3%
238160	Roofing Contractors	0.5%
238210	Electrical Contractors and Other Wiring Installation Contractors	8.6%
238220	Plumbing, Heating, and Air Conditioning Contractors	5.4%
238310	Drywall and Insulation Contractors	0.2%
238320	Painting and Wall Covering Contractors	0.2%
238330	Flooring Contractors	0.6%
238390	Other Building Finishing Contractors	0.3%
238910	Site Preparation Contractors	0.7%
238990	All Other Specialty Trade Contractors	0.7%
327320	Ready Mix Concrete Manufacturing	0.8%
334210	Telephone Apparatus Manufacturing	0.0%
423390	Other Construction Material Merchant Wholesalers	0.3%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.9%
444120	Paint and Wallpaper Stores	0.7%
484110	General Freight Trucking, Local	1.2%
484121	General Freight Trucking, Long Distance, Truckload	0.4%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
484220	Specialized Freight (except Used Goods) Trucking, Local	0.2%
531312	Nonresidential Property Managers	1.6%
561730	Landscaping Services	0.8%
562111	Solid Waste Collection	2.4%
<b>TOTAL</b>		<b>100.0%</b>

Source: CHA analysis of KCMO data.

**Table 4.22 Aggregated Weighted Availability  
Construction  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	TOTAL
TOTAL	7.9%	5.4%	1.8%	2.5%	17.6%	17.8%	64.6%	100.0%

Source: CHA analysis of KCMO data; Hoovers; CHA Master Directory.

**Table 4.23 Unweighted Availability  
Professional Services  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
541310	4.7%	2.1%	1.0%	1.5%	9.3%	13.9%	76.8%	100.0%
541320	1.7%	0.4%	0.2%	0.8%	3.1%	9.6%	87.4%	100.0%
541330	13.1%	1.4%	1.7%	16.8%	33.0%	3.4%	63.6%	100.0%
541370	1.3%	0.3%	0.2%	0.2%	2.0%	6.1%	91.8%	100.0%
541990	10.9%	2.7%	3.6%	1.5%	18.8%	12.0%	69.2%	100.0%
<b>TOTAL</b>	<b>4.8%</b>	<b>1.2%</b>	<b>1.3%</b>	<b>1.3%</b>	<b>8.6%</b>	<b>8.9%</b>	<b>82.5%</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data; Hoovers; CHA Master Directory.

**Table 4.24 Share of KCMO Spending by NAICS Code  
Professional Services**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
541310	Architectural Services	6.6%
541320	Landscape Architectural Services	3.7%
541330	Engineering Services	85.2%
541370	Surveying and Mapping (except Geophysical) Services	2.0%
541990	All Other Professional, Scientific, and Technical Services	2.4%
<b>TOTAL</b>		<b>100.0%</b>

Source: CHA analysis of KCMO data.

**Table 4.25 Aggregated Weighted Availability  
Professional Services  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	TOTAL
TOTAL	11.8%	1.4%	1.6%	14.5%	29.3%	4.6%	66.1%	100.0%

Source: CHA analysis of KCMO data; Hoovers; CHA Master Directory.

**Table 4.26 Unweighted Availability  
Other Services  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
488210	2.4%	0.5%	0.5%	0.4%	3.8%	5.0%	91.3%	100.0%
517911	1.0%	0.2%	0.2%	0.2%	1.7%	3.3%	95.0%	100.0%
541511	6.6%	1.9%	2.2%	1.1%	11.8%	7.4%	80.8%	100.0%
561612	6.7%	1.1%	1.3%	0.7%	9.8%	8.0%	82.1%	100.0%
562119	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562211	4.9%	1.1%	1.0%	0.8%	7.7%	3.8%	88.5%	100.0%
562212	7.9%	2.7%	1.1%	1.7%	13.3%	0.0%	86.7%	100.0%
562998	28.7%	1.2%	0.5%	0.8%	31.3%	6.3%	62.5%	100.0%

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
622110	0.0%	0.0%	0.0%	0.0%	0.0%	3.0%	97.0%	100.0%
812930	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
<b>TOTAL</b>	<b>5.1%</b>	<b>1.2%</b>	<b>1.4%</b>	<b>0.7%</b>	<b>8.5%</b>	<b>6.0%</b>	<b>85.6%</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data; Hoovers; CHA Master Directory.

**Table 4.27 Share of KCMO Spending by NAICS Code  
Other Services**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
488210	Support Activities for Rail Transportation	19.4%
517911	Telecommunications Resellers	3.5%
541511	Custom Computer Programming Services	0.5%
561612	Security Guards and Patrol Services	7.3%
562119	Other Waste Collection	20.0%
562211	Hazardous Waste Treatment and Disposal	7.8%
562212	Solid Waste Landfill	5.2%
562998	All Other Miscellaneous Waste Management Services	8.9%
622110	General Medical and Surgical Hospitals	25.4%
812930	Parking Lots and Garages	2.0%
<b>TOTAL</b>		<b>100.0%</b>

Source: CHA analysis of KCMO data.

**Table 4.28 Aggregated Weighted Availability  
Other Services  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	TOTAL
<b>TOTAL</b>	<b>4.4%</b>	<b>0.5%</b>	<b>0.4%</b>	<b>0.4%</b>	<b>5.6%</b>	<b>3.3%</b>	<b>91.0%</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data; Hoovers; CHA Master Directory.



**Table 4.29 Unweighted Availability  
Materials and Supplies  
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	Total
325311	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
332312	1.1%	13.8%	0.2%	0.2%	15.4%	17.3%	67.3%	100.0%
334512	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
336360	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423110	0.7%	0.2%	0.1%	0.1%	1.2%	5.8%	93.0%	100.0%
423720	3.2%	0.5%	0.4%	0.3%	4.4%	7.8%	87.8%	100.0%
423830	1.9%	0.4%	0.4%	0.3%	2.9%	7.3%	89.7%	100.0%
424690	4.5%	0.8%	1.7%	0.6%	7.5%	18.3%	74.2%	100.0%
424720	4.5%	0.4%	0.3%	0.3%	5.6%	8.3%	86.1%	100.0%
441310	0.3%	0.1%	0.1%	0.0%	0.5%	1.8%	97.7%	100.0%
561311	7.1%	1.4%	1.2%	1.5%	11.2%	17.4%	71.4%	100.0%
<b>TOTAL</b>	<b>2.9%</b>	<b>1.1%</b>	<b>0.5%</b>	<b>0.5%</b>	<b>5.0%</b>	<b>9.4%</b>	<b>85.6%</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data; Hoovers; CHA Master Directory.

**Table 4.30 Share of KCMO Spending by NAICS Code  
Materials and Supplies**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
325311	Nitrogenous Fertilizer Manufacturing	1.7%
332312	Fabricated Structural Metal Manufacturing	1.9%
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use	2.2%
336360	Motor Vehicle Seating and Interior Trim Manufacturing	2.7%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	1.4%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	7.6%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
423830	Industrial Machinery and Equipment Merchant Wholesalers	1.5%
424690	Other Chemical and Allied Products Merchant Wholesalers	9.6%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	47.2%
441310	Automotive Parts and Accessories Stores	19.7%
561311	Employment Placement Agencies	4.4%
<b>TOTAL</b>	<b>100.0%</b>	<b>100.0%</b>

Source: CHA analysis of KCMO data.

**Table 4.31 Aggregated Weighted Availability Materials and Supplies (total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	WBE	Non-MWBE	TOTAL
TOTAL	3.2%	0.6%	0.4%	0.3%	4.6%	7.9%	87.4%	100.0%

Source: CHA analysis of KCMO data; Hoovers; CHA Master Directory.

These weighted availability estimates can be used by KCMO to set its MBE and WBE goals.

#### **D. Analysis of Race and Gender Disparities in KCMO’s Utilization of Minority- and Women-Owned Business Enterprises**

To meet the strict scrutiny requirement that the City consider evidence of disparities to establish its compelling interest in remedying discrimination in its market area, we next calculated disparity ratios for total M/WBE utilization compared to the total weighted availability of M/WBEs, measured in dollars paid.

A “large” or “substantively significant” disparity is commonly defined by courts as utilization that is equal to or less than 80 percent of the availability measure. A substantively significant disparity supports the inference that the result may be caused by the disparate impacts of discrimination.<sup>149</sup> A 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. A more in depth discussion of statistical significance is provided in Appendix C.

---

<sup>149</sup> See U.S. Equal Opportunity Employment 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.”).

Tables 4.32 through 4.36 present the results of this disparity analysis by demographic group for all combined data set and each of the individual sectors.<sup>150</sup> These results appear to reflect the results of KCMO's programs that have brought M/WBEs close to parity with non-M/WBEs. Without the continued implementation of race- and gender-conscious measures, however, it may be that disparities would worsen, suggesting that the City would then function as a passive participant in marketplace discrimination.

**Table 4.32: Disparity Ratios by Demographic Group, All Sectors**

Demographic Group	Disparity Ratio
Black	99.3%
Hispanic	83.3%
Asian	96.7%
Native American	89.7%
MBE	93.4%
WBE	94.2%
Non-MWBE	102.5%

Source: CHA analysis of KCMO data.

\*Indicates substantive significance

**Table 4.33: Disparity Ratios by Demographic Group, Construction**

Demographic Group	Disparity Ratio
Black	106.5%
Hispanic	84.0%
Asian	95.2%
Native American	89.9%
MBE	96.1%
WBE	61.3%* **
Non-MWBE	111.8%**

Source: CHA analysis of KCMO data.

---

<sup>150</sup> A Chi-square test was performed on the disparity ratios to see if the results were statistically significant. The test could not be run on the Material and Supplies sector and the Other Services sector because the number of observations was too small. None of the disparity ratios for All sectors was statistically significant. In the Construction sector, the disparity ratios for WBE and Non-MWBE were statistically significant. In the Professional Services sector, the disparity ratios for MBE and WBE were significant.

\* Indicates substantive significance

\*\* Indicates statistical significance

**Table 4.34: Disparity Ratios by Demographic Group, Professional Services**

Demographic Group	Disparity Ratio
Black	97.6%
Hispanic	90.0%
Asian	270.9%
Native American	15.8%*
MBE	66.4%* **
WBE	231.9%**
Non-MWBE	105.7%

Source: CHA analysis of KCMO data.

\* Indicates substantive significance

\*\* Indicates statistical significance

**Table 4.35: Disparity Ratios by Demographic Group, Other Services**

Demographic Group	Disparity Ratio
Black	68.2%*
Hispanic	65.2%*
Asian	0.0%*
Native American	0.0%*
MBE	59.0%*
WBE	0.2%*
Non-MWBE	106.2%

Source: CHA analysis of KCMO data.

\* Indicates substantive significance

**Table 4.36: Disparity Ratios by Demographic Group, Materials and Supplies**

Demographic Group	Disparity Ratio
Black	0.0%*

Demographic Group	Disparity Ratio
Hispanic	172.8%
Asian	0.0%*
Native American	0.0%*
MBE	23.8%*
WBE	595.6%
Non-MWBE	59.1%*

Source: CHA analysis of KCMO data.

\* Indicates substantive significance

## V. ANALYSIS OF DISPARITIES IN KCMO'S ECONOMY

### 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.<sup>151</sup>

This Chapter explores the data and literature relevant to how discrimination in Kansas City, Missouri's (KCMO or City) market and throughout the wider economy affects the ability of minorities and women to fairly and fully engage in City contract opportunities. First, we analyzed the rates at which M/WBEs in Illinois form firms and their earnings from those firms. 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 interventions.

