

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: October 21, 2014 ☐ Consent ☒ **Regular**
 ☐ Workshop ☐ Public Hearing

Department
 Submitted By: **Administration - Office of Small Business Assistance (OSBA)**

Submitted For: Office of Small Business Assistance (OSBA).

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: (a) approve a contract with Mason Tillman Associates, Ltd. for a Disparity Study to assess whether there is disparity in the utilization of Minority and Women-Owned Business Enterprises (M/WBE) in contracting in the areas of construction, professional services and goods and services with Palm Beach County for an amount not to exceed \$749,995 and (b) approve a budget transfer of \$749,995 in the general fund from contingency reserves.

Summary: On February 4, 2014 the Board of County Commissioners directed staff to commission a disparity study. An RFP was issued and Mason Tillman Associates, Ltd. was determined by the Selection Committee to be the best firm to perform the study. The consultant will provide services for up to two (2) years ending upon completion of the project.

The Consultant shall prepare and deliver a comprehensive Disparity Study which is a statistical analysis of the availability and utilization of Minority/Women Business Enterprises (M/WBEs) in the industry segments of Construction, Horizontal and Vertical (new and replacement); Professional Services Consultants' Competitive Negotiation Act (CCNA) and Non-CCNA and Goods and Services/Commodities. The study period shall consist of five (5) years (2009-2013) for each industry segment and shall include the use of appropriate quantitative and qualitative methodologies.

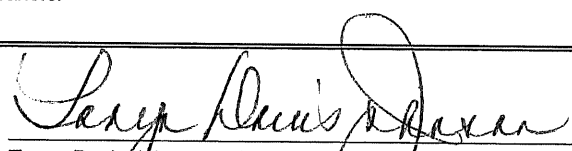
During the course of the study the Consultant shall consider relevant statistical, historical, sociological and anecdotal evidence and other variables that may have impeded the formation, growth, availability, or utilization of minority-and women-owned businesses. The Consultant shall consider use of appropriate methodologies for gathering and analyzing anecdotal or qualitative evidence regarding marketplace discrimination and other barriers e.g. public hearings, in-depth personal interviews of marketplace participants, surveys and focus groups. **Mason Tillman Associates, Ltd. has committed to 15.67% S/M/WBE participation on this contract. Countywide (TKF).**

Background and Justification: The solicitation for RFP 14-071/LJ was issued on June 26, 2014. Two amendments were issued and the proposal due date was revised and determined to be August 4, 2014. Five proposers responded to the solicitation and they are as follows: Mason Tillman Associates, Ltd., MGT of America, Miller3, Griffin & Strong and Colette Holt & Associates. Miller3 was deemed non-responsive for failing to submit Addendum #2 which was issued on July 28, 2014. The vendor protested the decision and was denied. Subsequently, counsel for Miller3 requested a hearing before the Special Master and failed to submit the required bond. On August 18, 2014 the Selection Committee met and determined that all proposers would offer oral presentation on August 25, 2014. Collette Holt & Associates withdrew their proposal for further consideration prior to the scheduled oral presentations. On August 25, 2014 after hearing the proposals of the remaining three proposers, the Selection Committee unanimously ranked the proposers as follows: 1st Mason Tillman Associates; 2nd MGT of America and 3rd Griffin & Strong.

Attachments:

1. Mason Tillman Associates, Ltd. Contract
2. Appendix E – Disclosure of Ownership Interests RFP No.14-071/LJ
3. Budget Transfer

Recommended by:


 Tonya Davis Johnson, Director OSBA Date 10/8/2014

Approved By:


 Verdenia C. Baker, Deputy County Administrator Date 10/20/2014

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures					
Operating Costs	<u>\$749,995</u>				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	<u>\$749,995</u>	<u>=====</u>	<u>=====</u>	<u>=====</u>	<u>=====</u>
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included In Current Budget? Yes _____ No. X

Budget Account No.: Fund Dept. Unit Object

C. Department Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

10/10/2014
K.D. AS OFMB
10/9/14

10-17-14
Contract Dev. and Control
B. Wheeler

B. Approved as to form and Legal Sufficiency:

10/20/14
Chief Assistant County Attorney

C. Approved as to terms and conditions:

Director, Office of Small Business Assistance

This summary is not to be used as a basis for payment.

**CONTRACT FOR
Palm Beach County Disparity Study
(Contract No. 14-071/LJ)**

This Contract No. 14-071/LJ is made as of this _____ day of _____, 2014, by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and Mason Tillman Associates, Ltd., located at 1999 Harrison Street, Suite 1440, Oakland, CA 94612-4710, a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT.

In consideration of the mutual promises contained herein, the COUNTY and the CONSULTANT agree as follows:

ARTICLE 1 - SERVICES

The CONSULTANT's responsibility under this Contract is to conduct a study to determine if there is a disparity between the number of minority- and women-owned businesses that are ready, willing, and able to perform construction, professional services, and goods and services contracts to Palm Beach County and provide such study to the Office of Small Business Assistance in accordance with Exhibit A, Scope of Work/Services, and Exhibit B, CONSULTANT's proposal dated August 4, 2014, both of which are attached hereto and incorporated herein.

The COUNTY's representative/liaison during the performance of this Contract shall be Tonya D. Johnson, Director, Office of Small Business Assistance, telephone number (561) 616-6840 or designee.

The CONSULTANT's representative/liaison during the performance of this Contract shall be Eleanor Mason Ramsey, Ph.D., President, telephone number (510) 835-9012.

ARTICLE 2 - ORDER OF PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of the Contract, including Exhibit A; (2) the provisions of RFP No. 14-071/LJ and all Amendments thereto, which are incorporated into and made a part of this Contract; (3) Exhibit B, CONSULTANT's proposal dated August 4, 2014; and (4) all other documents, if any, cited herein or incorporated herein by reference.

ARTICLE 3 - SCHEDULE

The CONSULTANT shall commence services on October 22, 2014, and complete all services upon completion of the project or October 21, 2016, whichever occurs first.

Reports and other items shall be delivered and/or completed in accordance with Exhibit A.

ARTICLE 4 - PAYMENTS TO CONSULTANT

- A. The total amount to be paid by the COUNTY under this Contract for all services and materials, not including expert witness and litigation support, shall not exceed a total contract amount of Seven Hundred Forty-Nine Thousand Nine Hundred Ninety-Five Dollars and no cents (\$749,995.00). Expert witness fees and litigation support, if necessary and requested by the COUNTY, shall be paid at a rate of Two Hundred Twenty-Five Dollars and no cents (\$225.00) per hour.

The CONSULTANT shall notify the COUNTY's representative, in writing, when ninety percent (90%) of the "not-to-exceed amount" has been reached. The CONSULTANT will bill the COUNTY on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit B for services rendered toward the completion of the Scope of Work/Services. Where incremental billings for partially completed items is permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.

- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, indicating that services have been rendered in conformity with the Contract. Approved invoices will be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.
- C. All requests for payment of travel expenses eligible for reimbursement under the terms of this Contract shall include copies of paid receipts, invoices, or other documentation acceptable to the COUNTY's Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Contract. Any travel, per diem, mileage, meals, or lodging expenses, which may be reimbursable under the terms of this Contract, will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.
- D. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" on the CONSULTANT's final/last billing to the COUNTY. This shall constitute CONSULTANT's certification that all services have been properly performed and all charges and costs have been invoiced to the COUNTY. Any further charges, if not properly included on this final invoice, are waived by the CONSULTANT.

ARTICLE 5 - PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL AUDIT REQUIREMENTS

Pursuant to Palm Beach County Code, Section 2-421 - 2-440, as amended, Palm Beach County's Office of Inspector General is authorized to review past, present and proposed COUNTY contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the COUNTY, or anyone

acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 6 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONSULTANT shall also constitute the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete, and current as of the date of the Contract and no higher than those charged the CONSULTANT's most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete, or noncurrent wage rates or due to inaccurate representation(s) of fees paid to outside contractors. The COUNTY shall exercise its rights under this Article 6 within three (3) years following final payment.

ARTICLE 7 - TERMINATION

This Contract may be terminated by the CONSULTANT upon sixty (60) days prior written notice to the COUNTY in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY, with cause upon five (5) business days written notice to the CONSULTANT or without cause upon ten (10) business days written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the COUNTY's satisfaction through the date of termination. After receipt of a Termination Notice, except as otherwise directed by the COUNTY, in writing, the CONSULTANT shall:

1. Stop work on the date and to the extent specified.
2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
3. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
4. Continue and complete all parts of the work which have not been terminated.

ARTICLE 8 - PERSONNEL

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of, or have any contractual relationship with, the COUNTY.

All of the services required hereinunder shall be performed by the CONSULTANT, or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT's key personnel, as may be listed in Exhibit B, attached hereto and incorporated herein, must be made known to the COUNTY's representative and written approval must be granted by the COUNTY's representative before said change or substitution can become effective.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONSULTANT's personnel (and all subcontractors) will comply with all COUNTY requirements governing conduct, safety, and security while on COUNTY premises.

