

City of Austin Disadvantaged Business Enterprise Federal Aviation Disparity Study 2023



CITY OF AUSTIN

**DISADVANTAGED BUSINESS
ENTERPRISE FEDERAL AVIATION
DISPARITY STUDY**

2023

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About the Study Team

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

Adisa Communications, founded in 1995 by Shuronda Robinson, is a City of Austin M/WBE certified public involvement and communications firm. Adisa provides a full spectrum of public involvement and communications services. Adisa has led public sector, nonprofit, and private sector communications and outreach campaigns to successful completion.

Cultural Strategies, Inc. (“CS”) headed by President Sebastian Puente, is an Austin certified MBE focusing on civic projects and education campaigns for local institutions and private enterprises. Founded in 2009, CS provides effective community engagement strategies for an ever more multicultural Central Texas. With rich experience in multicultural and multilingual marketing, advertising, outreach, and communications, CS helps build effective communications and outreach strategies for respected institutions.

Pink Consulting, a City of Austin certified M/WBE, provides communications services on public and private projects. Founded in 1997, the firm focuses on the development and implementation of community outreach initiatives for governments, private firms, and community based and neighborhood organizations, with emphasis in minority communities. Principal Bobbie Garza-Hernandez possesses over 30 years of experience with public participation processes, strategic planning, marketing, fundraising and event/conference planning and coordination in the Austin and Central Texas communities.

Acknowledgments

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I. EXECUTIVE SUMMARY

Colette Holt & Associates (“CHA”) was retained by the City of Austin (“City”) to perform a disparity study examining its Minority-owned Business Enterprise (“MBE”) and Woman-owned Business Enterprise (“WBE,” collectively, “MBE/WBE”) Program for locally funded contracts and its Disadvantaged Business Enterprise (“DBE”) program for its contracts funded in whole or in part by the Federal Aviation Administration (“FAA”). For this research project we determined the City’s utilization of MBE/WBEs and DBEs during fiscal years 2013 through 2018; the availability of these firms as a percentage of all firms in the City’s geographic and industry market areas by funding source; and any disparities between the City’s utilization of MBE/WBEs and MBE/WBE availability for its non-FAA funded contracts. We further analyzed disparities in the Austin Metropolitan Area and the wider Texas economy, where contracting affirmative action is rarely practiced, to evaluate whether barriers continue to impede opportunities for minorities and women when remedial intervention is not imposed. We also gathered qualitative data about the experiences of MBE/WBEs in obtaining City contracts and associated subcontracts. Based on these findings, we evaluated the MBE/WBE and DBE Programs for conformance with constitutional standards, national best practices, and the DBE program for conformance with the DBE program regulations.¹

The methodology for this Study embodies the constitutional principles of *City of Richmond v. J.A. Croson Co.*,² *Adarand Constructors, Inc. v. Peña*,³ Fifth Circuit Court of Appeals case law, the DBE program regulations and best practices for designing race- and gender-conscious programs. The CHA approach has been specifically upheld by the federal courts. It is also the approach developed by Ms. Holt for the National Academy of Sciences that is now the recommended standard for designing legally defensible disparity studies.

This study employs long established economic principles to empirically establish the City’s geographic and product market area to ensure that any program based on the study satisfies strict scrutiny. We applied this approach to also determine separately the City’s market area for its FAA funded contracts under the DBE program.⁴

-
1. 49 C.F.R. Part 26.
 2. 488 U.S. 469 (1989)
 3. **515 U.S. 200 (1995).**
 4. 49 C.F.R. §26.45(c).

A. Summary of Strict Constitutional Standards Applicable to the City of Austin’s MBE/WBE Program

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

Strict scrutiny analysis has two prongs:

1. The government must establish its “compelling interest” in remediating race discrimination by current “strong evidence” of the persistence of discrimination. Such evidence may consist of the entity’s “passive participation” in a system of racial exclusion.
2. Any remedies adopted must be “narrowly tailored” to that discrimination; the program must be directed at the types and depth of discrimination identified.⁵

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

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

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

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

The DBE program for United States Department of Transportation funded contracts has been evaluated under a similar framework. The program regulations were first

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

revised in 1999 to meet the new test imposed by the US. Supreme Court in *Adarand Constructors, Inc. v. Peña*.⁶

B. Austin’s DBE Program for Federal Aviation Administration Funded Contracts

As a recipient of FAA planning or development funds which exceed \$250,000 in a federal fiscal year, the City must administer a DBE program in good faith pursuant to 49 C.F.R. Part 26 (“Part 26”).

The City’s FAA-approved DBE Program Policy ensures that DBEs have an equal opportunity to receive and participate in FAA assisted contracts. The City’s most current DBE Program Plan is dated 2020-2022 and is undergoing review by the FAA. The Plan is intended to address all required Part 26 elements. Significant changes to the Plan must be submitted to the local FAA office for review and approval.

The City’s DBE Program is administered by the Department of Small Minority Business Resources (“SMBR”). The Director serves as its DBE Liaison Officer. The DBE Liaison Officer (“DBELO”) and SMBR’s two DBELO Program Designees are responsible for administering all aspects of the Program and for ensuring that the City complies with all provisions of Part 26. The DBELO has direct, independent access to the City Manager concerning DBE program matters.

As a general matter, the City’s local MBE/WBE Program follows the outlines of the USDOT DBE program. Pre-award and contract performance procedures for the City’s DBE program for FAA contracts are similar to those employed by the City in its MBE/WBE Program. Distinctions important for this Report follow.

1. Eligibility for the Program

A DBE is defined as a for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

The City is a certifying member of the Texas Unified Certification Program.

6. 515 U.S. 200 (1995).

2. DBE Goal Setting Policies and Procedures

The City is required to set a triennial DBE goal using the Part 26 two-step goal-setting process, the USDOT Tips for Goal Setting, and other USDOT official guidance. The overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on USDOT assisted contracts. The goal must reflect the City's determination of the level of DBE participation it would expect absent the effects of discrimination.

For FFYs 2018 through 2020, the City's overall DBE goal was 11.81%, of which 11.81% was to be met through race-conscious measures and 0.00% was to be met through race-neutral measures. The City will reassess its DBE goal based upon the findings in this Report. If necessary, it will make a mid-year adjustment.

3. Small Business Enterprise Element

The City reviews FAA funded projects to determine whether it is appropriate to unbundle contracts and providing greater subcontracting opportunities on a small scale. The City also promotes the use of joint ventures on federal projects by educating vendors on the benefits of forming partnerships with smaller businesses.

Additionally, the City develops and delivers training to small businesses on airport requirements, project certifications and qualifications, security clearances, and resources available to assist with future procurement interests.

4. Outreach, Training and Business Development

The City offers DBEs an array of outreach, training, and business development services. Every February, the City hosts its Runway To Opportunity event, which showcases opportunities for DBEs interested in performing work on FAA funded projects. It also offers training on obtaining certification; provides DBEs with the opportunity to meet with prime contractors; and sessions to learn about large projects.

C. Contract Data Analyses of the City of Austin's FAA Funded Contracts

We analyzed the four FAA funded contracts awarded between 2013 and 2015.

**Table 1-1: Final Contract Data File
(FAA Funded)**

Contract Type	Total Contracts	Share of Total Contracts
Prime Contracts	4	3.2%
Subcontracts	120	96.8%
TOTAL	124	100.0%

Source: CHA analysis of City of Austin data

**Table 1-2: Final Contract Data File Net Dollar Value
(FAA Funded)**

Contract Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contracts	\$20,401,467.88	25.8%
Subcontracts	\$58,629,290.89	74.2%
TOTAL	\$79,030,758.77	100.0%

Source: CHA analysis of City of Austin data

Table 1-3 presents data on the 42 NAICS codes contained in the FCDF. These codes contain a total contract dollar value of \$79,030,759. The third column represents the share of all contracts to firms performing work in a particular NAICS code. The fourth column presents the cumulative share of the City's spending from the NAICS code with the largest share to the NAICS code with the smallest share.

**Table 1-3: Industry Percentage Distribution of the City Contracts by Dollars
(FAA Funded)**

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
236220	Commercial and Institutional Building Construction	18.8%	18.8%
488119	Other Airport Operations	9.7%	28.5%
238120	Structural Steel and Precast Concrete Contractors	9.3%	37.8%
238210	Electrical Contractors and Other Wiring Installation Contractors	8.4%	46.2%
541330	Engineering Services	8.0%	54.1%

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NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
238220	Plumbing, Heating, and Air-Conditioning Contractors	5.6%	59.7%
541420	Industrial Design Services	5.0%	64.7%
238150	Glass and Glazing Contractors	5.0%	69.7%
237310	Highway, Street, and Bridge Construction	4.6%	74.3%
238310	Drywall and Insulation Contractors	4.6%	78.9%
541310	Architectural Services	3.4%	82.3%
238390	Other Building Finishing Contractors	3.1%	85.4%
488310	Port and Harbor Operations	2.4%	87.8%
238350	Finish Carpentry Contractors	2.2%	90.0%
561612	Security Guards and Patrol Services	1.6%	91.6%
238910	Site Preparation Contractors	1.5%	93.1%
238340	Tile and Terrazzo Contractors	1.2%	94.3%
331315	Aluminum Sheet, Plate, and Foil Manufacturing	0.6%	94.9%
238320	Painting and Wall Covering Contractors	0.6%	95.5%
484110	General Freight Trucking, Local	0.5%	96.0%
238290	Other Building Equipment Contractors	0.5%	96.5%
238330	Flooring Contractors	0.5%	97.0%
238160	Roofing Contractors	0.5%	97.5%
518210	Data Processing, Hosting, and Related Services	0.4%	97.9%
238990	All Other Specialty Trade Contractors	0.4%	98.2%
541380	Testing Laboratories	0.3%	98.6%
238140	Masonry Contractors	0.3%	98.9%
541620	Environmental Consulting Services	0.3%	99.1%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.1%	99.3%
444190	Other Building Material Dealers	0.1%	99.4%
238130	Framing Contractors	0.1%	99.5%
541211	Offices of Certified Public Accountants	0.1%	99.6%
561730	Landscaping Services	0.1%	99.6%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541611	Administrative Management and General Management Consulting Services	0.1%	99.7%
561439	Other Business Service Centers (including Copy Shops)	0.1%	99.8%
238110	Poured Concrete Foundation and Structure Contractors	0.1%	99.9%
337127	Institutional Furniture Manufacturing	0.04%	99.9%
562998	All Other Miscellaneous Waste Management Services	0.03%	99.9%
711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities	0.03%	100.0%
541370	Surveying and Mapping (except Geophysical) Services	0.02%	100.0%
562111	Solid Waste Collection	0.01%	100.0%
541810	Advertising Agencies	0.004%	100.0%
FCDFTOTAL		100.0%	

Source: CHA analysis of the City of Austin data

In the geographic market for the City’s FAA funded contracts, contracts awarded to firms located in the State of Texas accounted for 95.8% of all dollars during the study period. Four counties - Travis, Williamson, Bastrop, and Hays – captured 69.8% of the state dollars and 66.9% of the entire FCDF. Therefore, these four counties were determined to be the geographic market for the City, and we limited our analysis to firms in these counties. While 66.9% is slightly lower than the usual 75% threshold, it is important to note that two other counties – Dallas and Tom Green – captured another 21.6% of the contract dollars spent in Texas. When we explore these contracts more deeply, the contracts were deemed to be outliers.⁷ If we excluded contract dollars from these two counties, the state share of the FCDF falls slightly to 94.7% but the four-county share of the FCDF rises significantly to 84.3%.

7. One of the Dallas County contracts represented 79% of that County’s contract dollars, and the one contract in Tom Green County was for baggage handling system and structural steel work in the construction of the airport terminal. We assume these would not be repeated procurement opportunities for the City.

The next step was to determine the dollar value of the City’s utilization of DBEs⁸, as measured by payments to prime firms and subcontractors and disaggregated by race and gender.

Table 1-4 presents the distribution of contract dollars. Chapter IV provides detailed breakdowns of these results.

**Table 1-4: Distribution of Contract Dollars by Race and Gender
(share of total dollars)
(FAA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Women	D/M/WBE	Non-D/M/WBE	Total
236220	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237310	0.0%	21.3%	0.0%	0.0%	0.0%	21.3%	78.7%	100.0%
238110	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
238120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238130	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
238140	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
238150	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238160	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238210	0.0%	19.9%	0.0%	0.0%	19.0%	38.9%	61.1%	100.0%
238220	0.0%	0.0%	0.0%	0.0%	11.6%	11.6%	88.4%	100.0%
238310	0.0%	0.0%	9.1%	0.0%	0.0%	9.1%	90.9%	100.0%
238320	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
238340	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238350	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
238390	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
238910	0.0%	0.0%	0.0%	0.0%	50.8%	50.8%	49.2%	100.0%
238990	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
337127	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423320	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484110	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

8. We use the term “DBE” to include firms that are minority- or woman-owned but not necessarily certified as DBEs by the Texas UCP.

NAICS	Black	Hispanic	Asian	Native American	White Women	D/M/WBE	Non-D/M/WBE	Total
541330	2.4%	0.7%	0.0%	0.0%	0.0%	3.1%	96.9%	100.0%
541370	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541380	0.0%	41.5%	0.0%	0.0%	58.5%	100.0%	0.0%	100.0%
541420	0.0%	6.4%	0.0%	10.7%	42.7%	59.7%	40.3%	100.0%
541611	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541620	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541810	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
561439	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
561612	18.1%	0.0%	0.0%	0.0%	0.0%	18.1%	81.9%	100.0%
561730	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562111	0.0%	49.0%	0.0%	0.0%	0.0%	49.0%	51.0%	100.0%
562998	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
711310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
Total	3.2%	5.6%	0.6%	1.4%	6.3%	17.1%	82.9%	100.0%

Source: CHA analysis of the City of Austin data

Next, we determined the unweighted availability of DBEs in the City’s market area. Table 1-5 presents these data. The unweighted six-digit NAICS code availability results can be used by the City to set narrowly tailored DBE contract goals.

**Table 1-5: Aggregated Unweighted DBE Availability
(FAA Funded)**

Black	Hispanic	Asian	Native American	White Women	D/M/WBE	Non-D/M/WBE	Total
1.2%	3.1%	0.9%	0.2%	5.4%	10.9%	89.1%	100.0%

Source: CHA analysis of the City of Austin data

We next determined the aggregated availability of D/M/WBEs, weighted by the City’s spending in its geographic and industry markets. Table 1-6 presents these results. The overall, weighted D/M/WBE availability result can be used by the City to determine its triennial DBE goal to be submitted to FAA for approval.

**Table 1-6: Aggregated Weighted Availability
(FAA Funded)**

Black	Hispanic	Asian	Native American	White Women	D/M/WBE	Non-D/M/WBE	Total
1.9%	6.0%	1.7%	0.5%	8.5%	18.5%	81.5%	100.0%

Source: CHA analysis of the City of Austin data; Hoovers; CHA Master Directory

Because Congress has already determined that discrimination continues to impact the market for federally assisted transportation contracts, there is no need for the City to conduct disparity testing. Under 49 C.F.R. §26.45, its regulatory responsibility is to determine the availability of DBEs and set appropriate triennial and narrowly tailored contract goals.

D. Analysis of Disparities in the City of Austin Area Economy

Evidence of the experiences of minority- and woman-owned firms outside of contracting affirmative action programs is relevant and probative of the likely results of the City adopting a race-neutral program, because contracting diversity programs are rarely imposed outside of specific government agencies. To examine the outcomes throughout the City of Austin area economy, we explored two Census Bureau datasets and the government and academic literature relevant to how discrimination in the City’s 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:

- Austin Metropolitan Area data from the Census Bureau’s American Community Survey from 2015 through 2019. This rich data set establishes with greater certainty any causal links between race, gender and economic outcomes. We employed a multiple regression statistical technique to examine the rates at which minorities and women form firms. In general, we found that even after considering potential mitigating factors, business formation rates by Blacks, Hispanics and White women are lower compared to White males. The data indicate that non-Whites and White women receive lower wages and Blacks and White women receive lower business earnings after controlling for possible explanatory factors. These analyses support the conclusion that barriers to business success do affect non-Whites and White women entrepreneurs.

- Industry Data from the Census Bureau’s 2017 Annual Business Survey from 2017. This dataset indicated large disparities between M/WBE firms and non-M/WBE firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), and the payroll of employer firms.
- Surveys and literature on barriers to access to commercial credit and the development of human capital 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. These results support the conclusions drawn from the anecdotal interviews and analysis of the City’s contract data that M/WBEs face obstacles to achieving success on contracts outside of M/WBE programs.

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

E. Qualitative Evidence of Race and Gender Barriers in the City of Austin’s Market

In addition to quantitative data, anecdotal evidence of firms’ marketplace experiences is relevant to evaluating whether the effects of current or past discrimination continue to impede opportunities for DBEs such that race-conscious contract goals are needed to ensure equal opportunities to compete for City prime contracts. To explore this type of anecdotal evidence, we received input from 199 participants in small group business owner interviews. We also obtained written comments from 198 businesses that participated in an electronic survey.

1. Business Owner and Stakeholders Interviews

Many minority and woman business 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 brief summaries of the most common views expressed by numerous participants.

- Many minority and woman interview participants reported that they still encounter biases, stereotypes and negative assumptions about their qualifications and competency.

- Several owners reported that being certified as an MBE/WBE often carries a stigma.
- Many DBEs found it difficult to penetrate the industry networks necessary for entrepreneurial success.
- Several women, especially in construction, had experienced sexist attitudes and behaviors.
- Professional opportunities were sometimes explicitly denied because of gender.

2. Electronic Business Owner Survey

Results from the electronic survey were similar to those of the interviews. A little over a quarter (25.5%) reported that they still experience barriers to equal contracting opportunities; over one quarter (27.5%) said their competency was questioned because of their race or gender; and almost one fifth (17.4%) indicated that they had experienced job-related sexual or racial harassment or stereotyping.

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

- Many minorities reported that fair opportunities to compete for contracts were not available because of systemic racial barriers.
- Many minority and woman respondents reported instances of implicit bias and subtle discriminatory attitudes that affect their ability to obtain contracting work. Their credentials and competency are routinely questioned.
- Regardless of their industry, many women reported that stereotypical assumptions about their role and authority are common.
- Many minority and woman owners felt excluded from networks necessary for success.
- Some minority and woman respondents felt that prime bidders often use them only to meet affirmative action goals.
- Many MBEs/WBEs/DBEs reported difficulties with obtaining financing and bonding that would allow them to take on more work and successfully compete.
- Some minority and woman respondents reported being charged higher pricing for materials based on their race, ethnicity and gender.

F. Recommendations

1. Centralize the Contracting Equity Programs' Data Collection and Reporting

We suggest that all DBE and MBE/WBE Program reporting functions be centralized in SMBR. The somewhat parallel system of E-Capri seems to create unnecessary confusion and duplication of efforts, as well as inconsistent reporting protocols and outcomes that undermine public confidence in the Program. SMBR is the Program expert and it should be responsible for all aspects of administration, including reporting.

Further, while the City has had the B2Gnow® system for some years, it is not being used to its greatest functionality to support Program administration. While the City, to our understanding, has purchased the most important modules, including contract goal setting and compliance, all aspects of contracting and procurement relevant to the DBE and MBE/WBE programs should be captured and managed in this system, including detailed industry codes, which is designed specifically to implement contracting affirmative action programs.

2. Continue to Implement a Narrowly Tailored DBE Program

We recommend the City use the availability results for FAA funded contracts as its step 1 in setting its triennial goal and the basis for setting contract goals. This approach has been accepted by the FAA based on our studies for airports.

3. Use the Study to Set the Triennial DBE Goal

49 C.F.R. §26.45 requires the City to engage in a two-step process to set a triennial goal for DBE participation in its federally funded projects. To determine the Step 1 base figure for the relative availability of DBEs required by §26.45(c), the City should use the DBE unweighted availability findings for FAA funded contracts. The City can use past DBE utilization and the statistical disparities in the rates at which DBEs form businesses, provided in Chapter V, for a Step 2 adjustment, if necessary.

4. Use the Study to Set DBE Contract Goals

The highly detailed unweighted availability estimates in Chapter IV can serve as the starting point for setting narrowly tailored contract goals that reflect the percentage of available DBEs as a percentage of the total pool of available firms.

This methodology involves four steps:

1. Weight the estimated dollar value of the scopes of the contract by six-digit NAICS codes, as determined during the process of creating the solicitation.
2. Determine the unweighted availability of DBEs in those scopes as estimated in the Study.
3. Calculate a weighted goal based upon the scopes and the availability of at least three available firms in each scope.
4. Adjust the resulting percentage based on current market conditions and progress towards the annual goals.

Adjust the result based on geography and current market conditions (for example, the volume of work currently underway in the market, the entrance of newly certified firms, specialized nature of the project, etc.). Written procedures based on the study results detailing the implementation of contract goal setting should be developed and disseminated so that all contracting actors understand the methodology.

The B2Gnow® system provides the contract goal setting module developed to utilize our study's unweighted availability data as the starting point.

II. LEGAL STANDARDS FOR THE CITY OF AUSTIN'S CONTRACTING EQUITY PROGRAMS

A. Summary of Constitutional Equal Protection Standards

To be effective, enforceable, and legally defensible, a race-based affirmative action program designed to promote equity in public sector contracting, regardless of funding source, must meet the judicial test of constitutional “strict scrutiny”.⁹ Strict scrutiny constitutes the highest level of judicial review.¹⁰ Strict scrutiny analysis is comprised of two prongs:

1. The government must establish its “compelling interest” in remediating race discrimination by current “strong evidence” of the persistence of discrimination. Such evidence may consist of the entity’s “passive participation” in a system of racial exclusion.
2. Any remedies adopted must be “narrowly tailored” to that discrimination; the program must be directed at the types and depth of discrimination identified.¹¹

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

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

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

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

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

2. Qualitative or anecdotal evidence of race- or gender-based barriers to the full and fair participation of minority- and woman-owned firms in the market area or in seeking contracts with the agency.¹² Anecdotal data can consist of interviews, surveys, public hearings, academic literature, judicial decisions, legislative reports, and other information.

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

1. The necessity of relief;¹³
2. The efficacy of race-neutral remedies at overcoming identified discrimination;¹⁴
3. The flexibility and duration of the relief, including the availability of waiver provisions;¹⁵
4. The relationship of numerical goals to the relevant labor market;¹⁶ and
5. The impact of the relief on the rights of third parties.¹⁷

In *Adarand v. Peña*,¹⁸ the United States Supreme Court extended the analysis of strict scrutiny, the most exacting standard of review, to race-based federal enactments such as the United States Department of Transportation (“USDOT”) Disadvantaged Business Enterprise (“DBE”) program for federally assisted transportation contracts. Similar to the local government context, the national legislature must have a compelling governmental interest for the use of race, and the remedies adopted must be narrowly tailored to that evidence.^{19,20}

Most federal courts, including the Fifth Circuit,²¹ have subjected preferences for Woman-Owned Business Enterprises (“WBEs”) to “intermediate scrutiny”.²² Gender-based classifications must be supported by an “exceedingly persuasive justifi-

12. *Id.* at 509.

13. *Id.* at 507.

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

15. *Id.*

16. *Id.*

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

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

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

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

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

ation” and be “substantially related to the objective”.²³ The quantum of evidence necessary to satisfy intermediate scrutiny is less than that required to satisfy strict scrutiny. However, appellate courts have applied strict scrutiny to the gender-based presumption of social disadvantage in reviewing the constitutionality of the DBE program²⁴ or have held that the results would be the same under strict scrutiny.²⁵

Classifications not based upon a suspect class (race, ethnicity, religion, national origin or gender) are subject to the lesser standard of review referred to as “rational basis” scrutiny.^{26,27} The courts have held there are no equal protection implications under the Fourteenth Amendment of the United States Constitution for groups not subject to systemic discrimination.²⁸ In contrast to strict scrutiny and to intermediate scrutiny, rational basis means the governmental action or statutory classification must be “rationally related” to a “legitimate” government interest.²⁹ Thus, preferences for persons with disabilities or veteran status may be enacted with vastly less evidence than that required for race- or gender-based measures to combat historic discrimination.³⁰

Unlike most legal challenges, the defendant bears the initial burden of producing “strong evidence” in support of its race-conscious program.³¹ As held by the Fifth Circuit, the plaintiff must then proffer evidence to rebut the government’s case, and bears the ultimate burden of production and persuasion that the affirmative action program is unconstitutional.³² “[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.”³³

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22. See, e.g., *Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore and Maryland Minority Contractors Ass’n*, 83 F. Supp. 2d 613, 620 (D. Md. 2000); *W.H. Scott Construction*, 199 F.3d at 206, 215; *Engineering Contractors Ass’n of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 907-911 (11th Cir. 1997) (“*Engineering Contractors II*”); *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1519 (10th Cir. 1994) (“*Concrete Works II*”); *Contractors Ass’n of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990, 1009-1011 (3rd Cir. 1993) (“*Philadelphia II*”); *Coral Construction Co. v. King County*, 941 F.2d 910, 930-931 (9th Cir. 1991).
 23. Cf. *United States v. Virginia*, 518 U.S. 515, 532 n.6 (1996).
 24. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 720 (7th Cir. 2007) (“*Northern Contracting III*”).
 25. *Western States Paving Co., Inc. v. Washington Department of Transportation*, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006).
 26. *Coral Construction*, 941 F. 2d at 921; see generally *Equality Foundation v. City of Cincinnati*, 128 F. 3d 289 (6th Cir. 1997).
 27. The Supreme Court first introduced this level of scrutiny in *Nebbia v. New York*, 291 U.S. 502, 537 (1934). The Court held that if laws passed have a reasonable relationship to a proper legislative purpose and are neither arbitrary nor discriminatory, the requirements of due process are satisfied.
 28. See generally *United States v. Carolene Products Co.*, 304 U.S. 144 (1938).
 29. *Heller v. Doe*, 509 U.S. 312, 320 (1993).
 30. The standard applicable to status based on sexual orientation of gender identity has not yet been clarified by the courts.
 31. *Aiken v. City of Memphis*, 37 F.3d 1155, 1162 (6th Cir. 1994).
 32. *W. H. Scott Construction*, 199 F.3d at 219; *Adarand Constructors, Inc. v. Slater, Colorado DOT*, 228 F.3d 1147, 1166 (10th Cir. 2000), 532 U.S. 941, cert. granted then dismissed as improvidently granted, 534 U.S. 103 (2001) (“*Adarand VII*”).

A plaintiff “cannot meet its burden of proof through conjecture and unsupported criticism of [the government’s] evidence.”³⁴ To successfully rebut the government’s evidence, a plaintiff must introduce “credible, particularized evidence” that rebuts the government’s showing of a strong basis in evidence.³⁵ For example, in the challenge to the Minnesota and Nebraska DBE programs, “plaintiffs presented evidence that the data was susceptible to multiple interpretations, but they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to, and participation in, federally assisted highway contracts. Therefore, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.”³⁶ When the statistical information is sufficient to support the inference of discrimination, the plaintiff must prove that the statistics are flawed.³⁷ A plaintiff cannot rest upon general criticisms of studies or other related evidence; it must meet its burden that the government’s proof is inadequate to meet strict scrutiny, rendering the legislation or government program illegal.³⁸

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

B. Elements of Strict Constitutional Scrutiny

In its decision in *City of Richmond v. J.A. Croson Co.*, the United States Supreme Court established the constitutional contours of permissible race-based public contracting programs. Reversing long established Equal Protection jurispru-

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

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

35. *H.B. Rowe Co., Inc. v. W. Lyndo Tippet, North Carolina DOT, et al.*, 615 F.3d 233, 241-242(4th Cir. 2010); *Midwest Fence Corp. v. U.S. Department of Transportation, Illinois Department of Transportation, Illinois State Toll Highway Authority*, 84 F. Supp. 3d 705 (N.D. Ill. 2015), *aff’d* 840 F.3d 932 (7th Cir. 2016) (“*Midwest Fence II*”).

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

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

38. *Adarand VII*, 228 F.3d at 1166; *Engineering Contractors II*, 122 F.3d at 916; *Concrete Works II*, 36 F.3d at 1513, 1522-1523; *Webster v. Fulton County, Georgia*, 51 F.Supp.2d 1354, 1364 (N.D. Ga. 1999), *aff’d per curiam*, 218 F. 3d 1267 (11th Cir. 2000); *see also Wygant v. Jackson Board of Education*, 476 U.S. 267, 277-278 (1986).

dence,³⁹ the Court, for the first time, extended the highest level of judicial examination from measures designed to limit the rights and opportunities of minorities to legislation that inures to the benefit of these victims of historic, invidious discrimination. Strict scrutiny requires that a government entity prove both its “compelling governmental interest” in remediating identified discrimination based upon “strong evidence”⁴⁰ and that the measures adopted to remedy that discrimination are “narrowly tailored” to that evidence. However benign the government’s motive, race is always so suspect a classification that its use must pass the highest constitutional test of “strict scrutiny”.