A key element to determine the need for government intervention through contract goals in the sectors of the economy where the KCMO procures goods and services is an analysis of the extent of disparities in those sectors independent of the agency's intervention through its contracting affirmative action programs. The courts have repeatedly held that analysis of disparities in the rates at which minority- and women-owned business enterprises ("M/WBEs") in the government's markets form businesses compared to similar non-M/WBEs, and their earnings from such businesses, are highly relevant to the determination whether the market functions properly for all firms regardless of the race or gender of their ownership.<sup>152</sup>

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 similar non-M/WBEs, their earnings from such businesses, and their access to capital markets are highly relevant to the determination whether the market functions properly for all firms regardless of the race or gender of their ownership. These analyses contributed to the successful defense of Chicago's construction program.<sup>153</sup> As 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

---

<sup>151</sup> Arrow, Kenneth J., "What Has Economics to say about racial discrimination?", *Journal of Economic Perspectives*, (1998), 12(2), pp. 91-100.

<sup>152</sup> See the discussion in Chapter II of the legal standards applicable to contracting affirmative action programs.

<sup>153</sup> *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003) (holding that City of Chicago's M/WBE program for local construction contracts met compelling interest using this framework).

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.<sup>154</sup>

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. “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 again demonstrates that *existing* M/WBEs are precluded from competing for public contracts.”<sup>155</sup> Despite the contentions of plaintiffs that possibly dozens of factors might influence the ability of any individual to succeed in business, the courts have rejected such impossible tests and held that business formation studies are not flawed because they cannot control for subjective descriptions such as “quality of education,” “culture” and “religion.”

For example, in unanimously upholding the USDOT 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.<sup>156</sup> 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.<sup>157</sup>

To conduct this type of court-approved economy-wide analysis, we utilized U.S. Bureau of the Census datasets to address the central question whether firms owned by non-Whites and White women face disparate treatment in KCMO's marketplace.<sup>158</sup>

We explored the existence of any disparities by analyzing two datasets, each of which permits examination of the issue from a unique vantage point.

- The Census Bureau's *Survey of Business Owners* allows us to examine disparities using individual firms as the basic unit of analysis.

---

<sup>154</sup> *Adarand VII*, 228 F.3d at 1168-69 .

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*; *Western States*, 407 F.3d at 993; *Northern Contracting I*, 2004 U.S. Dist. LEXIS 3226 at \*64.

<sup>157</sup> *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.”).

<sup>158</sup> While this is often described as a “private sector analysis,” a more accurate description is an “economy-wide” analysis because expenditures by the public sector are included in the Census databases.

- The Census Bureau’s *American Community Survey* allows us to examine disparities using individual entrepreneurs as the basic unit of analysis.<sup>159</sup>

The Survey of Business Owners does not present data below a state-level of geography; hence, this analysis examines data from the state of Missouri. The American Community Survey presents data at a much smaller level of geography. These units are called Public Use Microdata Areas (PUMAs) and this study aggregated these PUMAs in order to examine economic activity in the Kansas City metropolitan area. The following counties were included in this definition of the metropolitan area:

State	County
Kansas	Johnson
Kansas	Wyandotte
Missouri	Cass
Missouri	Clay
Missouri	Clinton
Missouri	Jackson
Missouri	Lafayette
Missouri	Platte
Missouri	Ray

Using both data sets, we found disparities for minorities and women across most industry sectors in KCMO’s marketplace.

## B. Summary of Findings

### 1. Disparities in Firm Sales and Payroll

One way to measure equity is to examine the share of total sales and/or payroll a group has relative to its share of total firms. Parity would be represented by the ratio of sales or payroll share over the share of total firms equaling 100% (*i.e.*, a group has 10% of total sales and comprises 10% of all firms.) A ratio that is less than 100% indicates an underutilization of a demographic group, and a ratio of more than 100% indicates an overutilization of a demographic group. Table 5.1 presents data from the Census Bureau’s 2012 Survey of Business Owners that indicate very large disparities for non-White and White women-owned firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), or the payroll of employer firms. In contrast, the firms that were not non-White and not White women-owned were overutilized using the identical metrics.<sup>160</sup>

---

<sup>159</sup> Data from 2010 - 2014 American Community Survey are the most recent for a five-year period.

<sup>160</sup> The Survey of Business Owners data available via American Fact Finder do not permit the use of regression analysis on these results.



**Table 5.1 Disparity Ratios of Firm Utilization Measures  
All Industries,  
Survey of Business Owners, 2012**

	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
Non-whites	11.7%	15.5%	66.4%
White Women	14.1%	19.7%	75.3%
Not Non-White/Not White Women	154.8%	127.4%	102.6%

Source: CHA Calculations from Survey of Business Owners

## 2. Disparities in Wages and Business Earnings

Another way to measure equity is to examine how the economic utilization of particular demographic groups compares to White men. Multiple regression statistical techniques allowed us to examine the impact of race and gender on economic outcome while controlling for other factors, such as education, that might impact outcomes.<sup>161</sup> Using these techniques and data from the Census Bureau’s American Community Survey, we found that Blacks, Latinos, Native Americans, Asian/Pacific Islanders, Others, and White women were underutilized relative to White men: controlling for other factors relevant to business success, wages and business earnings were lower for these groups compared to White men. We report wages and business earnings because disparities in wages and business earnings can lead to disparities in business outcomes. These findings are presented in Table 5.2. Parity would exist if the figures in Table 5.2 were 0.0%; in other words, non-Whites and White women would be utilized identical to White men. When the Table indicates that the wage differential between Blacks and White men is -32.9%, for example, this means that wages received by Blacks are 32.9% less than wages received by similar White men. Because of these disparities, the rates at which these groups formed businesses were lower than the business formation rate of similarly situated White men.

**Table 5.2 Economic Outcome Differentials of Minorities and White Women  
Relative to White Males  
All Industries,  
American Community Survey, 2010 - 2014**

Demographic Group	Wages Differentials Relative to White Men (% Change)	Business Earnings Relative to White Men (% Change)
Black	-32.90%***	-72.70%***
Latino	-11.60%***	-33.10%*

<sup>161</sup> See Appendix A for more information on multiple regression statistical analysis.

Demographic Group	Wages Differentials Relative to White Men (% Change)	Business Earnings Relative to White Men (% Change)
Native American	-45.10%***	-27.70%
Asian/Pacific Islander	-29.30%***	-64.20%*
Other	-18.70%	-17.50%
White Women	-35.40%***	-75.80%***

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

### 3. Disparities in Business Formation

A third method of exploring differences in economic outcomes is to examine the rate at which different demographic groups form businesses. We developed these business formation rates using data from the U.S. Bureau of the Census' American Community Survey. Table 5.3a presents these results. The Table indicates that White men have higher business formation rates compared to non-Whites and White women.<sup>162</sup> Table 5.3b explores the same question but utilizes multiple regression analysis to control for important factors beyond race and gender. This Table indicates that non-Whites and White women are less likely to form businesses compared to similarly situated White men. For instance, Blacks are 4.4% less likely to form a business compared to White men after other key explanatory variables are controlled. These Tables reinforce the notion that there are significant differences in the rate of non-Whites and White women to form business compared to the rate of White men. These differences support the inference that minority- and women-owned business enterprises ("M/WBEs") suffer major barriers to equal access to entrepreneurial opportunities in the overall Kansas City Metropolitan area economy.

**Table 5.3a Business Formation Rates  
All Industries,  
American Community Survey, 2010 - 2014**

Demographic Group	Business Formation Rates
Black	3.98%
Latino	6.42%
Native American	6.12%

<sup>162</sup> Many times, there were not sufficient observations in the data to conduct a reliable statistical analysis. In these instances, the tables will contain the symbol "---".

Demographic Group	Business Formation Rates
Asian/Pacific Islander	6.08%
Other	---
Non-White	5.18%
White Women	6.59%
Non-White Male	6.07%
White Male	9.74%

Source: CHA calculations from the American Community Survey  
 --- There were insufficient observations to conduct a reliable statistical analysis

**Table 5.3b Business Formation Probabilities Relative to White Males  
 All Industries,  
 American Community Survey, 2010 - 2014**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-4.36%
Latino	-3.08%
Native American	-1.33%
Asian/Pacific Islander	-1.87%
Other	4.52%
White Women	-1.96%

Source: CHA calculations from the American Community Survey

Overall, the results of our analyses of the Missouri economy demonstrate that minorities and White women continue to face race- and gender-based barriers to equal opportunities as firm owners, and to equal opportunities to earn wages and salaries that impact their ability to form firms and to earn income from those firms. While not dispositive, this suggests that absent some affirmative intervention in the current operations of the Kansas City Metropolitan area marketplace, KCMO will function as a passive participant in these potentially discriminatory outcomes.<sup>163</sup>

---

<sup>163</sup> Various appendices to this Chapter contain additional data and methodological explanations. Appendix A provides a "Further Explanation of the Multiple Regression Analysis." Appendix B provides a "Further Explanation of Probit Regression Analysis." Appendix C discusses the meaning and role of "Significance Levels." Appendix D provides detailed "Additional

## C. Disparate Treatment in the Marketplace: Evidence from the Census Bureau's 2012 Survey of Business Owners

Every five years, the Census Bureau administers the *Survey of Business Owners* ("SBO") to collect data on particular characteristics of businesses that report to the Internal Revenue Service receipts of \$1,000 or more.<sup>164</sup> The 2012 SBO was released on December 15, 2015, so our analysis reflects the most current data available. The SBO collects demographic data on business owners disaggregated into the following groups:<sup>165, 166</sup>

- Non-Hispanic Blacks
- Latinos
- 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 where the ownership could not be classified
- Publicly-Owned Firms

For purposes of this analysis, the first four groups were aggregated to form a Non-White category. Since our interest is the treatment of non-White-owned firms and White women-owned firms, the last five 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.

To examine those sectors in which KCMO purchases, we analyzed economy-wide SBO data on the following sectors:

- Construction
- Professional, Scientific and Technical Services
- Information Technology
- Goods
- Services

However, the nature of the SBO data – a sample of all businesses, not the entire universe of all businesses – required some adjustments. In particular, we had to define the sectors at the 2-digit North American Industry Classification System ("NAICS") code level and therefore our sector definitions do not exactly correspond to the definitions used to analyze KCMO's contract data in Chapter IV, where we are able to determine sectors at the 6-digit NAICS code level. At a more detailed level, the number

---

Data from the Analysis of the Survey of Business Owners." Appendix E provides "Additional Data from the Analysis of American Community Survey."

<sup>164</sup> See <http://www.census.gov/econ/sbo/about.html> for more information on the Survey.

<sup>165</sup> Race and gender labels reflect the categories used by the Census Bureau.

<sup>166</sup> 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 Latino.

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.<sup>167</sup> We therefore report 2-digit data.

Table 5.4 presents information on which NAICS codes were used to define each sector.

**Table 5.4 2-Digit NAICS Code Definition of Sector**

SBO Sector Label	2-Digit NAICS Codes
Construction	23
Professional, Scientific, and Technical Services <sup>168</sup>	54
Information	51
Goods	31,42, 44
Services	48, 52, 53, 56, 61, 62, 71, 72, 81

The balance of this Chapter section reports the findings of the SBO analysis. For each sector, we present data describing the sector and report disparities within the sector.