ARTICLE 9 - CRIMINAL HISTORY RECORDS CHECK

The CONSULTANT, CONSULTANT's employees, subcontractors of CONSULTANT and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 – 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolution R-2003-1274, as amended. The CONSULTANT is solely responsible for understanding the financial, schedule, and/or staffing implications of this Ordinance. Further, the CONSULTANT acknowledges that its Contract price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This Contract may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and Resolution R-2003-1274, as amended. COUNTY staff representing the COUNTY department will contact the CONSULTANT(s) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The CONSULTANT shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the COUNTY. If the CONSULTANT or its subcontractor(s) terminates an employee who has been issued a badge, the CONSULTANT must notify

the COUNTY within two (2) hours. At the time of termination, the CONSULTANT shall retrieve the badge and shall return it to the COUNTY in a timely manner.

The COUNTY reserves the right to suspend the CONSULTANT if the CONSULTANT: 1) does not comply with the requirements of County Code Section 2-371 through 2-377, as amended; 2) does not contact the COUNTY regarding a terminated CONSULTANT employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

ARTICLE 10 - SMALL BUSINESS ENTERPRISES SUBCONTRACTING

The COUNTY reserves the right to accept the use of a subcontractor, or to reject the selection of a particular subcontractor, and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the CONSULTANT uses any subcontractors on this project, the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

- A. The Palm Beach County Board of County Commissioners has established a minimum goal for SBE participation of 15% on all County solicitations.
- B. The CONSULTANT agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that failure to comply with any of the requirements will be considered a breach of contract.
- C. The CONSULTANT incorporates Schedule 1 List of proposed SBE-M/WBE Prime/Subcontractors) and Schedule 2 (Letter of Intent) attached hereto and made a part hereof, the names, addresses, scope of work, percentage and/or dollar value of the SBE-M/WBE participation on Schedule 1 and the Letter of Intent, Schedule 2, signed by each of the listed SBE-M/WBE sub-consultants on Schedule 1 agreeing to perform the contract at the listed percentage and/or dollar value.

The CONSULTANT understands that each SBE firm utilized on this contract must be certified by Palm Beach County in order to be counted toward the SBE participation goal.

- D. The CONSULTANT understands that it is the responsibility of the Office of Small Business Assistance (OSBA) to monitor compliance with the SBE Ordinance requirements. In that regard, the CONSULTANT agrees to furnish progress payment reports to both parties on the progress of the SBE-M/WBE participation on each pay application submitted.

- E. The CONSULTANT further agrees to provide OSBA with a copy of their contract with the SBE sub-consultant or any other related documentation upon request.
- F. After contract award, the successful CONSULTANT will only be permitted to replace a certified SBE subcontractor who is unwilling or unable to perform. Such substitution must be done with other certified SBEs in order to maintain the proposed SBE percentages submitted with the proposal. Requests for substitutions must be submitted to the department issuing the Request for Proposal and the OSBA.
- G. The CONSULTANT understands that it is prohibited from making any agreements with an SBE in which the SBE promises not to provide sub consultant quotations to other proposers or potential proposers.
- H. The CONSULTANT agrees to maintain all relevant records and information necessary to document compliance with the Palm Beach County Code and will allow the COUNTY to inspect such records.

ARTICLE 11 - FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will provide an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONSULTANT authorized to use the COUNTY's Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

ARTICLE 12 - AVAILABILITY OF FUNDS

The COUNTY's performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the Board of County Commissioners.

ARTICLE 13 - INSURANCE REQUIREMENTS

It shall be the responsibility of the CONSULTANT to provide initial evidence of the following minimum amounts of insurance coverage to:

Palm Beach County
c/o Insurance Tracking Services, Inc. (ITS)
P.O. Box 20270
Long Beach, CA 90801

Subsequently, the CONSULTANT shall, during the term of the Contract, and prior to each renewal thereof, provide such evidence to ITS at pbcc@instracking.com or fax

(562) 435-2999, which is Palm Beach County's insurance management system, prior to the expiration date of each and every insurance required herein.

The CONSULTANT shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Contract, insurance coverages and limits (including endorsements) as described herein. Failure to maintain the required insurance will be considered default of the Contract. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by CONSULTANT, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the Contract. CONSULTANT agrees to notify the COUNTY with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverages. Further, CONSULTANT shall agree that all insurance coverage required herein shall be provided by CONSULTANT to COUNTY on a primary basis.

- A. **Commercial General Liability:** CONSULTANT shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.
- B. **Business Auto Liability:** CONSULTANT shall maintain Business Auto Liability at a limit of liability not less than **\$500,000** Each Occurrence for all owned, non-owned, and hired automobiles. In the event CONSULTANT owns no automobiles, the Business Auto Liability requirement shall be amended allowing CONSULTANT to maintain only Hired & Non-Owned Auto Liability. If vehicles are acquired throughout the term of the contract, CONSULTANT agrees to purchase "Owned Auto" coverage as of the date of acquisition. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.
- C. **Workers' Compensation Insurance & Employer's Liability:** CONSULTANT shall maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440.
- D. **Professional Liability:** CONSULTANT shall maintain Professional Liability, or equivalent Errors & Omissions Liability, at a limit of liability not less than **\$1,000,000** Per Occurrence. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of CONSULTANT's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CONSULTANT warrants the Retroactive Date equals or preceded the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, CONSULTANT shall purchase a SERP with a minimum reporting period not less than three (3) years. The requirement to purchase a

SERP shall not relieve the CONSULTANT of the obligation to provide replacement coverage. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims - made" form. If coverage is provided on a "claims - made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage.

- E. **Additional Insured Clause:** Except as to Business Auto, Workers' Compensation and Employer's Liability (and Professional Liability, when applicable) the Certificate(s) of Insurance shall clearly confirm that coverage required by the Contract has been endorsed to include Palm Beach County as an Additional Insured.
- F. **Waiver of Subrogation:** CONSULTANT hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONSULTANT shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should CONSULTANT enter into such an agreement on a pre-loss basis.
- G. **Certificates of Insurance:** Within forty-eight (48) hours of the COUNTY's request to do so, the CONSULTANT shall deliver to the COUNTY via the Insurance Company/Agent a signed Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. During the term of the Contract and prior to each subsequent renewal thereof, the CONSULTANT shall provide this evidence to ITS at pbcc@instracking.com or fax (562) 435-2999, which is Palm Beach County's insurance management system, prior to the expiration date of each and every insurance required herein. Said Certificate(s) of Insurance shall, to the extent allowable by the insurer, include a minimum thirty (30) day endeavor to notify due to cancellation (10 days for nonpayment of premium) or non-renewal of coverage.
- H. **Umbrella or Excess Liability:** If necessary, CONSULTANT may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

- I. **Right to Revise or Reject:** COUNTY, by and through its Risk Management Department in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

ARTICLE 14 - INDEMNIFICATION

CONSULTANT shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officials harmless from and against any and all claims, liability, loss, expense, cost, damages, or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Contract or due to the acts or omissions of CONSULTANT.

ARTICLE 15 - SUCCESSORS AND ASSIGNS

The COUNTY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONSULTANT shall assign, sublet, convey, or transfer its interest in this Contract, without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the CONSULTANT.

ARTICLE 16 - REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law, or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the COUNTY and/or CONSULTANT.

ARTICLE 17 - CONFLICT OF INTEREST

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the

performance or services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes and the Palm Beach County Code of Ethics. The CONSULTANT further represents that no person having any conflict of interest shall be employed for said performance or services.

The CONSULTANT shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence, or appear to influence, the CONSULTANT's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONSULTANT. The COUNTY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONSULTANT under the terms of this Contract.

ARTICLE 18 - EXCUSABLE DELAYS

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT, or its subcontractor(s), and without their fault or negligence. Such causes include, but are not limited to: acts of God; force majeure; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the CONSULTANT's request, the COUNTY shall consider the facts and extent of any failure to perform the work; and, if the CONSULTANT's failure to perform was without it or its subcontractors' fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY's rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 19 - ARREARS

The CONSULTANT shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 20 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONSULTANT shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY, or at its expense, will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY's prior written consent, unless required by a lawful court order. All drawings, maps, sketches, programs, data bases, reports and other data developed or purchased under this Contract for the COUNTY, or at the COUNTY's expense, shall be and remain the COUNTY's property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 21 - INDEPENDENT CONSULTANT RELATIONSHIP

The CONSULTANT is, and shall be, in the performance of all work, services, and activities under this Contract, an Independent Contractor and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT's sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT's relationship, and the relationship of its employees, to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement, or representation other than specifically provided for in this Contract.

ARTICLE 22 - CONTINGENT FEE

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 23 - PUBLIC RECORDS, ACCESS AND AUDITS

The CONSULTANT shall maintain records related to all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such records as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT's place of business.