The Court struck down the City of Richmond’s Minority Business Enterprise Plan (“Plan”) because it failed to satisfy the strict scrutiny analysis applied to “race-based” government programs. The City’s “setaside” Plan required prime contractors awarded City construction contracts to subcontract at least 30 percent of the dollar amount of contracts to one or more Minority-Owned Business Enterprises (“MBEs”).⁴¹ A business located anywhere in the nation was eligible to participate so long as it was at least 51 percent owned and controlled by minority citizens or lawfully-admitted permanent residents.

The Plan was adopted following a public hearing during which no direct evidence was presented that the City had discriminated on the basis of race in contracts or that its prime contractors had discriminated against minority subcontractors. The only evidence before the City Council was: (a) Richmond’s population was 50 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) generalized statements describing widespread racial discrimination in the local, Virginia, and national construction industries.

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

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

39. U.S. Const. Amend. XIV, §1.

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

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

exclusion ...[it] could take affirmative steps to dismantle such a system.⁴²

Strict scrutiny of race-based remedies is required to determine whether racial classifications are in fact motivated by notions of racial inferiority or blatant racial politics. This highest level of judicial review “smokes out” illegitimate uses of race by ensuring that the legislative body is pursuing an important enough goal to warrant use of a highly suspect tool.⁴³ It also ensures that the means chosen “fit” this compelling goal so closely that there is little or no likelihood that the motive for the classification was illegitimate racial prejudice or stereotype. The Court made clear that strict scrutiny is designed to expose racial stigma; racial classifications are said to create racial hostility if they are based on notions of racial inferiority.

Richmond’s evidence was found to be lacking in every respect.⁴⁴ The City could not rely upon the disparity between its utilization of MBE prime contractors and Richmond’s minority population because not all minority persons would be qualified to perform construction projects; general population representation is irrelevant. No data were presented about the availability of MBEs in either the relevant market area or their utilization as subcontractors on City projects.

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

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

42. 488 U.S. at 491-92.

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

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

City has demonstrated “a strong basis in evidence for its conclusion that remedial action was necessary.”⁴⁵

This analysis was applied only to Blacks. The Court emphasized that there was “absolutely no evidence” of discrimination against other minorities. “The random inclusion of racial groups that, as a practical matter, may have never suffered from discrimination in the construction industry in Richmond, suggests that perhaps the City’s purpose was not in fact to remedy past discrimination.”⁴⁶

Having found that Richmond had not presented evidence in support of its compelling interest in remediating discrimination—the first prong of strict scrutiny—the Court made two observations about the narrowness of the remedy—the second prong of strict scrutiny. First, Richmond had not considered race-neutral means to increase MBE participation. Second, the 30 percent quota had no basis in evidence, and was applied regardless of whether the individual MBE had suffered discrimination.⁴⁷ The Court noted that the City “does not even know how many MBEs in the relevant market are qualified to undertake prime or subcontracting work in public construction projects.”⁴⁸

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

Nothing we say today precludes a state or local entity from taking action to rectify the effects of identified discrimination within its jurisdiction. If the City of Richmond had evidence before it that non-minority contractors were systematically excluding minority businesses from subcontracting opportunities, it could take action to end the discriminatory exclusion. Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise. Under such circumstances, the City could act to dismantle the closed business system by taking appropriate measures against those who discriminate based on race or other illegitimate criteria. In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion.... Moreover, evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.⁴⁹

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

46. *Id.*

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

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

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.⁵⁰ 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.⁵¹

This argument has been rejected explicitly by some courts. In denying the plaintiff’s summary judgment motion to enjoin the City of New York’s Minority- and Woman-Owned Business Enterprise (“M/WBE”) construction ordinance, the court stated:

[I]t is important to remember what the *Croson* plurality opinion did and did not decide. The Richmond program, which the *Croson* Court struck down, was insufficient because it was based on a comparison of the minority population in its entirety in Richmond, Virginia (50%) with the number of contracts awarded to minority businesses (0.67%). There were no statistics presented regarding the number of minority-owned contractors in the Richmond area, *Croson*, 488 U.S. at 499, and the Supreme Court was concerned with the gross generality of the statistics used in justifying the Richmond program. There is no indication that the statistical analysis performed by [the consultant] in the present case, which does contain statistics regarding minority contractors in New York City, is not sufficient as a matter of law under *Croson*.⁵²

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 unyield-

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

50. *Id.* at 502.

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

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

ing application of those quotas, did not support the stated objective of ensuring equal access to City contracting opportunities. The *Croson* Court said nothing about the constitutionality of flexible goals based upon the availability of MBEs to perform the scopes of the contract in the government’s local market area. In contrast, the USDOT DBE program avoids these pitfalls. 49 C.F.R. Part 26 “provides for a flexible system of contracting goals that contrasts sharply with the rigid quotas invalidated in *Croson*”.

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

C. Strict Scrutiny as Applied to the City of Austin’s Disadvantaged Business Enterprise Program

1. Elements of DBE Programs

In *Adarand v. Peña*⁵³, the United States Supreme Court overruled long settled law and extended the analysis of strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment to federal enactments. To comply with *Adarand*, Congress reviewed and revised the DBE program statute and implementing regulations for federal-aid programs in the transportation sector. The DBE program statute governs the City of Austin’s receipt of federal funds from the Federal Aviation Administration (“FAA”).

To date, every court that has considered the issue has found the regulations to be constitutional on their face.⁵⁴ These cases provide important guidance to the City about how to narrowly tailor its DBE program, as well as its M/WBE program for its locally funded contracts.

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

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

54. See, for example, *Midwest Fence II*, 840 F.3d at 932; *Northern Contracting III*, 473 F.3d at 715; *Associated General Contractors of America, San Diego Chapter, Inc., v. California Department of Transportation, et al.*, 713 F. 3d 1187, 1198 (9th Cir. 2013); *Western States Paving*, 407 F.3d at 983, 994; *Adarand VII*, 228 F.3d at 1147; *M.K. Weeden Construction v. Montana Department of Transportation*, 2013 WL 4774517 (D. Mont.) (September 4, 2013).

- Disparities between the earnings of minority-owned firms and similarly situated non-minority owned firms;
- Disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners;
- The large and rapid decline in minorities' participation in the construction industry when affirmative action programs were struck down or abandoned; and
- Various types of overt and institutional discrimination by prime contractors, trade unions, business networks, suppliers, and sureties against minority contractors.⁵⁵

Next, the regulations were facially narrowly tailored. Unlike the prior program,⁵⁶ the revised Part 26 provides that:

- The overall goal must be based upon demonstrable evidence of the number of DBEs ready, willing, and able to participate on the recipient's federally-assisted contracts.
- The goal may be adjusted to reflect the availability of DBEs "but for" the effects of the DBE program and of discrimination.
- The recipient must meet the maximum feasible portion of the goal through race-neutral measures as well as estimate that portion of the goal it predicts will be met through such measures.
- The use of quotas and set-asides is limited to only those situations where there is no other remedy.
- The goals are to be adjusted during the year to remain narrowly tailored.
- Absent bad faith administration of the program, a recipient cannot be penalized for not meeting its goal.
- Exemptions or waivers from program requirements are available.
- The presumption of social disadvantage for racial and ethnic minorities and women is rebuttable, "wealthy minority owners and wealthy minority firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage."⁵⁷

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

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

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

These elements have led the courts to conclude that the program is narrowly tailored on its face. First, the regulations place strong emphasis on the use of race-neutral means that assist all small firms to achieve minority and woman participation. The USDOT recipient must also estimate the portion of the goal it predicts will be met through race-neutral and race-conscious measures (contract goals).⁵⁸ This requirement has been central to the holdings that the DBE regulations meet narrow tailoring.⁵⁹ Further, a recipient may terminate race-conscious contract goals if it meets its annual overall goal through race-neutral means for two consecutive years. Finally, the authorizing legislation is subject to Congressional reauthorization that will ensure periodic public debate.

In 2015, Congress reauthorized the DBE program and again concluded that the evidence before it “provided a strong basis” to continue the program.⁶⁰

2. Narrowly Tailoring the City of Austin’s DBE Program

Airports that receive FAA grants for airport planning or development and award prime contracts for projects that equal or exceed an accumulative amount of \$250,000.00 in a federal fiscal year must have a DBE program and must meet related requirements as an expressed condition of receiving these funds. Therefore, the City must establish a DBE program plan in conformance with 49 C.F.R. Part 26.

The City must use a two-step goal-setting process to establish its overall triennial DBE goal for FAA funded contracts. Its overall triennial goal must be based upon the relative availability of DBEs and reflect the level of DBE participation that would be expected absent the effects of discrimination.⁶¹

Under Step 1, the City must determine the base figure for the relative availability of DBEs, and one approved method is to use data from a disparity study.⁶² Under Step 2, the City must examine all evidence available in its jurisdiction to determine whether to adjust the base figure. The City must consider the current capacity of DBEs as measured by the volume of work DBEs have performed in recent years.⁶³

58. 49 C.F.R. §26.45(f)(3).

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

60. Fixing America’s Surface Transportation Act (Fast Act), Pub. L. No. 114-94, H.R. § 1101 (b), December 4, 2015, 129 Stat. 1312 at 1323-1325 (23 U.S.C. 101 *et. seq.*) (2015). In 2020, the program was amended to make an inflationary adjustment to the gross receipts figure. This figure was increased to \$26,900,000.00 and is applicable for FHWA and FTA work only. The FAA Reauthorization Act of 2018 (Pub. L. 115-254) removed the gross receipts cap for purposes of eligibility for FAA assisted work.

61. 49 C.F.R. §26.45(b).

62. 49 C.F.R. §26.45(c)(3).

63. 49 C.F.R. §26.45(d)(1)(i).

In addition to the overall goal, the City must set narrowly tailored goals on specific FAA funded contracts where warranted. It is required to set contract goals based upon the availability of DBEs to perform anticipated work scopes—including the work estimated to be performed by the prime contractor—of the individual contract.⁶⁴

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

The stark disparity in DBE participation rates on goals and non-goals contracts, when combined with the statistical and anecdotal evidence of discrimination in the relevant marketplaces, indicates that IDOT’s 2005 DBE goal represents a “plausible lower-bound estimate” of DBE participation in the absence of discrimination... Plaintiff presented no persuasive evidence contravening the conclusions of IDOT’s studies, or explaining the disparate usage of DBEs on goals and non-goals contracts... IDOT’s proffered evidence of discrimination against DBEs was not limited to alleged discrimination by prime contractors in the award of subcontracts. IDOT also presented evidence that discrimination in the bonding, insurance, and financing markets erected barriers to DBE formation and prosperity. Such discrimination inhibits the ability of DBEs to bid on prime contracts, thus allowing the discrimination to indirectly seep into the award of prime contracts, which are otherwise awarded on a race- and gender-neutral basis. This indirect discrimination is sufficient to establish a compelling governmental interest in a DBE program.... Having established the existence of such discrimination, a governmental entity has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.⁶⁵

64. 49 C.F.R. §26.51 (e)(2).

In upholding the Minnesota Department of Transportation’s (“Mn/DOT’s”) DBE program using the same approach, the Eighth Circuit opined that while plaintiff attacked the study’s data and methods, it failed to establish that better data was [sic] available or that Mn/DOT was otherwise unreasonable in undertaking this thorough analysis and in relying on its results. The precipitous drop in DBE participation in 1999, when no race-conscious methods were employed, supports Mn/DOT’s conclusion that a substantial portion of its 2001 overall goal could not be met with race-neutral measures, and there is no evidence that Mn/DOT failed to adjust its use of race-conscious and race-neutral methods as the year progressed, as the DOT regulations require.⁶⁶

More recently, the Seventh Circuit affirmed the district court and upheld the Illinois Tollway’s DBE program for non-federal-aid contracts based upon a Colette Holt & Associates disparity study utilizing this methodology. Plaintiff’s main objection to the defendant’s evidence was that it failed to account for “capacity” when measuring DBE availability and underutilization. As is well established, “Midwest would have to come forward with credible, particularized evidence of its own, such as a neutral explanation for the disparity or contrasting statistical data.”⁶⁷ Plaintiff’s expert “did not perform any substantive analysis of his own.”⁶⁸ Midwest offered only mere conjecture about how the defendants’ studies’ supposed failure to account for capacity may or may not have impacted other evidence demonstrating actual bias.

As recently as 2017, another district court found the DBE program and its implementing regulations to be constitutional.⁶⁹ This criminal case originated from alleged fraud on the program. The court rejected defendant’s challenge to the USDOT’s authority to promulgate the federal regulations and determined that the regulatory legislative history and executive rulemaking were made under the broad grant of rights authorized by Congressional statutes.

In 2020, prior to the COVID-19 pandemic, SMBR has collaborated with the Austin-Bergstrom International Airport to host the *Runway to Opportunities* event, since 2014, which offers firms information about future airport projects and doing business with the City.

65. See generally *Northern Contracting, Inc. v. Illinois Department of Transportation, et al*, 2005 U.S. Dist. LEXIS 19868 (Sept. 8, 2005) (*Northern Contracting II*); *Croson*, 488 U.S. at 492.

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

67. *Midwest Fence Corp. v. U.S. Department of Transportation, et al*, 840 F. Supp. 3d 705, 2015 WL 1396376 at *17 (N.D. Ill. 2015).

68. *Midwest Fence II*, 840 F.3d at 932, 951.

69. *United States v. Taylor*, 232 F. Supp. 3d 741 (W.D. Penn. 2017).

III. AUSTIN'S DBE PROGRAM FOR FEDERAL AVIATION ADMINISTRATION FUNDED CONTRACTS

As a recipient of Federal Aviation Administration (“FAA”) planning or development funds which exceed \$250,000 in a federal fiscal year (“FFY”), the City must administer a DBE program in good faith pursuant to 49 C.F.R. Part 26 (“Part 26”).

The City’s FAA-approved DBE Program Policy ensures that DBEs have an equal opportunity to receive and participate in FAA assisted contracts. The City’s most current DBE Program Plan is dated 2020-2022 and is undergoing review by the FAA. The Plan is intended to address all required Part 26 elements. Significant changes to the Plan must be submitted to the local FAA office for review and approval.

As a general matter, the City’s local MBE/WBE Program follows the outlines of the USDOT DBE program. Pre-award and contract performance procedures are similar to those employed by the City in its MBE/WBE Program. These includes review of Compliance Plans; determination of GFEs; desk audits and site visits to ensure that DBEs are performing CUFs; enforcement of prompt payment and release of retainage⁷⁰ obligations are set forth in FAA assisted contracts⁷¹; and progressive sanctions for failure to comply with these requirements. Differences between the Programs important for this Report follow.

A. Eligibility for the Program

A DBE is defined as a for-profit small business concern- (1) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvan-

70. 49 C.F.R., §26.29.

71. Retainage refers to the percent of each contractor payment retained until contract completion. Retainage provides an incentive to the contractor or subcontractor to complete a project and it gives the agency protection against performance problems such as liens, contractual defaults, and delays. The clauses is both a Part 26 and a contractual requirement.

tagged individuals who own it.⁷² In addition to requirements for management, ownership and control, the applicant firm must be small under the U.S. Small Business Administration’s size standards⁷³ and the firm’s owner’s personal net worth cannot exceed \$1.32M.⁷⁴

The City is a certifying member of the Texas Unified Certification Program (“TUCP”). The TUCP is a cooperative of USDOT assisted recipients within the State of Texas that provide “one stop shopping” certification for the DBE and the Airport Concessions Disadvantaged Business Enterprise programs.⁷⁵

B. DBE Goal Setting Policies and Procedures

The City is required to set a triennial DBE goal using the Part 26 two-step goal-setting process⁷⁶, the USDOT *Tips for Goal Setting*, and other USDOT official guidance. The overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on USDOT assisted contracts. The goal must reflect the City’s determination of the level of DBE participation it would expect absent the effects of discrimination.⁷⁷ Prior to establishing a goal, the City is required to conduct public consultation meetings and confer with minority, woman and general contractor groups, community organizations, and other officials and organizations that have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City’s efforts to establish a level playing field for the participation of DBEs.⁷⁸

For FFYs 2018 through 2020, the City’s overall DBE goal was 11.81%, of which 11.81% was to be met through race-conscious measures⁷⁹ and 0.00% was to be met through race-neutral⁸⁰ measures. The City will reassess its DBE goal based upon the findings in this Report. If necessary, it will make a mid-year adjustment.

The City sets DBE contract goals only on those USDOT assisted contracts that lend themselves to subcontracting opportunities. To ensure a narrowly tailored, legally

72. 49 C.F.R., §26.5.

73. 13 C.F.R. Part 121.

74. 49 C.F.R. §26.67(a)(2).

75. The TUCP is comprised of the City of Austin, City of Houston, Corpus Christi Regional Transportation Authority, North Central Texas Regional Certification Agency, South Central Texas Regional Certification Agency, and the Texas Department of Transportation.

76. 49 C.F.R. §26.45.

77. See 49 C.F.R. §26.45(b) and §26.45(h).

78. 49 C.F.R. §26.45(h).

79. 49 C.F.R. §26.5 provides that race-conscious measures are those focused specifically on assisting only DBEs, including woman-owned DBEs.

80. §26.5 provides that race-neutral measures are those used to assist all small businesses, not just DBEs.

defensible program, Part 26 does not require a recipient to set a goal on every USDOT assisted contract or to set each contract goal at the same percentage level of the overall goal. The goal for a specific contract may be higher or lower than the percentage of the overall goal. Criteria for establishing goals on individual contracts include: (1) availability of qualified DBEs; (2) location of the project; (3) type of project; (4) estimated total cost of the project, or portions of the project; and (5) number of contract line items with the most DBE subcontracting, service, or supplier potential.

C. Small Business Enterprise Element

The City reviews FAA funded projects to determine whether it is appropriate to unbundle contracts and providing greater subcontracting opportunities on a small scale.⁸¹ The City also promotes the use of joint ventures on federal projects by educating vendors on the benefits of forming partnerships with smaller businesses.⁸²

Additionally, the City develops and delivers training to small businesses on airport requirements, project certifications and qualifications, security clearances, and resources available to assist with future procurement interests.

D. DBE Program Administration

The City's DBE Program is administered by SMBR. The Director serves as its DBE Liaison Officer ("DBELO").⁸³ The DBELO and SMBR's Compliance Officer and Program Compliance Coordinator are responsible for administering all aspects of the Program and for ensuring that the City complies with all provisions of Part 26. The DBELO has direct, independent access to the City Manager concerning DBE program matters.

E. Outreach, Training and Business Development

The City offers DBEs an array of outreach, training, and business development services. Every February, the City hosts its Runway to Opportunity event which showcases opportunities for DBEs interested in performing work on FAA funded

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- 81. Design-build is a project delivery method used in the construction industry to deliver a project in which the design and construction services are contracting by a single entity. The Construction Manager-at-Risk is a delivery method which entails a commitment by the construction manager to deliver a project with a guaranteed maximum price. It is a cost-effective and time conscious alternative to the traditional design-bid-build construction process.
 - 82. A joint venture is a business entity created by two or more parties to share returns, risks, and governance.
 - 83. Part 26, §26.25, requires that the DBELO have direct, independent access to the Director concerning DBE program matters.

projects. It also offers training on certifications and provides DBEs with the opportunity to meet with primes and learn about large projects.

The City provides many training opportunities to its staff. These include attendance at classes, seminars and conferences sponsored by the American Contract Compliance Association Annual National Training Institute, Texas Unified Certification Program, B2Gnow[®], the Airport Minority Advisory Council, Federal Aviation Administration and the U.S. Department of Transportation.

IV. CONTRACT DATA ANALYSIS FOR THE CITY OF AUSTIN'S FEDERAL AVIATION ADMINISTRATION FUNDED CONTRACTS

The DBE program regulations require a recipient to set a triennial goal for Disadvantaged Business Enterprise (“DBE”)⁸⁴ participation on its FAA funded contracts.⁸⁵ This requires the determination of the City’s geographic and product markets for its FAA funded contracts and the availability of minority- and woman-owned business enterprises in those markets.

First, we determined the geographic and product markets for the analysis. Next, we estimated the utilization of DBEs by the City on FAA funded projects. Third, we used the Final Contract Data File (“FCDF”), in combination with other databases (as described below), to calculate DBE unweighted and weighted availability in the City’s marketplace. These results can be used to calculate the City’s triennial goal and to set narrowly tailored contract goals

A. The City’s Geographic and Product Market for FAA Funded Contracts

1. The Final Contract Data File for FAA Funded Contracts

Table 4-1 identifies all of the NAICS codes in the Final Contract Data File for the four contracts awarded by the City during the study period. There are 42 NAICS codes with a total contract dollar value of \$79,030,759.

84. We use the term “DBE” to include minority- and woman-owned firms that are not necessarily certified under Part 26.

85. 49 C.F.R. §26.45.

**Table 4-1: Industry Percentage Distribution of the City Contracts by Dollars
(FAA Funded)**

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
236220	Commercial and Institutional Building Construction	18.8%	18.8%
488119	Other Airport Operations	9.7%	28.5%
238120	Structural Steel and Precast Concrete Contractors	9.3%	37.8%
238210	Electrical Contractors and Other Wiring Installation Contractors	8.4%	46.2%
541330	Engineering Services	8.0%	54.1%
238220	Plumbing, Heating, and Air-Conditioning Contractors	5.6%	59.7%
541420	Industrial Design Services	5.0%	64.7%
238150	Glass and Glazing Contractors	5.0%	69.7%
237310	Highway, Street, and Bridge Construction	4.6%	74.3%
238310	Drywall and Insulation Contractors	4.6%	78.9%
541310	Architectural Services	3.4%	82.3%
238390	Other Building Finishing Contractors	3.1%	85.4%
488310	Port and Harbor Operations	2.4%	87.8%
238350	Finish Carpentry Contractors	2.2%	90.0%
561612	Security Guards and Patrol Services	1.6%	91.6%
238910	Site Preparation Contractors	1.5%	93.1%
238340	Tile and Terrazzo Contractors	1.2%	94.3%
331315	Aluminum Sheet, Plate, and Foil Manufacturing	0.6%	94.9%
238320	Painting and Wall Covering Contractors	0.6%	95.5%
484110	General Freight Trucking, Local	0.5%	96.0%
238290	Other Building Equipment Contractors	0.5%	96.5%
238330	Flooring Contractors	0.5%	97.0%
238160	Roofing Contractors	0.5%	97.5%
518210	Data Processing, Hosting, and Related Services	0.4%	97.9%
238990	All Other Specialty Trade Contractors	0.4%	98.2%
541380	Testing Laboratories	0.3%	98.6%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
238140	Masonry Contractors	0.3%	98.9%
541620	Environmental Consulting Services	0.3%	99.1%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.1%	99.3%
444190	Other Building Material Dealers	0.1%	99.4%
238130	Framing Contractors	0.1%	99.5%
541211	Offices of Certified Public Accountants	0.1%	99.6%
561730	Landscaping Services	0.1%	99.6%
541611	Administrative Management and General Management Consulting Services	0.1%	99.7%
561439	Other Business Service Centers (including Copy Shops)	0.1%	99.8%
238110	Poured Concrete Foundation and Structure Contractors	0.1%	99.9%
337127	Institutional Furniture Manufacturing	0.04%	99.9%
562998	All Other Miscellaneous Waste Management Services	0.03%	99.9%
711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities	0.03%	100.0%
541370	Surveying and Mapping (except Geophysical) Services	0.02%	100.0%
562111	Solid Waste Collection	0.01%	100.0%
541810	Advertising Agencies	0.004%	100.0%
TOTAL		100.0%	

Source: CHA analysis of City of Austin data

2. The City’s Geographic Market for FAA Funded Contracts

Firm location was determined by zip code and aggregated into counties as the geographic unit. Contracts awarded to firms located in the State of Texas accounted for 95.8% of all dollars during the study period. The four counties - Travis, Williamson, Bastrop, and Hays – captured 69.8% of the state dollars and 66.9% of the entire FCDF. Therefore, these four counties were determined to be the geographic market for the City, and we limited our analysis to firms in these counties. Table 4-2 presents the distribution of the dollars in the geo-

graphic market across these four Texas counties. While 66.9% is slightly lower than the usual 75% threshold, it is important to note that two other counties – Dallas and Tom Green – captured another 21.6% of the contract dollars spent in Texas. When we explore these contracts more deeply, the contracts were deemed to be outliers.⁸⁶ If we excluded contract dollars from these two counties, the state share of the FCDF falls slightly to 94.7% but the four-county share of the FCDF rises significantly to 84.3%.

Table 4-2: County Distribution of Contract Dollars within the Geographic Market (FAA Funded)

County	Pct Total Contract Dollars
Travis County	64.9%
Williamson County	30.6%
Bastrop County	2.3%
Hays County	2.2%
TOTAL	100.0%

Source: CHA analysis of City of Austin data

B. The City’s Utilization of DBEs in its Geographic and Product Market for FAA Funded Contracts

Having determined the City’s geographic market area, the next step was to determine the dollar value of the City’s utilization of DBEs as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. Table 4-3 presents these data; there are 34 NAICS codes, with a total contract dollar value of \$52,852,672. As with non-FAA funded contracts, the contract dollar shares in Table 4-3 are equivalent to the weight of spending in each NAICS code. These data were used to calculate weighted availability⁸⁷ from unweighted availability, as discussed below.

86. One of the Dallas County contracts (represented 79% of all the County’s contract dollars) and the one contract in Tom Green County were for baggage handling system and structural steel work in the construction of an airport terminal. We assume these would not be repeated procurement opportunities for the City.

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

Table 4-3: NAICS Code Distribution of Contract Dollars in the Constrained Product Market (FAA Funded)

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
236220	Commercial and Institutional Building Construction	\$14,286,580.00	27.0%
541330	Engineering Services	\$6,314,633.00	11.9%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$6,077,377.00	11.5%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$4,398,781.00	8.3%
238150	Glass and Glazing Contractors	\$3,936,649.00	7.4%
238310	Drywall and Insulation Contractors	\$3,600,515.00	6.8%
541310	Architectural Services	\$2,689,500.00	5.1%
541420	Industrial Design Services	\$2,620,076.00	5.0%
237310	Highway, Street, and Bridge Construction	\$2,516,223.75	4.8%
561612	Security Guards and Patrol Services	\$1,250,187.25	2.4%
238120	Structural Steel and Precast Concrete Contractors	\$736,100.00	1.4%
238350	Finish Carpentry Contractors	\$656,330.00	1.2%
238910	Site Preparation Contractors	\$628,914.44	1.2%
238320	Painting and Wall Covering Contractors	\$450,785.00	0.9%
484110	General Freight Trucking, Local	\$433,278.38	0.8%
238160	Roofing Contractors	\$352,643.00	0.7%
541380	Testing Laboratories	\$259,902.70	0.5%
238140	Masonry Contractors	\$234,423.00	0.4%
238340	Tile and Terrazzo Contractors	\$230,495.00	0.4%
238390	Other Building Finishing Contractors	\$228,475.00	0.4%
541620	Environmental Consulting Services	\$227,828.00	0.4%
238990	All Other Specialty Trade Contractors	\$207,378.00	0.4%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	\$104,080.87	0.2%
238130	Framing Contractors	\$73,861.00	0.1%
561730	Landscaping Services	\$65,529.00	0.1%

City of Austin Disadvantaged Business Enterprise Federal Aviation Disparity Study 2023

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
541611	Administrative Management and General Management Consulting Services	\$60,330.00	0.1%
561439	Other Business Service Centers (including Copy Shops)	\$54,999.00	0.1%
238110	Poured Concrete Foundation and Structure Contractors	\$54,896.00	0.1%
337127	Institutional Furniture Manufacturing	\$35,000.00	0.1%
562998	All Other Miscellaneous Waste Management Services	\$24,241.00	0.05%
711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities	\$24,215.00	0.05%
541370	Surveying and Mapping (except Geophysical) Services	\$12,300.00	0.02%
541810	Advertising Agencies	\$3,127.00	0.01%
562111	Solid Waste Collection	\$3,018.15	0.01%
TOTAL		\$52,852,671.54	100.0%

Source: CHA analysis of City of Austin data

1. The City’s Utilization of DBEs in its Geographic and Product Market for FAA Funded Contracts

Tables 4-4 and 4-5 present data on the D/M/WBE utilization on the contract dollars.