## 1. All SBO Industries

For a baseline analysis, we examined all industries in the state of Missouri. Table 5.5 presents data on the percentage share that each group has of the total of each of the following six business outcomes:

- The number of all firms
- The sales and receipts of all firms
- The number of firms with employees (employer firms)
- The sales and receipts of all employer firms
- The number of paid employees
- The annual payroll of employers firms

Panel A of Table 5.5 presents data for the four basic non-White racial groups:

- Black
- Latino
- Native American
- Asian
- Panel B of Table 5.5 presents data for six types of firm ownership:
- Non-white
- White Women

<sup>167</sup> Even with these broad sector definitions, there was an insufficient number of Native American owned firms to perform our analysis on this demographic group. This limitation also arose for Latinos and Asians in the Services sector.

<sup>168</sup> 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.

- White Men
- Equally non-Whites and Whites
- Equally women and men
- Firms that are publicly owned or not classifiable

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.<sup>169</sup>

**Table 5.5 Percentage Demographic Distribution of Sales and Payroll Data  
All Industries, 2012**

	Total Number of Firms (All Firms)	Sales & Receipts - All Firms (\$1,000)	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)
<b>Panel A: Distribution of Non-White Firms</b>						
Black	7.30%	0.40%	3.09%	0.32%	0.88%	0.69%
Latino	1.79%	0.29%	1.19%	0.26%	0.57%	0.37%
Native American	0.69%	0.07%	0.40%	0.05%	0.11%	0.07%
Asian	2.61%	0.68%	3.38%	0.62%	1.26%	0.71%
<b>Panel B: Distribution of All Firms</b>						
Non-White	12.42%	1.46%	8.13%	1.26%	2.84%	1.89%
White Women	26.35%	3.72%	16.96%	3.34%	5.89%	4.43%
White Men	47.22%	27.67%	51.64%	26.88%	31.16%	28.63%
Equally Non-White & White	0.63%	0.11%	0.64%	0.09%	0.23%	0.14%
Equally Women & Men	11.05%	3.95%	14.97%	3.67%	6.30%	3.96%
Firms Not Classifiable	2.34%	63.09%	7.67%	64.76%	53.58%	60.94%
<b>All Firms</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: CHA calculations from Survey of Business Owners

Since the central issue is the possible disparate treatment of non-White and White women firms, Table 5.6 re-aggregates the last four groups– White men; equally non-White and White; equally women and

<sup>169</sup> Some of the figures in Panel B may not correspond to the related figures in Panel A because of discrepancies in how the SBO reports the data

men; and firms not classifiable— into one group: Not Non-White/Not White Women.<sup>170</sup> We then present the shares each group has of the six indicators of firm utilization. These data were then used to calculate three disparity ratios, presented in Table 5.7:

- Ratio of sales and receipts share for all firms over the share of total number of all firms.
- Ratio of sales and receipts share for employer firms over the share of total number of employer firms.
- Ratio of annual payroll share over the share of total number of employer firms.

For example, the disparity ratio of sales and receipts share for all firms over the share of total number of all firms for Black firms is 5.5% (as shown in Table 5.7). This is derived by taking the Black share of sales and receipts for all firms (0.40%) and dividing it by the Black share of total number of all firms (7.30%) that are presented in Table 5.6. If Black-owned firms earned a share of sales equal to their share of total firms, the disparity would have been 100%. An index less than 100 percent 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 percent” rule that a ratio less than 80 percent presents a *prima facie* case of discrimination.<sup>171</sup> All disparity ratios for non-White firms and White women firms are below this threshold.<sup>172</sup>

**Table 5.6 Demographic Distribution of Sales and Payroll Data – Aggregated Groups  
All Industries, 2012**

	Total Number of Firms (All Firms)	Sales & Receipts - All Firms (\$1,000)	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)
<b>Panel A: Distribution of Non-White Firms</b>						
Black	7.30%	0.40%	3.09%	0.32%	0.88%	0.69%
Latino	1.79%	0.29%	1.19%	0.26%	0.57%	0.37%
Native American	0.69%	0.07%	0.40%	0.05%	0.11%	0.07%
Asian	2.61%	0.68%	3.38%	0.62%	1.26%	0.71%
<b>Panel B: Distribution of All Firms</b>						

<sup>170</sup> 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.

<sup>171</sup> 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.”).

<sup>172</sup> Because the data in Tables 5.6 and 5.7 are presented for descriptive purposes, significance tests on these results are not conducted.

	Total Number of Firms (All Firms)	Sales & Receipts - All Firms (\$1,000)	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)
Non-White	12.42%	1.46%	8.13%	1.26%	2.84%	1.89%
White Women	26.35%	3.72%	16.96%	3.34%	5.89%	4.43%
Not Non-White/Not White Women	61.24%	94.82%	74.91%	95.40%	91.26%	93.68%
<b>All Firms</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: CHA calculations from Survey of Business Owners

**Table 5.7 Disparity Ratios of Firm Utilization Measures  
All Industries, 2012**

	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
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
Black	5.5%	10.2%	77.9%
Latino	16.2%	21.7%	64.6%
Native American	9.7%	13.1%	64.0%
Asian	26.0%	18.2%	56.3%
<b>Panel B: Disparity Ratios for All Firms</b>			
Non-Whites	11.7%	15.5%	66.4%
White Women	14.1%	19.7%	75.3%
Not Non-White/Not White Women	154.8%	127.4%	102.6%
<b>All Firms</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: CHA calculations from Survey of Business Owners

This same approach was used to examine the key sectors in which KCMO purchases. The underlying data on the various industries of construction; professional, scientific and technical services; information technology; and services are presented in Appendix D to this Chapter. The following are summaries of the results of the disparity analyses.



## 2. Construction

Of the 17 disparity ratios for non-White firms and White women firms presented in Table 5.8, 10 fall under the 80% threshold.<sup>173</sup>

**Table 5.8 Disparity Ratios – Aggregated Groups  
Construction, 2012**

	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
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
Black	27.11%	107.72%	96.53%
Latino	25.88%	45.88%	S
Native American	56.78%	64.62%	93.13%
Asian	22.00%	74.43%	62.08%
<b>Panel B: Disparity Ratios for All Firms</b>			
Non-White	29.07%	67.14%	88.14%
White Women	126.24%	98.65%	90.66%
Not Non-White/Not White Women	103.38%	101.08%	101.54%
<b>All Firms</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: CHA calculations from Survey of Business Owners

## 3. Professional, Scientific and Technical Services

Of the 18 disparity ratios for non-White firms and White women firms presented in Table 5.9, 15 fall under the 80% threshold.

<sup>173</sup> The values of “S” reflect that the SBO did not publish data in these instances because it was “withheld because estimate did not meet publication standards”. See the Disclosure section under Methodology at <http://www.census.gov/econ/sbo/methodology.html>.

**Table 5.9 Disparity Ratios – Aggregated Groups  
Professional, Scientific, and Technical Services, 2012**

	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
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
Black	20.2%	46.4%	107.0%
Latino	25.1%	34.1%	88.9%
Native American	31.8%	25.8%	45.6%
Asian	40.0%	38.3%	92.7%
<b>Panel B: Disparity Ratios for All Firms</b>			
Non-White	27.5%	36.9%	91.8%
White Women	20.6%	22.5%	63.2%
Not Non-White/Not White Women	147.2%	128.1%	103.7%
<b>All Firms</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: CHA calculations from Survey of Business Owners

#### 4. Information

Of the 5 disparity ratios for non-White firms and White women firms presented in Table 5.9, all fall under the 80% threshold.

**Table 5.10 Disparity Ratios – Aggregated Groups  
Information, 2012**

	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
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
Black	1.7%	S	S
Latino	7.2%	S	S
Native American	0.5%	S	S
Asian	S	S	S
<b>Panel B: Disparity Ratios for All Firms</b>			

	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
Non-White	2.6%	S	S
White Women	2.9%	S	S
Not Non-White/Not White Women	148.3%	S	S
All Firms	100.0%	S	S

Source: CHA calculations from Survey of Business Owners

## 5. Services

Of the available 6 disparity ratios for non-White firms and White women firms presented in Table 5.11, all fall below the 80% threshold.

**Table 5.11 Disparity Ratios – Aggregated Groups  
All Services, 2012**

	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
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
Black	7.1%	S	S
Latino	24.1%	S	S
Native American	11.5%	S	S
Asian	30.6%	S	S
<b>Panel B: Disparity Ratios for All Firms</b>			
Non-White	14.6%	S	S
White Women	15.2%	S	S
Not Non-White/Not White Women	168.7%	S	S
All Firms	100.0%	S	S

Source: CHA calculations from Survey of Business Owners

## 6. Goods

Of the 18 disparity ratios for non-White firms and White women firms presented in Table 5.12, 14 fall under the 80% threshold.

**Table 5.12 Disparity Ratios – Aggregated Groups  
Goods, 2012**

	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
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
Black	7.50%	55.93%	108.54%
Latino	19.43%	39.52%	76.85%
Native American	7.85%	10.74%	82.58%
Asian	20.25%	19.35%	80.75%
<b>Panel B: Disparity Ratios for All Firms</b>			
Non-White	16.26%	23.75%	153.53%
White Women	13.66%	20.57%	79.48%
Not Non-White/Not White Women	132.84%	117.34%	99.70%
<b>All Firms</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: CHA calculations from Survey of Business Owners

### **D. Disparate Treatment in the Marketplace: Evidence from the Census Bureau’s 2010 - 2014 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 KCMO’s business inclusion programs.

In the previous section, we explored this question using SBO data. In this section, we use the Census Bureau’s *American Community Survey* data to address other aspects of this question. One element asks if there exist demographic differences 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. 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* (“ACS”) *Public Use Microdata Sample* (“PUMS”) is useful in addressing these issues. The ACS is an annual survey of 1 percent of the population and the PUMS provides detailed information at the individual level. In order to obtain robust results from our analysis,

we use the file that combines data for 2010 through 2014, the most recent available.<sup>174</sup> With this rich data set, our analysis can establish with greater certainty any causal links between race, gender and economic outcomes.

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, but 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 the race or gender difference. To better understand the impact of race or gender on wages, it is important to compare individuals of different races or genders who work in the same industry. Of course, wages are determined by a broad set of factors beyond race, gender, and industry. With the ACS PUMS, we have the ability to include a wide range of additional variables such as age, education, occupation, and state of residence.

We employ a multiple regression statistical technique to process this data. This methodology allows us to perform two analyses: an estimation of how variations in certain characteristics (called independent variables) will impact the level of some particular outcome (called a dependent variable), and a determination of how confident we are that the estimated variation is statistically different from zero. We have provided more detail on this technique in Appendix A.

With respect to the first result of regression analysis, we will examine how variations in the race, gender, and industry of individuals impact the wages and other economic outcomes received by individuals. The technique allows us to determine the effect of changes in one variable, assuming that the other determining variables are the same. That is, we compare individuals of different races, but of the same gender and in the same industry; or we compare individuals of different genders, but of the same race and the same industry; or we compare individuals in different industries, but of the same race and gender. We are determining 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, this technique also allows us to determine the statistical significance of the relationship between the dependent variable and independent variable. For example, the relationship between gender and wages might exist 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 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 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 we are 99.9% confident that the relationship is different from zero.<sup>175</sup>

In the balance of this section, we report data on the following sectors:

- All Industries
- Construction
- Construction-Related Services

---

<sup>174</sup> For more information about the ACS PUMS, please see <http://www.census.gov/acs/>.

<sup>175</sup> Most social scientists do not endorse utilizing a confidence level of less than 95%. Appendix C explains more about statistical significance.

- Information Technology
- Services
- Goods

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).

## 1. All Industries in Kansas City Metropolitan Area

### a. Business Formation Rates

Table 5.13 presents business formation rates in the Kansas City metropolitan area economy by demographic groups.