Notwithstanding anything herein to the contrary, as provided under Section 119.0701, F.S., where the CONSULTANT: **(i) provides a service and (ii) acts on behalf of the COUNTY as provided under Section 119.011(2) F.S.**, the CONSULTANT is required to:

- 1) maintain public records that ordinarily and necessarily would be required by the COUNTY in order to perform the service;
- 2) provide the public with access to public records on the same terms and conditions that the COUNTY would provide the records and at a cost that does not exceed the cost provided by Florida law;
- 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- 4) meet all requirements for retaining public records and transfer, at no cost, to the COUNTY all public records in possession of the CONTRACTOR upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the COUNTY in a format that is compatible with the information technology systems of the COUNTY.

Failure of the CONSULTANT to comply with these requirements shall be a material breach of this Contract.

ARTICLE 24 - NONDISCRIMINATION

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

ARTICLE 25 - AUTHORITY TO PRACTICE

The CONSULTANT hereby represents and warrants that it has, and will continue to maintain, all licenses and approvals required to conduct its business; and, that it will, at all times, conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

ARTICLE 26 - SEVERABILITY

If any term or provision of this Contract or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 27 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 28 - SCRUTINIZED COMPANIES (when contract value is greater than \$1 million)

As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473.

If the COUNTY determines, using credible information available to the public, that a false certification has been submitted by CONSULTANT, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S. 287.135.

ARTICLE 29 - MODIFICATIONS OF WORK

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein, or additions thereto. Upon receipt by the CONSULTANT of the COUNTY's notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change; (2) notify the COUNTY of any estimated change in the completion date; and (3) advise the COUNTY if the contemplated change shall affect the CONSULTANT's ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs, in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY's decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment, and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved and executed on behalf of Palm Beach County.

ARTICLE 30 - NOTICE

All notices required in this Contract shall be sent by certified mail (return receipt requested), hand delivered, or sent by other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Kathleen M. Scarlett, Director
Purchasing, Palm Beach County
50 South Military Trail, Suite 110
West Palm Beach, FL 33415

With a copy to:

Tonya Davis Johnson, Director
Office of Small Business Assistance, Palm Beach County
50 S. Military Trail, Suite 202
West Palm Beach, FL 33415

If sent to the CONSULTANT, notices shall be addressed to:

Eleanor Mason Ramsey, Ph.D., President
Mason Tillman Associates, Ltd.
1999 Harrison Street, Suite 1440
Oakland, CA 94612-4710

ARTICLE 31 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in the Contract may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 29 - Modifications of Work.

ARTICLE 32 - REGULATIONS; LICENSING REQUIREMENTS:

The CONSULTANT shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONSULTANT is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.


IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONTRACTOR has hereunto set its hand the day and year above written.

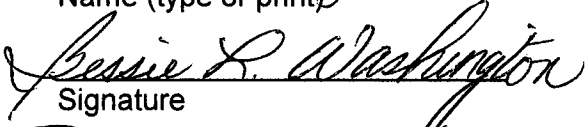
ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER

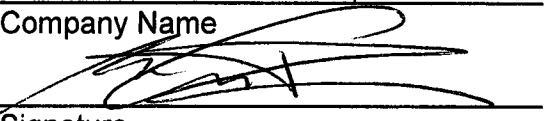
PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:

By: _____
Deputy Clerk

By: _____
Priscilla A. Taylor, Mayor

WITNESS:

Signature
Tyla Tingle
Name (type or print)


Signature
BESSIE L. WASHINGTON
Name (type or print)

CONTRACTOR
Mason Tillman Associates, Ltd.
Company Name

Signature
Eleanor Mason Ramsey, Ph.D.
Typed Name
President
Title

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
By _____
County Attorney

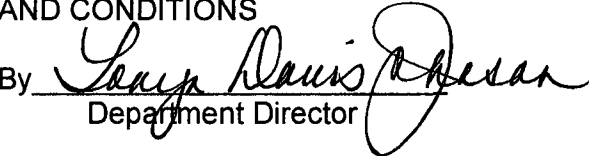
APPROVED AS TO TERMS
AND CONDITIONS
By 
Department Director

EXHIBIT A
SCOPE OF WORK/SERVICES
Contract No. 14-071/LJ

1. PURPOSE OF THE PROJECT

CONSULTANT shall conduct a study to determine if there is a disparity between the number of minority- and women-owned businesses that are ready, willing, and able to perform construction, professional services, and goods and services contracts and the numbers of these same business types who are actually participating in these same types of contracts with COUNTY; and, if so, whether such disparity can be attributed to discrimination.

2. HISTORY AND BACKGROUND

In 1989, the United States Supreme Court ruled in City of Richmond vs. J. A. Croson that local governments must satisfy the "strict scrutiny" standard prior to considering the use of racial classifications in the award of public contracts. As such, any such MBE set-aside programs as applied by the City of Richmond would be unconstitutional under the 14th Amendment Equal Protection Clause unless the government could demonstrate that prior to the enactment of the race-conscious policy that there was a strong basis in evidence of ongoing effects of past or present discrimination in the relevant marketplace, and that such discrimination formed a compelling interest for the government that required its use of racial classifications to remedy those effects. Moreover, the government had to show that any such race-conscious remedy was narrowly tailored to address the ongoing effects of the identified discrimination.

Like many jurisdictions across the country, the COUNTY had to re-evaluate its M/WBE Program after the Croson decision was rendered. As a result, the COUNTY issued an RFP to conduct a disparity study. On October 3, 1989, the Board of County Commissioners (BCC) directed staff to negotiate a contract with MGT of America, the highest scored respondent to the RFP. That disparity study was completed on January 17, 1991.

The 1991 disparity study found that there was significant underutilization of M/WBEs that established an inference of discrimination against M/WBEs in the relevant marketplace for goods and services purchased by the COUNTY. Combined with other evidence collected during the study, including the COUNTY's utilization of prime contractors within that discriminatory marketplace, the study found a strong basis in evidence for concluding that the COUNTY was a passive participant in the marketplace discrimination.

Based upon the results of the study, the COUNTY revised its M/WBE program to narrowly tailor its remedies for the discrimination identified in the study. The program ran for approximately ten years and included all M/WBEs regardless of whether they

were domiciled in the COUNTY. One aspect of the narrowly tailored program was a requirement that the program results be periodically reviewed to determine whether the program needed to continue.

On February 28, 2002, a report was received reviewing the successes and failures of the M/WBE program from 1991-2001. Most of the race, ethnic, and gender goals set by the COUNTY had been met during this period. Based on the utilization and disparity information for COUNTY purchases alone, the COUNTY determined that it did not have a sufficiently strong basis in evidence to establish the necessary compelling governmental interest to continue a race/gender conscious program.

The COUNTY transitioned to a race- and gender-neutral Small Business Enterprise (SBE) Program on October 1, 2002. This program was designed to meet the needs of all small businesses located within Palm Beach County that experienced similar challenges when participating in government contracting. This program varied from the M/WBE program because of Palm Beach County's domicile requirement that prevented vendors from outside of Palm Beach County to qualify as certified small business enterprises, and it allowed white males that owned small businesses to participate and receive equal treatment under the program if their businesses met the requirements for being small. Eligible businesses could retain their M/WBE certification, but preferences were not awarded on this basis except in the area of Consultants' Competitive Negotiation Act (CCNA) contracting for professional services pursuant to Florida Statutes. Tracking of M/WBE participation continued under the SBE Program. (Note: The definition of M/WBE also changed during the implementation of the SBE Program to only include M/WBEs domiciled in Palm Beach County.) Accordingly, because of these definitional changes, utilization, availability, and disparity measurements for M/WBEs prior to 2002 are not interchangeable with such measurements of M/WBEs after the SBE Program was enacted in 2002. In any event, such pre-2002 M/WBE data is so dated at this time as to no longer be probative of whether or not there is a sufficiently strong basis in evidence today to warrant consideration of race- and gender-conscious remedies by the COUNTY in its public contracting.

On December 3, 2013, a question was raised as to what would be necessary for the COUNTY to again implement a race and gender conscious contracting program. Staff advised the (BCC) that, at this juncture, the best way to gather relevant evidence regarding the efficacy of race-conscious vs. race-neutral remedies is by commissioning a new disparity study. If a disparity study provides a strong basis in evidence showing ongoing effects of past or present marketplace discrimination, and also demonstrates (through a combination of quantitative and qualitative evidence) that the COUNTY has been either an active or passive participant in that marketplace discrimination, then the BCC could appropriately consider implementing a program that has race- and gender-conscious elements that are narrowly tailored to address the identified discrimination. Staff was then directed to return to the BCC in early 2014 with an agenda item to facilitate discussion regarding the commissioning of a disparity study.