**Table 4-4: Distribution of Contract Dollars by Race and Gender
(total dollars, FAA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Women	D/M/WBE	Non-D/M/WBE	Total
236220	\$0	\$0	\$3,664	\$0	\$0	\$3,664	\$14,282,916	\$14,286,580
237310	\$0	\$536,379	\$0	\$0	\$0	\$536,379	\$1,979,844	\$2,516,224
238110	\$54,896	\$0	\$0	\$0	\$0	\$54,896	\$0	\$54,896
238120	\$0	\$0	\$0	\$0	\$0	\$0	\$736,100	\$736,100
238130	\$73,861	\$0	\$0	\$0	\$0	\$73,861	\$0	\$73,861
238140	\$234,423	\$0	\$0	\$0	\$0	\$234,423	\$0	\$234,423
238150	\$0	\$0	\$0	\$0	\$0	\$0	\$3,936,649	\$3,936,649
238160	\$0	\$0	\$0	\$0	\$0	\$0	\$352,643	\$352,643
238210	\$0	\$1,211,704	\$0	\$0	\$1,155,281	\$2,366,985	\$3,710,392	\$6,077,377
238220	\$0	\$0	\$0	\$0	\$511,625	\$511,625	\$3,887,156	\$4,398,781
238310	\$0	\$0	\$327,875	\$0	\$0	\$327,875	\$3,272,640	\$3,600,515
238320	\$0	\$0	\$0	\$450,785	\$0	\$450,785	\$0	\$450,785
238340	\$0	\$0	\$0	\$0	\$0	\$0	\$230,495	\$230,495
238350	\$656,330	\$0	\$0	\$0	\$0	\$656,330	\$0	\$656,330
238390	\$0	\$228,475	\$0	\$0	\$0	\$228,475	\$0	\$228,475
238910	\$0	\$0	\$0	\$0	\$319,637	\$319,637	\$309,278	\$628,914
238990	\$0	\$207,378	\$0	\$0	\$0	\$207,378	\$0	\$207,378

NAICS	Black	Hispanic	Asian	Native American	White Women	D/M/WBE	Non-D/M/WBE	Total
337127	\$0	\$0	\$0	\$0	\$0	\$0	\$35,000	\$35,000
423320	\$0	\$0	\$0	\$0	\$0	\$0	\$104,081	\$104,081
484110	\$0	\$433,278	\$0	\$0	\$0	\$433,278	\$0	\$433,278
541310	\$0	\$0	\$0	\$0	\$0	\$0	\$2,689,500	\$2,689,500
541330	\$150,676	\$45,405	\$0	\$0	\$0	\$196,081	\$6,118,552	\$6,314,633
541370	\$0	\$0	\$0	\$0	\$12,300	\$12,300	\$0	\$12,300
541380	\$0	\$107,790	\$0	\$0	\$152,113	\$259,903	\$0	\$259,903
541420	\$0	\$166,375	\$0	\$280,500	\$1,118,183	\$1,565,058	\$1,055,018	\$2,620,076
541611	\$60,330	\$0	\$0	\$0	\$0	\$60,330	\$0	\$60,330
541620	\$227,828	\$0	\$0	\$0	\$0	\$227,828	\$0	\$227,828
541810	\$0	\$0	\$0	\$0	\$3,127	\$3,127	\$0	\$3,127
561439	\$0	\$0	\$0	\$0	\$54,999	\$54,999	\$0	\$54,999
561612	\$226,574	\$0	\$0	\$0	\$0	\$226,574	\$1,023,613	\$1,250,187
561730	\$0	\$0	\$0	\$0	\$0	\$0	\$65,529	\$65,529
562111	\$0	\$1,478	\$0	\$0	\$0	\$1,478	\$1,540	\$3,018
562998	\$0	\$0	\$0	\$0	\$24,241	\$24,241	\$0	\$24,241
711310	\$0	\$0	\$0	\$0	\$0	\$0	\$24,215	\$24,215
Total	\$1,684,918	\$2,938,263	\$331,539	\$731,285	\$3,351,506	\$9,037,511	\$43,815,161	\$52,852,672

Source: CHA analysis of City of Austin data

**Table 4-5: Distribution of Contract Dollars by Race and Gender
(share of total dollars, FAA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Women	D/M/WBE	Non-D/M/WBE	Total
236220	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237310	0.0%	21.3%	0.0%	0.0%	0.0%	21.3%	78.7%	100.0%
238110	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
238120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238130	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
238140	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
238150	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238160	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238210	0.0%	19.9%	0.0%	0.0%	19.0%	38.9%	61.1%	100.0%
238220	0.0%	0.0%	0.0%	0.0%	11.6%	11.6%	88.4%	100.0%
238310	0.0%	0.0%	9.1%	0.0%	0.0%	9.1%	90.9%	100.0%
238320	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
238340	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238350	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
238390	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
238910	0.0%	0.0%	0.0%	0.0%	50.8%	50.8%	49.2%	100.0%
238990	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
337127	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423320	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484110	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541330	2.4%	0.7%	0.0%	0.0%	0.0%	3.1%	96.9%	100.0%
541370	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541380	0.0%	41.5%	0.0%	0.0%	58.5%	100.0%	0.0%	100.0%
541420	0.0%	6.4%	0.0%	10.7%	42.7%	59.7%	40.3%	100.0%
541611	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541620	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541810	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Women	D/M/WBE	Non-D/M/WBE	Total
561439	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
561612	18.1%	0.0%	0.0%	0.0%	0.0%	18.1%	81.9%	100.0%
561730	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562111	0.0%	49.0%	0.0%	0.0%	0.0%	49.0%	51.0%	100.0%
562998	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
711310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
Total	3.2%	5.6%	0.6%	1.4%	6.3%	17.1%	82.9%	100.0%

Source: CHA analysis of City of Austin data

2. The Availability of D/M/WBEs in the City’s Geographic and Product Market for FAA Funded Contracts

We used the same approach to estimating availability of D/M/WBEs in the City’s market for FAA funded contracts as we did for non-FAA funded contracts.

Tables 4-6 through 4-7 present data on:

1. The unweighted availability percentages by race and gender and by NAICS code for the City’s product market. These results can be used by the City as the starting point to set narrowly tailored contract-specific goals;
2. The weights used to adjust the unweighted numbers,⁸⁸ and
3. The final estimates of the weighted averages of the individual six-digit NAICS level availability estimates in the City’s market area.

Table 4-6: Unweighted D/M/WBE Availability for the City Contracts (FAA Funded)

NAICS	Black	Hispanic	Asian	Native American	White Woman	D/M/WBE	Non-D/M/WBE	Total
236220	3.4%	7.0%	2.0%	0.7%	10.3%	23.4%	76.6%	100.0%
237310	2.7%	15.1%	0.7%	1.0%	10.0%	29.4%	70.6%	100.0%
238110	0.8%	4.2%	0.2%	0.2%	2.2%	7.5%	92.5%	100.0%
238120	0.0%	17.4%	6.5%	2.2%	21.7%	47.8%	52.2%	100.0%
238130	0.5%	0.9%	0.2%	0.0%	2.1%	3.8%	96.2%	100.0%

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

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NAICS	Black	Hispanic	Asian	Native American	White Woman	D/M/WBE	Non-D/M/WBE	Total
238140	2.1%	4.7%	0.0%	0.0%	4.7%	11.5%	88.5%	100.0%
238150	0.0%	3.8%	0.0%	0.0%	5.7%	9.4%	90.6%	100.0%
238160	0.1%	1.5%	0.1%	0.1%	1.8%	3.7%	96.3%	100.0%
238210	0.3%	3.0%	0.3%	0.2%	4.8%	8.8%	91.2%	100.0%
238220	0.3%	1.5%	0.1%	0.0%	2.1%	4.1%	95.9%	100.0%
238310	0.3%	2.9%	0.9%	0.3%	3.8%	8.2%	91.8%	100.0%
238320	0.1%	2.1%	0.1%	0.5%	1.5%	4.3%	95.7%	100.0%
238340	1.1%	0.5%	0.5%	0.5%	3.2%	5.9%	94.1%	100.0%
238350	1.9%	1.9%	0.6%	0.0%	2.5%	6.8%	93.2%	100.0%
238390	0.5%	2.6%	1.0%	0.5%	2.1%	6.8%	93.2%	100.0%
238910	1.0%	7.7%	1.0%	0.0%	7.7%	17.3%	82.7%	100.0%
238990	0.4%	2.2%	0.2%	0.1%	2.8%	5.6%	94.4%	100.0%
337127	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423320	0.6%	1.9%	0.0%	0.6%	4.4%	7.5%	92.5%	100.0%
484220	19.8%	31.7%	2.0%	0.0%	5.0%	58.4%	41.6%	100.0%
541310	1.8%	3.5%	1.1%	0.3%	11.4%	18.2%	81.8%	100.0%
541330	2.0%	6.5%	4.7%	0.1%	8.4%	21.8%	78.2%	100.0%
541370	2.5%	8.5%	1.0%	1.5%	21.4%	34.8%	65.2%	100.0%
541380	0.9%	1.4%	1.8%	0.0%	3.5%	7.7%	92.3%	100.0%
541420	1.5%	13.8%	4.6%	3.1%	27.7%	50.8%	49.2%	100.0%
541611	2.1%	1.4%	0.8%	0.2%	7.1%	11.7%	88.3%	100.0%
541620	2.2%	3.3%	1.7%	0.3%	20.7%	28.2%	71.8%	100.0%
541810	0.6%	2.7%	0.3%	0.0%	11.2%	14.8%	85.2%	100.0%
561439	0.0%	7.7%	0.0%	0.0%	23.1%	30.8%	69.2%	100.0%
561612	3.9%	2.2%	0.0%	0.0%	4.4%	10.6%	89.4%	100.0%
561730	1.4%	1.3%	0.1%	0.0%	2.8%	5.6%	94.4%	100.0%
562111	0.0%	13.3%	0.0%	0.0%	26.7%	40.0%	60.0%	100.0%
562998	0.0%	0.0%	0.0%	0.0%	40.0%	40.0%	60.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	D/M/WBE	Non-D/M/WBE	Total
711310	1.4%	0.7%	0.0%	0.0%	5.6%	7.7%	92.3%	100.0%
236220	3.4%	7.0%	2.0%	0.7%	10.3%	23.4%	76.6%	100.0%
Total	1.2%	3.1%	0.9%	0.2%	5.4%	10.9%	89.1%	100.0%

Source: CHA analysis of City of Austin data; Hoovers; CHA Master Directory

**Table 4-7: Distribution of the City Spending by NAICS Code
(the Weights, FAA Funded)**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
236220	Commercial and Institutional Building Construction	27.0%
237310	Highway, Street, and Bridge Construction	4.8%
238110	Poured Concrete Foundation and Structure Contractors	0.1%
238120	Structural Steel and Precast Concrete Contractors	1.4%
238130	Framing Contractors	0.1%
238140	Masonry Contractors	0.4%
238150	Glass and Glazing Contractors	7.4%
238160	Roofing Contractors	0.7%
238210	Electrical Contractors and Other Wiring Installation Contractors	11.5%
238220	Plumbing, Heating, and Air-Conditioning Contractors	8.3%
238310	Drywall and Insulation Contractors	6.8%
238320	Painting and Wall Covering Contractors	0.9%
238340	Tile and Terrazzo Contractors	0.4%
238350	Finish Carpentry Contractors	1.2%
238390	Other Building Finishing Contractors	0.4%
238910	Site Preparation Contractors	1.2%
238990	All Other Specialty Trade Contractors	0.4%
337127	Institutional Furniture Manufacturing	0.1%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.2%
484110	General Freight Trucking, Local	0.8%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
541310	Architectural Services	5.1%
541330	Engineering Services	11.9%
541370	Surveying and Mapping (except Geophysical) Services	0.0%
541380	Testing Laboratories	0.5%
541420	Industrial Design Services	5.0%
541611	Administrative Management and General Management Consulting Services	0.1%
541620	Environmental Consulting Services	0.4%
541810	Advertising Agencies	0.0%
561439	Other Business Service Centers (including Copy Shops)	0.1%
561612	Security Guards and Patrol Services	2.4%
561730	Landscaping Services	0.1%
562111	Solid Waste Collection	0.01%
562998	All Other Miscellaneous Waste Management Services	0.05%
711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities	0.05%
Total		100.0%

Source: CHA analysis of City of Austin data

As explained above, the aggregated availability of DBEs, weighted by the City’s spending in its geographic and industry markets, is 18.5% for the City’s contracts. Table 4-8 presents these results for each of the racial and gender categories. The overall, weighted DBE availability results can be used by the City to determine its overall, annual aspirational MBE and WBE goals.

Table 4-8: Aggregated Weighted Availability for the City Contracts (FAA Funded)

Black	Hispanic	Asian	Native American	White Women	D/M/WBE	Non-D/M/WBE	Total
1.9%	6.0%	1.7%	0.5%	8.5%	18.5%	81.5%	100.0%

Source: CHA analysis of City of Austin data; Hoovers; CHA Master Directory

3. Conclusion for FAA Funded Contracts

Because Congress has already determined that discrimination continues to impact the market for federally assisted transportation contracts, there is no need for the City to conduct disparity testing. Under 49 C.F.R. §26.45, its regulatory responsibility is to determine the availability of DBEs and set appropriate triennial and narrowly tailored contract goals. The aggregated weighted availability in Table 4-8 can serve as the basis for its triennial goal and the unweighted availability of the individual six-digit NAICS codes in Table 4-7 as the starting point for setting narrowly tailored contract goals.

V. ANALYSIS OF DISPARITIES IN THE CITY OF AUSTIN AREA 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.⁸⁹

This Chapter explores the data and literature relevant to how discrimination in the City of Austin area economy affects the ability of minorities and women to fairly and fully engage in City contract opportunities. First, we analyze the rates at which M/WBEs in the City of Austin area economy 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 intervention.

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

The courts have repeatedly held that analyses of disparities in the rate of M/WBE formation in the government's markets as compared to similar non-M/WBEs, disparities in M/WBE earnings, and barriers to access to capital markets are highly relevant to a determination of whether market outcomes are affected by race or gender ownership status.⁹⁰ Similar analyses supported the successful legal

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

90. See the explanation in Chapter II of the legal standards applicable to contracting affirmative action programs.

defense of the Illinois Tollway's Disadvantaged Business Enterprise ("DBE") Program from constitutional challenge.⁹¹

Similarly, the Tenth Circuit Court of Appeals also upheld the U.S. Department of Transportation's DBE program, and in doing so, stated that this type of evidence

demonstrates the existence of two kinds of discriminatory barriers to minority subcontracting enterprises, both of which show a strong link between racial disparities in the federal government's disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination. The first discriminatory barriers are to the formation of qualified minority subcontracting enterprises due to private discrimination, precluding from the outset competition for public construction contracts by minority enterprises. The second discriminatory barriers are to fair competition between minority and non-minority subcontracting enterprises, again due to private discrimination, precluding existing minority firms from effectively competing for public construction contracts. The government also presents further evidence in the form of local disparity studies of minority subcontracting and studies of local subcontracting markets after the removal of affirmative action programs... The government's evidence is particularly striking in the area of the race-based denial of access to capital, without which the formation of minority subcontracting enterprises is stymied.⁹²

Business discrimination studies and lending studies are relevant and probative because they show a strong link between the disbursement of public funds and the channeling of those funds due to private discrimination. In unanimously upholding the USDOT DBE Program, federal courts agree that disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms and the disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners are strong evidence of the continuing effects of discrimination.⁹³ "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

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91. *Midwest Fence Corp. v. Illinois Department of Transportation, Illinois State Toll Highway Authority et al*, 840 F.3d 942 (7th Cir. 2016) (upholding the Illinois Tollway's program for state funded contracts modeled after Part 26 and based on CHA's expert testimony, including about disparities in the overall Illinois construction industry); *Midwest Fence Corp. v. Illinois Department of Transportation, Illinois State Toll Highway Authority et al*, 2015 WL 1396376 at * 21 (N.D. Ill.) ("Colette Holt [& Associates'] updated census analysis controlled for variables such as education, age, and occupation and still found lower earnings and rates of business formation among women and minorities as compared to white men."); *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003) (holding that City of Chicago's M/WBE program for local construction contracts satisfied "compelling interest" standards using this framework).
 92. *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1169 (10th Cir. 2000), *cert. granted then dismissed as improvidently granted*, 532 U.S. 941 (2001).
 93. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868, at *64 (Sept. 8, 2005).

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.”⁹⁴

This type of court-approved analysis is especially important for an agency such as the City, which has been implementing a program for many years. The agency’s remedial market interventions through the use of race- and gender-based contract goals may ameliorate the disparate impacts of marketplace discrimination in the agency’s own contracting activities. Put another way, the program’s success in moving towards parity for minority and woman firms may be “masking” the effects of discrimination that, but for the contract goals, would mirror the disparities in M/WBE utilization in the overall economy.

To explore the question of whether firms owned by non-Whites and White women face disparate treatment in the City marketplace outside of the City contracts, we examined the U.S. Bureau of the Census’ *American Community Survey* (“ACS”) which allows us to analyze disparities using individual entrepreneurs as the basic unit of analysis.⁹⁵ We used the Austin-metropolitan area as the geographic unit of analysis.

We found disparities in wages, business earnings and business formation rates for minorities and women in all industry sectors in the City’s marketplace.⁹⁶

B. Disparate Treatment in the City of Austin Marketplace: Evidence from the Census Bureau’s 2015 - 2019 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 the City’s MBE/WBE Program. In this section, we use the Census Bureau’s ACS data to explore this and other aspects of this question. One element asks if demographic differences exist in the wage and salary income received by private sector workers. Beyond the issue of bias in the incomes generated in the private sector, this exploration is important for the issue of possible variations in the rate of business formation by different demographic

94. *Id.*

95. Data from 2015 - 2019 American Community Survey are the most recent for a five-year period.

96. Possible disparities in wages are important to explore because of the relationship between wages and business formation. Research by Alicia Robb and others indicate non-White firms rely on their own financing to start businesses compared to White firms who rely more heavily on financing provided by financial institutions. To the extent non-Whites face discrimination in the labor market, they would have reduced capacity to self-finance their entrepreneurial efforts and, hence, impact business formation. *See, for example*, Robb’s “Access to Capital among Young Firms, Minority-owned Firms, Woman-owned Firms, and High-tech Firms” (2013), [https://www.sba.gov/sites/default/files/files/rs403tot\(2\).pdf](https://www.sba.gov/sites/default/files/files/rs403tot(2).pdf).

groups. One of the determinants of business formation is the pool of financial capital at the disposal of the prospective entrepreneur. The size of this pool is related to the income level of the individual either because the income level impacts the amount of personal savings that can be used for start-up capital, or the income level affects one's ability to borrow funds. Consequently, if particular demographic groups receive lower wages and salaries then they would have access to a smaller pool of financial capital, and thus reduce the likelihood of business formation.

The *American Community Survey Public Use Microdata Sample* ("PUMS") is useful in addressing these issues. The ACS is an annual survey of one percent of the population and the PUMS provides detailed information at the individual level. In order to obtain robust results from our analysis, we used the file that combines the most recent data available for years 2015 through 2019.⁹⁷ With this rich data set, our analysis can establish with greater certainty any causal links between race, gender and economic outcomes.

The Census Bureau classifies Whites, Blacks, Native Americans, and Asians as racial groupings. CHA developed a fifth grouping, "Other", to capture individuals who are not a member of the above four racial categories. In addition, Hispanics are an ethnic category whose members could be of any race, *e.g.*, Hispanics could be White or Black. In order to avoid double counting – *i.e.*, an individual could be counted once as Hispanic and once as White – CHA developed non-Hispanic subset racial categories: non-Hispanic Whites; non-Hispanic Blacks; non-Hispanic Native Americans; non-Hispanic Asians; and non-Hispanic Others. When those five groups are added to the Hispanic group, the entire population is counted and there is no double-counting. When Whites are disaggregated into White men and White women, those groupings are non-Hispanic White men and non-Hispanic White women. For ease of exposition, the groups in this report are referred to as Black, Native American, Asian, Other, White women, and White men, while the actual content is the non-Hispanic subset of these racial groups.

Often, the general public sees clear associations between race, gender, and economic outcomes and assumes this association reflects a tight causal connection. However, economic outcomes are determined by a broad set of factors including, and extending beyond, race and gender. To provide a simple example, two people who differ by race or gender may receive different wages. This difference may simply reflect that the individuals work in different industries. If this underlying difference is not known, one might assert the wage differential is the result of race or gender difference. To better understand the impact of race or gender on wages, it is important to compare individuals of different races or genders who work in the same industry. Of course, wages are determined by a broad set of factors beyond

97. Initially, the Census Bureau contacted approximately 3.5M households. For the analysis reported in this Chapter, we examined over 47,000 observations. For more information about the ACS PUMS, see <https://www.census.gov/programs-surveys/acs/>.

race, gender, and industry. With the ACS PUMS, we have the ability to include a wide range of additional variables such as age, education, occupation, and state of residence in the analysis.

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

With respect to the first result of regression analysis, we examine how variations in the race, gender, and industry of individuals impact the wages and other economic outcomes received by individuals. The technique allows us to determine the effect of changes in one variable, assuming that the other determining variables are the same. That is, we compare individuals of different races, but of the same gender and in the same industry; or we compare individuals of different genders, but of the same race and the same industry; or we compare individuals in different industries, but of the same race and gender. We determine the impact of changes in one variable (*e.g.*, race, gender or industry) on another variable (wages), “controlling for” the movement of any other independent variables.

With respect to the second result of regression analysis, we determine the statistical significance of the relationship between the dependent variable and independent variable. For example, the relationship between gender and wages might exist (*e.g.*, holding all other factors constant, women earn less than men), but we find that it is not statistically different from zero. In this case, we are not confident that there is not any relationship between the two variables. If the relationship is not statistically different from zero, then a variation in the independent variable has no impact on the dependent variable. The regression analysis allows us to say with varying degrees of statistical confidence that a relationship is different from zero. If the estimated relationship is statistically significant at the 0.05 level, that indicates that we are 95% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.01 level, that indicates that we are 99% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.001 level, that indicates that we are 99.9% confident that the relationship is different from zero.⁹⁸

In the following presentation of results, each sub-section first reports data on the share of a demographic group that forms a business (business formation rates); the probabilities that a demographic group will form a business relative to White

98. Most social scientists do not endorse utilizing a confidence level of less than 95%. Appendix C explains more about statistical significance.

men (business formation probabilities); the differences in wages received by a demographic group relative to White men (wage differentials); and the differences in business earnings received by a demographic group relative to White men (business earnings differentials). Because the ACS contained limited observations for certain groups in particular industries, we were unable to provide reliable estimates for business outcomes for these groups. However, there were always sufficient observations in the sample of wage earners in each group in each industry to permit us to develop reliable estimates.

1. All Industries Combined in the Austin Metropolitan Area

One 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' ACS for the Austin-Round Rock Metropolitan Statistical Area. Table 5-1 presents these results.

The business formation rate represents the share of a population that forms businesses. When developing industry-specific rates, we examine the population that works in that particular industry and identify what share of that sub-population that form businesses. For example, Table 5-1 indicates that 2.7% of Blacks forms businesses; this is less than the 6.7% business formation rate for White men. The Table indicates that White men have higher business formation rates compared to non-Whites and White women. Table 5-2 utilizes probit regression analysis to examine the probability of forming a business after controlling for important factors beyond race and gender.⁹⁹ This Table indicates that non-Whites and White women are less likely to form businesses compared to White men; the reduced probability ranges from 0.6% for Others to 4.7% for Native Americans. These results were statistically significant at the 0.01 level for Blacks, Hispanics, and White women.

With respect to the interpretation of the level of statistical significance of a result, as indicated in the latter part of the previous section, we are exploring whether the result of the regression analysis is statistically different from zero; if the finding is statistically significant, we also indicate the level of statistical confidence at which the result is accurate. Table 5-2 indicates that the probability that Blacks form businesses is 3.9% less than the probability that White men form business, once we control for age, education, and occupation. The statistical significance of this result is at the 0.01 level, which means we are 95% statistically confident the result is true. If a result is non-zero but the result is not statistically significant, then we cannot rule out zero being the true result. Note: this does not mean the result is wrong, only there is not a statisti-

99. Appendix B provides a "Further Explanation of Probit Regression Analysis."

cally significant level of confidence in the result. Table 5-2 indicates that the probability that Native Americans form businesses is 4.7% less than White men.

Another way to measure equity is to examine how the wage and salary incomes and business earnings of particular demographic groups compare to White men. Multiple regression statistical techniques allowed us to examine the impact of race and gender on economic outcomes while controlling for other factors, such as education and age.¹⁰⁰ Tables 5-3 and 5-4 present this data on wage and salary incomes and business earnings respectively. Table 5-3 indicates that non-Whites and White women earn less than White men. The reduction in earnings ranges from 19.3% to 46.8% and all the results are statistically significant at the 0.001 level (except the coefficient for Native Americans which is statistically significant at the 0.05 level). Table 5-4 indicates that Blacks, Others, and White women receive business earnings less than White men. The reduction in earnings ranges from 186.0% to 58.9%. These results were statistically significant.

Table 5-1: Business Formation Rates

All Industries, 2015 - 2019¹⁰¹

Demographic Group	Business Formation Rates
Black	2.7%
Hispanic	2.7%
Native American	1.8%
Asian/Pacific Islander	3.8%
Other	5.1%
White Women	4.6%
Non-White Male	3.5%
White Male	6.7%

Source: CHA calculations from the American Community Survey

100. See Appendix A for more information on multiple regression statistical analysis.

101. Statistical significance tests were not conducted on basic business formation rates.

**Table 5-2: Business Formation Probabilities Relative to White Males
All Industries, 2015 - 2019**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-3.9%**
Hispanic	-2.7%**
Native American	-4.7%
Asian/Pacific Islander	-1.5%
Other	-0.6%
White Women	-1.7%**

Source: CHA calculations from the American Community Survey
** Indicates statistical significance at the 0.01 level

**Table 5-3: Wage Differentials for Selected Groups Relative to White Men
All Industries, 2015 - 2019**

Demographic Group	Wages Relative to White Men (% Change)
Black	-32.6%***
Hispanic	-19.3%***
Native American	-24.8%*
Asian/Pacific Islander	-27.5%***
Other	-46.8%***
White Women	-30.2%***

Source: CHA calculations from the American Community Survey
*** Indicates statistical significance at the 0.001 level
* Indicates statistical significance at the 0.05 level

**Table 5-4: Business Earnings Differentials for Selected Groups Relative to White Men
All Industries**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-92.6%**
Hispanic	1.3%
Native American	105.0%

Demographic Group	Earnings Relative to White Men (% Change)
Asian/Pacific Islander	40.4%
Other	-186.0% ^{*a}
White Women	-58.9% ^{***}

a. The proper way to interpret a coefficient that is less than negative 100% (e.g., the value of the coefficient for Other in Table 5-4), is the percentage amount non-M/WBEs earn that is more than the group in question. In this case, non-M/WBEs earn 186% more than Others.

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

** Indicates statistical significance at the 0.01 level

* Indicates statistical significance at the 0.05 level

2. The Construction Industry in the Austin Metropolitan Area

There were low numbers of Native American (1) and Other firms (0) in the sample of the construction industry; consequently, reliable estimates of firm outcomes could not be made for these groups. Table 5-5 indicates that White men have higher business formation rates compared to non-Whites and White women. Table 5-6 indicates that non-Whites and White women are less likely to form businesses compared to similarly situated White men. The reduced probabilities of business formation ranged from 15.9% to 0.8%. None of these coefficients were statistically significant. Table 5-7 indicates that non-Whites and White women earn less than White men. The statistically significant reductions in earnings range from 53.5% to 13.2%. Four of these coefficients were statistically significant. Table 5-8 indicates that none of the business coefficients were statistically significant.

Table 5-5: Business Formation Rates, Construction, 2015 - 2019

Demographic Group	Business Formation Rates
Black	1.1%
Hispanic	4.9%
Native American	---
Asian/Pacific Islander	4.2%
Other	---

Demographic Group	Business Formation Rates
White Women	10.2%
Non-White Male	5.1%
White Male	14.3%

Source: CHA calculations from the American Community Survey

Table 5-6: Business Formation Probability Differentials for Selected Groups Relative to White Men, Construction, 2015 - 2019

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-15.9%
Hispanic	-4.0%
Native American	---
Asian/Pacific Islander	-4.3%
Other	---
White Women	-0.8%

Source: CHA calculations from the American Community Survey

Table 5-7: Wage Differentials for Selected Groups Relative to White Men Construction, 2015 - 2019

Demographic Group	Wages Relative to White Men (% Change)
Black	-48.4%***
Hispanic	-15.4%***
Native American	-13.2%
Asian/Pacific Islander	-53.5%**
Other	-42.6%
White Women	-25.4%**

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

** Indicates statistical significance at the 0.01 level

**Table 5-8: Business Earnings Differentials for Selected Groups Relative to White Men
Construction, 2015 - 2019**

Demographic Group	Earnings Relative to White Men (% Change)
Black	37.3%
Hispanic	18.2%
Native American	---
Asian/Pacific Islander	-140.0%
Other	---
White Women	-88.6%

Source: CHA calculations from the American Community Survey

3. The Construction-Related Services Industry in the Austin Metropolitan Area

The sample of firms in the construction-related services industry contained too few numbers of Black, Hispanic, Native American, Asian, White woman, and Other firms to produce reliable estimates for these groups. The wages for White women were 18.6% less than those of White men and this result was statistically significant at the 0.01 level.