**Table 5.13 Business Formation Rate,  
Kansas City Metro Area  
All Industries, 2010 - 2014**

Demographic Group	Business Formation Rates
Black	3.98%
Latino	6.42%
Native American	6.12%
Asian/Pacific Islander	6.08%
Other	---
Non-White	5.18%
White Women	6.59%
Non-White Male	6.07%
White Male	9.74%

Source: CHA calculations from the American Community Survey

White males have a higher rate of business formation than Non-White males. However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed.<sup>176</sup> The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

---

<sup>176</sup> Probit is a special type of regression technique where the dependent variable only has two possible values: 0 or 1. For instance, the unit of observation is an individual and he/she forms a business or does not form a business. In the former case, the value of the dependent variable would be 1 while in the latter case, the value of the dependent variable would be 0. This is in contrast to the multiple regression technique discussed earlier where the dependent variable such as wages might have any non-negative value. For a more extensive discussion of probit regression analysis, see Appendix B.

Table 5.14 presents the results of the probit analysis for the Kansas City metropolitan area economy.

**Table 5.14 Business Formation Probability Differentials  
for Selected Groups Relative to White Men  
All Industries, 2010 - 2014**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-4.36%***
Latino	-3.08%***
Native American	-1.33%***
Asian/Pacific Islander	-1.87%***
Other	4.52%***
White Women	-1.96%***

Source: CHA calculations from the American Community Survey  
\*\*\* Indicates statistical significance at the 0.001 level

The analysis indicates that (with the exception of Other) non-Whites and White women in Kansas City metropolitan area are less likely than White men to form businesses even after controlling for key factors. The reduction in probability ranges from 1.33% to 4.36%. Once again, these estimates are statistically significant at the 99.1 level.

**b. Differences in Wage and Salary Incomes**

Table 5.15 presents the findings from the wage and salary income regression analysis examining the Kansas City metropolitan area economy. This indicates the wage differential for selected demographic groups in Kansas City metropolitan area relative to White men.

**Table 5.15 Wage Differentials  
for Selected Groups Relative to White Men  
All Industries, 2010 - 2014**

Demographic Group	Wages Relative to White Men (% Change)
Black	-32.90%***
Latino	-11.60%***
Native American	-45.10%***
Asian/Pacific Islander	-29.30%***
Other	-18.70%
White Women	-35.40%***

Source: CHA calculations from the American Community Survey  
\*\*\* Indicates statistical significance at the 0.001 level

Holding constant factors such as education, age, occupation, and industry, Blacks, Latinos, White women, Asian/Pacific Islanders and Others in Kansas City metropolitan area earn less than White men in the overall economy. Estimates of the coefficients for Black, Latino, Native American, Asian/Pacific Islander and White Women are statistically significant at the 0.001 level. For example, we are 99.9% confident that wages for Blacks in Kansas City metropolitan area (after controlling for numerous other factors) are 32.9% less than those received by White men.

**c. Differences in Business Earnings**

The same approach was used to investigate if there were differences in business earnings received by Non-Whites and White women entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 5.16 presents these findings.

**Table 5.16 Business Earnings Differentials for Selected Groups Relative to White Men All Industries, 2010 - 2014**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-72.70%***
Latino	-33.10%*
Native American	-27.70%
Asian/Pacific Islander	-64.20%*
Other	-17.50%
White Women	-75.80%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\* Indicates statistical significance at the 0.05 level

Two of the estimates of the coefficients for these variables were found to be statistically significant at the 0.001 level. Two of the estimates of the coefficients for these variables were found to be statistically significant at the 0.05 level. The statistically significant differentials in business earnings received by Non-Whites and White women compared to White males ranged from -27.7% to -75.8%.

**d. Conclusion**

Using descriptive analysis, Table 5.13 shows that differentials exist between the business formation rates by non-Whites and White women and White males across industry sectors. Table 5.14 presents the results of a further statistical analysis, which indicated that even after taking into account potential mitigating factors, the differential still exists. Tables 5.15 and 5.16 present data indicating differentials in wages and 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.



## 2. The Construction Industry in Kansas City Metropolitan area

### a. Business Formation Rates

Table 5.17 presents business formation rates in the Kansas City metropolitan area construction industry for selected demographic groups.

**Table 5.17 Business Formation Rates,  
Kansas City Metro Area  
Construction, 2010 - 2014**

Demographic Group	Business Formation Rates
Black	15.52%
Latino	18.31%
Native American	---
Asian/Pacific Islander	---
Other	---
Non-White	18.10%
White Women	13.57%
Non-White Male	16.92%
White Male	22.08%

Source: CHA calculations from the American Community Survey

White males have a higher rate of business formation than non-White males where there were sufficient observations to make a statistical inference. However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed. The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

Table 5.18 presents the results of the probit analysis for the construction industry in Kansas City metropolitan area.

**Table 5.18 Business Formation Probability Differentials  
for Selected Groups Relative to White Men  
Construction, 2010 - 2014**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-1.73%***
Latino	-0.59%***

Demographic Group	Probability of Forming a Business Relative to White Men
Native American	-4.09%***
Asian/Pacific Islander	-6.53%***
Other	---
White Women	-2.28%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

The analysis indicates that non-Whites and White women in Kansas City metropolitan area are less likely to form construction businesses compared to White men even after controlling for key factors. The reduction in probability ranges from 0.59% to 6.53%. Once again, these estimates are statistically significant at the 99.1 level.

### b. Differences in Wage and Salary Incomes

Table 5.19 presents the findings from the wage and salary income regression analysis examining the construction industry in Kansas City metropolitan area. This indicates the wage differential for selected demographic groups in Kansas City metropolitan area relative to White men.

**Table 5.19 Wage Differentials  
for Selected Groups Relative to White Men  
Construction, 2010 - 2014**

Demographic Group	Wages Relative to White Men (% Change)
Black	-48.50%***
Latino	-15.90%*
Native American	30.80%
Asian/Pacific Islander	-15.90%
Other	---
White Women	-55.30%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\* Indicates statistical significance at the 0.05 level

Holding constant factors such as education, age, occupation, and industry, Blacks, Latinos, White women, and Asian/Pacific Islanders in Kansas City metropolitan area earn less than White men in the construction industry. The differential ranges between 15.9% less and 55.3% less. Estimates of the coefficients for Black and White Women are statistically significant at the 0.001 level. The coefficient for Latino and statistically significant at the 0.05 level and the coefficient for Asian/Pacific Islander is not statistically significant.

### c. Differences in Business Earnings

The same approach was used to investigate if there were differences in business earnings received by non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 5.20 presents these findings.

**Table 5.20 Business Earnings Differentials for Selected Groups Relative to White Men Construction, 2010 - 2014**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-57.70%
Latino	-10.20%
Native American	-136.00%
Asian/Pacific Islander	-125.00%
Other	---
White Women	25.20%

Source: CHA calculations from the American Community Survey

\*\* Indicates statistical significance at the 0.01 level

None of the coefficients are significantly statistically different from zero.

### d. Conclusion

Using descriptive analysis, Table 5.17 shows that differentials exist between the business formation rates by non-White males and White males. Table 5.18 presents the results of a further statistical analysis, which indicated that even after taking into account potential mitigating factors, the differential still exists. Table 5.19 presents data indicating wage differentials in wage and Table 5.20 indicates no statistically significant differences in business earnings.

## 3. The Construction-Related Services Industry in Kansas City Metropolitan Area

### a. Business Formation Rates

Table 5.21 presents business formation rates in the construction-related services industry in Kansas City metropolitan area for selected demographic groups.

**Table 5.21 Business Formation Rates,  
Kansas City Metropolitan Area  
Construction-Related Services, 2010 - 2014**

Demographic Group	Business Formation Rates
Black	---
Latino	---
Native American	No observations
Asian/Pacific Islander	---
Other	---
Non-White	---
White Women	1.04%
Non-White Male	---
White Male	3.89%

Source: CHA calculations from the American Community Survey

A limited number of observations hampered the studies' ability to conduct a detailed analysis in this sector. There were no Native Americans in this sectors and the small number of Black, Latino, Asians, and Others meant that reliable estimates for specific groups could not be made. White males have a higher rate of business formation than White females. However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed. The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

Table 5.22 presents the results of the probit analysis for the construction-related services industry in Kansas City metropolitan area.

**Table 5.22 Business Formation Probability Differentials  
for Selected Groups Relative to White Men  
Construction-related Services, 2010 - 2014**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	---
Latino	---
Native American	---
Asian/Pacific Islander	---
Other	---

Demographic Group	Probability of Forming a Business Relative to White Men
White Women	-0.46%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

Because of sample size concerns, the only valid analysis could examine business formation probabilities for White Women; here, White Women were 0.46% less likely to form a business relative to White Men. This estimate was statistically significant at the 99.1 level.

### b. Differences in Wage and Salary Incomes

Table 5.23 presents the findings from the wage and salary income regression analysis examining the construction-related services industry in Kansas City metropolitan area. This indicates the wage differential for selected demographic groups in Kansas City metropolitan area relative to White men.

**Table 5.23 Wage Differentials  
for Selected Groups Relative to White Men  
Construction-Related Services, 2010 – 2014**

Demographic Group	Wages Relative to White Men (% Change)
Black	---
Latino	---
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	-35.20%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

Because of sample size concerns, the only valid analysis could examine wage differentials for White Women; here, White Women earn 35.2% less than White Men. This estimate was statistically significant at the 99.1 level.

### c. Differences in Business Earnings

The same approach was used to investigate if there were differences in business earnings received by non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 5.24 presents these findings.

**Table 5.24 Business Earnings Differentials  
for Selected Groups Relative to White Men  
Construction-related Services, 2010 - 2014**

Demographic Group	Earnings Relative to White Men (% Change)
Black	---
Latino	---
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	-73.60%**

Source: CHA calculations from the American Community Survey  
\*\*\* Indicates statistical significance at the 0.001 level

Because of sample size concerns, the only valid analysis could examine business earnings differentials for White Women; here, business earnings for White Women were 73.6% less than White Men. This estimate was statistically significant at the 99.1 level.

**d. Conclusion**

Because of the limited number of observations in this sector and subsequent sample size concerns, reliable estimates could only be conducted for White women. For this group, the analysis found statistically significant disadvantages relative to White men.

**4. The Information Technology Industry in Kansas City Metropolitan Area**

**a. Business Formation Rates**

Table 5.25 presents business formation rates in the information technology industry in Kansas City metropolitan area for selected demographic groups.

**Table 5.25 Business Formation Rates,  
Kansas City Metro Area  
Information Technology, 2010 - 2014**

Demographic Group	Business Formation Rates
Black	---
Latino	---
Native American	---
Asian/Pacific Islander	---
Other	---
Non-White	---

Demographic Group	Business Formation Rates
White Women	3.36%
Non-White Male	---
White Male	5.02%

Source: CHA calculations from the American Community Survey

Similar to the Construction-related Services sector, a limited number of observations in the Information Technology sector hampered the studies' ability to conduct a detailed analysis in this sector. There were no Native Americans in this sectors and the small number of Black, Latino, Asians, and Others meant that reliable estimates for specific groups could not be made. White males have a higher rate of business formation than White females. However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed. The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

Table 5.26 presents the results of the probit analysis for the information technology industry in Kansas City metropolitan area.

**Table 5.26 Business Formation Probability Differentials for Selected Groups Relative to White Men Information Technology, 2010 - 2014**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	---
Latino	---
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	-1.29%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

Because of sample size concerns, the only valid analysis could examine business formation probabilities for White Women; here, White Women were 01.29% less likely to form a business relative to White Men. This estimate was statistically significant at the 99.1 level.