On February 4, 2014, the BCC voted to: (1) commission a disparity study to assess whether there is disparity in the utilization of Minority- and Woman-Owned Business Enterprises (M/WBE) within the relevant marketplace from which the COUNTY purchases construction, professional services and goods and services, and if so, whether there is a strong basis in evidence to show that any such disparity is a result of discrimination; (2) directed that the geographical market area to be studied be limited to Palm Beach County due to the fact that the COUNTY's current race and gender neutral Small Business program is limited to businesses domiciled in Palm Beach County and (3) determine that the study should be multi-jurisdictional pending a vote in support by the Solid Waste Authority (SWA) board. The SWA subsequently decided not to join with the COUNTY in conducting a disparity study but will instead commission their own study.

3. CONSULTANT RESPONSIBILITIES

The CONSULTANT shall be required to work closely with the COUNTY's Director of the Office of Small Business Assistance or designee. The CONSULTANT shall, at a minimum, perform the following tasks:

- identify key managers/stakeholders,
- advise/assist in the creation of a task force, if required,
- determine data requirements,
- facilitate required meetings,
- review past and existing contracts, expenditures and procurement methods,
- create status reports as agreed upon/required,
- upon agreement by the County, survey, and interview outside resources for anecdotal evidence,
- facilitate any public hearings recommended to gather information,
- identify an expert witness that will testify in defense of the final disparity study report in the event that it or any program adopted as a result of the study is challenged in court; provide that expert witness's qualifications and experience in providing such expert testimony.

The COUNTY will provide local office space for one (1) individual that will include local telephone service, located at: Palm Beach County Office of Small Business Assistance, 50 South Military Trail, Suite 202, West Palm Beach, Florida 33415.

4. Phase I

The purpose of this project is to conduct a study to determine if there is strong basis in evidence showing that ready, willing, and able minority-and women-owned businesses are significantly underutilized in construction, professional services, and goods and services contracts awarded by the COUNTY and if so, the extent to which such disparities may be attributed to discrimination.

For the purpose of the requested study, minority-owned businesses are those that are at least 51% owned and controlled by one or more citizens or lawful permanent residents of the United States who are either African American, Hispanic American, Asian American, or Native American. A woman-owned business is one that is at least 51% owned and controlled by one or more citizens or lawful permanent residents of the United States who are non-minority females.

- 4.1 The CONSULTANT shall use appropriate quantitative and qualitative methodologies not in conflict with the standards established by City of Richmond v. J. A. Croson Co., 488 U.S. 469, 109 S. Ct. 706, 102 L. Ed. 2nd 854 (1989) and subsequent cases applying Croson, especially including those controlling legal precedents within the jurisdiction of the Eleventh Circuit and the State of Florida.
- 4.2 The CONSULTANT shall evaluate minority- and women-owned businesses identified for the geographic market which has been defined as Palm Beach County.
- 4.3 The CONSULTANT shall prepare and deliver a comprehensive Disparity Study which is a statistical analysis of the availability and utilization of Minority/Women Business Enterprises (M/WBEs) in the industry segments set forth below:
 - Construction, Horizontal & Vertical (new and replacement)
 - Professional Services - (CCNA and Non-CCNA)
 - Goods and Services/Commodities
- 4.4 Data Review and Collection
 - a. The study period shall consist of 5 years (2009-2013) for each industry segment indicated above.
 - b. Data review shall include data sources for contracts with and without SBE participation which includes M/WBEs.
- 4.5 Analysis of M/WBE Availability in County
 - a. The analysis of availability shall include a detailed and comprehensive definition of the study's measure of availability and will identify how such availability was calculated or estimated. Businesses that are ready, willing and able to perform business are those that are capable of providing the required services or goods, and are available and interested in performing for the COUNTY when solicited and/or selected.
 - b. The analysis of availability shall include a determination of the relative availability of ready, willing and able M/WBE, firms as compared to

non-M/WBE firms within the relevant market and shall address or otherwise account for differences in capacity as a possible explanation for any identified disparities in utilization as compared to availability. To the extent there is evidence that discrimination adversely affects capacity of M/WBE firms, the analysis shall summarize and present such findings.

- c. The availability analysis shall identify all sources of data and methods relied upon to establish a legally defensible estimate of percentage of availability of qualified M/WBEs, and other businesses categorized by industry and by major racial/ethnic and gender categories.

All methodologies implemented in the availability analysis shall be thoroughly researched, reviewed, and documented by the CONSULTANT to withstand any legal challenges in accordance with relevant case law and applicable statutory framework.

4.6 Utilization and Disparity Analysis

- a. The CONSULTANT shall determine whether there is a significant statistical disparity between the availability of qualified, ready, willing and able minority- and women-owned businesses, (in each of the industry segments set forth above) and the utilization of such businesses by the COUNTY or by its prime contractors categorized by major racial/ethnic and gender categories.
- b. All study methodologies used to identify any disparity or disparities shall be thoroughly researched, reviewed, and documented in order to withstand legal challenge. Analysis shall use appropriate statistical standards in identifying and differentiating disparities that are statistically significant from those that are not, as well as calculating confidence levels in sample sizes. To the extent possible, the CONSULTANT shall apply relevant multivariate/regression analysis to determine whether any factors other than discrimination that may account for observed statistical disparities between availability and utilization.
- c. CONSULTANT shall conduct an analysis of statistical disparities, if any, in M/WBE business formation and projected growth rates. This analysis shall include comparisons between the characteristics of business owners for M/WBE firms and non-M/WBE firms, and controlling for such characteristics, tracking and comparing the business formation rates, average revenues, and revenue growth trends for M/WBEs vs. non-M/WBEs over time. In the course of conducting this analysis, CONSULTANT shall identify any barriers or problems related to the development and expansion of minority- and

women-owned businesses that appear to be different from other small businesses.

- d. CONSULTANT shall conduct an analysis of statistical disparities, if any, concerning the access by M/WBE firms to commercial capital, credit, bonding, and business, family, and social networks, as compared to non-M/WBE firms while holding balance sheet and creditworthiness information constant. CONSULTANT shall compare bonding levels and bonding rates of M/WBE firms to SBE firms that are non-minority. CONSULTANT shall account for any factors other than race or gender e.g., firm age, education, performance track record, or home equity that may account for any differences. To the extent disparities are identified, CONSULTANT shall provide analysis of the likely effects of any such disparities upon relative capacity and growth rates for M/WBE firms.
- e. CONSULTANT shall conduct an analysis of statistical disparities, if any, of the percentage of all prime contract and subcontract revenues earned by M/WBE businesses in Palm Beach County under contracts awarded by the COUNTY or businesses in Palm Beach County categorized by industry and by major racial/ethnic and gender categories for each contracting category applying controls for similar types of contracts.
- f. CONSULTANT shall conduct a statistical comparison of public sector utilization (non-County) to availability categorized by industry and by major racial/ethnic and gender categories to determine any public sector disparity ratios in the relevant market area. Where disparities are identified, CONSULTANT shall examine whether race- and gender-neutral contracting procedures are used.
- g. CONSULTANT shall conduct a statistical comparison of private sector utilization to availability categorized by industry and by major racial/ethnic and gender categories to determine any private sector disparity ratios in the relevant market area utilizing controls for similar kinds of contracts that are issued by the COUNTY and identify any nexus between the specific prime contractors and vendors that the COUNTY has utilized and the identity of those firms that have been awarded contracts and/or subcontracts in the private sector of the relevant marketplace. The CONSULTANT shall identify any patterns of exclusion in the private sector marketplace of M/WBE subcontractors that have successfully performed for the COUNTY, but have not been utilized outside of the public sector contracts. CONSULTANT shall explore whether there are market dynamics that may account for such patterns e.g., negotiated contracts with owners, less than full open competition, differences in solicitation practices, differences in profit margins and bidding competition. From this

evidence, CONSULTANT shall make a finding regarding whether the COUNTY is a passive participant in discrimination as a result of its utilization of private sector business.

- h. CONSULTANT shall conduct a detailed analysis of the effects, if any, of over-concentration of M/WBE firms and non M/WBE firms in specific sub-industry categories. This shall include analysis of whether firm size and experience have any effect on reported disparities, as well as any barriers to entry that may be caused by various forms of discrimination e.g., unequal access to capital, stereotypical attitudes by prime contractors, good old boy networks between prime contractors and certain subcontractors in other industry categories that may account for such over-concentration on the basis of race and gender.