**Table 5-9: Business Formation Rates
Construction-Related Services, 2015 - 2019**

Demographic Group	Business Formation Rates
Black	---
Hispanic	---
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	---
Non-White Male	---
White Male	7.0%

Source: CHA calculations from the American Community Survey

Table 5-10: Business Formation Probability Differentials for Selected Groups Relative to White Men, Construction-related Services, 2015 - 2019

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

Source: CHA calculations from the American Community Survey

Table 5-11: Wage Differentials for Selected Groups Relative to White Men Construction-Related Services, 2015 - 2019

Demographic Group	Wages Relative to White Men (% Change)
Black	5.0%
Hispanic	-13.9%
Native American	---
Asian/Pacific Islander	-5.7%
Other	-23.3%
White Women	-18.6%**

Source: CHA calculations from the American Community Survey

** Indicates statistical significance at the 0.01 level

Table 5-12: Business Earnings Differentials for Selected Groups Relative to White Men Construction-related Services, 2015 - 2019

Demographic Group	Earnings Relative to White Men (% Change)
Black	---
Hispanic	---
Native American	---

Demographic Group	Earnings Relative to White Men (% Change)
Asian/Pacific Islander	---
Other	---
White Women	---

Source: CHA calculations from the American Community Survey

4. The Goods Industry in Austin Metropolitan Area

There were low numbers of Black (4), Hispanic (13), Native American (0), Asian (9), and Other firms (0) in the sample of the goods industry. Therefore, once again, reliable estimates of firm outcomes could not be made for these groups. Table 5-13 indicates that White women have higher business formation rates compared to White men. While Table 5-14 indicates that White women form businesses at a higher rate than White men, the result is statistically insignificant. Table 5-15 indicates that statistically significant results are found for five groups (Black; Hispanic; Asian/Pacific Islanders; Others; and White women) and all indicate lower wages relative to White men. Table 5-16 indicates that the coefficients for White woman business earnings were not statistically significant.

**Table 5-13: Business Formation Rates
Goods, 2015 - 2019**

Demographic Group	Business Formation Rates
Black	---
Hispanic	---
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	5.8%
Non-White Male	---
White Male	3.7%

Source: CHA calculations from the American Community Survey

**Table 5-14: Business Formation Probabilities Relative to White Males
Goods, 2015 - 2019**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	---
Hispanic	---
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	0.8%

Source: CHA calculations from the American Community Survey

**Table 5-15: Wage Differentials for Selected Groups Relative to White Men
Goods, 2015 - 2019**

Demographic Group	Wages Relative to White Men (% Change)
Black	-39.0%***
Hispanic	-16.5%**
Native American	-42.2%
Asian/Pacific Islander	-44.4%***
Other	-113.0%**
White Women	-51.9%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

** Indicates statistical significance at the 0.01 level

**Table 5-16: Business Earnings Differentials for Selected Groups Relative to White Men
Goods, 2015 - 2019**

Demographic Group	Earnings Relative to White Men (% Change)
Black	---
Hispanic	---
Native American	---

Demographic Group	Earnings Relative to White Men (% Change)
Asian/Pacific Islander	---
Other	---
White Women	60.5%

Source: CHA calculations from the American Community Survey

5. The Services Industry in Austin Metropolitan Area

There were low numbers of Native American (1) and Other firms (8) in the sample of the services industry; consequently, reliable estimates of firm outcomes could not be made for these groups. Table 5-17 indicates that White men have higher business formation rates compared to non-Whites and White women. Table 5-18 indicates that non-Whites and White women are less likely to form businesses compared to similarly situated White men and the coefficients are statistically significant at the 0.01 level. Table 5-19 indicates that non-Whites and White women earn less than White men – ranging from 19.5% to 34.2% – and these coefficients were statistically significant. Table 5-20 indicates that Black-owned and White woman-owned firms earned less than White male-owned firms and these results were statistically significant.

**Table 5-17: Business Formation Rates
Services, 2015 - 2019**

Demographic Group	Business Formation Rates
Black	3.3%
Hispanic	2.9%
Native American	---
Asian/Pacific Islander	4.1%
Other	---
White Women	5.8%
Non-White Male	4.3%
White Male	8.1%

Source: CHA calculations from the American Community Survey

**Table 5-18: Business Formation Probability Differentials for Selected Groups
Relative to White Men, Services, 2015 - 2019**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-3.3%**
Hispanic	-2.6%**
Native American	---
Asian/Pacific Islander	-2.5%**
Other	---
White Women	-1.6%**

Source: CHA calculations from the American Community Survey
** Indicates statistical significance at the 0.01 level

**Table 5-19: Wage Differentials for Selected Groups Relative to White Men
Services, 2015 - 2019**

Demographic Group	Wages Relative to White Men (% Change)
Black	-31.4%***
Hispanic	-19.5%***
Native American	-23.0%
Asian/Pacific Islander	-28.7%***
Other	-34.2%**
White Women	-26.3%***

Source: CHA calculations from the American Community Survey
*** Indicates statistical significance at the 0.001 level
** Indicates statistical significance at the 0.01 level

**Table 5-20: Business Earnings Differentials for Selected Groups
Relative to White Men, Services, 2015 - 2019**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-129.0%**
Hispanic	-26.8%
Native American	---

Demographic Group	Earnings Relative to White Men (% Change)
Asian/Pacific Islander	21.9%
Other	---
White Women	-60.4%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

** Indicates statistical significance at the 0.01 level

6. The Information Technology Industry in the Austin Metropolitan Area

There were low numbers of Blacks (2), Hispanics (10), Native American (0), and Other (1) sampled in the information technology industry. Therefore, reliable estimates of firm outcomes could not be made in this sector. Table 5-21 indicates that White men have higher business formation rates compared to Asians but lower compared to White women. Table 5-22 indicates that none of the coefficients were statistically significant. Table 5-23 indicates that non-Whites and White women earn less than White men and the coefficients for Blacks, Hispanics, Asians, and White women were statistically significant. Table 5-24 indicates that two business coefficients (Asian/Pacific Islanders; White women) were not statistically significant.

**Table 5-21: Business Formation Rates
Information Technology, 2015 - 2019**

Demographic Group	Business Formation Rates
Black	---
Hispanic	---
Native American	---
Asian/Pacific Islander	3.0%
Other	---
White Women	4.6%
Non-White Male	---
White Male	4.1%

Source: CHA calculations from the American Community Survey

Table 5-22: Business Formation Probability Differentials for Selected Groups Relative to White Men, Information Technology, 2015 - 2019

Demographic Group	Probability of Forming a Business Relative to White Men
Black	---
Hispanic	---
Native American	---
Asian/Pacific Islander	-1.8%
Other	---
White Women	-0.3%

Source: CHA calculations from the American Community Survey

Table 5-23: Wage Differentials for Selected Groups Relative to White Men Information Technology, 2015 - 2019

Demographic Group	Wages Relative to White Men (% Change)
Black	-20.4%**
Hispanic	-30.9%***
Native American	-9.0%
Asian/Pacific Islander	-16.3%***
Other	-17.0%
White Women	-21.1%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

** Indicates statistical significance at the 0.01 level

Table 5-24: Business Earnings Differentials for Selected Groups Relative to White Men Information Technology, 2015 - 2019

Demographic Group	Earnings Relative to White Men (% Change)
Black	---
Hispanic	---
Native American	---

Demographic Group	Earnings Relative to White Men (% Change)
Asian/Pacific Islander	-10.7%
Other	---
White Women	-63.0%

Source: CHA calculations from the American Community Survey

7. Conclusion

Overall, the data presented in the above tables indicate that non-Whites and White women form businesses less than White men and their wage and business earnings are less than those of White men. These analyses support the conclusion that barriers to business success do affect non-Whites and White women.

C. Disparate Treatment in the City of Austin Area Marketplace: Evidence from the Census Bureau’s 2017 Annual Business Survey

We further examined whether non-Whites and White women have disparate outcomes when they are active in the City of Austin area marketplace. This question is operationalized by exploring if the share of business receipts, number of firms, and payroll for firms owned by non-Whites and White women is greater than, less than, or equal to the share of all firms owned by non-Whites and White women.

To answer this question, we examined the U.S. Bureau’s Annual Business Survey (“ABS”). The ABS supersedes the more well-known Survey of Business Owners (“SBO”). The SBO was last conducted in 2012 and historically has been reported every five years. In contrast, the ABS was first conducted in 2017 and it is the Census Bureau’s goal to release results annually. As of the writing of this report, the most recent complete ABS contains 2017 data. The ABS surveyed about 850,000 employer firms and collected data on a variety of variables documenting ownership characteristics including race, ethnicity, and gender. It also collected data on the firms’ business activity with variables marking the firms’ number of employees, payroll size, sales and industry.¹⁰² For this analysis, we examined firms in the State of Texas. The state was the geographic unit of analysis because the ABS does not present data at the sub-state level.

102. For more information on the Annual Business Survey see <https://www.census.gov/programs-surveys/abs/about.html>.

With these data, we grouped the firms into the following ownership categories.^{103,104}

- Hispanics
- non-Hispanic Blacks
- non-Hispanic Native Americans
- non-Hispanic Asians
- non-Hispanic White women
- non-Hispanic White men
- Firms equally owned by non-Whites and Whites
- Firms equally owned by men and women
- Firms that were either publicly-owned or where the ownership could not be classified

For purposes of this analysis, the first four groups were aggregated to form a non-White category. Since our interest is the treatment of non-White-owned firms and White woman-owned firms, the last four groups were aggregated to form one category. To ensure this aggregated group is described accurately, we label this group “not non-White/non-White women”. While this label is cumbersome, it is important to be clear this group includes firms whose ownership extends beyond White men, such as firms that are not classifiable or that are publicly traded and thus have no racial ownership. In addition to the ownership demographic data, the Survey also gathers information on the sales, number of paid employees, and payroll for each reporting firm.

We analyzed the ABS data on the following sectors:

- Construction
- Professional, Scientific and Technical Services
- Goods
- Other services

The ABS data – a sample of all businesses, not the entire universe of all businesses – required some adjustments. In particular, we had to define the sectors at the two-digit North American Industry Classification System (“NAICS”) code level, and therefore our sector definitions do not exactly correspond to the definitions used

103. Race and gender labels reflect the categories used by the Census Bureau.

104. For expository purposes, the adjective “non-Hispanic” will not be used in this Chapter; the reader should assume that any racial group referenced does not include members of that group who identify ethnically as Hispanic.

to analyze the City contract data in Chapter IV, where we are able to determine sectors at the six-digit NAICS code level. At a more detailed level, the number of firms sampled in particular demographic and sector cells may be so small that the Census Bureau does not report the information, either to avoid disclosing data on businesses that can be identified or because the small sample size generates unreliable estimates of the universe. We therefore report two-digit data.

Table 5-25 presents information on which NAICS codes were used to define each sector.

Table 5-25: Two-Digit NAICS Code Definition of Sector

ABS Sector Label	Two-Digit NAICS Codes
Construction	23
Professional, Scientific, and Technical Services ^a	54
Goods	31,42, 44
Other Services	48, 52, 53, 56, 61, 62, 71, 72, 81

a. This sector includes (but is broader than just) construction-related services. It is impossible to narrow this category to construction-related services without losing the capacity to conduct race and gender specific analyses.

The balance of this Chapter reports the findings of the ABS analysis.

1. All Industries

For a baseline analysis, we examined all industries. Table 5-26 presents data on the percentage share that each group has of the total of each of the following four business outcomes:

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

Panel A of Table 5-26 presents data for the four basic non-White racial groups:

- Black
- Hispanic

- Native American
- Asian

Panel B of Table 5-26 presents data for the following types of firm ownership:

- Non-White
- White women
- Not non-White/non-White women¹⁰⁵

Categories in the second panel are mutually exclusive. Hence, firms that are non-White and equally owned by men and women are classified as non-White and firms that are equally owned by non-Whites and Whites and equally owned by men and women are classified as equally owned by non-Whites and Whites.

Since the central issue is the possible disparate treatment of non-White firms and White woman firms, we calculate three disparity ratios each for Black, Hispanic, Asian, Native American, non-White, and White woman firm respectively (a total of 18 ratios), presented in Table 5-27:

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

For example, the disparity ratio of sales and receipts share for all firms over the share of total number of all employer firms for Black firms is 13.0% (as shown in Table 5-26). This is derived by taking the Black share of sales and receipts for all employer firms (0.3%) and dividing it by the Black share of total number of all employer firms (2.2%) that are presented in Table 5-26.¹⁰⁶ If Black-owned firms earned a share of sales equal to their share of total firms, the disparity index would have been 100%. An index less than 100% indicates that a given group is being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission's "80% rule" that a ratio less than 80% presents a *prima facie* case of discrimina-

105. 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.

106. Please note that while the numbers presented in Table 5-26 are rounded to the first decimal place, the calculations resulting in the numbers presented in Table 5-27 are based on the actual (non-rounded) figures. Therefore, the Black ratio presented in Table 5-27 of 13.0% (as presented in Table 5-27) is not the same figure as that which would be derived when you divided 0.3 by 2.2 (the numbers presented in Table 5-26).

tion.¹⁰⁷ All of the 18 disparity ratios for non-White firms and White woman firms are below this threshold.¹⁰⁸

**Table 5-26: Demographic Distribution of Sales and Payroll Data – Aggregated Groups
All Industries, 2017**

	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts - All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
Panel A: Distribution of Non-White Firms				
Black	2.2%	0.3%	1.1%	0.6%
Hispanic	12.2%	2.2%	5.7%	3.4%
Asian	11.3%	2.1%	4.1%	2.4%
Native American	0.4%	0.1%	0.2%	0.1%
Panel B: Distribution of All Firms				
Non-White	26.1%	4.7%	11.1%	6.5%
White Women	13.6%	2.7%	5.8%	4.5%
Not Non-White/ Not White Women	60.3%	92.6%	83.1%	89.0%
All Firms	100.0%	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

107. 29 C.F.R. §1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or 80%) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).

108. Because the data in the subsequent tables are presented for descriptive purposes, significance tests on these results are not conducted.

**Table 5-27: Disparity Ratios of Firm Utilization Measures
All Industries, 2017**

	Ratio of Sales to Number of Employer Firms	Ratio of Employees to Number of Employer Firms	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratio for Non-White Firms			
Black	13.0%	50.5%	26.2%
Hispanic	18.0%	46.7%	27.5%
Asian	18.5%	36.6%	21.6%
Native American	22.1%	42.8%	30.0%
Panel B: Disparity Ratios for All Firms			
Non-White	17.8%	42.6%	24.9%
White Women	19.9%	42.9%	33.2%
Not Non-White/Not White Women	153.6%	137.7%	147.6%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

This same approach was used to examine the Construction, Professional, Scientific and Technical Services, Goods, and Other Services sectors. The following are summaries of the results of the disparity analyses.

2. Construction Industry

Of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-28, 17 fall under the 80% threshold.

**Table 5-28: Disparity Ratios – Aggregated Groups
Construction, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non-White Firms			
Black	48.4%	58.0%	44.7%
Hispanic	44.3%	52.3%	39.9%
Asian	35.9%	33.9%	29.8%
Native American	50.5%	69.2%	59.3%

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel B: Disparity Ratios for All Firms			
Non-White	44.1%	51.8%	40.0%
White Women	62.9%	84.0%	74.6%
Not Non-White/Not White Women	119.4%	114.9%	119.2%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

3. Professional, Scientific and Technical Services Industry

Of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-29, 18 fall under the 80% threshold.

**Table 5-29: Disparity Ratios – Aggregated Groups
Professional, Scientific and Technical Services, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non-White Firms			
Black	33.0%	34.9%	25.5%
Hispanic	34.7%	44.2%	26.8%
Asian	43.3%	44.4%	39.1%
Native American	34.4%	33.3%	24.9%
Panel B: Disparity Ratios for All Firms			
Non-White	38.5%	43.1%	32.3%
White Women	42.0%	44.1%	32.0%
Not Non-White/Not White Women	135.9%	133.8%	140.6%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

4. Goods Industry

Of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-30, all 18 fall under the 80% threshold.

**Table 5-30: Disparity Ratios – Aggregated Groups
Goods, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non-White Firms			
Black	13.5%	25.8%	20.9%
Hispanic	14.3%	29.8%	23.4%
Asian	12.7%	21.4%	14.3%
Native American	19.2%	42.7%	39.2%
Panel B: Disparity Ratios for All Firms			
Non-White	13.4%	24.9%	18.1%
White Women	13.8%	34.4%	30.8%
Not Non-White/Not White Women	158.7%	148.9%	152.8%
All Firms	100.00%	100.00%	100.00%

Source: CHA calculations from American Business Survey

5. Services Industry

Of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-31, all 18 fall under the 80% threshold.

**Table 5-31: Disparity Ratios – Aggregated Groups
Services, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non-White Firms			
Black	21.9%	59.3%	33.2%
Hispanic	24.6%	55.7%	34.5%
Asian	23.7%	44.4%	26.4%

	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
Native American	23.3%	51.1%	24.7%
Panel B: Disparity Ratios for All Firms			
Non-White	23.9%	51.3%	30.9%
White Women	28.5%	46.8%	36.4%
Not Non-White/Not White Women	157.6%	138.7%	152.0%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

6. Conclusion

Overall, the analysis of the ABS data presented in the above tables indicate that non-Whites and White women share of all employer firms is greater than their share of sales, payrolls, and employees. This supports the conclusion that barriers to business success disproportionately affect non-Whites and White women.

D. Evidence of Disparities in Access to Business Capital

Capital is the lifeblood of any business. Participants in the anecdotal data collection universally agreed to this fundamental fact. The interviews with business owners conducted as part of this Study confirmed that small firms, especially minority- and woman-owned firms, had difficulties obtaining needed working capital to perform on City contracts and subcontracts, as well as expand the capacities of their firms. As demonstrated by the analyses of Census Bureau data, above, discrimination may even prevent firms from forming in the first place.

There are extensive federal agency reports and much scholarly work on the relationship between personal wealth and successful entrepreneurship. There is a general consensus that disparities in personal wealth translate into disparities in business creation and ownership.¹⁰⁹ The most recent research highlights the magnitude of the COVID-19 pandemic’s disproportionate impact on minority-owned firms.

109. See, e.g., Evans, David S. and Jovanovic, Boyan, “An Estimated Model of Entrepreneurial Choice under Liquidity Constraints,” *Journal of Political Economy*, Vol. 97, No. 4, 1989, pp. 808-827; David S. Evans and Linda S. Leighton, “Some empirical aspects of entrepreneurship,” *The American Economic Review*, Vol. 79, No. 3, 1989, pp. 519-535.

1. Federal Reserve Board Small Business Credit Surveys¹¹⁰

The Development Office of the 12 Reserve Banks of the Federal Reserve System has conducted Small Business Credit Surveys (“SBCS”) to develop data on small business performance and financing needs, decisions, and outcomes.

a. 2021 Small Business Credit Survey

The 2021 SBCS¹¹¹ reached more than 15,000 small businesses, gathering insights about the COVID-19 pandemic’s impact on small businesses, as well as business performance and credit conditions. The Survey yielded 9,693 responses from a nationwide convenience sample of small employer firms with between one and 499 full- or part-time employees across all 50 states and the District of Columbia. The survey was fielded in September and October 2020, approximately six months after the onset of the pandemic. The timing of the survey is important to the interpretation of the results. At the time of the survey, the Paycheck Protection Program (“PPP”) authorized by the Coronavirus Relief and Economic Security Act had recently closed applications, and prospects for additional stimulus funding were uncertain. Additionally, many government-mandated business closures had been lifted as the number of new COVID-19 cases plateaued in advance of a significant increase in cases by the year’s end.

The 2020 survey findings highlight the magnitude of the pandemic’s impact on small businesses and the challenges they anticipate as they navigate changes in the business environment. Few firms avoided the negative impacts of the pandemic. Furthermore, the findings reveal disparities in experiences and outcomes across firm and owner demographics, including race and ethnicity, industry, and firm size.

Overall, firms’ financial conditions declined sharply and those owned by people of color reported greater challenges. The most important anticipated financial challenge differed by race and ethnicity of the owners. Among the findings for employer firms relevant to discriminatory barriers were the following:

- For Black-owned firms, credit availability was the top expected challenge, while Asian-owned firms disproportionately cited weak demand.
- The share of firms in fair or poor financial conditions varied by race: 79% of Asian-owned firms, 77% of Black-owned firms, 66% of

110. This survey offers baseline data on the financing and credit positions of small firms before the onset of the pandemic. See [fedsmallbusiness.org](https://www.fedsmallbusiness.org).

111. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/2021-sbcs-employer-firms-report>.

Hispanic-owned firms and 54% of White-owned firms reported this result.

- The share of firms that received all the financing sought to address the impacts of the pandemic varied by race: 40% of White-owned firms received all the funding sought, but only 31% of Asian-owned firms, 20% of Hispanic-owned firms and 13% of Black-owned firms achieved this outcome.

b. 2018 Small Business Credit Survey

The 2018 SBCS¹¹² focused on minority-owned firms. The analysis was divided into two types: employer firms and non-employer firms.

i. Employer firms

Queries were submitted to businesses with fewer than 500 employees in the third and fourth quarters of 2018. Of the 7,656 firms in the unweighted sample, five percent were Asian, ten percent were Black, six percent were Hispanic, and 79% were White. Data were then weighted by number of employees, age, industry, geographic location (census division and urban or rural location), and minority status to ensure that the data is representative of the nation’s small employer firm demographics.¹¹³

Among the findings for employer firms relevant to discriminatory barriers were the following:

- Not controlling for other firm characteristics, fewer minority-owned firms were profitable compared to non-minority-owned firms during the past two years.¹¹⁴ On average, minority-owned firms and non-minority-owned firms were about as likely to be growing in terms of number of employees and revenues.¹¹⁵
- Black-owned firms reported more credit availability challenges or difficulties obtaining funds for expansion—even among firms with revenues of more than \$1M. For example, 62% of Black-owned firms reported that obtaining funds for expansion was a challenge, compared to 31% of White-owned firms.¹¹⁶

112. Small Business Credit Survey, <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

113. *Id.* at 22. Samples for SBCS are not selected randomly. To control for potential biases, the sample data are weighted so that the weighted distribution of firms in the SBCS matches the distribution of the small firm population in the United States by number of employees, age industry, geographic location, gender of owner, and race or ethnicity of owners.

114. *Id.* at 3.

115. *Id.* at 4.

116. *Id.* at 5.

- Black-owned firms were more likely to report relying on personal funds of owner(s) when they experienced financial challenges to fund their business. At the same time, White- and Asian-owned firms reported higher debt levels than Black- and Hispanic-owned firms.¹¹⁷
- Black-owned firms reported more attempts to access credit than White-owned firms but sought lower amounts of financing. Forty percent of Black-owned firms did not apply because they were discouraged, compared to 14% of White-owned firms.¹¹⁸
- Low credit score and lack of collateral were the top reported reasons for denial of applications by Black- and Hispanic-owned firms.¹¹⁹

ii. Non-employer firms¹²⁰

Queries were submitted to non-employer firms in the third and fourth quarters of 2018. Of the 4,365 firms in the unweighted sample, five percent were Asian, 24% were Black, seven percent were Hispanic, and 64% were White. Data were then weighted by age, industry, geographic location (census division and urban or rural location), and minority status.¹²¹

Among the findings for non-employer firms relevant to discriminatory barriers were the following:

- Black-owned firms were more likely to operate at a loss than other firms.¹²²
- Black-owned firms reported greater financial challenges, such as obtaining funds for expansion, accessing credit and paying operating expenses than other businesses.¹²³
- Black- and Hispanic-owned firms submitted more credit applications than White-owned firms.¹²⁴

117. *Id.* at 6.

118. *Id.* at 9.

119. *Id.* at 15.

120. *Id.* at 18.

121. *Id.* at 18.

122. *Id.*

123. *Id.* at 19.

124. *Id.* at 20.

c. 2016 Small Business Credit Surveys

The 2016 Small Business Credit Survey¹²⁵ obtained 7,916 responses from employer firms with race/ethnicity information and 4,365 non-employer firms in the 50 states and the District of Columbia. Results were reported with four race/ethnicity categories: White, Black or African American, Hispanic, and Asian or Pacific Islander.¹²⁶ It also reported results from woman-owned small employer firms, defined as firms where 51% or more of the business is owned by women, and compared their experiences with male-owned small employer firms.

2. The 2016 Report on Minority-Owned Businesses¹²⁷

The Report on Minority-Owned Businesses provided results for White-, Black- or African American-, Hispanic-, and Asian- or Pacific Islander-owned firms.

a. Demographics¹²⁸

The SBCS found that Black-, Asian-, and Hispanic-owned firms tended to be younger and smaller in terms of revenue size, and they were concentrated in different industries. Black-owned firms were concentrated in the health-care and education industry sectors (24%). Asian-owned firms were concentrated in professional services and real estate (28%). Hispanic-owned firms were concentrated in non-manufacturing goods production and associated services industry, including building trades and construction (27%). White-owned firms were more evenly distributed across several industries but operated most commonly in the professional services industry and real estate industries (19%), and non-manufacturing goods production and associated services industry (18%).¹²⁹

b. Profitability Performance Index¹³⁰

After controlling for other firm characteristics, the SBCS found that fewer minority-owned firms were profitable compared to non-minority-owned firms during the prior two years. This gap proved most pronounced between White- (57%) and Black-owned firms (42%). On average, however,

125. <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

126. When the respondent sample size by race for a survey proved to be too small, results were communicated in terms of minority vis-à-vis non-minority firms.

127. <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

128. 2016 SBCS, at 2.

129. *Id.* Forty-two percent of Black-owned firms, 21% of Asian-owned firms, and 24% of Hispanic-owned firms were smaller than \$100K in revenue size compared with 17% of White-owned firms.

130. *Id.* at 3-4.

minority-owned firms and non-minority-owned firms were nearly as likely to be growing in terms of number of employees and revenues.

c. Financial and Debt Challenges/Demands¹³¹

The number one reason for financing was to expand the business or pursue a new opportunity. Eighty-five percent of applicants sought a loan or line of credit. Black-owned firms reported more attempts to access credit than White-owned firms but sought lower amounts of financing.

Black-, Hispanic-, and Asian-owned firms applied to large banks for financing more than they applied to any other sources of funds. Having an existing relationship with a lender was deemed more important to White-owned firms when choosing where to apply compared to Black-, Hispanic- and Asian-owned firms.

The SBCS also found that small Black-owned firms reported more credit availability challenges or difficulties for expansion than White-owned firms, even among firms with revenues in excess of \$1M. Black-owned firm application rates for new funding were ten percentage points higher than White-owned firms; however, their approval rates were 19 percentage points lower. A similar but less pronounced gap existed between Hispanic- and Asian-owned firms compared with White-owned firms. Of those approved for financing, only 40% of minority-owned firms received the entire amount sought compared to 68% of non-minority-owned firms, even among firms with comparably good credit scores.

Relative to financing approval, the SBCS found stark differences in loan approvals between minority-owned and White-owned firms. When controlling for other firm characteristics, approval rates from 2015 to 2016 increased for minority-owned firms and stayed roughly the same for non-minority-owned firms. Hispanic- and Black-owned firms reported the highest approval rates at online lenders.¹³²

Low credit score and lack of collateral were the top reported reasons for denial of Black- and Hispanic-owned firms' applications. Satisfaction levels were lowest at online lenders for both minority- and non-minority-owned firms. A lack of transparency was cited as one of the top reasons for dissatisfaction for minority applicants and borrowers.

Forty percent of non-applicant Black-owned firms reported not applying for financing because they were discouraged (expected not to be approved),

131. *Id.* at 8-9; 11-12; 13; 15.

132. The share of minority-owned firms receiving at least some financing was lower across all financing products, compared with non-minority firms.

compared with 14% of White-owned firms. The use of personal funds was the most common action taken in response to financial challenges, with 86% of Black-owned firms, 77% of Asian-owned firms, 76% of White-owned firms, and 74% of Hispanic-owned firms using this as its source.

A greater share of Black-owned firms (36%) and of Hispanic-owned firms (33%) reported existing debt in the past 12 months of less than \$100,000, compared with 21% of White-owned firms and 14% of Asian-owned firms. Black-owned firms applied for credit at a higher rate and tended to submit more applications, compared with 31% of White-owned firms. Black-, Hispanic-, and Asian-owned firms applied for higher-cost products and were more likely to apply to online lenders compared to White-owned firms.

d. Business Location Impact¹³³

Controlling for other firm characteristics, minority-owned firms located in low-income minority zip codes reported better credit outcomes at large banks, compared with minority-owned firms in other zip codes. By contrast, at small banks, minority-owned firms located in low- and moderate-income minority zip codes experienced lower approval rates than minority-owned firms located in other zip codes.

e. Non-employer Firms¹³⁴

Non-employer firms reported seeking financing at lower rates and experienced lower approval rates than employer firms, with Black-owned non-employer firms and Hispanic-owned non-employer firms experiencing the most difficulty. White-owned non-employer firms experienced the highest approval rates for new financing, while Black-owned non-employer firms experienced the lowest approval rates for new financing.

3. The 2016 Report on Woman-Owned Businesses¹³⁵

The Report on Woman-Owned Businesses provides results from woman-owned small employer firms where 51% or more of the business is owned by women. These data compared the experience of these firms compared with male-owned small employer firms.

133. *Id.* at 17.

134. *Id.* at 21.

135. <https://www.newyorkfed.org/medialibrary/media/smallbusiness/2016/SBCS-Report-WomenOwnedFirms-2016.pdf>.

a. Firm Characteristics: Woman-Owned Firms Start Small and Remain Small and Concentrate in Less Capital-Intensive Industries¹³⁶

The SBCS found that 20% of small employer firms were woman-owned, compared to 65% male-owned and 15% equally owned. Woman-owned firms generally had smaller revenues and fewer employees than male-owned small employer firms. These firms tended to be younger than male-owned firms.