#### **b. Differences in Wage and Salary Incomes**

Table 5.27 presents the findings from the wage and salary income regression analysis examining the information technology industry in Kansas City metropolitan area. This indicates the wage differential for selected demographic groups in Kansas City metropolitan area relative to White men.

**Table 5.27 Wage Differentials  
for Selected Groups Relative to White Men  
Information Technology, 2010 - 2014**

Demographic Group	Wages Relative to White Men (% Change)
Black	---
Latino	---
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	-14.00%**

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

Because of sample size concerns, the only valid analysis could examine wage differentials for White Women; here, White Women earn 14.00% less than White Men. This estimate was statistically significant at the 99.1 level.

**c. Differences in Business Earnings**

The same approach was used to investigate if there were differences in business earnings received by non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 5.28 presents these findings.

**Table 5.28 Business Earnings Differentials  
for Selected Groups Relative to White Men  
Information Technology, 2010 - 2014**

Demographic Group	Earnings Relative to White Men (% Change)
Black	---
Latino	---
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	-10.60%

Source: CHA calculations from the American Community Survey

\*\* Indicates statistical significance at the 0.01 level

\* Indicates statistical significance at the 0.05 level



Because of sample size concerns, the only valid analysis could examine business earnings differentials for White Women; here, business earnings for White Women were 10.6% less than White Men. This estimate was statistically significant at the 99.1 level.

**d. Conclusion**

Because of the limited number of observations in this sector and subsequent sample size concerns, reliable estimates could only be conducted for White women. For this group, the analysis found statistically significant disadvantages relative to White men.

**5. The Services Industry in Kansas City Metropolitan Area**

**a. Business Formation Rates**

Table 5.29 presents business formation rates in the services industry in Kansas City metropolitan area for selected demographic groups.

**Table 5.29 Business Formation Rates,  
Kansas City Metro Area  
Services, 2010 - 2014**

Demographic Group	Business Formation Rates
Black	4.48%
Latino	5.60%
Native American	---
Asian/Pacific Islander	5.58%
Other	---
Non-White	5.02%
White Women	7.29%
Non-White Male	6.48%
White Male	10.17%

Source: CHA calculations from the American Community Survey

White males have a higher rate of business formation than non-White males. (Sample size issues meant that analyses could not be conducted for Native Americans and Others.) However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed. The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

Table 5.30 presents the results of the probit analysis for the services industry in Kansas City metropolitan area.

**Table 5.30 Business Formation Probability Differentials  
for Selected Groups Relative to White Men  
Services, 2010 - 2014**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-4.30%***
Latino	-2.57%***
Native American	---
Asian/Pacific Islander	-3.12%***
Other	---
White Women	-2.37%***

Source: CHA calculations from the American Community Survey  
\*\*\* Indicates statistical significance at the 0.001 level

The analysis indicates that compared to White men, non-Whites and White women in Kansas City metropolitan area are less likely to form services businesses even after controlling for key factors. The reduction in probability ranges from 2.37% less to 4.30% less. Once again, these estimates are statistically significant at the 99.1 level.

**b. Differences in Wage and Salary Incomes**

Table 5.31 presents the findings from the wage and salary income regression analysis examining the services industry in Kansas City metropolitan area. This indicates the wage differential for selected demographic groups in Kansas City metropolitan area relative to White men.

**Table 5.31 Wage Differentials  
for Selected Groups Relative to White Men  
Services, 2010 - 2014**

Demographic Group	Wages Relative to White Men (% Change)
Black	-31.80%***
Latino	-1.61%
Native American	---
Asian/Pacific Islander	-23.60%***
Other	---
White Women	-32.80%***

Source: CHA calculations from the American Community Survey  
\*\*\* Indicates statistical significance at the 0.001 level

Holding constant factors such as education, age, occupation, and industry, Blacks, White women, and Asian/Pacific Islanders in Kansas City metropolitan area earn less than White men in the services industry. The differential ranges between 23.6% less and 32.8% less. All estimated coefficients statistically significant at the 0.001 level. The estimated coefficient for Latinos was not statistically different than zero.

**c. Differences in Business Earnings**

The same approach was used to investigate if there were differences in business earnings received by non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 5.32 presents these findings.

**Table 5.32 Business Earnings Differentials for Selected Groups Relative to White Men Services, 2010 - 2014**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-65.10%**
Latino	-64.20%*
Native American	---
Asian/Pacific Islander	-91.50%*
Other	---
White Women	-77.00%***

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

The differentials in business earnings for Blacks, Latinos, Asians, and White women relative to White males ranged from 64.2%% less to 77.0% less. For White Women, the coefficient was statistically significant at the 0.001 level; for Black, the coefficient was statistically significant at the 0.01 level; and for Latino and Asian/Pacific Islander, the coefficient was statistically significant at the 0.05 level.

**d. Conclusion**

Using descriptive analysis, Table 5.29 shows that differentials exist between the business formation rates by non-White males and White males. Table 5.30 presents the results of a further statistical analysis, which indicated that even after taking into account potential mitigating factors, the differential still exists. Tables 5.31 and 5.32 present data indicating differentials in wage and 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.

## 6. The Goods Industry in Kansas City Metropolitan area

### a. Business Formation Rates

Table 5.33 presents business formation rates in the goods industry in Kansas City Metropolitan area for selected demographic groups.

**Table 5.33 Business Formation Rates,  
Kansas City Metro Area  
Goods, 2010 - 2014**

Demographic Group	Business Formation Rates
Black	3.08%
Latino	2.50%
Native American	---
Asian/Pacific Islander	---
Other	---
Non-White	3.32%
White Women	4.96%
Non-White Male	4.34%
White Male	7.06%

Source: CHA calculations from the American Community Survey

White males have a higher rate of business formation than non-Whites and White women. Note: the observed number of Native American, Asian/Pacific Islander, and Other was too small for any reliable statistical analysis. However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed. The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

Table 5.34 presents the results of the probit analysis for the construction industry in Kansas City metropolitan area.

**Table 5.34 Business Formation Probability Differentials  
for Selected Groups Relative to White Men  
Goods, 2010 - 2014**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-5.47%***
Latino	-3.38%***
Native American	---

Demographic Group	Probability of Forming a Business Relative to White Men
Asian/Pacific Islander	---
Other	---
White Women	-0.73%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

The analysis indicates that Blacks, Latinos, and White women in Kansas City metropolitan area are less likely to form goods businesses compared to White men even after controlling for key factors. The reduction in business formation probability ranged from 0.73% to 5.47%. These estimates are statistically significant at the 99.1 level.

### b. Differences in Wage and Salary Incomes

Table 5.35 presents the findings from the wage and salary income regression analysis examining the goods industry in Kansas City metropolitan area. This indicates the wage differential for selected demographic groups in Kansas City metropolitan area relative to White men.

**Table 5.35 Wage Differentials  
for Selected Groups Relative to White Men  
Goods, 2010 - 2014**

Demographic Group	Wages Relative to White Men (% Change)
Black	-24.90%**
Latino	-15.90%*
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	-41.60%***

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

Holding constant factors such as education, age, occupation, and industry, Blacks, Latinos, and White women in Kansas City metropolitan area earn less than White men in the goods industry. The differential ranges between 15.9% less and 41.6% less.

### c. Differences in Business Earnings

The same approach was used to investigate if there were differences in business earnings received by non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample

to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 5.36 presents these findings.

**Table 5.36 Business Earnings Differentials for Selected Groups Relative to White Men Goods, 2010 - 2014**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-229.00%**
Latino	34.80%
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	-129.00%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\*\* Indicates statistical significance at the 0.01 level

Blacks earned 229.0% less than White males and White women earned 129.0% less than White males. These coefficients were statistically significant at the 0.01 level and 0.001 level, respectively. The coefficient for Latino was not statistically different from zero.

#### **d. Conclusion**

Using descriptive analysis, Table 5.33 shows that differentials exist between the business formation rates by non-Whites and White women and White males. Table 5.34 presents the results of a further statistical analysis, which indicated that even after taking into account potential mitigating factors, the differential still exists. Tables 5.35 and 5.36 present data indicating differentials in wage and 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.

## VI. QUALITATIVE EVIDENCE OF RACE AND GENDER DISCRIMINATION IN KCMO'S MARKET

In addition to quantitative data, a disparity study should further explore anecdotal evidence of experiences with discrimination in contracting opportunities. Such data are relevant to the determination of whether race- and gender-neutral measures will fully remediate discrimination and create a level playing field for City of Kansas City, Missouri (City or KCMO) contracts. As observed by the Supreme Court, anecdotal evidence can be persuasive because it “brought the cold [statistics] convincingly to life.”<sup>177</sup> Evidence about discriminatory practices engaged in by prime contractors and consultants, lenders and other actors relevant to business opportunities on agency contracts and associated subcontracts has been found probative regarding barriers both to minority firms’ business formation and to their success on governmental projects.<sup>178</sup> While anecdotal evidence is insufficient standing alone, “[p]ersonal accounts of actual discrimination or the effects of discriminatory practices may, however, vividly complement empirical evidence. Moreover, anecdotal evidence of a [government’s] institutional practices that exacerbate discriminatory market conditions are [sic] often particularly probative.”<sup>179</sup> “[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.”<sup>180</sup>

There is no requirement that anecdotal testimony be “verified” or corroborated, as befits the role of evidence in legislative decision-making as opposed to judicial proceedings. “Plaintiff offers no rationale as to why a fact finder could not rely on the State’s ‘unverified’ anecdotal data. Indeed, a fact finder could very well conclude that anecdotal evidence need not— indeed cannot — be verified because it ‘is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perception.”<sup>181</sup> 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.”<sup>182</sup>

To explore anecdotal evidence of possible discrimination against minorities and women in the City’s geographic and industry markets and the need for race-and gender-conscious contract goals, we interviewed 56 business owners or executives from the industries from which KCMO purchases. Firms ranged in size from large national businesses to decades-old family-owned firms to new start-ups. Owners’ backgrounds included individuals with many years of experience in their fields and entrepreneurs beginning their careers. We sought to explore their experiences in seeking and performing public and private sector prime contracts and subcontracts with KCMO, other Kansas City area agencies and in the private sector. We also elicited recommendations for improvements to the City’s business inclusion programs.

---

<sup>177</sup> *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 399 (1977).

<sup>178</sup> *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1172 (10<sup>th</sup> Cir. 2000), cert. granted, 532 U.S. 941, then dismissed as improvidently granted, 534 U.S. 103 (2001).

<sup>179</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1520, 1530 (10<sup>th</sup> Cir. 1994).

<sup>180</sup> *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 926 (11<sup>th</sup> Cir. 1997).

<sup>181</sup> *H.B. Rowe Co., Inc. v. Tippett*, 615 F.3d 233, 249 (4<sup>th</sup> Cir. 2010).

<sup>182</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 989 (10<sup>th</sup> Cir. 2003), cert. denied, 540 U.S. 1027 (2003).

As with other jurisdictions, most minority and women owners reported that while some progress has been made in integrating their firms into public and private sector contracting activities through race- and gender-conscious contracting programs, significant barriers remain.

The following are summaries of the issues discussed and interviewees' experiences and comments. Quotations are indented, and have been edited for readability.

## **A. Discriminatory Attitudes and Negative Perceptions of Competence**

Many minority and female owners reported that agencies and other firms display negative attitudes about the competency and professionalism of minorities and women. The assumption is that minority firms are less qualified.