4.7 Qualitative Evidence

- a. If the study reveals an underutilization of minority- and/or women-owned businesses that are ready, willing and able to participate in the COUNTY's contracts, the CONSULTANT shall research and analyze the reasons for such underutilization.
- b. CONSULTANT shall conduct a detailed, in-depth review of the COUNTY's purchasing and contracting policies to determine whether any of the COUNTY's policies and procedures or practices have a discriminatory effect or adverse impact on M/WBE utilization in awarding of contracts or subcontracts. Any statistical disparity finding that is tied to COUNTY purchasing or contracting policies or practices must be well documented by quantitative data.
- c. If a disparity is found to exist, the relevance and significance of such disparity shall be documented and explained by CONSULTANT through a combination of quantitative statistical analysis and qualitative evidence that provides insight into the nature and form of discrimination or other barriers that are affecting outcomes in the marketplace. Such analysis by the CONSULTANT shall include an evaluation of the extent to which any such identified disparity has likely been caused by race and gender discrimination by the COUNTY itself or by actors in the private marketplace, and/or by other factors such as length of time in business and business size. CONSULTANT shall indicate the extent to which discrimination has had an adverse effect on the ability of minority- and women-owned businesses to compete in contracting and awards in the procurement processes. CONSULTANT shall consider relevant statistical, historical, sociological and anecdotal evidence and other variables that may have impeded the formation, growth, availability, or utilization of minority- and women-owned businesses. The CONSULTANT shall consider the use of appropriate methodologies for gathering and analyzing anecdotal or qualitative evidence regarding

marketplace discrimination and other barriers e.g., public hearings, in-depth personal interviews of marketplace participants, surveys and focus groups.

4.8 Conclusion of Phase I

- a. If no disparity is found upon the completion of the tasks described above, CONSULTANT shall assess the benefits of continuing the COUNTY's SBE program with particular focus on, but not limited to, race and gender-neutral activities the COUNTY can undertake to improve or modify its contracting and procurement processes to the extent necessary to ensure that all businesses have a fair and equal opportunity to participate in the COUNTY's procurement and contracting processes. The CONSULTANT shall focus especially on those segments of COUNTY contracts where SBE firm utilization is significantly below the availability of SBE firms and those segments where there is a scarcity of SBE availability and capacity. The CONSULTANT shall identify and recommend new tools for addressing such shortcomings.
- b. In the event CONSULTANT finds evidence of disparity and/or discrimination in Phase I, the CONSULTANT shall proceed to conduct the work outlined in Phase II below. In the event that no disparity or discrimination is identified in Phase I, CONSULTANT shall present its quantitative and qualitative findings to COUNTY, and shall not perform the work in Phase II below.

5. Phase II

5.1 Remedy Analysis

- a. If discrimination is identified, the CONSULTANT shall assess what level of participation would otherwise be achieved in the relevant market as identified by the COUNTY in the absence of the effects of discrimination and the extent to which the effects of discrimination have been mitigated by programs established by the COUNTY. CONSULTANT shall conduct an analysis of whether the COUNTY is a direct or passive participant in racial, ethnic or gender discrimination. The CONSULTANT shall investigate, describe, and evaluate practices that may indicate discrimination in the relevant market places that are the subject of the disparity study. In addition, the study shall identify any links of the COUNTY's expenditure of public funds to any direct or passive discrimination occurring in, by or through the appropriate marketplace. CONSULTANT shall identify programs and administrative policy changes that will further address discrimination through race- and gender-neutral means. If the CONSULTANT determines that such neutral means are unlikely to be effective in eliminating identified disparities, the CONSULTANT shall also identify and recommend narrowly tailored race- and gender-conscious remedies. In so doing, the CONSULTANT shall

explore the efficacy of race- and gender-neutral remedies alone and make findings and recommendations as to whether additional race- and gender-conscious remedies are likely to be necessary to remedy the effects of identified marketplace discrimination.

5.2 Program Comparison

The CONSULTANT shall review the overall Small Business Enterprise (SBE) program in an effort to identify additional improvements in the following manner:

- a. Read and review "A.G.C. v. State of Florida" and conduct a detailed analysis of other applicable court cases and rulings to determine relevance, if any, to COUNTY's program. If relevant, what issues and concerns does the CONSULTANT have about COUNTY's existing program?
- b. What recommendations does the CONSULTANT have to address these issues and concerns?
- b. The CONSULTANT shall review programs at all of the following peer counties:
 - Broward
 - Miami-Dade
 - Hillsborough
 - Pinellas
 - Orange
 - Duval
- c. The CONSULTANT shall review M/WBE and SBE programs currently in place at the six agencies listed above. Are there any programs or portions of programs that have resulted in increasing M/WBE participation? Considering legal implications, what programs or portions of these programs should be considered by COUNTY? What recommendation(s) does the CONSULTANT have regarding these programs? The CONSULTANT shall estimate the cost to implement all recommendations indicated above.

5.3 The Final Study

- a. Upon completion of the above work, the CONSULTANT shall be required to deliver a detailed draft report of findings and recommendations. The COUNTY shall be given ample time to review the draft report and to provide CONSULTANT with detailed feedback regarding factual errors, the efficacy and feasibility of proposed remedies, areas of the report in need of clarification, and areas where

the legal sufficiency of findings and recommendations appear to be lacking, and where additional research is required.

- b. Upon receipt of comments and proposed edits to the draft study from the COUNTY, the CONSULTANT shall exercise its own independent professional judgment in making revisions to the draft study and producing a final disparity study report. The final study will present findings on availability, utilization, and disparity, as well as for any other statistical and qualitative analysis discretely for each of the three (3) industry segments set forth herein. Moreover, to the extent findings are reported for the category of "M/WBEs", such analysis and findings shall also be disaggregated on the basis of race- and gender-group including the following: African American, Hispanic American, Asian American, Native American, non-minority Women and White males.
- c. The complete and final disparity study report shall contain recommendations on how often a study update should be conducted in order to maintain the legal validity and integrity of the program and also recommend efforts the COUNTY can complete (data collection, etc.), towards reduction of future study costs i.e., how to best implement an automated centralized bidder registration system, etc.
- d. The Final Study Report shall include the following minimum elements:
 - Name and signature of the person(s) responsible for the preparation of the analysis and the report including a description of their credentials supporting their expertise and qualifications to conduct the disparity analysis;
 - Executive Summary of findings, conclusions, and recommendations;
 - Definition Section, including a definition of all racial and ethnic groups considered in the report;
 - Background Section: Detailed descriptions of all-pertinent methodology, data sources, results, conclusions, findings, and recommendations;
 - Legal Analysis Section: Description of the legal framework for the disparity study analysis to include specific note of any relevant and controlling federal and State of Florida statutes and court decisions;
 - Assumptions Section: Discussion of all assumptions that influenced the analysis. Discussion shall include:
 - (1) any methodological approach utilized and support for such approach;

- (2) detailed description and breakdown of M/WBEs in the market area of Palm Beach County as determined by the Board of County Commissioners and regional breakdown to be determined by the CONSULTANT and reasoning utilized for such breakdown;
- (3) any contracts or information included or not included in the Availability Analysis or Utilization Analysis and the reason(s) for their inclusion or exclusion from disparity analysis;
- (4) limitation(s) on the use of any data;
- (5) definitions of key terms and phrases – e.g., “ready, willing and able” – should be provided;
- (6) calculation of the projected growth of M/WBE firms over the next four (4) years in the relevant market areas consistent with the overall general business growth in the study area.

5.4 Presentation of Final Report

- a. Present the results of the Final Study Report to COUNTY Senior Staff at a site to be determined.
- b. Present the results of the Final Study Report to the Small Business Advisory Committee at a site to be determined.
- c. Present the results of the Final Study Report to community organizations at a site to be determined.
- d. Participate in any required Public Hearing(s) with the BCC as well as individual meetings with members of the BCC.

EXHIBIT B
CONTRACTOR'S PROPOSAL
Dated August 4, 2014

Contract No. 14-071/LJ
(Consisting of 374 pages)

Original

Palm Beach County, Florida

Disparity Study

RFP No. 14-071/LJ

MASON TILLMAN
ASSOCIATES, LTD

July 2014

TITLE PAGE

Date: August 4, 2014

RFP Number: RFP No. 14-071/LJ

RFP Subject: Palm Beach County Disparity Study

Proposer: Mason Tillman Associates, Ltd.
1999 Harrison Street, Suite 1440
Oakland, California 94612

Proposer's Telephone Number: (510) 835-9012

Proposer's Facsimile: (510) 835-2647

Proposer's Email Address: eramsey@mtaltd.com

***Mason Tillman Associates, Ltd. August 2014
Palm Beach County Disparity Study***

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LETTER OF TRANSMITTAL

July 10, 2014

Lisa Juliano, Senior Buyer
Palm Beach County
Board of County Commissioners
Purchasing Department
50 South Military Trail, Suite 110
West Palm Beach, Florida 33415

Subject: Request for Proposal (RFP No. 14-071/LJ) for a Palm Beach County Disparity Study

Dear Ms. Juliano:

Mason Tillman Associates, Ltd. (Mason Tillman) respectfully submits its proposal to prepare a Disparity Study (Study) for Palm Beach County, Florida (County). Mason Tillman's skills, qualifications, and experience preparing comprehensive and legally defensible disparity studies are unparalleled and presented in this proposal.