Woman-owned firms were concentrated in less capital-intensive industries. Two out of five woman-owned firms operated in the healthcare and education or professional services and real estate industries. Male-owned firms were concentrated in professional services, real estate, and non-manufacturing goods production and associated services.¹³⁷

b. Profitability Challenges and Credit Risk Disparities¹³⁸

Woman-owned firms were less likely to be profitable than male-owned firms. These firms were more likely to report being medium or high credit risk compared to male-owned firms. Notably, gender differences by credit risk were driven by woman-owned startups. Among firms older than five years, credit risk was indistinguishable by the owner's gender.

c. Financial Challenges During the Prior Twelve Months¹³⁹

Woman-owned firms were more likely to report experiencing financial challenges in the prior twelve months: 64% compared to 58% of male-owned firms. They most frequently used personal funds to fill gaps and make up deficiencies. Similar to male-owned firms, woman-owned firms frequently funded operations through retained earnings. Ninety percent of woman-owned firms relied upon the owner's personal credit score to obtain financing.

d. Debt Differences¹⁴⁰

Sixty-eight percent of woman-owned firms had outstanding debt, similar to that of male-owned firms. However, woman-owned firms tended to have

136. 2016 SBCS, at 1-5.

137. Non-manufacturing goods production and associated services refers to firms engaged in Agriculture, Forestry, Fishing, and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction; Wholesale Trade; Transportation and Warehousing (NAICS codes: 11, 21, 22, 23, 42, 48-49).

138. *Id.* at 6-7.

139. *Id.* at 8.

140. *Id.* at 10.

smaller amounts of debt, even when controlled for the revenue size of the firm.

e. Demands for Financing¹⁴¹

Forty-three percent of woman-owned firms applied for financing. Woman-owned applicants tended to seek smaller amounts of financing even when their revenue size was comparable.

Overall, woman-owned firms were less likely to receive all financing applied for compared to male-owned firms. Woman-owned firms received a higher approval rate for U.S. Small Business Administration loans compared to male-owned firms. Low-credit, woman-owned firms were less likely to be approved for business loans than their male counterparts with similar credit (68% compared to 78%).

f. Firms That Did Not Apply for Financing¹⁴²

Woman-owned firms reported being discouraged from applying for financing for fear of being turned down at a greater rate: 22% compared to 15% for male-owned firms. Woman-owned firms cited low credit scores more frequently than male-owned firms as their chief obstacle in securing credit. By contrast, male-owned businesses were more likely to cite performance issues.

g. Lender Satisfaction¹⁴³

Woman-owned firms were most consistently dissatisfied by lenders' lack of transparency and by long waits for credit decisions. However, they were notably more satisfied with their borrowing experiences at small banks rather than large ones.

4. 2021 Report on Firms Owned by People of Color

a. Overview

The *2021 Report on Firms Owned by People of Color*¹⁴⁴ compiles results from the 2020 SBCS. The SBCS provides data on small business performance, financing needs, and decisions and borrowing outcomes.^{145,146}

141. *Id.* at 16.

142. *Id.* at 14.

143. *Id.* at 26.

144. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

145. The SBCS is an annual survey of firms with fewer than 500 employees.

The Report provides results by four race/ethnicity categories: White, Black or African American, Hispanic or Latino, and Asian or Pacific Islander. For select key statistics, it also includes results for 4,531 non-employer firms, which are firms with no employees on payroll other than the owner(s) of the business.

Patterns of geographic concentration emerged among small business ownership by race and ethnicity. This was important given the progressive geographic spread of the novel coronavirus throughout 2020 and variations in state government responses to limit its spread. The Report found that 40% of Asian-owned small employer firms are in the Pacific census division, and another 28% are in the Middle Atlantic. Early and aggressive efforts by the impacted states may have affected the revenue performance of Asian-owned firms in the aggregate given their geographic concentration. Black- and Hispanic-owned small employer firms are more concentrated in the South Atlantic region, which includes states with a mix of pandemic responses. For example, while Florida lifted COVID-19 restrictions relatively quickly, the South Atlantic includes states such as Maryland and North Carolina that maintained more strict guidelines.

The Report found that firms owned by people of color continue to face structural barriers in acquiring the capital, business acumen, and market access needed for growth. At the time of the 2020 SBCS – six months after the onset of the global pandemic – the U.S. economy had undergone a significant contraction of economic activity. As a result, firms owned by people of color reported more significant negative effects on business revenue, employment, and operations. These firms anticipated revenue, employment, and operational challenges to persist into 2021 and beyond. Specific findings are, as follows:

b. Performance and Challenges

Overall, firms owned by people of color were more likely than White-owned firms to report that they reduced their operations in response to the pandemic. Asian-owned firms were more likely than others to have temporarily closed and to have experienced declines in revenues and employment in the 12 months prior to the survey. In terms of sales and the supply chain, 93% of Asian-owned firms and 86% of Black-owned firms reported sales declines as a result of the pandemic. Relative to financial challenges for the prior 12 months, firms owned by people of color were more likely than White-owned firms to report financial challenges, including paying operating expenses, paying rent, making payments on debt, and

146. The 2020 SBCS was fielded in September and October 2020 and yielded 9,693 responses from small employer firms in all 50 states and the District of Columbia.

credit availability. Black-owned business owners were most likely to have used personal funds in response to their firms' financial challenges. Nearly half of Black-owned firms reported concerns about personal credit scores or the loss of personal assets. By contrast, one in five White-owned firms reported no impact on the owners' personal finances. Asian-owned firms were approximately twice as likely as White-owned firms to report that their firms were in poor financial condition.

c. Emergency Funding

The *Report* finds that PPP loans were the most common form of emergency assistance funding that firms sought during the period. Black- and Hispanic-owned firms were less likely to apply for a PPP loan. Only six in ten Black-owned firms actually applied. Firms owned by people of color were more likely than White-owned firms to report that they missed the deadline or were unaware of the program. Firms owned by people of color were less likely than White-owned firms to use a bank as a financial services provider. Regardless of the sources at which they applied for PPP loans, firms that used banks were more likely to apply for PPP loans than firms that did not have a relationship with a bank. While firms across race and ethnicity were similarly likely to apply for PPP loans at large banks, White- and Asian-owned firms more often applied at small banks than did Black- and Hispanic-owned firms. Black-owned firms were nearly half as likely as White-owned firms to receive all of the PPP funding they sought and were approximately five times as likely to receive none of the funding they sought.

d. Debt and Financing

Black-owned firms have smaller amounts of debt than other firms. About one in ten firms owned by people of color do not use financial services.

On average, Black-owned firms completed more financing applications than other applicant firms. Firms owned by people of color turned more often to large banks for financing. By contrast, White-owned firms turned more often to small banks. Black-owned applicant firms were half as likely as White-owned applicant firms to be fully approved for loans, lines of credit, and cash advances.

Firms owned by people of color were less satisfied than White-owned firms with the support from their primary financial services provider during the pandemic. Regardless of the owner's race or ethnicity, firms were less satisfied with online lenders than with banks and credit unions.

In the aggregate, 63% of all employer firms were non-applicants – they did not apply for non-emergency financing in the prior 12 months. Black-owned firms were more likely than other firms to apply for non-emergency

funding in the 12 months prior to the survey. One-quarter of Black- and Hispanic-owned firms that applied for financing sought \$25,000 or less. In 2020, firms owned by people of color were more likely than White-owned firms to apply for financing to meet operating expenses. The majority of non-applicant firms owned by people of color needed funds but chose not to apply, compared to 44% of White-owned firms. Financing shortfalls were most common among Black-owned firms and least common among White-owned firms.

Firms of color, and particularly Asian-owned firms, were more likely than White-owned firms to have unmet funding needs. Just 13% of Black-owned firms received all of the non-emergency financing they sought in the 12 months prior to the survey, compared to 40% of White-owned firms. Black-owned firms with high credit scores were half as likely as their White counterparts to receive all of the non-emergency funding they sought.

e. Findings for Non-employer Firms

Non-employer firms, those that have no paid employees other than the owner, represent the overwhelming majority of small businesses across the nation. In all, 96% of Black- and 91% of Hispanic-owned firms are non-employer firms, compared to 78% of White-owned and 75% of Asian-owned firms.¹⁴⁷

Compared to other non-employer firms, Asian-owned firms reported the most significant impact on sales as a result of the pandemic. They were most likely to report that their firm was in poor financial condition at the time of the survey.

Compared to other non-employer firms that applied for financing, Black-owned firms were less likely to receive all of the financing they sought. Black-owned non-employer firms that applied for PPP loans were less likely than other firms to apply at banks and more often turned to online lenders. Among PPP applicants, White-owned non-employer firms were twice as likely as Black-owned firms to receive all of the PPP funding they sought.

147. The Report notes that a future report will describe findings from the 2020 SBCS for non-employers in greater detail.

5. 2020 Small Business Administration Loans to African American Businesses

As detailed in a 2021 article published in the *San Francisco Business Times*,¹⁴⁸ the number of loans to Black businesses through the SBA's 7(a) program¹⁴⁹ decreased 35% in 2020.¹⁵⁰ This was the largest drop in lending to any race or ethnic group tracked by the SBA. The 7(a) program is the SBA's primary program for financial assistance to small businesses. Terms and conditions, like the guaranty percentage and loan amount, vary by the type of loan. Lenders and borrowers can negotiate the interest rate, but it may not exceed the SBA maximum.¹⁵¹

Bankers, lobbyists, and other financial professionals attributed the 2020 decline to the impact of the PPP pandemic relief effort.¹⁵² The PPP loan program provided the source of relief to underserved borrowers through a direct incentive for small businesses to keep their workers on payroll.¹⁵³ Approximately 5.2M PPP loans were made in 2020, as compared with roughly 43,000 loans made through the 7(a) program.

In a published statement to the *Portland Business Journal*, the American Bankers Association, an industry trade group, noted that the 2020 decline in SBA 7(a) loans to Black-owned businesses is not a one-year anomaly; it has been declining for years at a much faster rate than 7(a) loans to other borrowers. The 2020 data¹⁵⁴ reveal that the number of SBA loans made annually to Black businesses has declined 90% since a 2007 peak, more than any other group tracked by the SBA. In that interval, the overall number of loans decreased by 65%.

The nation's four largest banks (JP Morgan Chase, Bank of America, Citigroup, and Wells Fargo), which hold roughly 35% of national deposits, made 41% fewer SBA 7(a) loans to Blacks in 2020.¹⁵⁵

148. SBA Loans to African American Businesses Decrease 35%, *San Francisco Business Times* (August 11, 2021) at: <https://www.bizjournals.com/sanfrancisco/news/2021/08/11/sba-loans-to-african-american-businesses-decrease.html>. Data were obtained through a Freedom of Information Act request.

149. Section 7(a) of the Small Business Act of 1953 (P.L. 83-163, as amended).

150. The total number of 7(a) loans declined 24%.

151. The SBA caps the maximum spread lenders can charge based on the size and maturity of the loan. Rates range from prime plus 4.5% to prime plus 6.5%, depending on how much is borrowed.

152. The Coronavirus Act, Relief, and Economic Security Act ("CARES Act"), required the SBA to issue guidance to PPP lenders to prioritize loans to small businesses owned by socially and economically disadvantaged individuals including Black-owned businesses. See 116-136, §1, March 27, 2020, 134 Stat. 281.

153. PPP loans were used to help fund payroll costs, including benefits, and to pay for mortgage interest, rent, utilities, workers protection costs related to COVID-19, uninsured property damage costs caused by looting or vandalism during 2020 as well as certain supplier costs and operational expenses.

154. The SBA denied the original request for information; however, the publication prevailed on appeal.

PPP loans served as a lifeline during the pandemic for millions of businesses. However, industry experts maintained that PPP loans detracted from more conventional SBA lending efforts that year. Wells Fargo provided more than 282,000 PPP loans to small businesses nationwide in 2020, with an average loan size of \$50,000. Wells Fargo, the most active lender for Black-owned businesses nationwide in 2020, saw its SBA loans to Blacks drop from 263 in 2019 to 162 in 2020. Bank of America, Chase, and Citigroup also reported fewer SBA loans to African American businesses in 2020.

While PPPs have been heralded for providing needed monies to distressed small and mid-size businesses, data reveals disparities in how loans were distributed.¹⁵⁶ An analysis in 2020 by the *Portland Business Journal*, found that of all 5.2M PPP loans, businesses in neighborhoods of color received fewer loans and delayed access to the program during the early critical days of the pandemic.¹⁵⁷ More recent analysis released by the Associated Press indicates that access for borrowers of color improved exponentially during the later rounds of PPP funding, following steps designed to make the program more accessible to underserved borrowers.

a. 2010 Minority Business Development Agency Report¹⁵⁸

The 2010 Minority Business Development Agency Report, “Disparities in Capital Access Between Minority and non-Minority Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs”, summarizes results from the Kauffman Firm Survey, data from the U.S. Small Business Administration’s Certified Development Company/504 Guaranteed Loan Program and additional extensive research on the effects of discrimination on opportunities for minority-owned firms. The report found that:

low levels of wealth and liquidity constraints create a substantial barrier to entry for minority entrepreneurs because the owner’s wealth can be invested directly in the business, used as collateral to obtain business loans or used to acquire other businesses.¹⁵⁹

155. Data obtained by the *Business Journal* does not include information from lenders who made less than ten loans in 2020.

156. While PPP loans are administered by the SBA, they are disbursed primarily through banks.

157. Many industry experts have observed that businesses that already had strong relationships with lenders were the most successful in accessing PPP loans. The nation’s long history of systemic racism in banking fostered disparities in PPP loan distribution. See Alicia Plerhoples, *Correcting Past Mistakes: PPP Loans and Black-Owned Small Businesses*, at <https://www.acslaw.org/expertforum/correcting-past-mistakes-ppp-loans-and-black-owned-small-businesses/>.

158. Robert W. Fairlie and Alicia Robb, *Disparities in Capital Access Between Minority and non-Minority Businesses: The Troubling Reality of Capital Limitations Faced by MBEs*, Minority Business Development Agency, U.S. Department of Commerce, 2010 (“MBDA Report” (<https://archive.mbda.gov/sites/mbda.gov/files/migrated/files-attachments/DisparitiesinCapitalAccessReport.pdf>)).

159. *Id.* at 17.

It also found, “the largest single factor explaining racial disparities in business creation rates are differences in asset levels.”¹⁶⁰

Some additional key findings of the Report include:

- *Denial of Loan Applications.* Forty-two percent of loan applications from minority firms were denied compared to 16% of loan applications from non-minority-owned firms.¹⁶¹
- *Receiving Loans.* Forty-one percent of all minority-owned firms received loans compared to 52% of all non-minority-owned firms. MBEs are less likely to receive loans than non-minority-owned firms regardless of firm size.¹⁶²
- *Size of Loans.* The size of the loans received by minority-owned firms averaged \$149,000. For non-minority-owned firms, loan size averaged \$310,000.
- *Cost of Loans.* Interest rates for loans received by minority-owned firms averaged 7.8%. On average, non-minority-owned firms paid 6.4% in interest.¹⁶³
- *Equity Investment.* The equity investments received by minority-owned firms were 43% of the equity investments received by non-minority-owned firms even when controlling for detailed business and owner characteristics. The differences are large and statistically significant. The average amount of new equity investments in minority-owned firms receiving equity is 43% of the average of new equity investments in non-minority-owned firms. The differences were even larger for loans received by high sales firms.¹⁶⁴

b. Federal Reserve Board Surveys of Small Business Finances

The Federal Reserve Board and the U.S. Small Business Administration have conducted surveys of discrimination in the small business credit market for years 1993, 1998 and 2003.¹⁶⁵ These Surveys of Small Business Finances are based on a large representative sample of firms with fewer than 500 employees. The main finding from these Surveys is that MBEs experience higher loan denial probabilities and pay higher interest rates than White-

160. *Id.* at 22.

161. *Id.* at 5.

162. *Id.*

163. *Id.*

164. *Id.*

165. <https://www.federalreserve.gov/pubs/oss/oss3/nssbftoc.htm>. These surveys have been discontinued. They are referenced to provide some historical context.

owned businesses, even after controlling for differences in credit worthiness and other factors. Blacks, Hispanics and Asians were more likely to be denied credit than Whites, even after controlling for firm characteristics like credit history, credit score and wealth. Blacks and Hispanics were also more likely to pay higher interest rates on the loans they did receive.¹⁶⁶

6. Other Reports

- Dr. Timothy Bates found venture capital funds focusing on investing in minority firms provide returns that are comparable to mainstream venture capital firms.¹⁶⁷
- According to the analysis of the data from the Kauffman Firm Survey, minority-owned firms' investments into their own firms were about 18% lower in the first year of operations compared to those of non-minority-owned firms. This disparity grew in the subsequent three years of operations, where minorities' investments into their own firms were about 36% lower compared to those of non-minority-owned firms.¹⁶⁸
- Another study by Fairlie and Robb found minority entrepreneurs face challenges (including lower family wealth and difficulty penetrating financial markets and networks) directly related to race that limit their ability to secure financing for their businesses.¹⁶⁹

E. Evidence of Disparities in Access to Human Capital

There is a strong intergenerational correlation with business ownership. The probability of self-employment is significantly higher among the children of the self-employed. A generational lack of self-employment capital disadvantages minorities, whose earlier generations were denied business ownership through either *de jure* segregation or *de facto* exclusion.

There is evidence that current racial patterns of self-employment are in part determined by racial patterns of self-employment in the previous generation.¹⁷⁰

166. See Blanchflower, D. G., Levine, P. and Zimmerman, D., "Discrimination In The Small Business Credit Market," *Review of Economics and Statistics*, (2003); Cavalluzzo, K. S. and Cavalluzzo, L. C. ("Market structure and discrimination, the case of small businesses," *Journal of Money, Credit, and Banking*, (1998).

167. See Bates, T., "Venture Capital Investment in Minority Business," *Journal of Money Credit and Banking* 40, 2-3 (2008).

168. Fairlie, R.W. and Robb, A, *Race and Entrepreneurial Success: Black-, Asian- and White-Owned Businesses in the United States*, (Cambridge: MIT Press, 2008).

169. Fairlie, R.W. and Robb, A., *Race and Entrepreneurial Success: Black-, Asian- and White-Owned Businesses in the United States*, (Cambridge: MIT Press, 2008).

170. Fairlie, R W., "The Absence of the African-American Owned Business, An Analysis of the Dynamics of Self-Employment," *Journal of Labor Economics*, Vol. 17, 1999, pp 80-108.

Black men have been found to face a “triple disadvantage” in that they are less likely than White men to: 1. Have self-employed fathers; 2. Become self-employed if their fathers were not self-employed; and 3. To follow their fathers into self-employment.¹⁷¹

Intergenerational links are also critical to the success of the businesses that do form.¹⁷² Working in a family business leads to more successful firms by new owners. One study found that only 12.6% of Black business owners had prior work experiences in a family business as compared to 23.3% of White business owners.¹⁷³ This creates a cycle of low rates of minority ownership and worse outcomes being passed from one generation to the next, with the corresponding perpetuation of advantages to White-owned firms.

Similarly, unequal access to business networks reinforces exclusionary patterns. The composition and size of business networks are associated with self-employment rates.¹⁷⁴ The U.S. Department of Commerce has reported that the ability to form strategic alliances with other firms is important for success.¹⁷⁵ Minorities and women in our interviews reported that they felt excluded from the networks that help to create success in their industries.

F. Conclusion

The economy-wide data, taken as a whole, paint a picture of systemic and endemic inequalities in the ability of firms owned by minorities and women to have full and fair access to the City’s contracts and associated subcontracts. This evidence supports the conclusion that absent the use of narrowly tailored contract goals, the disparate economy-wide impacts experienced by M/WBEs exacerbate unequal access to contracting opportunities.

171. Hout, M. and Rosen, H. S., “Self-employment, Family Background, and Race,” *Journal of Human Resources*, Vol. 35, No. 4, 2000, pp. 670-692.

172. Fairlie, R.W. and Robb, A., “Why Are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital,” *Journal of Labor Economics*, Vol. 24, No. 2, 2007, pp. 289-323.

173. *Id.*

174. Allen, W. D., “Social Networks and Self-Employment,” *Journal of Behavioral and Experimental Economics (formerly The Journal of Socio-Economics)*, Vol. 29, No. 5, 2000, pp. 487-501.

175. “Increasing MBE Competitiveness through Strategic Alliances” (Minority Business Development Agency, 2008).

VI. QUALITATIVE EVIDENCE OF RACE AND GENDER BARRIERS IN THE CITY OF AUSTIN'S MARKET

In addition to quantitative data, a disparity study should further explore anecdotal evidence of experiences with discrimination in contracting opportunities. This evidence is relevant to the question of whether despite the successful operations of the City's DBE and MBE/WBE programs, DBE, MBEs or WBEs continue to face discriminatory barriers to their full and fair participation in City opportunities. Anecdotal evidence also sheds light on the likely efficacy of using only race- and gender-neutral remedies designed to benefit all small contractors to combat discrimination and achieve the objectives of the City's program. As discussed in the Legal Chapter, this type of anecdotal data has been held by the courts to be relevant and probative of whether an agency continues to have a need to use narrowly tailored DBE contract goals to remedy the effects of past and current discrimination and create a level playing field for contract opportunities for all firms.

The Supreme Court has held that anecdotal evidence can be persuasive because it "brought the cold [statistics] convincingly to life."¹⁷⁶ Evidence about discriminatory practices engaged in by prime contractors, agency personnel, and other actors relevant to business opportunities has been found relevant regarding barriers both to minority firms' business formation and to their success on governmental projects.¹⁷⁷ The courts have held that while anecdotal evidence is insufficient standing alone, "[p]ersonal accounts of actual discrimination or the effects of discriminatory practices may, however, vividly complement empirical evidence. Moreover, anecdotal evidence of a [government's] institutional practices that exacerbate discriminatory market conditions are [sic] often particularly probative."¹⁷⁸ "[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."¹⁷⁹

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

177. *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1172 (10th Cir. 2000), cert. granted, 532 U.S. 941, then dismissed as improvidently granted, 534 U.S. 103 (2001).

178. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1120, 1530 (10th Cir. 1994).

There is no requirement that anecdotal testimony be “verified” or corroborated, as befits the role of evidence in legislative decision-making, as opposed to judicial proceedings. In finding the State of North Carolina’s Historically Underutilized Business program to be constitutional, the court of appeals opined that “[p]laintiff offers no rationale as to why a fact finder could not rely on the State’s ‘unverified’ anecdotal data. Indeed, a fact finder could very well conclude that anecdotal evidence need not—indeed cannot—be verified because it is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perception.”¹⁸⁰ 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.”¹⁸¹

To explore this type of anecdotal evidence of possible discrimination against minorities and women in the City’s geographic and industry markets and the effectiveness of its current race-conscious and race-neutral measures, we conducted 22 small group and individual business owner and stakeholder interviews, totaling 199 participants. We also received written comments. We met with a broad cross section of business owners from the City’s geographic and industry markets. Firms ranged in size from large, long established prime contracting and consulting firms to new market entrants. We sought to explore their experiences in seeking and performing public sector prime contracts and subcontracts with the City of Austin, other government agencies, and in the private sector. We also elicited recommendations for improvements to the City’s DBE and MBE/WBE programs.

CHA conducted extensive outreach to maximize participation and input from relevant businesses in the Austin contracting community.

- We engaged stakeholder groups representing relevant businesses to both solicit their input and to enlist their assistance in reaching their member firms. These included stakeholder organizations, trade associations, community groups and other entities to encourage participation. Over 75 advocacy organizations and industry groups in and around Austin were solicited as part of CHA’s outreach plan. These organizations included the Asian Contractor Association, the Austin Area Black Contractor's Association, the U.S. Hispanic Contractors Association, the Austin Chapter of the National Association of Women in Construction, the Austin LGBT Chamber of Commerce, the American Institute of Architects, the Associated General Contractors of Texas, and numerous chambers of commerce. These organizations were contacted by telephone and through email

179. *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 926 (11th Cir. 1997).

180. *H.B. Rowe Co., Inc. v. Tippet*, 615 F.3d 233, 249 (4th Cir. 2010).

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

multiple times during the study period. This included CHA personalized emails to organization executives and staff asking for assistance in encouraging their members to participate in the study. CHA also conducted two focus group interviews to which all seventy-five groups were invited. Twenty-nine people participated in these two interviews.

- Our three, highly experienced local subcontractors attended over 10 events and meetings hosted by stakeholder organizations to present information about the study and encourage the organization's members to provide feedback about their experiences. Presentations were made at events hosted by the Southwest Minority Supplier Development Council, the Greater Austin Black Chamber of Commerce, the NAACP Austin Chapter, the Texas Society of Professional Engineers, the Austin Society of Civil Engineers and the American Council of Engineering Companies.
- Our local subconsultants made over 500 calls and sent numerous follow up emails to relevant firms encouraging participation in the business owner interviews.
- We actively sought input from the MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee. Two group and one individual interview were conducted with Committee members. All eight Committee members were interviewed.
- We developed social media content with information about how to participate in the study for organizations to post to their social media platforms and newsletters.
- We drafted a newsletter article that could be used for online or print newsletters. The article provided information about the study, along with ways that firms could participate.
- We developed a Frequently Asked Questions sheet that was regularly disseminated to stakeholder organizations and firms in the Austin contracting community to inform them of where, when and how to participate in the study and share their experiences.
- We created a dedicated website that collected feedback and provided information about the study and how firms could participate.

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

In addition to the group interviews, we conducted an electronic survey of firms in the City's market area about their experiences in obtaining work, marketplace conditions

and the City's DBE and MBE/WBE programs. One-hundred and ninety-eight minority and female recipients responded to the survey. The results were similar to those of the interviews. Among minority- and woman-owned firms, a little over a quarter (25.5%) reported that they still experience barriers to equal contracting opportunities; 27.5% said their competency was questioned because of their race or gender; and almost a fifth (17.4%) indicated they had experienced job-related sexual or racial harassment or stereotyping.

A. Business Owner Interviews

The following are summaries of the issues discussed. Quotations are indented and may have been shortened for readability. The statements are representative of the views expressed over the many sessions and by numerous participants.

Appendix E contains anecdotal information from the recent disparity studies conducted by Colette Holt & Associates for various Texas governments. Although not dispositive, these reports corroborate the barriers faced by minorities and women in the Austin area marketplace.

1. Discriminatory Attitudes and Negative Perceptions of Competence

Many minority and woman interview participants reported that they still encounter biases, stereotypes and negative assumptions about their qualifications and competency.

There is a negative connotation out there with MBE or WBE firms that they're not as qualified. I was actually on a conversation about two weeks ago with a prime firm. And they're talking about how they had too many MBE or DBE firms on their team, and it was going to drag their team down during the interview. And so, it wasn't just, that they had too many partners. It was that they were MBE or DBE firms. So that is definitely out there. And a lot of people do see it as like, "Oh, I have to do this, because, the City is making me. Not that I want to do this, because these are good people to work with or they're good firms. So, there definitely is negative connotation out there towards minority-owned businesses.

[The prime contractors] start to refer to me as the "diversity firm". So, they're like, "Who's the diversity firm?" And then they proceed to talk about me as though I'm not in the room and sort of you're just here because we have to do this.

You just have to prove yourself over and over and over again.... [Prime contractors are] like, "Oh, another minority company. Like, I have to work with you." And then you're a chick. And like, "do you know what you're doing?"

I am so visible and I'm so public and you still don't quite understand that I'm the decision maker. And I've been in one of my buildings where the tenant is there and she happens to be a White woman and people are asking her, "can I help them?" And so, it's contractors and just everyone. And so, I've had that experience again, being as visible. And so, it's jarring for me because if I'm as visible as I am, and I have that experience, I can't imagine someone who's not as visible what they're going through.

Several owners reported that being certified as a minority or woman firm often carries a stigma.

We have been advised many times to mention towards the end of our proposal, that we're a HUB and not to ever put that at the front, because we will be discounted.

I am an African-American woman founder, and I struggle with whether or not I want to identify myself as a Black business.

[There is] a stigma on [being certified] that we suck.

[The Program] allowed us to have experience working with larger firms and working on larger projects. It's like a two-sided thing now, that was the good side. It's given us all this experience and been able to work on really some fantastic projects. But at the same time, there is that stigma.... You're just a WBE firm.

I do think that there's a stigma, whether or not they actually say it to your face is another thing. Sometimes with certain [type of] supply places I'll catch it, but I just don't do business with them anymore. But yeah, I do think that the stigma still exists, I think that people just don't necessarily say it to your face as much.

We have a bad rep out there.

One construction firm owner believed poor treatment was part of functioning as a subcontractor.

It's real hard to prove if anything negative has been done against me from a racial perspective. I think it's more they know they can shit on a sub.

2. Exclusion from Industry Networks

Many minorities and women found it difficult to penetrate the industry networks necessary for entrepreneurial success.