The biggest barriers that I see is the perception that the G[eneral C[ontractor]s out there— it's still a good ol' boy network.... I've sat in meetings and had them talk about the small and the minority contractors as the "little people. We have to clean up after the little people." To the point where I just want to scream.... There's the perception out there that GCs don't like participation. The GCs no matter how well you perform, do you paperwork, do the job, meet every of their requirements, you're used for participation. The good 'ol boy system is still out there.

There is still that undermining thing that women can't do it and minorities can't do it.

A lot of the higher architectural firms, there's not a lot of Black people employed there.

Women faced continuing sexist remarks and conduct.

When people make comments or something, I mean I'm in my 50s, I don't take that shit anymore from somebody says something to me. I'll just throw it right back at them and they were done.... A man is aggressive. A woman is a bitch.

[A Missouri Department of Transportation engineer] only talks to men and pretty young women. He's really condescending. Honestly, I don't project his little problems with all of MoDOT but it does piss you off after awhile sitting there watching. You just have to shut up and let it go. When you see people like that get promoted, it [tells you something about] the culture.

I get this a lot from white men: "It's really unfair that you get this WBE and it's unfair."... I can give you enough stories when I was a young female engineer that will make your toes curl of some discrimination. Granted, that was back in the early '80s. I do think some of the over the top discrimination, that's kind of gone under. I do think there is unconscious bias. People hire who their comfortable with.

When you're at meetings, you get vibes of who you can approach and who you can't. When I get that vibe that that guy is not going to give me the time of day then I don't approach him. I do get an email off to him.

## **B. Obtaining Work on an Equal Basis**

These types of barriers lead minorities and women to unanimous agreement that M/WBE goals remain necessary to level the playing field and equalize opportunities. M/WBEs sought the right to compete on a fair and equal basis. Without goals, they believed they would be shut out of KCMO's contract and associated subcontracts and the overall Kansas City area market. Interviewees were clear that contract



goals remain necessary to ensure equal opportunities because they receive little to no work on non-goals jobs.

[We get used] only on setasides.

[Minority-owned firms] don't do any work in the private sector, that the only window of opportunity we have is within the [government] program.... [The agencies' programs are] the entree we all have [to the marketplace].

There's not an aggressive marketing strategy or plan to pursue minorities or the certified companies on those private jobs.

The public sector work, you can find out about that. Contractors, generals will contact me. It's the private sector jobs that you never know about. If there isn't an inclusion goal, you won't even hear about the opportunity and be given the opportunity to even complete for it. That's the biggest gap I've seen.

If there is no goal setting, you don't have any opportunity to perform as a subcontractor. That's a big dichotomy, public-private.

We already can't do any private sector work... That's every kind of development in the world and we're missing it all.... it's the good old boy network. They can just give the job to who they want to.

Let's say a contractor comes to town, which a lot of them are. And the first thing, they see me and they say oh, okay. And they see my financials, they see my safety record. Everything just legit. Everything is great. First thing that comes out of their mouth is, are you certified by the City of Kansas City, Missouri. And as soon as I say no, all of a sudden I got a black cloud against me.

Minorities who spoke up about discrimination faced retaliation.

The minute I open my mouth, I am filleted and I have gotten filleted a little bit by one of the biggest contractors in town.... Kansas City's not a very big town. You piss off the right people, you're not getting any work.

[Retaliation against firms that complain about fronts or the failure to perform commercially useful functions is] going on all the time.

Prime contracts were especially difficult to obtain.

I'm able to get my prime contracts through the SLBE. I have had a few prime contracts not as an SLBE but it's been kind of specialty type stuff.

MBEs that did receive prime contracts sometimes felt they were subjected to a double standard.

[The agencies] don't force the larger already white and established contractor [to meet standards], they go around the codes for them. For the minority contractor, you got the [prime] bid now. They're somewhat pissed off at you, for lack of a better term. That you've got it and they other one didn't. Then, you're being subjected to codes that they would have gotten around or that would have been allowances made in the City for the other contractor.

Some WBEs reported that unions were another source of discrimination.

My payment history [of benefits contributions] wasn't anything different from the male businesses. However, they did not incur the same action from the business manager that I got.... It's just all male. You're great if you're male. If you're a girl, bitching about something, it is not allowed and some of the things that even some of the male minority companies do, is acceptable. Whereas for me, I would get three days notice and you're pulling my men.

I don't have a bad relationship with the union, but I would say I have what I wouldn't call a favorable one because I did not come up through the trade and I'm female. It's the good ol' boy [network], yes. To get around that, I've put someone in my office [who is] a male that has really good relationships with key people at the union, which has helped me.

Only a handful of Kansas City area large firms apply the same process for private sector work as they do for government projects with goals.

The only exceptions are enlightened corporations like [name]. When they did their veteran office tower, all they did was solicit the same people they solicit on public sector work, and minorities and women went to work on that project. That is by way the exception.... All they did was cast a broader net and included minority- and women-owned companies, and the pool of contractors they solicited bids from. Internally, they had a goal that [name] supports inclusion and that's on all their work, but that is an exception.

Others agreed that this firm is exemplary.

I do a lot of work with [name] and it has nothing to do that I'm MBE certified. I believe in relationships, so I believe a lot of opportunities that I get are because of relationships, building relationships, or relationships that my father has built. I believe in relationships. It's about getting out there and meeting people, and they know who you are and what you do. When you get that chance, it's performing well, doing a great job performing, and then they'll come back. It won't have anything to do with whether you're MBE or WBE.

## **C. Conclusion**

Consistent with other evidence reported in this Study, anecdotal interview information strongly suggests that minorities and women continue to suffer discriminatory barriers to full and fair access to KCMO and private sector contracts and subcontracts. While not definitive proof that the City should apply race- and gender-conscious measures to these impediments, the results of the personal interviews are the types of evidence that, especially when considered alongside the numerous pieces of statistical evidence assembled, the courts have found to be highly probative of whether the City may use narrowly tailored M/WBE contract goals to address that discrimination.

## **VII. RECOMMENDATIONS FOR THE CITY OF KANAS CITY, MISSOURI'S BUSINESS INCLUSION PROGRAMS**

The quantitative and qualitative data presented in this Study provide a thorough examination of the evidence regarding the experiences of minority- and women-owned firms operating in the City of Kansas City, Missouri's geographic and procurement markets. As required by strict scrutiny as applied to locally-funded contracts, we analyzed evidence of such firms' utilization by the City as measured by dollars spent, as well as business owners' experiences in obtaining City contracts and associated subcontracts, and opportunities in the private sector. We gathered statistical and anecdotal data to provide the evidence necessary to determine whether there is a strong basis in evidence that barriers to full and equal contracting opportunities exist on the basis of race or gender in the City's market area, and if so, what narrowly tailored remedies are appropriate.

The Study results fully support the City's continuing compelling interest in implementing its race- and gender-conscious Minority- and Women-Owned Business Enterprise (M/WBE) program. The statistical data and the anecdotal testimony provide a sufficient basis for the continued use of narrowly tailored remedial race- and gender-based measures to ensure full and fair access by all firms to City prime contracting and associated subcontracting opportunities.

KCMO's business inclusion programs have most of the hallmarks of narrowly tailored measures, and its initiatives are generally well crafted and properly implemented. The City is a national leader in using best practices for program design and administration. Its policies and procedures are clear and fairly administered; its certification efforts ensure that few fraudulent firms obtain program eligibility; its staff is well respected and active in the community; and it has achieved significant levels of utilization of minority, women and small local businesses as prime vendors and subcontractors. The major obstacle to an even higher level of performance and service is lack of financial and personnel resource.

This leaves room for improvement. We therefore suggest enhancements to the City's existing measures and new initiatives to increase opportunities for M/WBEs and other small businesses. The following recommendations seek to provide additional approaches to ensure the programs conform to strict scrutiny and national best practices for M/WBE programs.

### **A. Enhance Race- and Gender-Neutral Measures**

#### **1. Augment the City's Electronic Contracting Data Collection and Monitoring System**

Kansas City utilizes the B2GNow electronic data collection and monitoring system for its M/WBE, Small Business Enterprise (SBE) and Small Local Business Enterprise (SLBE) programs. The system has been in place for several years, and with the assistance of City personnel and the system's vendor staff, we were able to extract valuable contract data on the City's prime vendors and certified subcontractors.

However, full information on the non-certified prime firms and any information on the non-certified subcontractors, including payment data, was not collected. Because these records are an essential element of a defensible study methodology, we spent many months working with City staff, cleaning the available records and filling in missing information directly from vendors.

We therefore strongly urge the City to collect all the data needed to fully monitor its programs and greatly ease the burden and costs of any future research. Additional data to be collected should include:

- Prime vendor information: contact person with email; race and gender of the firm’s owner(s); and industry classification codes (preferably, North American Industry Classification System codes).
- Non-certified subcontractor information: firm name, address with zip code, contact person with email address; telephone number; work description; race and gender of the owner(s); industry classification code; and amounts paid, including any change orders.

In addition to full data collection, we suggest the City implement the contract/project-specific goal setting module available as part of the current system to set narrowly tailored goals using the data from this Study as the starting point. This will not only tie the program’s implementation to its evidentiary basis but also increase consistency and transparency of the contract goal setting process.

Another enhancement of the system would be to allow prime vendors to submit verified subcontractor utilization plans online. This should reduce the time for review of plans and the burdens of record keeping.

## **2. Increase Outreach to M/WBEs and Small Firms**

As is the case with many governments, the study revealed that M/WBEs are receiving few opportunities in several industry codes.<sup>183</sup> We suggest that special outreach be conducted to firms in those sectors so that they are aware of opportunities and can make connections with other vendors as subcontractors or joint venture partners. Activities could include targeted emails about future contracts, matchmaking events focusing on those industries, and identification of firms that are not currently certified with the City but might be eligible for inclusion to encourage applications.

Another avenue to increase the pool of certified M/WBEs would be to conduct outreach to firms certified by the State of Missouri located in the Kansas City metropolitan area. KCMO might also work with private advocacy groups to ensure such organizations’ members are fully aware of the City’s programs and how to access opportunities.

## **3. Require Department and Statutory Agency Contracting and Goal Forecasts**

The ability to plan ahead is critical for small firms, which often lack the resources to respond quickly to new opportunities. Annual or semi-annual contracting forecasts, whereby each department’s or statutory agency’s estimates approximately what it will spend at the general industry level or on specific projects will assist all firms. These forecasts should explain in detail how departments will utilize race-neutral tools such as unbundling contracts; reducing unnecessary experience and insurance requirements, and other approaches to reduce barriers. Further, the M/WBE Ordinance requires departments to provide annual plans and goals for M/WBE participation. This mandate should be rigorously enforced, with department held accountable for outreach and good faith efforts to include M/WBEs and SLBEs as both prime vendors and subcontractors.

## **4. Continue to Review Contract Sizes and Scopes**

The City has made strides to “unbundle” some construction contracts into smaller segments by dollars and scopes of work to provide fair access to its projects on a race- and gender-neutral basis. The SLBE program tailors contract size to the available firms, resulting in increased prime contracting opportunities. Reviewing specific procurement needs through the lens of small businesses can lead to reduced barriers across many City departments. In conjunction with reduced insurance and bonding

---

<sup>183</sup> See Table C, Executive Summary.

requirements where possible, unbundled contracts may permit smaller and firms new to the City to participate on projects.

## **5. Continue the SLBE and the SLBE Water Services Department Engineering Professional Services Programs**

These efforts were generally praised by participants in the interviews as good tools to expand opportunities for Small Local Business Enterprises to compete for prime contract awards, and the dollars awarded have been significant: over \$4 million/year in fiscal years 2014-2016, was won through these programs. However, only 5 City departments have participated (City Planning and Development; General Services; Parks and Recreation; Public Works and Water Services). Specific efforts should be made to expand the departments and industries using this procurement method. Departments should be required to include the use of SLBE contracts in their annual procurement forecast and regularly report to HRD on their progress.