Mason Tillman is a minority woman-owned public policy research and social marketing firm with extensive experience in conducting disparity studies. Since 1978, Mason Tillman has conducted 127 unchallenged disparity studies for cities, counties, states, and special districts nationwide on time and within budget. Mason Tillman's studies represent one-third of all the disparity studies completed in the nation since 1990. None of Mason Tillman disparity studies, or business inclusion programs based on Mason Tillman



*Mason Tillman Associates, Ltd. August 2014
Palm Beach County Disparity Study*

disparity studies, have been legally challenged which is a unique distinction among our competitors. As a national industry leader, this breadth of experience makes the firm uniquely qualified to perform the requested Study.

This Study will be conducted by staff which includes the most experienced professionals in the disparity study business. Eleanor Mason Ramsey, Ph.D., Mason Tillman's president, supervises a team of statisticians with master's degrees in statistics and mathematics, in addition to social scientists with advanced degrees in sociology, political science, and law. Dr. Ramsey is a social scientist with a Ph.D. in anthropology from the University of California, Berkeley and possesses a firm grounding in statistical analysis. Our distinguished legal team is led by Edward W. Norton, LL.B. who has assisted federal, state, and city attorneys in formulating policies on MBE development. Mr. Norton supervises Mason Tillman's legal staff, including Allura Scott, Esq. and Tuyet Tan, Esq. Although none of the firm's studies has been subjected to a legal challenge, our legal team is experienced and available to provide legal consulting and litigation services to support programs predicated on the Study, if required.

Mason Tillman's team includes certified Palm Beach County Small Business Enterprises (SBEs) with experienced professionals who are experts in community outreach, regression analysis, anecdotal interviews, and surveying services. L.B. Limited & Associates, Inc. will use its longstanding relationships with the local business community to facilitate business community meetings and public hearings. S. Davis & Associates, P.A. will assist in the collection of data by collecting electronic and hard copy records



and surveying local business owners in order to identify businesses that are willing and able to contract with the County. Surale Phillips will conduct interviews with local business owners in order to gather anecdotal evidence of discrimination, if any. She will also assist in business community outreach. Caren Hackman, Inc. will design a website to inform business owners, stakeholders, and the public about the Palm Beach County Disparity Study. She will also create business community meeting invitations, flyers, media placements, and other materials to effectively communicate with local business owners, including SBEs. Finally, Q-Q Research Consultants, a small business in Florida, will conduct the regression analyses for this Study. The team's experience includes a number of studies performed in the state of Florida, which includes contracts with the School Board of Broward County, the County of Miami-Dade, and the City of Jacksonville, Florida.

As project manager, I have the authority to answer questions regarding this proposal and to legally bind the firm with respect to all proposal content. Mason Tillman has taken no exceptions to the requirements of this Request for Proposal and agrees to make any modifications or conduct any subsequent work necessary to achieve the Study's adequacy and appropriateness.

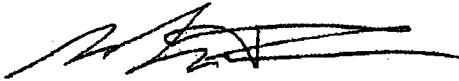


Accordingly, all correspondence regarding this proposal and any resulting agreements should be directed to:

Eleanor Mason Ramsey, Ph.D., President
Mason Tillman Associates, Ltd.
1999 Harrison Street, Suite 1440 • Oakland, CA 94612
Tel: (510) 835-9012 • Fax: (510) 835-2647
eramsey@mtaltd.com

Thank you in advance for your consideration.

Sincerely,



Eleanor Mason Ramsey, Ph.D.
President



3.1 EXPERIENCE AND QUALIFICATIONS

Background

Mason Tillman is a national expert in the performance of disparity studies. Mason Tillman has provided public policy research, affirmative action consulting, and social marketing professional services for over three decades to public agencies and corporations to improve their equity programs, including contracting with Minority, Woman-owned, and Disadvantaged Business Enterprises (M/W/DBE). Mason Tillman has performed 127 disparity studies since 1990 when its first study was commissioned by Maricopa County, Arizona. Not one of Mason Tillman's studies, or any M/WBE program based on a study, has been legally challenged. The disparity study methodology developed by Mason Tillman's legal and statistical team has insulated Mason Tillman's disparity studies from lawsuits.

Our distinguished legal team is led by Edward W. Norton, LL.B. Mr. Norton has provided legal guidance on each of Mason Tillman's 127 disparity studies. His influence has impacted federal, state, and local policies on minority business development for over 100 agencies. At Mason Tillman, Mr. Norton directs a team of two attorneys. The members of Mason Tillman's legal team also include Allura Scott, Esq. and Tuyet Tan, Esq. Mason Tillman's legal team will be available for litigation support and other related



services that may be requested in connection with the Study and the equity program based on the Study.

Mason Tillman's extensive experience conducting unchallenged studies for counties, cities, states, and other public agencies throughout the country makes the firm a national leader and uniquely qualified to perform the requested Palm Beach County Disparity (Study). Mason Tillman's project team for the Study includes professionals who are among the most experienced experts in the disparity study business. Eleanor Mason Ramsey, Ph.D., is the principal of the firm. She earned a Ph.D. in anthropology from the University of California, Berkeley and possesses firm grounding in statistical analysis. She has led each of Mason Tillman's 127 disparity studies and has been engaged twice as an expert witness to defend two public agencies against litigation resulting from competitors' disparity studies. Dr. Eleanor Mason Ramsey will supervise the project team that consists of professionals with advanced degrees in statistics, mathematics, business administration, sociology, political science, and law.

Table 1: Summary of Mason Tillman's Disparity Studies

CLIENT TYPE	STUDIES PERFORMED
Counties	21
Transportation Agencies	30
States	14
Cities	27
Utilities and Special Districts	23
Public School Districts	12
Total Disparity Studies	127



A complete list of the disparity studies Mason Tillman has engaged to perform as the prime contractor is listed in *Section 3.1.3* below. Four of these studies have been conducted in Florida counties. Florida counties where Mason Tillman has been engaged to conduct a disparity study are Hillsborough, Duval, Miami-Dade, and Palm Beach. Most of our clients have implemented a race and gender-based M/WBE program where the factual finding documented a statistically significant disparity.

In addition to disparity study experience, Mason Tillman has extensive experience in small and local program design, goal setting, contract monitoring, utilization reporting, and contract goal attainment review. These services have been performed for many of our disparity study clients at the conclusion of the disparity study. Those services are detailed below.

1. Small and Local Program Design

Small and local business programs must meet a lesser legal standard than that required for race-specific programs. While a disparity study is not required for small and local business development programs, the race-neutral findings a disparity study produces can be used to formulate such programs. Mason Tillman has designed and implemented Small Business Enterprise and Local Business Enterprise (SBE/LBE) programs for large and small agencies, and provided a complete array of services to support the programs. These services have ranged from goal setting to tracking and monitoring. Mason Tillman's expertise in designing, implementing, and monitoring these programs is described below.



2. Goal Setting

Since 1983, Mason Tillman has been involved in setting S/L/M/WBE contract goals. The most recent national experience was the formulation of the United States Environmental Protection Agency's Fair Share Regulations and national M/WBE goals. Goal setting services to support S/L/M/WBE procurement programs have been provided to special districts, counties, and transit agencies nationwide for over three decades.

3. Contract Monitoring

Monitoring compliance with contract goals is a core function of a rigorous equity program. Mason Tillman has performed the tracking of prime contracting and subcontracting awards and payments required to monitor compliance for large and small projects. Mason Tillman's contracting monitoring database application tracks the prime and subcontract awards, the bidders, contract payments, and vendor certification.

4. Utilization Reporting

Preparation of independent reviews of S/L/M/WBE utilization is a core service provided by Mason Tillman. Utilization reviews have been performed and statistical reports written presenting the analytical findings for projects involving as few as one prime contract to as many as 110,000 prime contract records. For most of our clients where large utilization data sets were analyzed, the reviews involved the examination of both prime contractors and subcontractors and the preparation of utilization reports.



These reports are generated from a proprietary application Mason Tillman has developed to handle large and small data sets. The contract award and payment data is either imported electronically into the database or the data is entered from hardcopy files. A series of queries are run to clean the data and detect any discrepancies, duplicate records, or other anomalies. Customized tables, charts, and graphs can be generated to report the data consistent with the client's requirements. The dataset also undergoes numerous quality control queries to identify unusual scenarios, such as prime awards exceeding prime payments and subcontractor payments exceeding prime contractor payments. Regular reports are an integral component of a rigorous compliance and monitoring system.

5. Contract Goal Attainment Review

The S/L/M/WBE programs which Mason Tillman has managed include contract specific goal setting, goal attainment review, and good faith effort evaluation. Presentation of the S/L/M/WBE services at the pre-bid and pre-proposal meetings has been a core service of most of the assignments requiring goal attainment review.

A systematic process which quantifies the goal attainment on each contract is Mason Tillman's approach to delivering these services. A computerized process is used to quantify the goal setting and the goal attainment review. Using a proprietary application, each bidder's goal attainment is calculated. A formal memorandum is prepared documenting the goal attainment on each contract.