People do business with people that they know and that they trust halfway. And if they don't know you, or you're just a quote on a fax machine or an email quote, there's no relationship there, okay. And then even if they use you ... they'll shuck and jive you and put you through all these hoops and whatnot and everything, because there is no relationship there.

Especially in engineering, it's very, very heavily White male dominated.

There is still, I believe, a barrier to even just being invited to the networking events or, if you're going to a conference and somebody is hosting a kind of cocktail hour, because if you don't already know those people, you're not already in those clubs, it's a little bit hard to get those invites and know where those places are where potentially a lot of good networking is out there.

The hardest part is that you have these goals and it's not across the board, but you have to prove yourself. You have to be a great company regardless of minority or not minority. And the minority situation is a great ticket into the ball game, [which is] a very closed network.

When City staff made the efforts to develop relationships with certified firms, there were positive outcomes.

My experience with getting contracts with Austin Energy was very good. And I think that's because I had a chance to actually meet with key people inside of Austin Energy. I had a chance to have meetings with them, go sit down with them, talk to them about my business, and stuff like that. So, I think too, having a good relationship does help.

3. Gender Bias and Hostile Work Environments

Several women, especially in construction, had experienced sexist attitudes and behaviors.

It's usually more of the smaller [construction firms], but especially if I go into a place where they're putting in a [project], they don't necessarily believe that I understand what I'm talking about..... I can say it, and then I can have whoever the male beside me is say it and it'll be like, "Oh, okay. Yeah, yeah, we got that." I'm like, "yeah." It's something that I think a lot of us have learned to deal with, but it's shockingly still very prevalent. I don't know how prevalent it is everywhere, but definitely in our industry.

Recently, I was on a job. It was actually our job [as the prime contractor]. And we brought this sub in and I walked up to the owner, and he was just awful to me. He just was very condescending and threatened to walk off the job and you know, "you're not going to talk to me like this" and "you're going to nitpick" because it was our responsibility that he did his job properly. And when I walked in, his whole attitude changed from when my guys were talking to him. And then he and I got into it because I'm now used to this, but it's still, it never is fun.

[Construction is] a male very much dominated industry, so to have that certification is really, really important.

Professional opportunities were sometimes explicitly denied because of gender.

When I was in consulting and there was a situation where, "Okay, I don't have an office, but we can meet at lunch and talk about the services I can provide, and what projects you're looking for." And so, it took a while and we scheduled a meeting and then a day before the meeting, he said, "Sorry, I can't meet with you in public without my wife." He didn't actually say a religious belief. He just said, "I won't go out to lunch with a woman out of respect for my wife."

A man in the construction industry confirmed that women continue to suffer harassment.

As a man, yeah, it happens. With the minorities I don't know a lot, but with women, for sure. In construction there's a lot of men outside, and it happens. I have to make rules with my employees, I have to shut them up, tell them to stop looking.

You have to talk to them kind of tough and learn not to say anything. And we made up a three second rule, you look one two three and then turn around.

A more senior woman felt that gender bias has lessened since she entered the business world.

Today, what I've seen is women are being taken more seriously.

4. Barriers to Access to Capital

One firm owner had directly experienced racial barriers in accessing business financing.

I couldn't get equal access to financing for a long time. And in 2009, I hired a White man to be our controller. And after that, we didn't have any problems getting financing. It was like night and day.

B. Anecdotal Survey of Austin Area Firms

To supplement the in-person interviews, we also conducted an anecdotal, electronic survey of firms on our Master M/W/DBE Directory; prime firms on the contract data file; and firms identified through our outreach efforts. We further solicited written comments. The survey was comprised of up to 45 closed- and open-ended questions and replicated the topics discussed in the business owner interviews. Questions focused on doing business in the City's market area, specifically barriers and negative perceptions, access to networks, information and experiences in obtaining work, and capacity development, as well as the City's DBE and MBE/WBE programs.

The survey was emailed to 4,131 firm representatives and owners, six times from February 23, 2021, to March 29, 2021. The survey was also distributed by key industry associations and woman and minority business advocacy organizations in April 2021. Telephone follow-up was conducted to encourage firms to complete the survey and stimulate responses. The response period closed on May 12, 2021.

Two-hundred and ninety-six gross responses were received. After accounting for incomplete and non-relevant responses, usable responses equaled 198 for a net response rate of 4.8%. One-hundred and forty-nine minority- and woman-owned firms and 49 publicly held and non- MBEs/WBEs/DBEs completed the survey. This represents a 3.6% net response rate among minority- and woman-owned firms and a 1.2% net response rate for publicly held and non- MBEs/WBEs/DBEs.¹⁸²

182. Percentage results have been rounded to one decimal place to increase readability.

1. Respondents' Profiles

Table 6-1. The race and gender distribution of MBE/WBE/DBE survey respondents is listed below.

Table 6-1: Distribution of race and gender of survey respondents

Firm Ownership	Construction	Construction Related Services (includes Professional Services)	Services & Commodities	Total
African American	9	2	17	28
Hispanic	7	12	30	49
Asian Pacific/Subcontinent Asian American	1	4	11	16
Native American/Alaska Native	1	0	2	3
Non-Minority Women	5	9	39	53
DBE Total	23	27	99	149
Publicly Held, Non-M/W/DBE Total	22	11	16	49
Respondents Total	45	38	115	198

Chart 6-1: Construction firms accounted for 15.4%, construction-related services firms for 18.1%, and services and commodities for 66.4% of the responses.

Chart 6-1: Respondent Type of Work

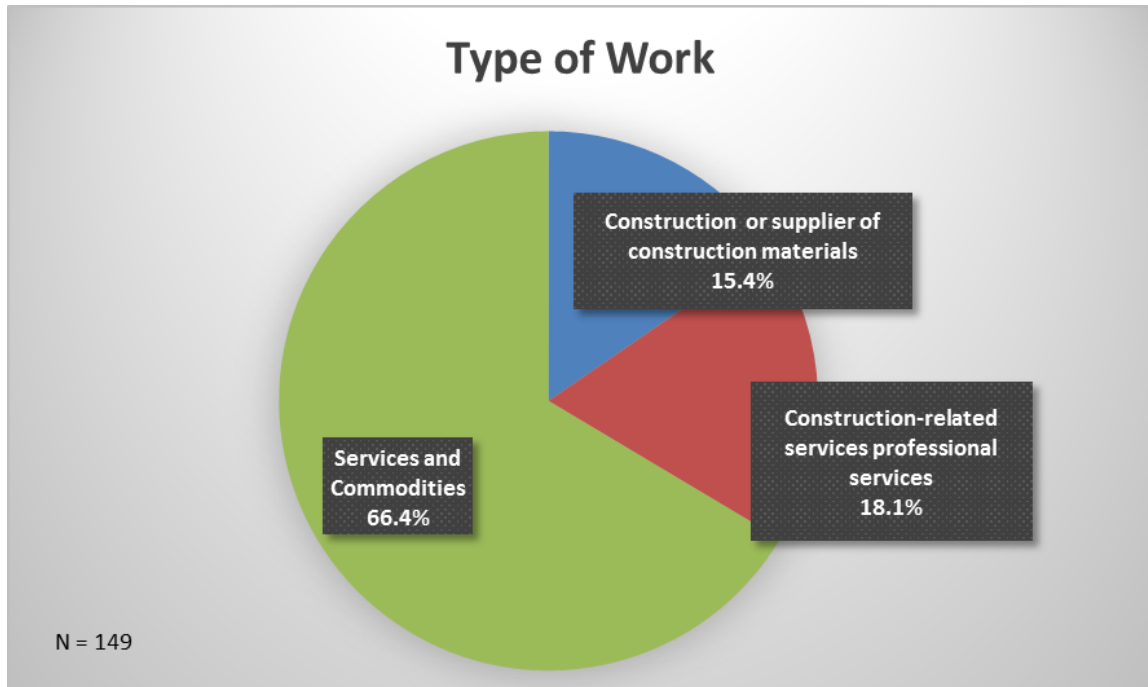
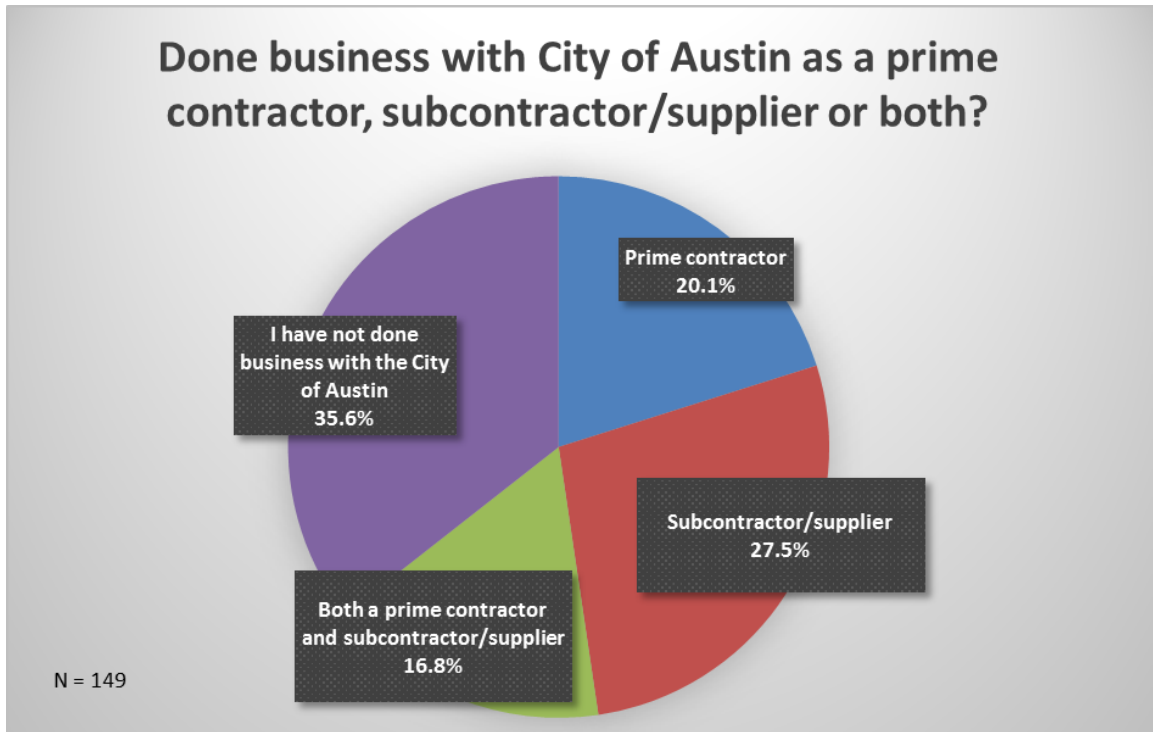


Chart 6-2: Among MBEs/WBEs/DBEs, 20.1% of the firms had worked on City of Austin projects only as a prime contractor or consultant; 27.5% had worked only as a subcontractor; 16.8% had worked as both a prime contractor or consultant and as a subcontractor or subconsultant; and 35.6% had not done business with the City. Three quarters (74.5%) of minority- and woman-owned firms responding were certified with the City of Austin. Almost three-quarters (73.2%) were certified with other government agencies, primarily the Historically Underutilized Business certification by the State of Texas.

Chart 6-2: Respondent Contractor Status with the City of Austin



2. Discriminatory Attitudes and Negative Perceptions of Competence

Chart 6-3: A little over one quarter (25.5%) of the respondents reported that they experienced barriers to contracting opportunities based on their race and/or gender.

Chart 6-3: Barriers to Contracting Opportunities Based on Race and Gender

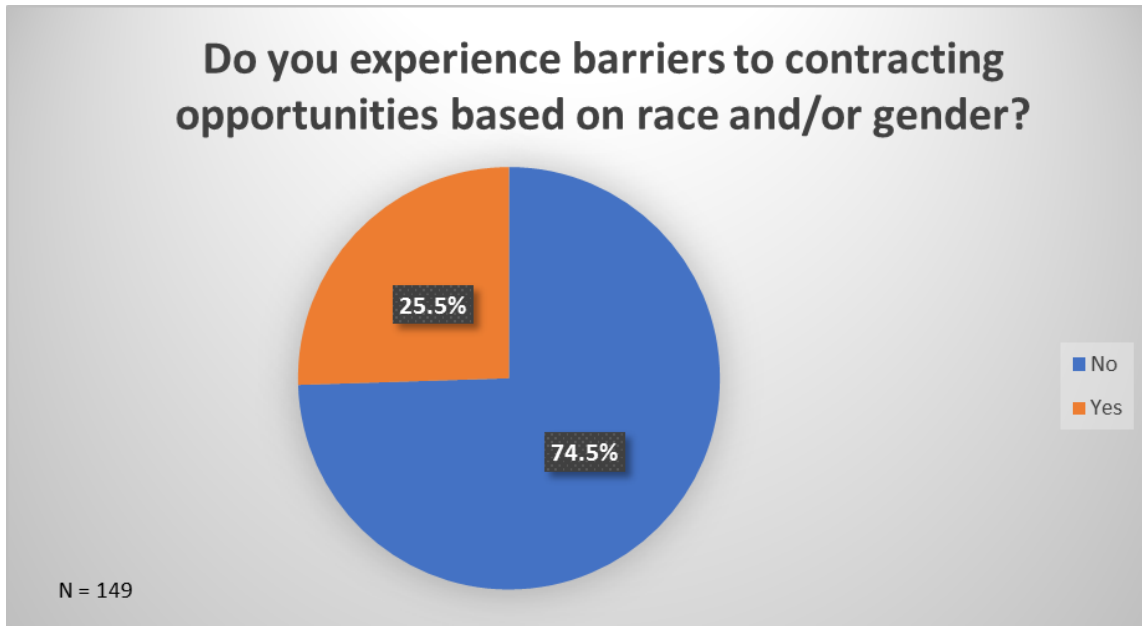


Chart 6-4: Over one quarter (27.5%) answered yes to the question “Is your competency questioned based on your race and/or gender?”.

Chart 6-4: Negative Perception of Competency Based on Race or Gender

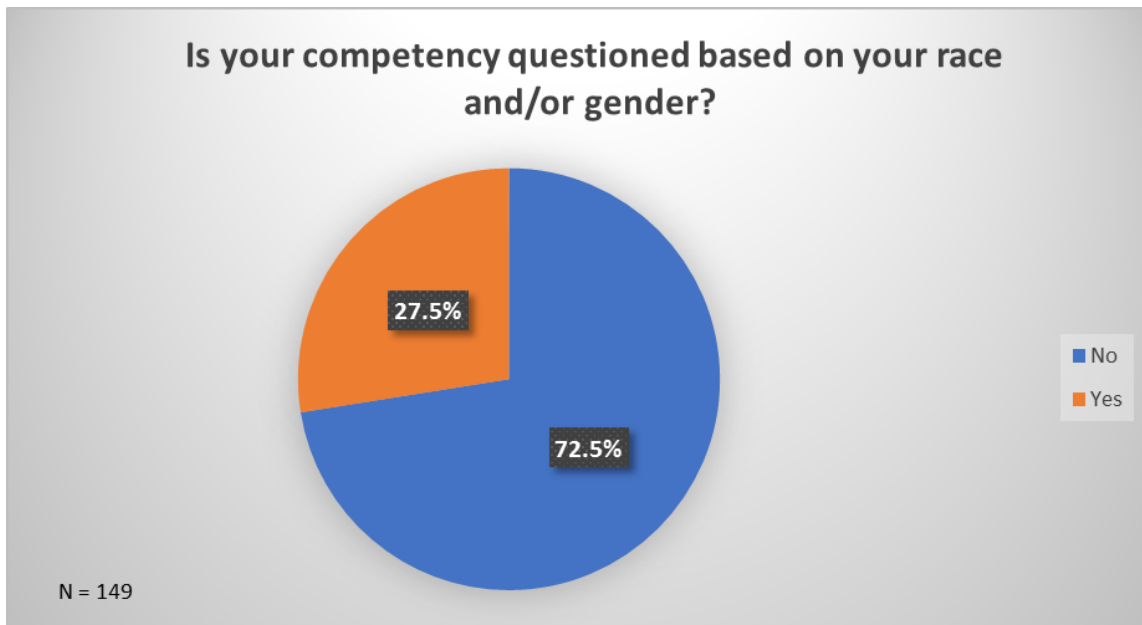


Chart 6-5: Almost one fifth (17.4%) indicated that they experience job-related sexual or racial harassment or stereotyping.

Chart 6-5: Industry-Related Sexual or Racial Harassment or Stereotyping

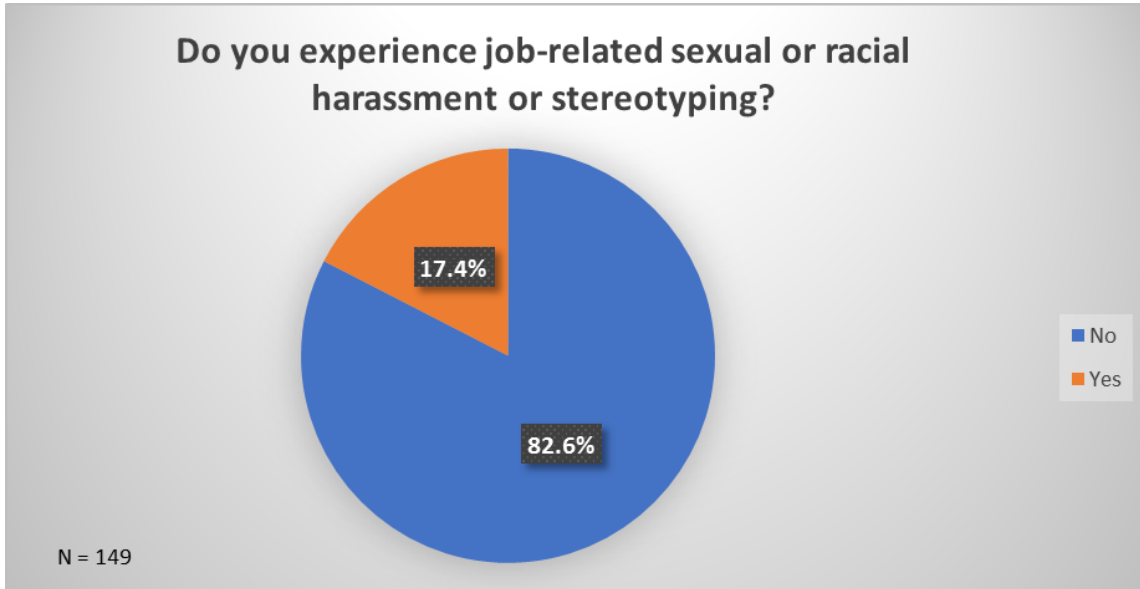
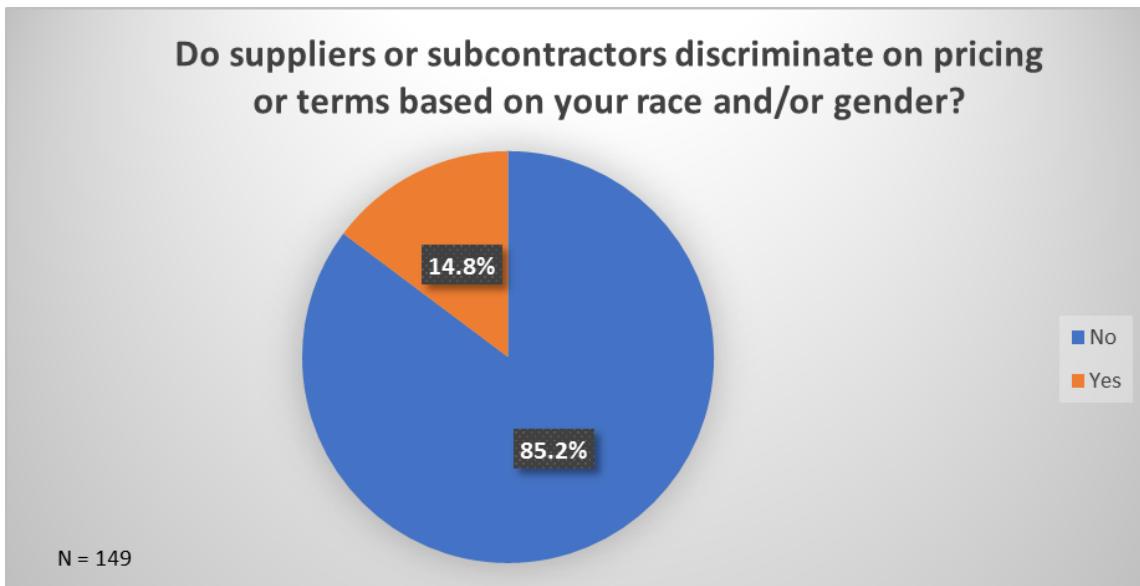


Chart 6-6: Discrimination from suppliers or subcontractors because of their race and/or gender was experienced by 14.8%.

Chart 6-6: Supplier Pricing and Terms Discrimination Based on Race and Gender



3. Exclusion from Industry Networks

Chart 6-7: Over one quarter (26.2%) of minority and woman respondents reported that they did not have equal access to the same information as non-certified firms in their industry.

Chart 6-7: Access to the Same Information as Non-Certified Firms

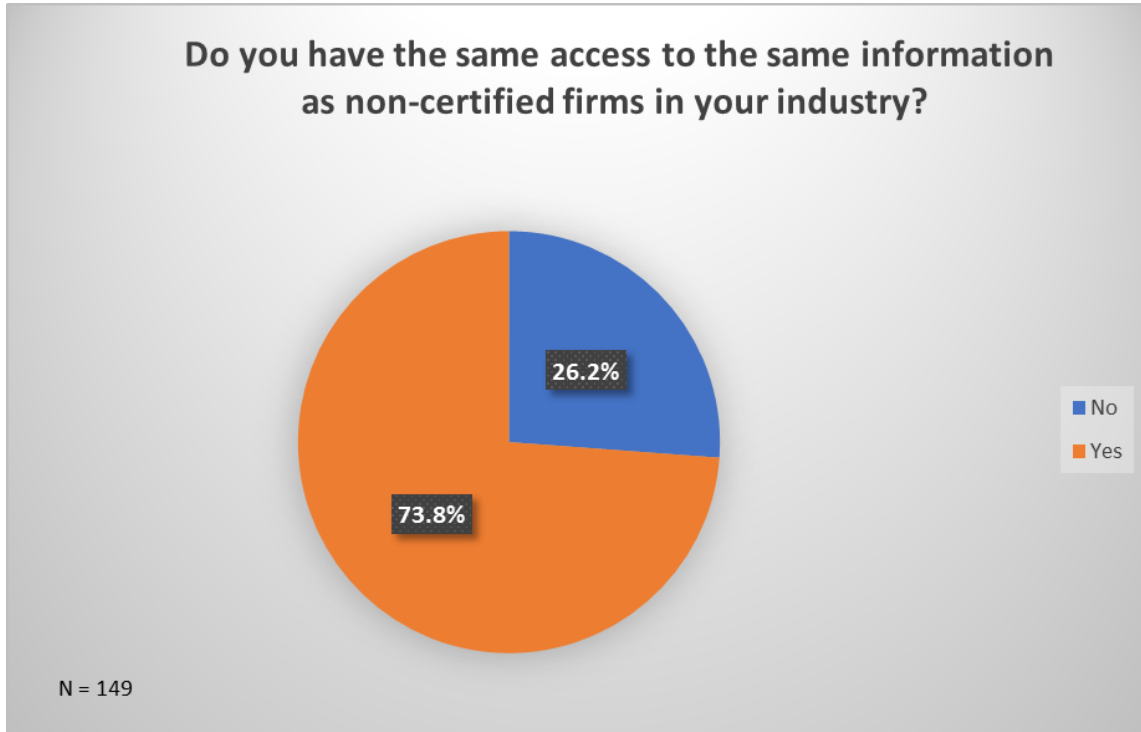
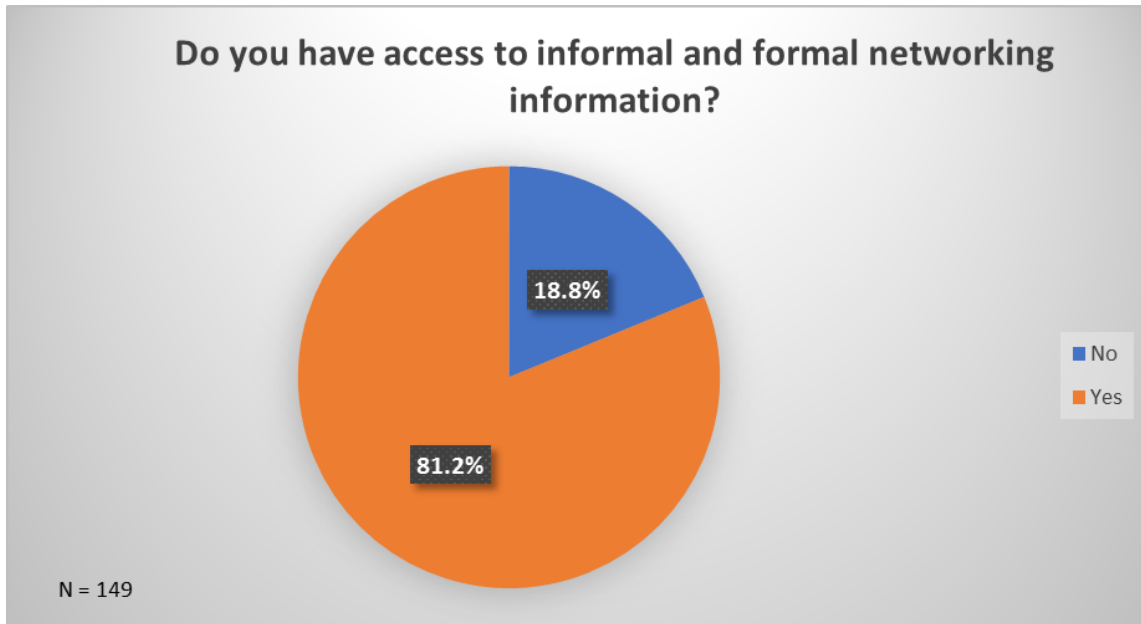


Chart 6-8: Only 18.8% of minority and woman respondents indicated that they have access to informal and formal networking information.

Chart 6-8: Access to Informal and Formal Networking Information



4. Access to Financial Supports

Chart 6-9: Among MBEs/WBEs/DBEs, 8.1% reported challenges in their efforts to obtain bonding. In comparison, none of the non-MBEs/WBEs/DBEs reported difficulty with obtaining bonding.

Chart 6-9: Barriers to Obtaining Bonding

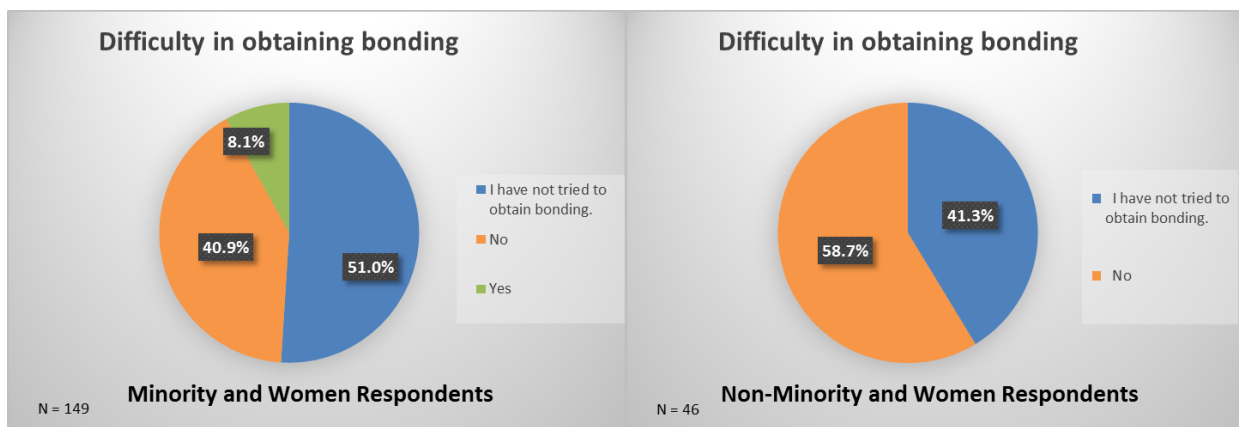


Chart 6-10: Almost a quarter (23.5%) of minorities and women reported experiencing barriers in their efforts to obtain financing and loans. In comparison, only 2.2% of non-minority firms reported such difficulties.