## **6. Expand Financing Programs**

Access to bonding and working capital are the two of the largest barriers to the development and success of M/WBEs and small local businesses. The City has recognized this fact, and has recently developed a City-sponsored financing assistance partnerships with Lead Bank and Corner Stone Financial. We applaud those efforts, but more should be done. The original agreement with Lead Bank calls for 10 to 15 applicant firms to participate in the program; this number should be expanded. Larger loans and bonds to increase capacity are needed, and special efforts should be made to include firms in a variety of industries and ensure that all groups have access to these resources.

## **7. Expand Supportive Services to M/WBEs and SLBEs**

Both M/WBEs and larger prime contractors reported that small firms often lack the “back office” support or experience to address the complexities of government contracting. We there recommend KCMO partner with other agencies to provide training sessions and support for activities such as estimating subcontract bids or quotes; submitting certified payrolls; invoicing; safety compliance; accounting; and legal services. Participants reported that the City’s Overflow Control University Training Program for Water Department contracts was very useful. The Missouri Department of Transportation (MoDOT) also has an excellent supportive services program. Perhaps the City can expand its current program, and/or work with MoDOT to leverage resources.

## **B. Continue to Use Race- and Gender-Conscious Measures to Implement the M/WBE Program**

The Study’s results support the determination that the City has a strong basis in evidence to continue to implement the M/WBE Program. The record— both quantitative and qualitative— establishes that M/WBEs in the City’s market area continue to experience significant disparities in their access to contracts without M/WBE goals, private sector opportunities and to those factors necessary for business success. While few disparities between M/WBE availability and the City’s utilization of these firms were substantively or statistically significant, this reflects the effects of KCMO’s longstanding and successful implementation of its small business inclusion programs. The other evidence in this Report strongly suggests that should these efforts be discontinued or diminished, minorities and women would face discriminatory barriers remediated by the City’s programs. This is the type of “passive participation” evidence that the courts have recognized supports race- and gender-conscious programs. We therefore recommend the continued implementation of the Program and the inclusion of all groups for credit towards meeting contract goals.

## **1. Increase Resources for Monitoring, Accountability and Transparency**

It was apparent from the interviews with business owners and City personnel that more monitoring is necessary for the M/WBE program. Specific areas of concern where contract performance compliance, especially compliance with the requirement that certified firms perform a commercially useful function and that subcontractors are paid promptly. Further, while the Human Relations Department is doing a good job with existing resources, to ensure full compliance and City-wide “buy in” to the Program’s objectives, contract administration staff and project managers must be full partners to assure vendors’ compliance with their approved Utilization Plans and other Program commitments. Additional staffing is critically needed for efficient compliance monitoring and maintaining the assurance that the MWBE program is accountable.

## **2. Use the Study to Set the MBE and WBE Annual Goals**

The availability estimates in Chapter IV should be the basis for consideration of overall, annual spending targets for City funds. We found the availability of MBEs to be 14.7 percent, and the availability of WBEs to be 14.4 percent.

## **3. Use the Study to Set Narrowly Tailored Contract Specific Goals**

As discussed in Chapter II of the Study, the City’s constitutional responsibility is to ensure that goals are narrowly tailored to the specifics of the project. The detailed availability estimates in the Study can serve as the starting point for contract goal setting. This methodology involves four steps, which are operationalized in the system’s goal setting module.

1. Weigh the estimated dollar value of the scopes of the contract by industry codes as determined during the process of creating the solicitation. To increase understanding and compliance, these industry codes could be listed in the solicitation as a guide to how the goal was determined and where the agency expects bidders to seek MBE and WBE participation. Good faith efforts could be defined as, among several other elements, an adequate solicitation of firms certified in these codes.
2. Determine the availability of MBEs and WBEs in those scopes as estimated in the Study.
3. Calculate a weighted goal based upon the scopes and the availability of firms.
4. Adjust the resulting percentage based on current market conditions.

We urge the City to bid some contracts that it determines have significant opportunities for M/WBE participation without goals. These “control contracts” can illuminate whether certified firms are used or even solicited in the absence of goals. The development of some unremediated markets data, as held by the courts, will be probative of whether the M/WBE program remains needed to level the playing field for minorities and women.

## **4. Apply the M/WBE Program Elements and Administration Fully to the Statutory Agencies**

While in theory all statutory agencies must follow the City’s ordinance, the Program’s provisions seem to be inconsistently applied by the agencies. By far the most broadly shared comments about Program improvements were directed at the implementation of the Program by the agencies. In particular, interviewees cited very low goals, weak compliance oversight and few sanctions for failures to meet contractual commitments as major issues in need of attention.

We therefore recommend that the agencies outsource to HRD the operations of Program implementation, including contract goal setting; review of Utilization Plans and compliance with bid requirements; appeals and hearing; assessment of damages when appropriate; contract performance

monitoring; and construction workforce and wage monitoring. This will ensure that M/WBEs have full and fair access to compete for all taxpayer funded projects subject to the ordinance.

## **5. Continue to Narrowly Tailor M/WBE Program Eligibility Standards**

Current standards for eligibility to participate in the M/WBE program comport with the case law on the elements of a narrowly tailored ordinance. Detailed standards very similar to those of the DBE regulations are 49 C.F.R. Part 26 govern certification standards and processes. There is a geographic limitation; a size standard; and the requirement that the owner be economically disadvantaged. The minority or woman owner must own, manage and control the applicant firm day to day. The applicant firm cannot be affiliated with another firm if to do so exceeds the size standard. There are due process protections are applicants and timetables for review. These long standing criteria should be continued.

To update these standards, we suggest that KCMO consider the following revisions to the certification policy:

- Lengthen the recertification period. In view of scarce resources, a longer period before a full City review of a firm's continuing eligibility would permit staff to be deployed to other critical tasks as well as reduce the burdens on certified firms. The US Department of Transportation's (USDOT's) Disadvantaged Business Enterprise (DBE) program requires a certified firm to attest annually to its continuing eligibility, and the certifying agency may request additional information if warranted. This approach has been effective and the City should at a minimum lengthen the time for a complete paperwork submission and file review.
- Eliminate the requirement that a firm be in business at least one year before it is eligible to apply for certification. This unusual limitation seems to have resulted from concerns about the legitimacy of applicant firms. However, such an overly broad approach punishes legitimate firms that are "ready, willing and able" to do work from their inception. Issues with eligibility should be addressed through the certification review process.
- Certify firms owned by minority females as both MBEs and WBEs. KCMO is also unusual in refusing to certify a firm owned by a minority female as both a MBE and a WBE. While perhaps in the days before the electronic system was implemented it was too confusing to track to which goal a particular firm's dollars were to be counted, today this is an easy record keeping task. There is little doubt that such firms face a dual burden of race- and gender-based constraints, and there is no reason to limit their opportunities. It will also provide additional flexibility to prime contractors to meet goals by determining to which goal the firm's dollars will be applied, a hallmark of a narrowly tailored program. It is important that such participation not be double counted or split between two goals.
- Eliminate the requirement that a firm must have received its City certification at least 45 days prior to the issuance of the city's solicitation. While this imitation is directed at discouraging fraudulent firms, the appropriate remedy is to ensure integrity in the certification process, not impose an arbitrary restriction that might prohibit legitimate minority and women firms from participating fully in a city contract opportunity.
- Adopt a personal net worth test along the lines of the USDOT DBE program requirements. This narrow tailoring measure has been critical to the unanimous judicial holdings that the program meets strict constitutional scrutiny.

The City's certification process generally works well. The length of time to have a final file reviewed was sometimes stated to be long, although we note that the average time of approximately 55 days is less than the 90 day time limit of the DBE program regulations. We suggest some additional staff resources be deployed for initial certification review and processing.

## **6. Update the Policy on Counting M/WBE Participation Towards Contract Goals**

There are two areas where we recommend updating how M/WBE participation is counted towards meeting contract goals.

- Follow the DBE regulations and definitions and count firms that supply materials as “regular dealers” at 60 percent of the dollar value of the contract. The City currently counts only 25 percent of the value of supplies towards the contract goal, and gives 10 percent credit for “brokering.” This seems to have stemmed from concerns when the program was first adopted that prime contractors would not use specialty trade subcontractors to meet goals. While this concern remains valid, the DBE program’s approach is preferable. Counting 60 percent of the cost of materials from regular dealers recognizes that trade contractors are critical to the program while not so vastly diminishing the value of necessary supplies to perform construction activities that suppliers have few opportunities. No credit should be given for “brokering” other than credit for the fee or commission on the transaction (which may vary from 5 percent). This revision also has the benefit of harmonizing the City’s program with that of most other agencies, thereby reducing confusion for both prime contractors and M/WBE suppliers.
- Count M/WBE prime vendors’ self-performance towards meeting the contract goal. This unusual restriction fails to recognize that barriers to prime contracting opportunities are the most difficult for minority and women businesses to overcome. The DBE program has always permitted prime contractors to count self-performance towards meeting contract goals, and no court has suggested that this is somehow fails strict constitutional scrutiny. This very common policy does not give M/WBE prime vendors an “unfair” advantage, but rather somewhat reduces the advantage enjoyed by non-M/WBEs because of the continuing effects of race and gender discrimination that especially affect prime firms.

## **7. Provide Training to Prime Vendors on the Contract Goal Compliance Process**

Many prime vendors stated that they were either unaware of the standards for submitting documentation of good faith efforts to meet contract goals, or believed that the City will not award a contract to a bidder that did not meet the goal(s), regardless of the bidder’s good faith efforts to do so.

A flexible a good faith efforts procedure is a constitutional requirement to ensure that the Program does not function as a *de facto* quota system. The City should therefore review and revise its bid documents and other instructions to bidder and provide training on compliance with these provisions so that there is no confusion or ambiguity about the availability of a reduction in the MBE and/or WBE goals in the solicitation based upon a good faith effort to meet those goals.

## **8. Implement the Mentor-Protégé Program**

The M/WBE Ordinance authorizes a Mentor-Protégé Program, and HRD is in the process of implementing these provisions. To ensure that the approach is narrowly tailored and does not compromise either the certified firm’s independence and possible program eligibility, as well as defined and measurable results, we suggest a framework similar to that adopted by the Missouri Department of Transportation and approved by USDOT. This approach was welcomed by M/WBEs and several large prime contractors as a way to increase M/WBEs’ capacities. Elements should include:

- Formal program guidelines.
- A City-approved written development plan, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement, a schedule for meetings



and development of plans, and the services and resources to be provided by the mentor to the protégé. The development targets should be quantifiable and verifiable, and reflect objectives to increase the protégé's capacities and expand its business areas and expertise. Targets for improvement must be specified, such as increased bonding capacity, increased sales, increased areas of work specialty, etc.

- A long term and specific commitment between the parties, e.g., 12 to 36 months.
- Extra credit for the mentor's use of the protégé to meet a contract goal (e.g., 1.25 percent for each dollar spent).
- A fee schedule to cover the direct and indirect cost for services provided by the mentor for specific training and assistance to the protégé.
- Regular review by the City of compliance with the plan and progress towards meeting its objectives. Failure to adhere to the terms of the plan would be grounds for termination from the Program.