3.1.1 References

Mason Tillman's three references for disparity studies conducted within the last 10 years are listed Table 2.

Table 2: Mason Tillman References

Agency Name	Agency Contact	Project Information
Miami- Dade County, Florida Local Government Agency	Ms. Veronica Clark , Assistant to Director, Internal Services Department Small Business Development Miami-Dade County 111 N.W. 1 Street 19th Floor Miami, FL 33128-1906 Tel: (305) 375-4770 Fax: (305) 375-3160 vmg@miamidade.gov	<ul style="list-style-type: none"> ➤ Dates of Service: October 2012 – July 2014 ➤ Dollar Amount of Contract: \$450,000 ➤ Number of Full Time Employees: 10
Scope of Work	A Comprehensive Disparity Study of the procurement practices of the County to assess, quantify, and evaluate the prevalence, magnitude, and extent of marketplace discrimination.	
Agency Name	Agency Contact	Project Information
Duval County Public Schools, Florida Local Government Agency	Ms. Beth Tramel , Supervisor Duval County Public School Minority Business Affairs Office 4880 Bulls Bay Highway Jacksonville, FL 32219 Tel: (904) 858-4860 Fax: (904) 858-1492 tramelb@duvalschools.org	<ul style="list-style-type: none"> ➤ Dates of Service: August 2011– June 2013 ➤ Dollar Amount of Contract: \$150,000 ➤ Number of Full Time Employees: 13
Scope of Work	Determined if there was disparity between the number of disadvantaged, minority-owned, and women-owned businesses that are ready, willing, and able to provide construction services, professional services, and other contractual goods and services, and the number of these same business types that are actually participating in these same types of contracts.	



Agency Name	Agency Contact	Project Information
City of Tampa, Florida Local Government Agency	Mr. Gregory Spearman, Purchasing Director City of Tampa 306 E. Jackson Street Tampa, FL 33602 Tel: (813) 274-8855 Fax: (813) 274-8355 gregory.spearman@tampagov.net	➤ Dates of Service: January 2004-April 2006 ➤ Dollar Amount of Contract: \$164,157 ➤ Number of Full Time Employees: 8
Scope of Work	Study examined information from the past three years to determine whether the Agency had either an active or passive participant in discrimination in contracting for goods and services, contracting construction services, or contracting for professional or management services.	



3.1.2 Executive Summaries

The executive summaries of three Mason Tillman disparity studies conducted within the last 10 years are contained in **Appendix 5**.

Executive summaries of disparity studies for the following government agencies are provided:

1. *California High-Speed Rail Authority*

- This disparity study had findings of disparity in government contracting that are attributable to corresponding findings of discrimination.

2. *Bexar County, Texas*

- This disparity study had findings of disparity in government contracting with no corresponding findings of discrimination.

3. *City of Fort Wayne, Indiana*

- This disparity study had no statistically significant findings of disparity or discrimination in government contracting.



3.1.3 List of Mason Tillman Studies

Table 3 is a list of the Mason Tillman studies, including the agencies that have chosen to enact a program based on the study findings.

Table 3: Status of Disparity Studies Conducted by Jurisdiction

CLIENT	YEAR AWARDED	DISPARITY FINDING	PROGRAM ENACTED	PROGRAM CHALLENGED
COUNTIES				
Broward County School District, Florida	2014	In Progress	--	--
Miami-Dade County, Florida	2012	In Progress	--	--
Los Angeles County Metropolitan Transportation, California	2012	Yes	Yes	No
Duval County Public Schools, Florida	2011	Yes	Yes	No
Bexar County, Texas	2010	Yes	Yes	No
Clayton County, Georgia	2010	Yes	Yes	No
Wayne County Airport Authority, Michigan	2006	Yes	Yes	No
Wyandotte County, Kansas	2005	Yes	Yes	No
School District of Hillsborough County, Florida	2005	Yes	Yes	No
Baltimore County, Maryland	2004	Yes	Yes	No
Hillsborough County Aviation Authority, Florida	2004	Yes	Yes	No
Alameda County, California	2002	Yes	Yes	No
Cuyahoga County, Ohio	2001	Yes	Yes	No
Montgomery County, Maryland	2001	Yes	Yes	No
Durham County, North Carolina	2000	Yes	Yes	No
Knox County, Tennessee	1999	Yes	Yes	No
King County and the Department of Metropolitan Services, Washington	1996	Yes	Yes	No
Metropolitan Government of Nashville and Davidson County, Tennessee	1996	Yes	Yes	No
Multnomah County, Oregon	1994	Yes	Yes	No
Washington County, Oregon	1994	Yes	No	N/A
Maricopa County, Arizona	1990	Yes	Yes	No

CLIENT	YEAR AWARDED	DISPARITY FINDING	PROGRAM ENACTED	PROGRAM CHALLENGED
TRANSPORTATION AGENCIES				
California High-Speed Rail Authority	2013	In Progress	--	--
Dallas Area Rapid Transit, Texas Update	2013	In Progress	--	--
Massachusetts Department of Transportation, Massachusetts	2012	In Progress	--	--
Illinois Department of Transportation, Illinois	2012	Yes	Yes	No
Dallas Area Rapid Transit, Texas	2011	Yes	Yes	No
Jacksonville Port Authority, Florida	2011	Yes	Yes	No
Jacksonville Transportation Authority, Florida	2011	Yes	Yes	No
Illinois Department of Transportation, Illinois	2009	Yes	Yes	No
Illinois State Tollway, Illinois	2009	Yes	Yes	No
Dallas Fort Worth International Airport, Texas	2008	Yes	Yes	No
Fort Worth Transportation Authority, Texas	2008	Yes	Yes	No
North Texas Tollway Authority, Texas	2008	Yes	Yes	No
San Francisco Bay Area Rapid Transit, California	2007	Yes	Yes	No
Tennessee Department of Transportation	2005	Yes	Yes	No
State of Minnesota Department of Transportation	1997	Yes	Yes	No
Kansas City Area Transportation Authority, Missouri	2005	Yes	Yes	No
New Jersey Department of Transportation	2004	Yes	Yes	No
Dallas Area Rapid Transit Authority Update Study, Texas	2002	Yes	Yes	No
Greater Cleveland Regional Transit Authority, Ohio	2001	Yes	Yes	No
Cleveland Cuyahoga Port Authority, Ohio	2001	Yes	No	N/A
Dallas Area Rapid Transit Authority, Texas	1997	Yes	Yes	No
Knoxville Transit Agency, Tennessee	1997	Yes	Yes	No
Metropolitan Transit Agency, Nashville	1997	Yes	Yes	No
Metropolitan Airports Commission, Minnesota	1997	Yes	Yes	No
Minnesota Airport, Minnesota	1997	Yes	Yes	No
Nashville Airport Authority, Tennessee	1997	Yes	Yes	No
Port of Oakland, California	1997	Yes	Yes	No

CLIENT	YEAR AWARDED	DISPARITY FINDING	PROGRAM ENACTED	PROGRAM CHALLENGED
TRANSPORTATION AGENCIES				
Port of Seattle, Washington	1996	Yes	Yes	No
Tri-County Metropolitan Transportation District of Oregon, Portland, Oregon	1994	Yes	Yes	No
Alameda County Transportation Authority, California	1993	Yes	Yes	No
STATES				
State of Illinois	2009	Yes	No	N/A
Commonwealth of Pennsylvania	2007	Yes	Yes	No
State of Texas, Update	2005	Yes	No	N/A
State of Tennessee	2005	Yes	No	N/A
State of New Jersey	2003	Yes	Yes	No
State of Ohio (Anecdotal Study)	2001	Disparity Not Analyzed	N/A	N/A
State of Indiana	1998	Yes	Yes	No
State of Indiana Lottery	1998	Yes	Yes	No
State of Indiana Riverboat Casinos	1998	Yes	Yes	No
State of Minnesota	1997	Yes	Yes	No
State of Washington	1997	Yes	Yes	No
State of Missouri	1994	Yes	Yes	No
State of Oregon Department of Administrative Services	1994	No	No	N/A
State System of Higher Education, Portland, Oregon	1994	No	No	N/A
CITIES				
City of Cincinnati, Ohio	2014	In Progress	--	--
City of Fort Wayne, Indiana	2012	In Progress	--	--
City of Jacksonville, Florida	2011	Yes	Yes	No
City of Arlington, Texas	2008	Yes	Yes	No
City of Davenport, Iowa	2008	Yes	Yes	No
City of Fort Worth, Texas	2008	Yes	Yes	No
City of Houston, Texas	2006	Yes	Yes	No