Chart 6-10: Barriers to Obtaining Financing and Loans

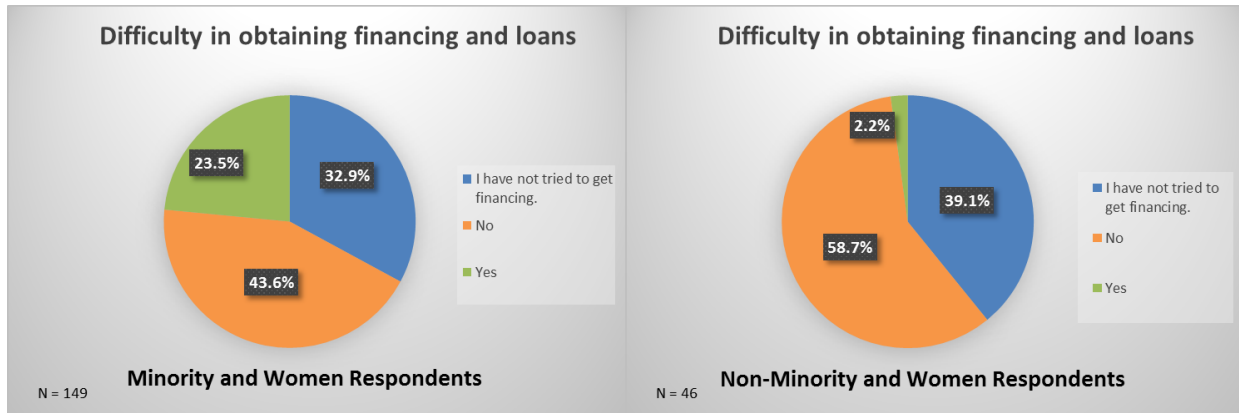
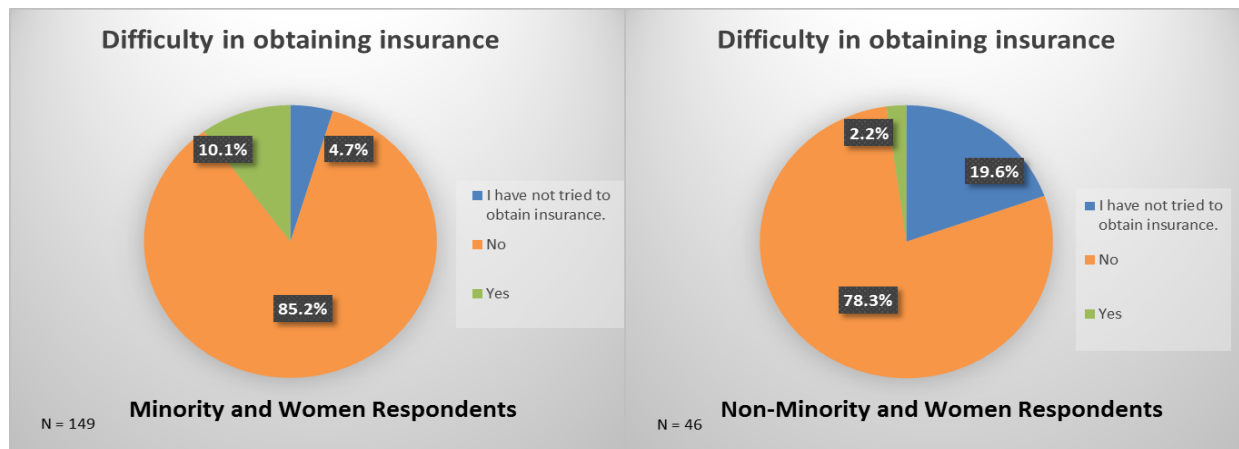


Chart 6-11: Among minority and woman respondents, 10.1% reported experiencing barriers to obtaining insurance. Less than three percent of non-MBEs/WBEs/DBEs reported such difficulties.

Chart 6-11: Barriers to Obtaining Insurance



5. Obtaining Work on an Equal Basis

Chart 6-12: Over half of MBEs/WBEs/DBEs (55.0%) reported that they are solicited for City or government projects with MBE, WBE or DBE goals.

Chart 6-12: Solicitation for City or Government Construction Projects with MBE, WBE or DBE Goals

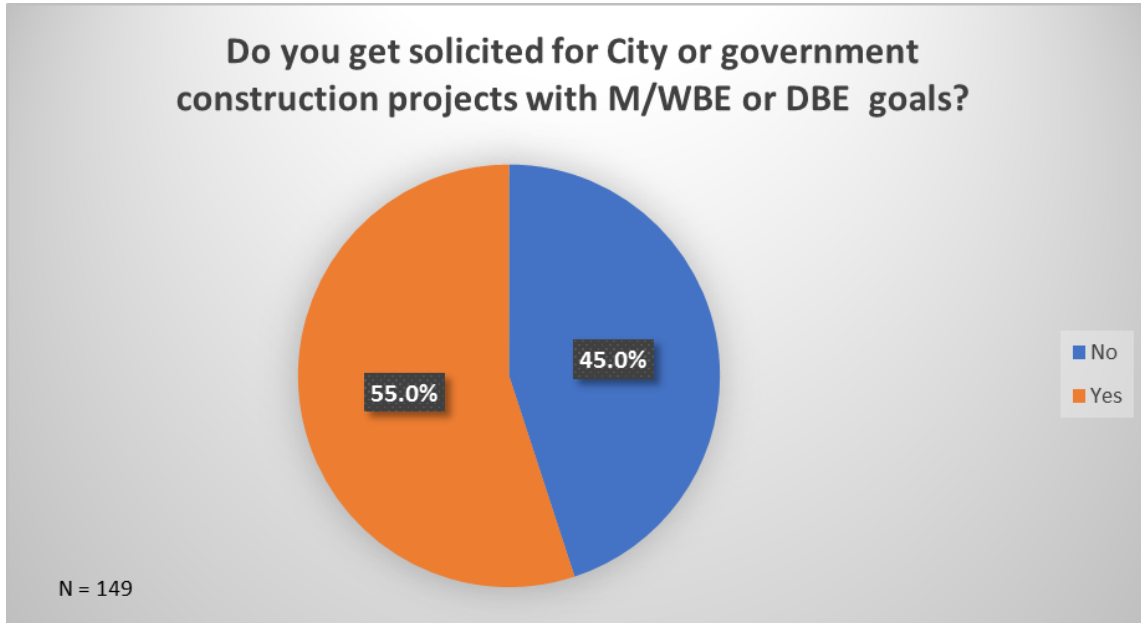


Chart 6-13: Fewer respondents, 46.3%, reported that they are solicited for private projects and projects without goals.

Chart 6-13: Solicitation for Private Projects and Projects Without Goals



6. Capacity for Growth

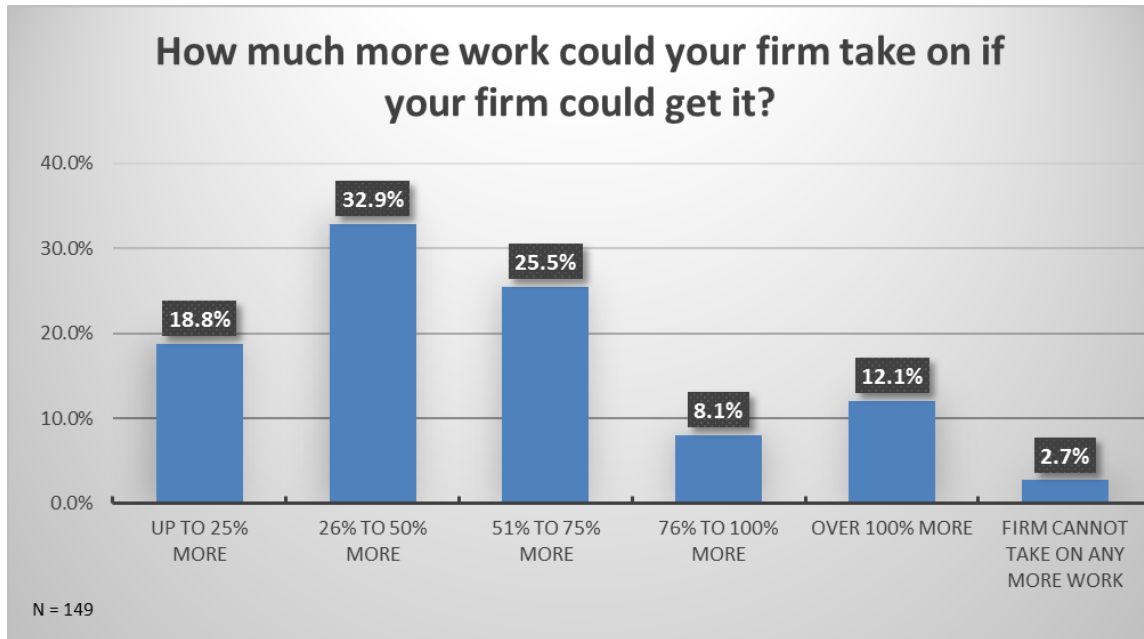
Chart 6-14: A majority of MBEs/WBEs/DBEs (59.1%) reported that their firm's contract size was below the amount they are qualified to perform.

Chart 6-14: Firm Contract Size vs. Contract Amounts Qualified to Perform



Chart 6-15: More than three quarters (77.2%) of minority and female respondents reported they could take on up to 75% more work if it were available. A fifth (20.2%) reported their firm could double or increase its amount of work by more than 75%.

Chart 6-15: Capacity for More Work



7. Prompt Payment

Chart 6-16: Of the contractors who reported doing work for the City, 61.8% said that the City paid them promptly. Prime contractors were reported to pay more slowly. A little over 50% (51.9%) of those doing work for prime contractors said prime contractors paid promptly within 30 days.

Chart 6-16: Prompt Payment within 30 Days

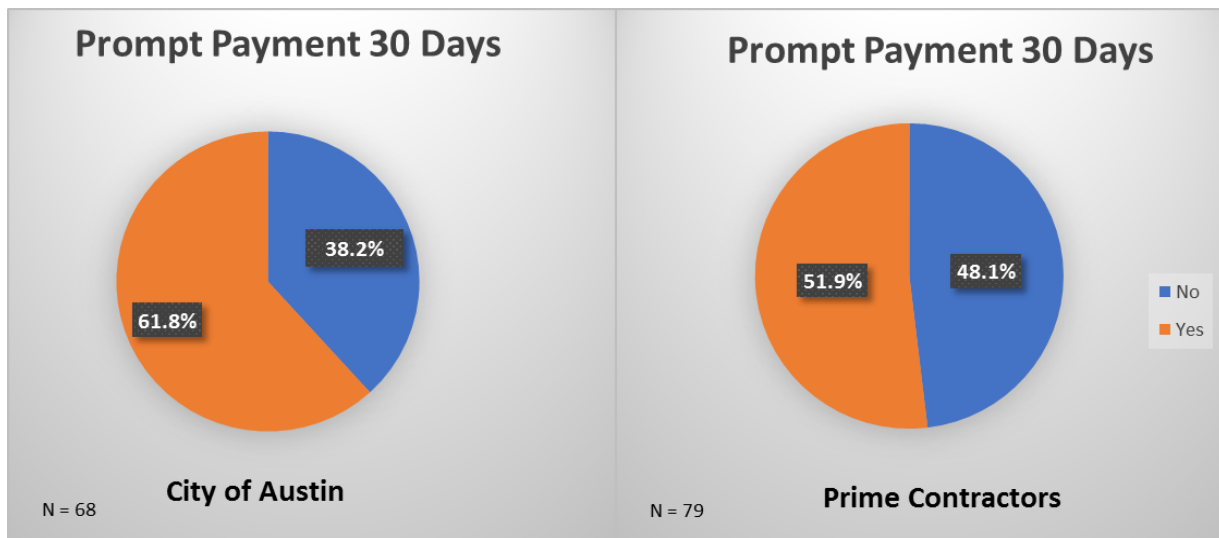
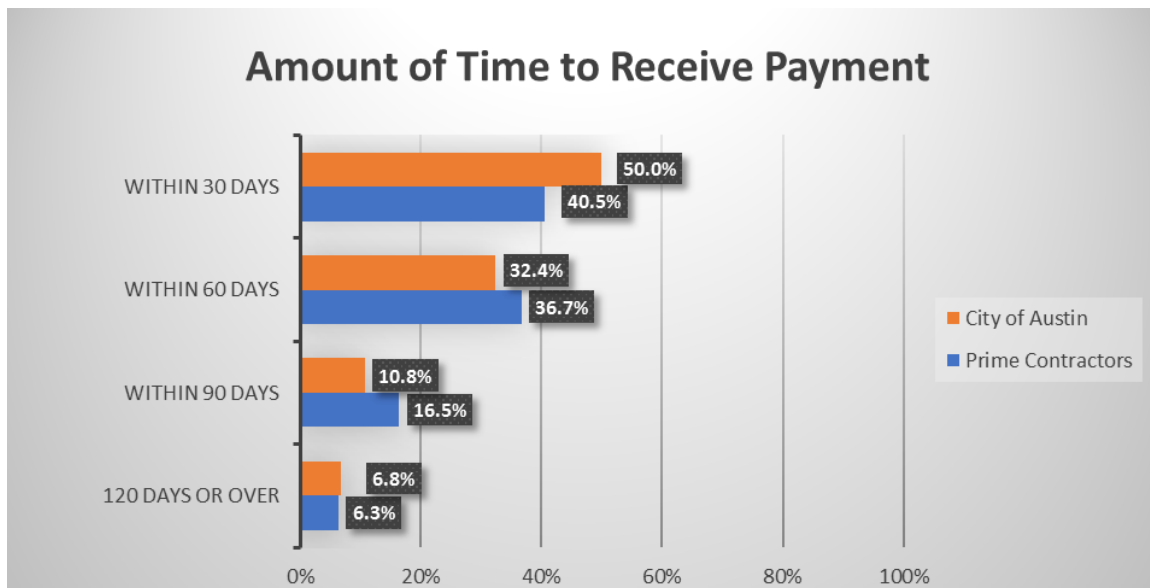


Chart 6-17: Of contractors performing work for the City, 82.4% reported receiving payment within 60 days; 10.8% were paid within 90 days; and 6.8% were paid in 120 days or later. Prime vendors were reported to pay on a slower schedule. A little over three quarters (77.2%) said prime vendors paid within 60 days; 16.5% reported they were paid within 90 days; and 6.3% reported they were paid within 120 days or later.

Chart 6-17: Amount of Time to Receive Payment

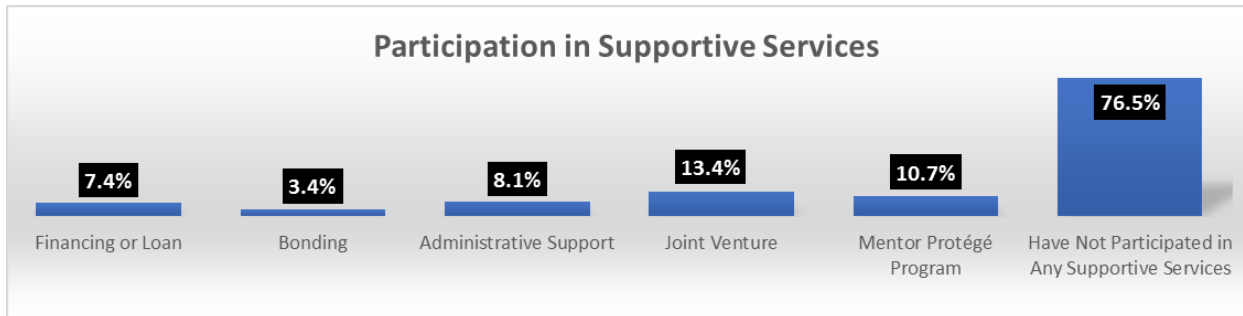


8. Capacity Development and Participation Incentives

Chart 6-18: Almost one quarter (23.5%) of minority and woman respondents reported participating in at least one type of MBE/WBE or DBE business support or development activity; 76.5% indicated they had not participated in any of these programs.

- 7.4% had participated in financing or loan programs.
- 3.4% had accessed bonding support programs.
- 8.1% had received support services such as assistance with marketing, estimating, information technology.
- 13.4% had joint ventured with another firm.
- 10.7% had participated in a mentor-protégé program.

Chart 6-18: Participation in Supportive Services



C. Written Survey Responses

The survey also included open-ended response questions. These responses were consistent with information provided in the business owner interviews and close-ended questions. Responses to these questions have been categorized and are presented below.

1. Systemic Racial Exclusion

Many minorities reported that fair opportunities to compete for contracts were not available because of systemic racial barriers.

[I have experienced] every systematic racial barrier that all minorities endure.

Limited opportunities based on race.

Racial barriers. It is never an even playing field period.

Panels of inquiry or qualification are overwhelmingly European American or of white privilege.

I don't spin out any more about this [discriminatory barriers]. It cost me too much in the past. I nearly sank and had to regroup a couple years ago.

Companies 100% Hispanic have trouble to get access to resources and opportunities.

2. Discriminatory Attitudes and Negative Perceptions of Competence

Many minority and woman respondents reported instances of implicit bias and subtle discriminatory attitudes that affect their ability to obtain contracting work. Their credentials and competency are routinely questioned.

I am a female who knows what I am providing and I am constantly being questioned... I have worked and actually know what I am doing. I have to constantly remind these people (99% white males) to look at my resume.

A customer questioned my technical background, suggesting I wasn't qualified to attend a technical conference.

[Questioning of my] competency starts from being black period.

Like I don't know what I'm talking about.

I feel like we are not taken very seriously even though we make products that make the job safer for the worker.

This [questioning of my competency] is happening every single day.

All the time [my competency is questioned].... Now I stick with the same people I have worked with in the past to avoid all the drama.

You are judged from onset.

In the past 17 years of existence our competency has always been questioned based on the type services we provide.

Seems like every day [my competency is questioned].

Too many times to list [when my competency has been questioned].

Too many [times], too long of a time [my competency has been questioned].

I don't have any white customers, none, zero. In 6 years, I have had less than 5% of my customers to be white, it is fine, however, I do believe it is interesting.

I am an African American, female business owner. Based on the racial climate in our country I am sure I have been judged and excluded from opportunities because of my sex and race.

It's often subtle - someone else undercutting something when I say it, but if a male colleague speaks up, the idea isn't met with resistance, etc.

We [have not won] many contracts, that were not given to us probably because decision makers thought our competency was [questionable] based on our race.

I may be [discriminated against], I just don't know.

It [the questioning of my competency] is never spoken, just assumed.

Many minority respondents relayed instances of stereotypical assumptions and attitudes on the basis of race.

I overheard people in the next room suggesting that I shoot for Chinese Architectural Digest because I am an American Asian. There is no Chinese Architectural Digest. I've had architects denigrate me while I am portraying their work for a third party, then act surprised and impressed when they see the finished images.

Most Caucasian employers see Hispanics as labor workers only, [they] do not see us as a relevant workforce on arts, science and/or [as] entrepreneurs.

The White male on the team is often assumed to be in charge.

Example: If there is an employer asking for design and or leadership role, who's in charge kind of deal, and beside me there is a Caucasian person, the employers tend to ask him and assume he is in charge before even asking me who I am, even though he is my helper. This has happened multiple times.

Many minority- and woman-owned firms felt that they had to work harder and are held to a higher standard than their non-minority male counterparts.

Minority firms are held to a different performance standard. This has actually helped us because we always follow the book so the performance is not an issue if you know that going in.

Asked to provide more and do more for less than white colleagues.

It's hard to say, but I do think that as a woman, I have to fight harder to win bids, etc.

Held to different performance standard than white peers.

Several owners felt that being certified as an M/W/BE carries a stigma.

We have run into larger firms who think small DBE/HUB firms do not do good work. Often larger firms are scared to do business with small DBE firms due to this stereotype.

There is definitely a stigma to being known as a WBE (or MBE) firm. Certification definitely helps with getting public projects, but actually can be viewed as a negative in the private sector.

Most people involved in contracting award think certified firms are less qualified and competent based on the firm owner's race and/or gender.

Some respondents noted that it can be difficult, if not impossible, to know whether they had been subjected to discrimination.

It's hard to pinpoint about race/gender because it's always so subtle and automatic - unconscious bias. But I have yet to get a contract. I have given up getting one, so I haven't been applying.

It [discriminatory behavior] is deep and very systematic. You cannot know what is going on because it is deep.

I am not aware of any obvious discrimination, but that does not mean it does not exist.

I am probably blind to many of them [discriminatory behaviors] - so consider this a "false negative" reply - I do not know what I do not know.

3. Gender Bias and Barriers

Regardless of their industry, many women reported that stereotypical assumptions about their role and authority are common.

Sometimes I feel that construction owners do not believe I can do the job and choose male contractors.

Males, even the minority ones, seem to get a lot more contracts than females. Being WOC I feel I am more at a disadvantage.

My name looks male, along with my engineering background, have been in business situations where I was the only female mistakenly invited because they didn't know I was female.

We are just not taken seriously as women.

Being a woman, I am viewed as not being able to lift 50-pound bags of flour or work long hours and move as quickly as a man in the food industry.

I am a middle-aged woman in tech and I am often talked down to by younger male acquaintances who do not believe I have such a deep level of expertise.

As an arborist, I'm regularly asked if I'm helping my husband and have people ask for sources for information that I give while accepting the word of the male arborists.

It is [stereotyping] not as bad now that I am older and have more confidence in saying something. But, [I] definitely experienced more [of this] when I was younger and afraid to say something.

I'm a woman working in a male dominated industry.

Once people see us in action this [stereotyping] typically ends, but all women are looked at with skepticism when promoting their business skills.

[Stereotyping] only when working with older white men.

One respondent thought that Hispanic women experience greater barriers than White or Black women.

White women are preferred. Hispanic women are paid less than White and Black women.

Some woman owners reported overt instances of sexual harassment or demeaning behavior.

I have had requests for sexual relationships from both male and female prospective clients. I have also experienced inappropriate touching from a client.

Gender, usually. Some males in construction related work, including males employed by the government agency, by the general contractors, and by subcontractors of other trades, will posture themselves physically and verbally in front of other males to question females on our team performing the work in an effort to make it appear we do not know what we are doing.

"She has not worked in this construction/frontline environment before so I will not listen."

Good ol' boys' club mentality that includes beginning comments with "honey" and comments such as "maybe this isn't a good fit for your type of company" - each spoken by different males to female employees on our staff.

One Asian man reported verbal and physical abuse.

I have been verbally harassed and physically assaulted while working in public for being a POC. Strangers report my presence to security and police while I am working, which means my work is interrupted while I am detained or questioned. I now wear a body camera to help deescalate confrontations and to provide evidence to authorities of my conduct and the conduct and behavior of those I encounter.

4. Exclusion from Industry Networks

Many minority and woman business owners felt excluded from networks necessary for success.

Entrenched relationships, and yes, definitely a "good old boy" network in Austin, particularly for prime jobs.

I had a meeting with a general contractor to establish a good rapport and the GC kept discussing all his friends and I mentioned that it was an established network and he said of course it is and that it would be difficult for me to break in. I just quit after that.

The biggest barrier to the growth of my business are the lack of networks that are in procurement related areas so my business can be considered for opportunities.

My competency has not been questioned in person. I've never been extended an opportunity to present my business for consideration. I did have an email exchange and a phone call with a key person at [name]; however, after coming up with a plan-of-action and following up with him regarding that plan, he ghosted me and never responded to my calls, texts or emails.

I don't have political connections.

I feel the access is being granted because of some individual allies or in a token form sometimes.

Honestly, how would I know? There are so many insider actions that I am not aware of.

I need to work with companies, but don't have the proper channels to get there.

Information is diluted or manipulated before we get it.

[We have not been] admitted into the inner circle of networking relationships between male-dominated IT service companies and male client team members, especially for larger projects.

As a woman and minority firm in construction, it is difficult to acquire qualified field staff to perform our trade because most are males that network with other males or male-owned contractors.

5. Access to Contract Opportunities

Some minority and woman respondents felt that prime bidders often use them only to meet affirmative action goals.

If contractors would be willing to work with us on an ongoing [basis] and not only because they have to.

Contractors just don't really want to use us unless there are goals. Even as a Native American-owned firm, because the goal is so low, they only want to get that little tiny amount from us to satisfy the goal but not really be open to purchasing the other materials we carry.

When I am working, my skill set is very much appreciated but many times I have a difficult time getting in the door due to being female and a minority.

6. Financial Barriers to Contract Opportunities

Many minority and woman owners reported difficulties with obtaining financing and bonding that would allow them to take on more work and successfully compete.

I was unable to obtain sufficient funding for growth from my banks for many years. In the first years of growing the company, my bank VP told me twice to come back with my husband before they could discuss my application for funding. Recently, I was able to receive sufficient funding from the SBA.

Regardless of our good credit we are always not good enough to qualify for the amount we requested.

The requirement is such that we wouldn't even waste [our time]. Some of bond requirements are only to limit competition and also to eliminate small and minority businesses. It is deep.

As a female owner of a smaller small business AND attempting to do business different from the usual (think good ole boy network), it's been challenging to support other WMBEs and meet the baseline requirements of insurance and bonding.

We know we could become a larger Company providing jobs and opportunities. We were turned down flat by many local banks even though our business plan is solid.

Banks seem to think that my type of business is too high risk. Not sure of my equipment, whether it is worth the money, and also [whether] my race has been a hindrance.

I have been turned down for line of credit with a signed construction contract in hand. You figure that.

Just this week! I've been in business for 19 years and have great credit and last week, a supplier would not open my account for a 10K order. I have another supplier that will not open an account for me and makes me file a Joint Check Agreement which means I don't get my money for (most times) 90 days!

The lack of predictable annual income makes banks consider us a risk in spite of have A++ credit.

One respondent noted that bonding is particularly challenging for new businesses.

Getting bonding was challenging when my business first began as it was necessary to provide a financial statement indicating profitability and a backlog of work. Bonding is no longer a challenge.

7. Barriers to Equal Contract Terms

Some minority and woman respondents reported being charged higher pricing for materials based on their race, ethnicity and gender.

I believe they charge more when they believe our firm would fail and they won't get paid.

I have heard stories from other minority business owners who have experienced this type [pricing discrimination] of disparity.

We are quoted different pricing than the majority.

We cannot be certain; however, it is suspected at times certain subs or suppliers (services, mostly) will quote a higher price to us.

I don't say the price was the same to us as to others.

Some minority and woman respondents reported that they are often under pressure to reduce their pricing relative to their White male counterparts.

I have definitely received lower pricing because of being female, I had access to pricing information paid for various contractors in same position and found that I was paid less, and [the] only female.

Project pricing is expected to be lower than white peers. It is a standard business practice but in order to win the job minorities pricing has to be much lower than everyone else's.

Some firms also expect me to charge less and do more as a [photographer of color].

There is also a problem with change order pricing. Minorities are not expected to submit change orders for work scope changes and are in many cases expected to eat the additional costs.

D. Conclusion

Consistent with other evidence reported in this Study, the business owner interviews, and the survey results strongly suggest that minorities and women continue to suffer discriminatory barriers to full and fair access to contracts and associated subcontracts in the City of Austin's market area. Many minorities and women reported negative perceptions and assumptions about their competency that reduced their ability to conduct business. Minorities and women still suffer from stereotyping and hostile environments. They often had reduced opportunities to obtain contracts, less access to formal and informal networks, and much greater difficulties in securing financial support relative to non-MBEs/WBEs/DBEs in their industries. A large number indicated that they were working well below their capacity.

Anecdotal evidence may "vividly complement" statistical evidence of discrimination. While not definitive proof that the City needs to continue to implement race-

and gender-conscious remedies for these impediments, the results of the qualitative data are the types of evidence that, especially when considered in conjunction with other evidence assembled, are relevant and probative of the City's evidentiary basis to consider the use of race- and gender-conscious measures on local contracts.

VII. RECOMMENDATIONS FOR THE CITY OF AUSTIN'S DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

The quantitative and qualitative data in this Study provide a thorough examination of the evidence regarding the experiences of Disadvantaged Business Enterprises (“DBEs”)¹⁸³ in the City of Austin’s geographic and industry markets for FAA funded contracts. As required by strict constitutional scrutiny and the DBE program regulations, we analyzed evidence of the City’s utilization of DBEs as a percentage of all firms as measured by dollars spent, as well as DBEs’ experiences in obtaining contracts in the public and private sectors. We gathered statistical and anecdotal data to provide the City with the evidence necessary to determine how to narrowly tailor its DBE program, including the data that the City will need to submit its triennial DBE goal to the Federal Aviation Administration (“FAA”) for contracts at Austin-Bergstrom International Airport.

Based upon these results, we make the following recommendations. We recognize that many of our recommendations, both race- and gender-neutral and race- and gender-conscious will require more to staff and technical resources to be devoted to the Program.

A. Centralize the Program’s Data Collection and Reporting

We suggest that all DBE and MBE/WBE Program reporting functions be centralized in SMBR. The somewhat parallel system of E-Capri seems to create unnecessary confusion and duplication of efforts, as well as inconsistent reporting protocols and outcomes that undermine public confidence in the program. SMBR is the Program expert and it should be responsible for all aspects of administration, including reporting.

Further, while the City has had the B2Gnow[®] system for some years, it is not being used to its greatest functionality to support Program administration. While the

183. As with the other Chapters of this Report, we use the term DBE to include MBEs and WBEs.

City, to our understanding, has purchased the most important modules, including contract goal setting and compliance, all aspects of contracting and procurement relevant to the DBE and MBE/WBE programs should be captured and managed in this system, including detailed industry codes, which is designed specifically to implement contracting affirmative action programs.

B. Continue to Implement a Narrowly Tailored DBE Program

1. Use the Study to Set the Triennial DBE Goal

49 C.F.R. Part 26 requires that Austin engage in a two-step process to set a triennial goal for DBE participation in its FAA funded projects. To determine the Step 1 base figure for the relative availability of DBEs required by § 26.45(c), the City should use the DBE unweighted availability findings in Chapter IV.