The Mentor-Protégé Guidelines in Appendix D to 49 C.F.R. Part 26, which govern MoDOT's program, are an excellent the starting point. The General Counsel's Office at USDOT has provided some additional guidance<sup>184</sup>, and USDOT's Office of Small Disadvantaged Business Utilization had created a pilot program<sup>185</sup> and sample documents<sup>186</sup>. Careful screening of participants and close, real time oversight of the progress towards goals and objectives is key to meaningful results and the prevention of fraud.

### **C. Conduct Regular M/WBE Program Reviews**

To meet the requirements of strict constitutional scrutiny and ensure best practices in program administration continue to be applied, the City should conduct a full and thorough review of the evidentiary basis for the Program approximately every five to seven years.

A sunset date for the M/WBE program, when it will end unless reauthorized, is a constitutional requirement to meet the narrow tailoring test that race-and gender-conscious measures be used only when necessary. A new disparity study or other applicable research should be commissioned in time to meet the sunset date.

### **D. Develop Performance Measures for Program Success**

The City should develop quantitative performance measures for overall success of its programs to evaluate their effectiveness in reducing the systemic barriers identified by the Study. This will require enhanced data collection and monitoring. In addition to meeting goals, possible benchmarks might be:

- Progress towards meeting the overall, annual MBE and WBE goals.
- The number of bids or proposals, 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 and dollar amount of bids or proposals rejected as non-responsive for failure to make good faith efforts to meet the goal.
- The number, type and dollar amount of M/WBE substitutions during contract performance.
- Increased bidding by certified firms as prime vendors, including through the SLBE Program.
- Increased prime contract awards to certified firms.

---

<sup>184</sup> <http://www.dot.gov/osdbu/disadvantaged-business-enterprise/official-questions-and-answers>.

<sup>185</sup> <http://www.dot.gov/osdbu/procurement-assistance/mentor-protege-pilot-program>.

<sup>186</sup> [http://cms.dot.gov/small-business/procurement-assistance/mentor-protege program](http://cms.dot.gov/small-business/procurement-assistance/mentor-protege-program).

- Increased “capacity” of certified firms, as measured by bonding limits, size of jobs, profitability, complexity of work, etc.
- Increased variety in the industries in which M/WBEs are awarded prime contracts and subcontracts.
- “Graduation” data, such as the rates at which firms exceed the personal net worth and the size limits, the industries in which they operate, the movement from subcontracting to prime contracting, and the experiences of firms that exit the program.

## APPENDIX A: FURTHER EXPLANATION OF THE MULTIPLE REGRESSION ANALYSIS

As explained in the Report, the 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;  $\beta_1$ ,  $\beta_2$  and  $\beta_3$  are coefficients, and  $\mu$  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, education and the state of residence 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. An additional factor was included: because of our interest in the impact of race and gender on wages and earnings, we made the assumption that the impact of those variables might vary from state to state (*i.e.*, the impact of being Black on wages is different in Missouri than it is in Iowa). We therefore developed new variables that would show the interaction between race and gender and one particular state. Since this Report examined Illinois, that was the state employed. The coefficient for the new variable showed the impact of being a member of that race or gender in Missouri. Consequently, the impact of race or gender on wages or earnings had two components: the national coefficient and the state-specific impact.

## APPENDIX B: FURTHER EXPLANATION OF THE PROBIT REGRESSION ANALYSIS

Probit regression is a special type of regression analysis. While there are many differences between the underlying estimation techniques used in the probit regression and the standard regression analysis, the main differences from the layperson's point of view lie in the nature of dependent variable and the interpretation of the coefficients associated with the independent variables.

The basic model looks the same:

$$DV = f(D, I, O),$$

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;  $\beta_1$ ,  $\beta_2$ , and  $\beta_3$  are coefficients, and  $\mu$  is the random error term.

In the standard regression model, the dependent variable is continuous and can take on many values. In the probit model, the dependent variable is dichotomous and can take on only two values: zero or one. For instance, in the standard regression analysis, we may be exploring the impact of a change in some independent variable on wages. In this case, the value of one's wage might be any non-negative number. In contrast, in the probit regression analysis, the exploration might be the impact of a change in some independent variable on the probability that some event occurs. For instance, the question might be how an individual's gender impacts the probability of that person forming a business. In this case, the dependent variable has two values: zero, if a business is not formed; one, if a business is formed.

The second significant difference – the interpretation of the independent variables' coefficients – is fairly straight-forward in the standard regression model: the unit change in the independent variable impacts the dependent variable by the amount of the coefficient.<sup>187</sup> However, in the probit model, the initial coefficients cannot be interpreted this way. One additional step - which can be computed easily by most statistical packages - 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) occurs. For instance, using our previous example of the impact on 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 final transformation of the coefficient of WOMAN was -0.12, we would interpret this to mean that women have a 12% lower probability of forming a business compared to men.

---

<sup>187</sup> The exact interpretation depends upon the functional form of the model.

## APPENDIX C: SIGNIFICANCE LEVELS

Many tables in this Report contain asterisks indicating a number has statistical significance at 0.001 or 0.01 levels 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 whether 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 KCMO as it explores the necessity of intervening in the marketplace through contract goals to ensure it is not a passive participant in the continuation of historic and contemporary bias 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 this analysis determines that non-Whites receive wages that are 35% 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 is that estimation, that is, what is the probability 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% less than White men). This is sometimes called the null hypothesis. We then calculate a confidence interval to find explore the probability that the observed relationship (e.g., - 35%) is between 0 and minus that confidence interval.<sup>188</sup> The confidence interval will vary depending upon the level of confidence (statistical significance) we wish to have in our conclusion. Hence, a statistical significance of 99% would have a broader confidence interval than statistical significance of 95%. Once a confidence interval is established, if -35% lies outside of that interval, we can assert the observed relationship (e.g., 35%) is accurate at the appropriate level of statistical significance.

---

<sup>188</sup> Because 0 can only be greater than -35%, 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: ADDITIONAL DATA FROM THE ANALYSIS OF THE SURVEY OF BUSINESS OWNERS<sup>189</sup>

**Table D1. Demographic Distribution of Sales and Payroll Data  
Construction, 2012**

	Total Number of Firms (All Firms)	Sales & Receipts (All Firms) (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
Black	2.92%	0.79%	0.68%	0.73%	0.83%	0.80%
Latino	2.81%	0.73%	0.98%	0.45%	S	S
Native American	0.82%	0.47%	0.72%	0.46%	0.55%	0.51%
Asian	0.40%	0.09%	0.07%	0.05%	0.09%	0.05%
<b>Panel B: Distribution of All Firms</b>						
Non-White	6.96%	2.02%	2.45%	1.64%	2.19%	1.93%
White Women	7.85%	9.91%	10.44%	10.30%	11.45%	10.38%
White Men	73.81%	64.86%	66.62%	63.78%	61.61%	61.95%
Equally Non-White & White	0.38%	0.15%	0.45%	0.12%	0.26%	0.11%
Equally Women & Men	10.41%	9.06%	17.62%	9.02%	11.47%	10.12%
Firms Not Classifiable	0.60%	14.00%	2.43%	15.14%	13.01%	15.51%
<b>All Firms</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: CHA calculations from Survey of Business Owners

<sup>189</sup> See Footnote 15 for an explanation of the reported value of "S".

**Table D2. Demographic Distribution of Sales and Payroll Data – Aggregated Groups  
Professional, Scientific, and Technical Services, 2012**

	Total Number of Firms (All Firms)	Sales & Receipts (All Firms) (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
Black	3.91%	0.79%	1.45%	0.67%	0.87%	0.93%
Latino	1.74%	0.44%	1.12%	0.38%	0.54%	0.48%
Native American	0.76%	0.24%	0.86%	0.22%	0.19%	0.08%
Asian	2.43%	0.97%	2.29%	0.88%	1.13%	1.05%
<b>Panel B: Distribution of All Firms</b>						
Non-White	8.86%	2.43%	5.81%	2.15%	2.79%	2.56%
White Women	28.87%	5.93%	21.57%	4.85%	8.25%	5.21%
White Men	52.27%	32.03%	58.86%	30.49%	34.96%	32.95%
Equally Non-White & White	0.44%	0.10%	0.38%	0.07%	0.10%	0.06%
Equally Women & Men	8.29%	2.91%	8.54%	2.55%	4.91%	2.88%
Firms Not Classifiable	1.27%	56.58%	4.82%	59.91%	48.99%	56.34%
<b>All Firms</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: CHA calculations from Survey of Business Owners

**Table D3. Demographic Distribution of Sales and Payroll Data – Aggregated Groups Information, 2012**

	Total Number of Firms (All Firms)	Sales & Receipts (All Firms) (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
Black	5.50%	0.10%	0.67%	0.08%	0.25%	0.17%
Latino	1.32%	0.10%	0.42%	0.08%	0.16%	0.17%
Native American	0.71%	0.00%	0.25%	S	S	S
Asian	1.85%	S	0.67%	S	S	S
<b>Panel B: Distribution of All Firms</b>						
Non-White	9.33%	0.25%	2.02%	S	S	S
White Women	23.51%	0.68%	13.06%	0.61%	1.97%	1.07%
White Men	51.74%	8.08%	51.05%	7.73%	16.97%	10.34%
Equally Non-White & White	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Equally Women & Men	9.41%	0.91%	11.20%	0.85%	1.70%	1.17%
Firms Not Classifiable	4.93%	90.09%	22.49%	90.61%	78.90%	87.04%
<b>All Firms</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: CHA calculations from Survey of Business Owners



**Table D4. Demographic Distribution of Sales and Payroll Data – Aggregated Groups Services, 2012**

	Total Number of Firms (All Firms)	Sales & Receipts (All Firms) (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
Black	10.16%	0.72%	4.77%	S	S	S
Latino	1.72%	0.41%	1.46%	S	S	S
Native American	0.69%	0.08%	0.28%	S	S	S
Asian	3.40%	1.04%	4.59%	0.86%	1.98%	1.15%
<b>Panel B: Distribution of All Firms</b>						
Non-White	15.95%	2.33%	11.20%	S	S	S
White Women	28.64%	4.35%	17.68%	3.40%	6.65%	5.07%
White Men	41.31%	22.77%	46.82%	20.97%	29.96%	25.75%
Equally Non-White & White	0.46%	0.15%	0.54%	0.12%	0.24%	0.15%
Equally Women & Men	10.55%	4.29%	14.07%	3.65%	7.49%	4.32%
Firms Not Classifiable	2.89%	66.02%	9.46%	69.95%	51.24%	62.08%
<b>All Firms</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: CHA calculations from Survey of Business Owners

**Table D5. Demographic Distribution of Sales and Payroll Data – Aggregated Groups Goods, 2012**

	Total Number of Firms (All Firms)	Sales & Receipts (All Firms) (\$1,000)	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>						
Black	2.75%	0.21%	0.36%	0.20%	0.31%	0.34%
Latino	3.14%	0.61%	1.53%	0.61%	0.67%	0.52%
Native American	0.29%	0.02%	0.21%	0.02%	0.05%	0.04%
Asian	4.95%	1.01%	5.12%	0.99%	1.34%	1.10%
<b>Panel B: Distribution of All Firms</b>						
Non-White	11.21%	1.83%	7.26%	1.72%	2.24%	3.49%
White Women	16.49%	2.26%	10.87%	2.24%	4.48%	3.62%
White Men	55.34%	21.70%	60.49%	21.59%	37.56%	34.56%
Equally Non-White & White	0.33%	0.03%	0.29%	0.03%	0.07%	0.05%
Equally Women & Men	10.26%	1.77%	9.45%	1.75%	3.44%	2.75%
Firms Not Classifiable	6.03%	72.34%	11.50%	72.53%	52.01%	56.94%
<b>All Firms</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: CHA calculations from Survey of Business Owners