Section § 26.45(d) requires the City to perform a Step 2 analysis. Austin must consider whether to adjust the Step 1 figure to reflect the effects of the DBE program and the level of DBE availability that would be expected in the absence of discrimination. The City can use the statistical disparities in Chapter V, the rates at which DBEs form businesses, for a Step 2 adjustment. Business formation results are the type of “demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.”¹⁸⁴ However, we note that while the DBE regulations have withstood repeated legal attacks, there is no direct case law upholding this type of “but for” analysis. We therefore advise the City to proceed with caution in using the economy-wide data for an adjustment.

2. Use the Study to Set DBE Contract Goals

The highly detailed unweighted availability estimates in Chapter IV can serve as the starting point for setting narrowly tailored contract goals that reflect the percentage of available DBEs as a percentage of the total pool of available firms.

This methodology involves four steps:

1. Weight the estimated dollar value of the scopes of the contract by six-digit NAICS codes, as determined during the process of creating the solicitation.

184. 49 C.F.R. §26.45(d).

2. Determine the unweighted availability of DBEs in those scopes as estimated in the Study.
3. Calculate a weighted goal based upon the scopes and the availability of at least three available firms in each scope.
4. Adjust the resulting percentage based on current market conditions and progress towards the annual goals.

Adjust the result based on geography and current market conditions (for example, the volume of work currently underway in the market, the entrance of newly certified firms, specialized nature of the project, etc.). Written procedures based on the study results detailing the implementation of contract goal setting should be developed and disseminated so that all contracting actors understand the methodology.

The B2Gnow® system provides the contract goal setting module developed to utilize our study's unweighted availability data as the starting point.

APPENDIX A:

FURTHER EXPLANATION OF THE MULTIPLE REGRESSION ANALYSIS

As explained in the report, multiple regression statistical techniques seek to explore the relationship between a set of independent variables and a dependent variable. The following equation is a way to visualize this relationship:

$$DV = f(D, I, O)$$

where DV is the dependent variable; D is a set of demographic variables; I is a set of industry & occupation variables; and O is a set of other independent variables.

The estimation process takes this equation and transforms it into:

$$DV = C + (\beta_1 * D) + (\beta_2 * I) + (\beta_3 * O) + \mu$$

where C is the constant term; β_1 , β_2 and β_3 are coefficients, and μ is the random error term.

The statistical technique seeks to estimate the values of the constant term and the coefficients.

In order to complete the estimation, the set of independent variables must be operationalized. For demographic variables, the estimation used race, gender and age. For industry and occupation variables, the relevant industry and occupation were utilized. For the other variables, age and education were used.

A coefficient was estimated for each independent variable. The broad idea is that a person's wage or earnings is dependent upon the person's race, gender, age, industry, occupation, and education. Since this report examined the City of Austin, the analysis was limited to data from the Austin/Round Rock MSA, which consists of Bastrop, Caldwell, Hays, Travis, and Williamson counties. The coefficient for the new variable showed the impact of being a member of that race or gender in the metropolitan area.

APPENDIX B:

FURTHER EXPLANATION OF THE PROBIT REGRESSION ANALYSIS

Probit regression is a special type of regression analysis. Probit regression analysis is used to explore the determinants of business formation because the question of business formation is a “yes’ or “no” question: the individual does or does not form a business. Hence, the dependent variable (business formation) is a dichotomous one with a value of “one” or “zero”. This differs from the question of the impact of race and gender of wages, for instance, because wage is a continuous variable and can have any non- negative value. Since business formation is a “yes/no” issue, the fundamental issue is: how do the dependent variables (race, gender, etc.) impact the probability that a particular group forms a business? Does the race or gender of a person raise or lower the probability he or she will form a business and by what degree does this probability change? The standard regression model does not examine probabilities; it examines if the level of a variable (*e.g.*, the wage) rises or fall because of race or gender and the magnitude of this change.

The basic probit regression model looks identical to the basic standard regression model:

$$DV = f(D, I, O)$$

where DV is the dependent variable; D is a set of demographic variables; I is a set of industry and occupation variables; and O is a set of other independent variables.

The estimation process takes this equation and transforms it into:

$$DV = C + (\beta_1 * D) + (\beta_2 * I) + (\beta_3 * O) + \mu$$

where C is the constant term; β_1 , β_2 , and β_3 are coefficients, and μ is the random error term.

As discussed above, the dependent variable in the standard regression model is continuous and can take on many values while in the probit model, the dependent variable is dichotomous and can take on only two values: zero or one. The two models also differ in the interpretation of the independent variables’ coefficients, in the standard model, the interpretation is fairly straight-

forward: the unit change in the independent variable impacts the dependent variable by the amount of the coefficient.¹⁸⁵ However, in the probit model, because the model is examining changes in probabilities, the initial coefficients cannot be interpreted this way. One additional computation step of the initial coefficient must be undertaken in order to yield a result that indicates how the change in the independent variable affects the probability of an event (*e.g.*, business formation) occurring. For instance, with the question of the impact of gender on business formation, if the independent variable was WOMAN (with a value of 0 if the individual was male and 1 if the individual was female) and the additional computation chance of the coefficient of WOMAN yielded a value of -0.12, we would interpret this to mean that women have a 12 percent lower probability of forming a business compared to men.

185. The exact interpretation depends upon the functional form of the model.

APPENDIX C:

SIGNIFICANCE LEVELS

Many tables in this Report contain asterisks indicating that a number has statistical significance at 0.001, 0.01, or 0.05 levels (sometimes, this is presented as 99.9 percent; 99 percent and 95 percent, respectively) and the body of the report repeats these descriptions. While the use of the term seems important, it is not self-evident what the term means. This Appendix provides a general explanation of significance levels.

This Report seeks to address the question of whether or not non-Whites and White women received disparate treatment in the economy relative to White males. From a statistical viewpoint, this primary question has two sub-questions:

- What is the relationship between the independent variable and the dependent variable?
- What is the probability that the relationship between the independent variable and the dependent variable is equal to zero?

For example, an important question facing the City of Austin as it explores whether each racial and ethnic group and White women continue to experience discrimination in its markets is do non-Whites and White women receive lower wages than White men? As discussed in Appendix A, one way to uncover the relationship between the dependent variable (e.g., wages) and the independent variable (e.g., non-Whites) is through multiple regression analysis. An example helps to explain this concept.

Let us say, for example, that this analysis determines that non-Whites receive wages that are 35 percent less than White men after controlling for other factors, such as education and industry, which might account for the differences in wages. However, this finding is only an estimate of the relationship between the independent variable (e.g., non-Whites) and the dependent variable (e.g., wages) – the first sub-question. It is still important to determine how accurate the estimation is. In other words, what is the probability that the estimated relationship is equal to zero – the second sub-question.

To resolve the second sub-question, statistical hypothesis tests are utilized. Hypothesis testing assumes that there is no relationship between belonging to a particular demographic group and the level of economic utilization relative to White men (e.g., non-Whites earn identical wages compared to White men

or non-Whites earn 0 percent less than White men). This sometimes is called the null hypothesis. We then calculate a confidence interval to find the probability that the observed relationship (e.g., -35 percent) is between 0 and minus that confidence interval.¹⁸⁶ The confidence interval will vary depending upon the level of confidence (statistical significance) we wish to have in our conclusion. When a number is statistically significant at the 0.001 level, this indicates that we can be 99.9 percent certain that the number in question (in this example, -35 percent) lies outside of the confidence interval. When a number is statistically significant at the 0.01 level, this indicates that we can be 99.0 percent certain that the number in question lies outside of the confidence interval. When a number is statistically significant at the 0.05 level, this indicates that we can be 95.0 percent certain that the number in question lies outside of the confidence interval.

186. Because 0 can only be greater than -35 percent, we only speak of “minus the confidence level”. This is a one-tailed hypothesis test. If, in another example, the observed relationship could be above or below the hypothesized value, then we would say “plus or minus the confidence level” and this would be a two-tailed test.

APPENDIX D:

UNWEIGHTED AND WEIGHTED AVAILABILITY

Central to the analysis, under strict constitutional scrutiny, of an agency's contracting activity is understanding what firms could have received contracts. Availability has two components: unweighted availability and weighted availability. Below we define these two terms; why we make the distinction; and how to convert unweighted availability into weighted availability.

Defining Unweighted and Weighted Availability

Unweighted availability measures a group's share of all firms that could receive a contract or subcontract. If 100 firms could receive a contract and 15 of these firms are minority-owned, then MBE unweighted availability is 15 percent (15/100). *Weighted availability* converts the unweighted availability through the use of a weighting factor: the share of total agency spending in a particular NAICS code. If total agency spending is \$1,000,000 and NAICS Code AAAAAA captures \$100,000 of the total spending, then the weighting factor for NAICS code AAAAAA is 10 percent ($\$100,000/\$1,000,000$).

Why Weight the Unweighted Availability

It is important to understand *why* weighted availability should be calculated. A disparity study examines the overall contracting activity of an agency by looking at the firms that *received* contracts and the firms that *could have received* contracts. A proper analysis does not allow activity in a NAICS code that is not important an agency's overall spending behavior to have a disproportionate impact on the analysis. In other words, the availability of a certain group in a specific NAICS code in which the agency spends few of its dollars should have less importance to the analysis than the availability of a certain group in another NAICS code where the agency spends a large share of its dollars.

To account for these differences, the availability in each NAICS code is weighted by the agency's spending in the code. The calculation of the weighted availability compares the firms that received contracts (utilization) and the firms that could receive contracts (availability). Utilization is a group's share of total spending by an agency; this metric is measure in dollars, *i.e.*,

MBEs received 8 percent of all dollars spent by the agency. Since utilization is measured in dollars, availability must be measured in dollars to permit an “apples-to-apples” comparison.

How to Calculate the Weighted Availability

Three steps are involved in converting unweighted availability into weighted availability:

- Determine the unweighted availability
- Determine the weights for each NAICS code
- Apply the weights to the unweighted availability to calculate weighted availability

The following is a hypothetical calculation.

Table A contains data on unweighted availability measured by the number of firms:

Table A

NAICS	Black	Hispanic	Asian	Native American	White Women	Non-M/W/DBE	Total
AAAAAA	10	20	20	5	15	400	470
BBBBBB	20	15	15	4	16	410	480
CCCCCC	10	10	18	3	17	420	478
TOTAL	40	45	53	12	48	1230	1428

Unweighted availability measured as the share of firms requires us to divide the number of firms in each group by the total number of firms (the last column in Table A). For example, the Black share of total firms in NAICS code AAAAAA is 2.1 percent (10/470). Table B presents the unweighted availability measure as a group’s share of all firms.

Table B

NAICS	Black	Hispanic	Asian	Native American	White Women	Non-M/W/DBE	Total
AAAAAA	2.1%	4.3%	4.3%	1.1%	3.2%	85.1%	100.0%
BBBBBB	4.2%	3.1%	3.1%	0.8%	3.3%	85.4%	100.0%
CCCCCC	2.1%	2.1%	3.8%	0.6%	3.6%	87.9%	100.0%
TOTAL	2.8%	3.2%	3.7%	0.8%	3.4%	86.1%	100.0%

Table C presents data on the agency’s spending in each NAICS code:

Table C

NAICS	Total Dollars	Share
AAAAAA	\$1,000.00	22.2%
BBBBBB	\$1,500.00	33.3%
CCCCCC	\$2,000.00	44.4%
TOTAL	\$4,500.00	100.0%

Each NAICS code’s share of total agency spending (the last column in Table C) is the weight from each NAICS code that will be used in calculating the weighted availability. To calculate the overall weighted availability for each group, we first derive the every NAICS code component of a group’s overall weighted availability. This is done by multiplying the NAICS code weight by the particular group’s unweighted availability in that NAICS code. For instance, to determine NAICS code AAAAAA’s component of the overall Black weighted availability, we would multiply 22.2 percent (the NAICS code weight) by 2.1 percent (the Black unweighted availability in NAICS code AAAAAA). The resulting number is 0.005 and this number is found in Table D under the cell which presents NAICS code AAAAAA’s share of the Black weighted availability. The procedure is repeated for each group in each NAICS code. The calculation is completed by adding up each NAICS component for a particular group to calculate that group’s overall weighted availability. Table D presents this information:

Table D

NAICS	Black	Hispanic	Asian	Native American	White Women	Non-M/W/DBE
AAAAAA	0.005	0.009	0.009	0.002	0.007	0.189
BBBBBB	0.014	0.010	0.010	0.003	0.011	0.285
CCCCCC	0.009	0.009	0.017	0.003	0.016	0.391
TOTAL	0.028	0.029	0.037	0.008	0.034	0.864

To determine the overall *weighted availability*, the last row of Table D is converted into a percentage (*e.g.*, for the Black weighted availability: $0.028 * 100 = 2.8$ percent). Table E presents these results.

Table E

Black	Hispanic	Asian	Native American	White Women	Non-MWBE	Total
2.8%	2.9%	3.7%	0.8%	3.4%	86.4%	100.0%

APPENDIX E:

QUALITATIVE EVIDENCE FROM TEXAS DISPARITY STUDIES

In addition to the anecdotal data collected for this study and provided in the Qualitative chapter of this report, Colette Holt & Associates has conducted several studies in Texas over the last few years that shed light on the experiences of minority- and women-owned firms in the Texas marketplace.

This summary of anecdotal reports provides an overview of the following Disparity Studies: the Dallas Fort Worth International Airport 2019 (“DFW”), Texas Department of Transportation 2019 (“TxDOT”), Dallas County 2015 (“Dallas County”), Parkland Health and Hospital System 2015 (“PHHS”), Harris County 2020 (“Harris County”), the City of Arlington (“Arlington”), and the City of Fort Worth (“Fort Worth”).

1. **Discriminatory Attitudes and Negative Perceptions of Competency and Professionalism**

Many minority and women owners reported being stigmatized by their race and/or gender. Subtle and overt stereotyping and race and gender discrimination were commonplace. Respondents reported that White men often evince negative attitudes concerning their competency, skill and professionalism.

Biases about the capabilities of minority and women business owners impact all aspects of their attempts to obtain contracts and to be treated equally in performing contract work. The prevailing viewpoint is that MBEs and WBEs and smaller firms are less qualified and capable.

One of the biggest general contractors in this part of Texas got up and says, "I don't want to do business with [minorities]... The only reason why I'm here is because I got a contract and the state is paying for it, or else I wouldn't be doing business with you. (Harris County, p.95)

Stigma sometimes can come from leading your marketing with M/WBE status, and that's a quick way to [not get work]. (DFW, page 158)

Sometimes, I choose not to present myself as a minority contractor.... Obviously, when people meet me, [being an MBE] they assume certain things. As they get to know me and understand that I can speak construction, that I'm bilingual, that I speak engineering, then I get the comment, "Oh, you're different." Or, "You're educated."... I do think that there is a stigma" [to being an MBE]. (DFW, page 158)

I try not to use my accent. And treatment is completely different, completely different [if they think I am White]. (TxDOT, page 161)

[Agency staff and prime vendors] are looking down at you because you are a woman. Because you're a woman, you probably didn't know IT. (Dallas County, page 104) (PHHS, page 107)

There's still this stigma. "Well, I guess, you know, we'll see what the little girls are doing over there." (DFW, page 158)

There are many women owned businesses who are trying today to survive in the male-owned, if you want to say good old boy, Texas network. Many of us. And it does keep us down because of the perception of what the woman knows in math and science as you negotiate with engineers. (Dallas County, page 102)

When a White firm commits an offense, something goes wrong, they say run his ass off. Not the firm, but the architect or that manager who did a poor job. If it's an African-American firm or Hispanic firm, run the company off. (PHHS, page 108) (Dallas County, page 103)

People of color do not get the same credit even if their financials and credit scores are the same.... [A White man has] got a little bit more credit than you did. And then there was a slowdown in paid invoices, [he's] a big GC and he floats it because he's got a little more credit. And then people turn around, "Hey, that guy's a good business. Joe Man Black over here, Hispanic, he doesn't know how to manage his business." All he did was access his credit line. And if he would've had his credit line, he could do it, too. It's like he ain't stupid. If he had a credit line, he'd access it when he needs it.... So then, [non-MBEs/WBEs] look like they're better business people, not because they're better business people, but because people are carrying them. (Fort Worth, page 137)

There's definitely on fees, an expectation, that if you are woman-owned or minority-owned firm, that you're going to do the work for less. Same work, for less. (Harris County, page 95)

Many women reported unfair treatment or sexual harassment in the business world.

Sometimes I get statements like, "Are you sure you can do the work?" (TxDOT, page 162)

I've dealt with [TxDOT staff] that just thought I was dumb as dirt because I'm a woman, but this was a woman. (TxDOT, page 163)

I still do find the initial contact with specifically, a general contractor, there is somewhat that attitude of you're a woman, let me tell you how to do this. (TxDOT, page 162)

You get a lot of that. You're a woman, pat you on the head and say it's nice that you came today. Then, all the sudden, they'll be over there doing their thing and you sit there and hear what they're saying. You're like, that's not gonna be to code buddy and good luck with that. They look at you like, how do you know that? This is my job to know those things (TxDOT, page 162)

I have offered to go out and market more for the company and... some guys that were sitting in the back, they said, "Well, we really need somebody very young and pretty and dresses very nice to go out and market, 'cause they get the attention." "Excuse me?" I think I can do a good job marketing, but I...don't meet those qualifications. (TxDOT, page 163)

I've had dinner encounters ... I've had a guy grab me at one of those.... I definitely do make it a point to not ride with certain people that I don't feel comfortable with. (DFW, page 158)

2. Access to Formal and Informal Business and Professional Networks

Both minority and women respondents reported difficulty in accessing networks and fostering relationships necessary for professional success and viability. This difficulty extended to agency staff; respondents were unable to gain access to and communicate with key agency decisionmakers. Business owners frequently stated that Texas is a "good old boy" state (TxDOT, page 161; Dallas County, page 102; Fort Worth, page 134) and that it is difficult for new firms to

gain entry into a predominantly White and male-dominated industry. (DFW, page 158).

The transportation industry as a whole is dominated by the civil engineers, which typically the folks graduating in civil engineering are white men. You have a very low proportion of women and minorities with those degrees. Inherently, then in the workplace, you're seeing very low amounts of diversity. Same things in environmental services. You don't get a lot of women who are wildlife biologists. Someone with that type of experience typically has been hunting and fishing with his father and his grandpa their entire lives and they have a good old boys club. They go drinking, they go fishing, they go playing golf. (TxDOT, page 162)

You call and call and call [prime vendors] and you sort of feel like you're just bugging them. But they never call back. They never do anything. So, just seems like they're just used to doing business with the same companies and that's who they choose to do business with. (Harris County, p. 100)

They still see women as a support system. They do not see us as business people. We are stepping out, and we are, women are coming on. Men, I hate to put it, y'all better get ready because the women are in the labor force, they're coming hard, and they're coming fast. (Fort Worth, page 136)

You're not in the frat. You didn't get the letter, you know? You didn't get the call. But whatever you need to do to get in, you need to figure it out. (Harris County, page 100)

[Texas is] a good old boy state. It is a fact of life whether you're a woman, small business, whatever. Ladies, the only way we get a chance is we have to legally stand up and demand that we get a fair trial, that we be put on a level playing field by having rules and regulations.... [Women] are always behind. We will always be behind in this state. (Dallas County, page 101)

We are always at a disadvantage because we are not in a situation where we can build these relationships. Going to the country club here and having lunch with the mayor and with all of the CEOs of the companies around here. So, the playing field is not level, and it is discriminatory because we're not in a position to build those relationships. (Arlington, page 143).

I've been raised in Fort Worth my whole life and so it's still a very much a good old boys club here in Fort Worth. I spend 90 percent of my time in Dallas. And I live in Fort Worth. (Fort Worth, page 134)

I'm a lifelong Fort Worth resident and taxpayer and it's very disheartening that the City of Dallas has actually been a lot easier as a small minority business. There are certain aspects of the good old boys' club [you see] attending some of the pre-bids. You do see a lot of kind of favoritism and partiality to the contractors that are there and some of the City officials. (Fort Worth, page 134)

In presenting the various options and moving forward from concept into detail design, sitting around a room, and except for maybe an architect, I was always the only woman at the table. It's an expertise that I've carried for many years, and literally, repeated to the owners of a government entity, would present the case and why this is the recommendation to move forward. And it would be silence in the room. And then, this junior, who was not even a licensed P[rofessional] E[ngineer] yet, working underneath of me, who helped me put the slides together, and did some of the analysis under my leadership, would – they'd ask a couple of questions and this young man would answer the questions based on the slides and flipping back and forth. And then all of a sudden, the recommendation was accepted because this young man, who was my employee, was giving the answer instead of me. (Harris County, page 96)

There are many women owned businesses who are trying today to survive in the male-owned, if you want to say good old boy, Texas network. Many of us. An, it does keep us down because of the perception of what the woman knows in math and science, as you negotiate with engineers. (Dallas County, page 102)

My industry it is extremely male dominant.... They say, " Oh, there's a girl, there's a woman. What is she here for? Who does she work for?... That's [name]. Oh, she owns her own company. She's a little bitty company. She's nothing to worry about." Well, I'm going to be silent and deadly and they're going to watch because I'm coming. (Fort Worth, page 135)

The County and the hospital ... do tell you about the opportunities. The problem is you can't get into the inner circle [of agency decision makers]. (Dallas County, page 102)

[There is an] inability to get in front of the key decision makers [at the agencies].... I reached out to the executive assistant to the C[hief] I[nformation] O[fficer] and no one has responded at all. (PHHS, page 107)

3. Obtaining Work on an Equal Basis

Respondents reported that institutional and discriminatory barriers continue to exist in the Texas marketplace. They were in almost unanimous agreement that contract goals remain necessary to level the playing field and equalize opportunities. Race- and gender-neutral approaches alone are viewed as inadequate and unlikely to ensure a level playing field.

If it's not a project that has a goal, they're not bringing you to the table. (Dallas County, page 103)

There's no real aggressive movement on [the City's] part to recruit and require these plans to hire African-Americans. (Arlington, page 144).

There is an entrenched bias in favor of the big company. They'll have the political connections, all that stuff ...They don't want to risk anything. They've got the good old boys, they got the whole comfy thing. (Arlington, pages 144-145).

Unless there's goals in the project, there is no business for small business. And even then, they try to skirt around it. And they'll use my credentials to actually go for it and then excuse me. (Dallas County, page 103)

I have never had a contract with a general contractor in 36 years that's private. Everything is government, and if the government didn't say use a minority, they wouldn't do it. (Harris County, page 97)

Prime vendors see the goal as the ceiling, not as the floor. (Dallas County, page 103)

If you just looking at goals, goals in itself, without enforcements, it's not effective. (Harris County, page 101)

If it wasn't for that requirement, that MWB requirement, most of the businesses would probably have a very difficult time staying in business and my business, probably 80 percent of it [comes] just from these types of governmental projects that come along and it's no way that these primes would work with

us ... on projects that did not have an MWB requirement. (Fort Worth, page 137)

If the program went away, what would happen? You would lose small businesses. One, if you don't have relationships, people do business with who they know. If we don't have a program that says that there has to be utilization, participation levels, whatever that is, DBE goals MBE goals, they won't use them. (Fort Worth, page 137)

Part of the problem is accountability... The State [of Texas] has told me, with regard to submitting bids for the Texas HUB requirement, that I need to go back to the contractor, but the contractor is the problem.... The government doesn't hold the contractor accountable. (Harris County, page 102)

The [City] work stopped as a result [of dropping Hispanic firms from the program]. It was not going to be helpful to [the prime proposer] to bring on my firm, because they wouldn't get any points in the grading of the proposals. So, therefore, I have not been able to do any work at all since. (Fort Worth, page 138)

If [prime vendors] think they can get away with it, without having goals, then they're going to self-perform or they're going to use the folks that they have relationships with. And those folks don't necessarily look like us. (Dallas County, page 103)

Until those [business relationships] are equal, you're going to have to keep on forcing numbers. And as quick as you force a number, they're going to come up with something to circumvent that number. (Dallas County, page 104)

[Prime contractors] are like, why do I need you? Why do I need to give you any money? It's not required of me to do it. So, you may have the greatest relationship with them in the world but those larger firms, if they don't need to check the box so to speak, they're not going to reach out and say, hey, I want to help grow you more because in their mind I just helped you on this job get this much money, you should be happy and let me go do what I need to do. (Dallas County, page 103)

Minority and female entrepreneurs were also concerned about the inability to get work due to longstanding relationships that predate contracting affirmative action programs.

[Larger white male-owned firms are] going to go and use the same company [with which they usually do business]. (PHHS, page 106)

[People] tend to do business with who they know and who they like, and they really don't care that they're supposed to [meet a goal]. (Dallas County, page 103)

And if you're not a DBE or HUB or SBE, you're not going to be considered for any work as a consultant for TxDOT because they're going to use these legacy firms for most of their work on the consulting side. (TxDOT study, page 164)

There's this systemic nature of doing business with people you know. And we all like to do business with people we know. We know that they'll come through. They'll be on time. They'll be under budget.... [But] the systemic aspect of familiarity for others sometimes breeds contempt for the person trying to get in the door. (Fort Worth, page 133)

Respondents also maintained that prime contractors are not comfortable with minorities taking larger roles. They indicated that even MBEs/WBEs who had accessed large public contracts through M/WBE programs did not translate into public sector work.

Do we really want to play this game and how much headache and how much headache do we want to deal with?... We employ 75 employees and I've had minorities grow through our organization. But, the challenge that I have is now that we're able to bond single projects up to 15, 18 million dollars, I'm getting a bigger pushback.... When we can sit down and start talking business and how we're going to staff the job, going to put my bonding up, what's the duration and the schedule? [The large general contractors are] doing this, no, no, no [shaking head]. (Dallas County, page 104)

You get in a niche of being a DBE and you're automatically a sub.... We've had a lot of success in the DBE market and I'm not going to downplay that, but as a prime, we don't get a lot. We end up getting a smaller piece so you can do the hydraulics, or you can do the survey but the true design work for plan and profile on a street or something like that where we can actually show expertise in engineering, we're not given that piece of the pie. (Arlington, page 145).

[A general contractor, which this MBE had worked on major project jobs, when approached about a private sector project, responded] there's no MWBE [goal] on this: I said, wait a minute. We just worked together for five years, you know me. Yes, but there's not MWBE goals. I said, you mean to tell me I can't do [scope]? It's right across the street from my headquarters. Well, there's no MWBE goals. So, he's one of the good guys. (PHHS, page 109)

Respondents also suggested approaches to increasing M/WBE opportunities and capacities.

Come out with a mentoring program that's goal-oriented and visible. (PHHS, page 110)

A good mentor helps you with a lot of things that have nothing to do with that specific project but with your business. Helps you with your safety plan and quality control plans (Dallas County, page 105)

My recommendation is that they start to do lunch and learn where you get to meet with that department for hours specific to your line of business and now you're able to have a true one-on-one conversation, or even in a group setting of their size where we can ask specific questions to understand how to respond to these RFQs, RFPs better, because as it stands right now, it's the generic and generic gets you nowhere because you don't know what a person expects. And we all have a concept of how we work, but if that's not what the person's looking for, we miss every time. (Arlington, page 146).

We've had a mentorship with [firm name] which has helped us immensely. Because I don't think we would have been able to walk through the doors or bid on the things that we've bid on or have the opportunity had we not had that mentorship. Because they had forged a path in places where I hadn't seen before. And I work in a very male dominated business in [specialty trade]. It's predominantly men. And there is some stigma with that. There are competency issues when you show up at a meeting and you're a woman and you're representing the [specialty trade] company. So, I'm really thankful for the mentorship program because I think it's just something that helps open doors. (PHHS, page 110)

I'm hearing a lot of positive feedback on mentor-protégé [initiatives]. Because you write a really good mentor-protégé

agreement and you have a great mentor, you can really learn a lot. (Dallas County, page 105)

Houston Community College has a lot of money that they have to put programs together. And they said if we will just call them and tell them what program we want, and we can get, say, 10 to 15 people in there, they'll design the program. So, you could put a mentoring program together for anybody. (Harris County, page 103)

I have some experience with J[oint] V[entures] and mentor-protégé relationships and they work but it depends on A, who you're partnering with. It's just like with anything. A JV is like a marriage. (Dallas County, page 105)

Our challenge [with acting as joint venture partner with a majority-owned firm] that we have when we're sitting at the table [is] we're really not in a decision-making position [with the majority-owned partner]. (Dallas County, page 105)

There should be contracts from which] the big boys should be completely excluded. (Dallas County, page 106)

I'm a big fan of being a participant in mentor-protégé programs because you learn how to stay in business. (Harris County, page 103)

If the County were to follow any program on the civil side, it would be the State as opposed to the City. I think the State has a lot better program. They have lower goals, but they use commercially useful function. The City has no commercially useful function. They say they do, but they really don't. There's a lot of pass throughs because their goals are so high. A lot of pass throughs are used every day to meet the goals and to me that's not the purpose of what we're doing. (Harris County, page 106)