CLIENT	YEAR AWARDED	DISPARITY FINDING	PROGRAM ENACTED	PROGRAM CHALLENGED
CITIES				
City of Oakland Update, California	2005	Yes	No	N/A
City of Kansas City, Missouri	2005	Yes	Yes	No
City of Tampa, Florida	2004	Yes	Yes	No
City of Bridgeport, Connecticut	2004	Yes	Yes	No
City of New York, New York	2003	Yes	Yes	No
City of Boston, Massachusetts	2002	Yes	Yes	No
City of Cleveland, Ohio	2001	Yes	Yes	No
City of Dallas, Texas	2001	Yes	Yes	No
City of Durham, North Carolina	2000	Yes	Yes	No
City of Pittsburgh, Pennsylvania	1999	Yes	Yes	No
City of New Haven, Connecticut	1998	Yes	Yes	No
City of Knoxville, Tennessee	1997	Yes	Yes	No
San Francisco City and County Human Rights Commission, California	1997	Yes	Yes	No
City of Seattle, Washington	1996	Yes	Yes	No
City of Indianapolis, Indiana	1995	Yes	Yes	No
City of Gresham, Oregon	1994	Yes	No	N/A
City of Portland, Oregon	1994	No	Yes	N/A
City of Richmond, California	1994	Yes	Yes	No
City of San Jose, California (additional industries)	1994	Yes	Yes	No
City of San Jose, California	1992	Yes	Yes	No
UTILITY AND SPECIAL DISTRICTS				
Metropolitan St. Louis Sewer District, Missouri	2012	Yes	Yes	No
Jacksonville Electric Authority, Florida	2011	Yes	Yes	No
Washington Suburban Sanitary Commission, Maryland	2010	Yes	Yes	No
Pittsburgh Housing Authority, Pennsylvania	1999	Yes	Yes	No
Pittsburgh Urban Development Agency, Pennsylvania	1999	Yes	Yes	No

CLIENT	YEAR AWARDED	DISPARITY FINDING	PROGRAM ENACTED	PROGRAM CHALLENGED
UTILITY AND SPECIAL DISTRICTS				
Knoxville Community Development Agency, Tennessee	1998	Yes	Yes	No
Sacramento Municipal Utility District, California (Update Study)	1998	Yes	Yes	No
Knoxville Community Development Agency, Tennessee	1998	Yes	No	N/A
New Haven Housing Authority, Connecticut	1998	Yes	Yes	No
Metropolitan Development and Housing Agency, Nashville, Tennessee	1997	Yes	Yes	No
East Bay Municipal Utility District, California	1997	Yes	Yes	No
Metropolitan Mosquito Control District, Minnesota	1997	Yes	Yes	No
Metropolitan Sports Facilities Commission, Minnesota	1997	Yes	Yes	No
Metropolitan Council, Minnesota	1997	Yes	Yes	No
Nashville Electric Service, Tennessee	1997	Yes	Yes	No
Redevelopment Agency, City of Oakland, California	1996	Yes	Yes	No
City College of San Francisco, California	1996	Yes	Yes	No
Seattle Public Facilities District, Washington	1996	Yes	Yes	No
Metropolitan Service District, Portland, Oregon	1994	Yes	Yes	No
Portland Redevelopment Agency, Oregon	1994	Yes	Yes	No
Tri-Met, Portland, Oregon	1994	Yes	Yes	No
Sacramento Municipal Utility District, California	1993	Yes	Yes	No
San Jose Redevelopment Agency, California	1992	Yes	Yes	No
PUBLIC SCHOOL DISTRICTS				
St. Louis Community College District, Missouri	2014	In Progress		
Fort Worth Independent School District, Texas	2008	Yes	No	N/A
Dallas County Community College District, Texas	2005	Yes	Yes	No
Kansas City School District, Missouri	2005	Yes	Yes	No
Dallas Independent School District, Texas	2002	Yes	Yes	No
Cuyahoga Community College District, Ohio	2001	Yes	Yes	No
Cleveland Municipal School District, Ohio	2001	Yes	No	N/A

CLIENT	YEAR AWARDED	DISPARITY FINDING	PROGRAM ENACTED	PROGRAM CHALLENGED
<i>Public School Districts</i>				
Metropolitan Board of Education, Nashville Tennessee	1997	Yes	Yes	No
City College of San Francisco, California	1996	Yes	Yes	No
Seattle School District No. 1, Washington	1996	Yes	Yes	No
Oakland Unified School District, California	1993	Yes	Yes	No
University of California, California	1990	Not Analyzed	N/A	N/A

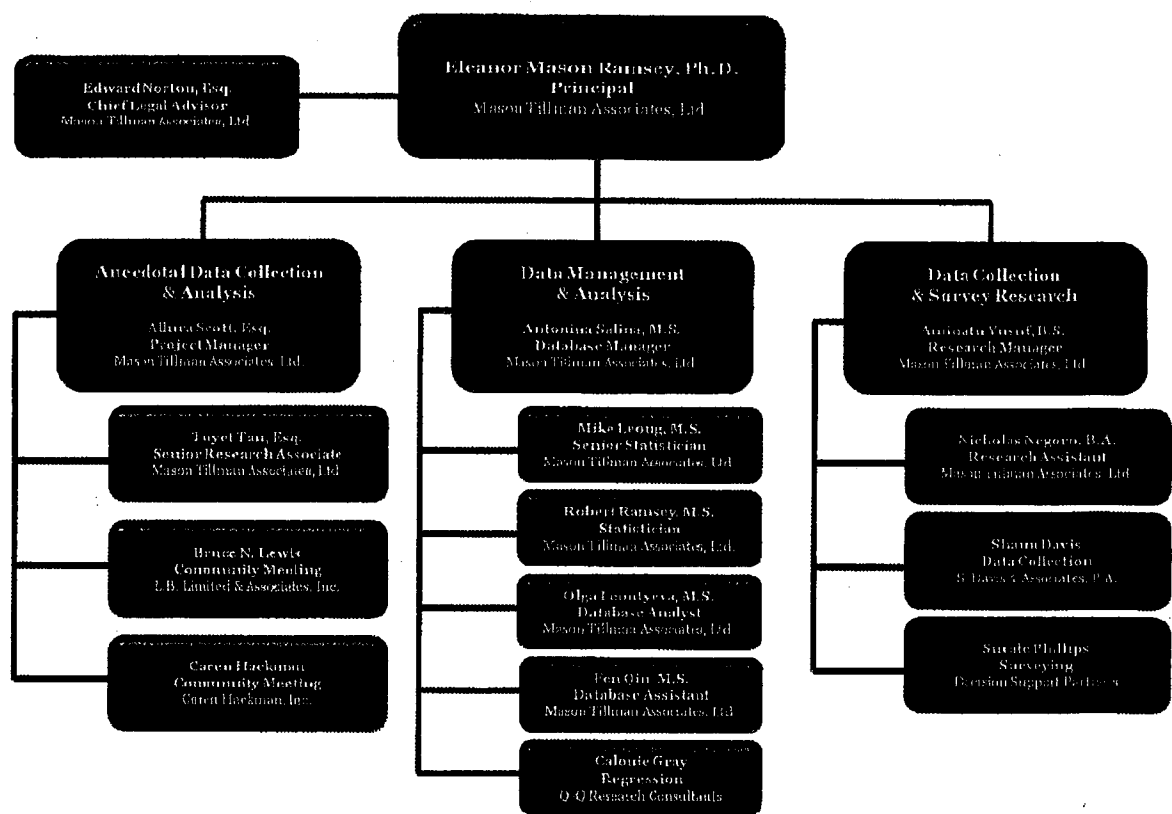
3.1.4 Mason Tillman's Team

A. Mason Tillman Staff

Mason Tillman understands our clients' need to develop legally defensible M/WBE programs. Therefore, our disparity studies are prepared under the supervision and guidance of legal professionals conducted by seasoned social scientists. Our distinguished legal team is involved in every aspect of a disparity study, from the implementation of the statistical and anecdotal methodology through the submission of the final report. The organization chart for this project is presented in Chart 01 below.



Chart 01: Team Organizational Structure



PRINCIPAL: ELEANOR MASON RAMSEY, Ph.D.

Education: Dr. Ramsey holds a Doctorate of Philosophy in anthropology from the University of California, Berkeley. She earned a baccalaureate degree from Hunter College, New York, New York.

Experience: As president of Mason Tillman, Dr. Ramsey directs the staff's performance of its disparity studies. Dr. Ramsey is a leading expert in program design and statistical analysis performed for disparity studies in accordance with legal rulings and policies. Dr.



Ramsey has also served as an expert witness for two agencies in their effort to defend a challenged M/W/DBE program predicated on a competitor's disparity study and has been a member of the litigation team for two others. Currently, expert witness services are being provided in *Midwest Fence Corporation v. USDOT*, Case No. 10-CV-5627, filed in the Seventh Circuit. Dr. Ramsey was also an expert witness in *Associated Builders and Contractors v. City of Memphis*, 138 F. Supp. 2d 1015 (W.D. Tenn. 2000). Under Dr. Ramsey's direction and leadership, Mason Tillman has conducted, as prime contractor, 127 unchallenged disparity studies on time and within budget. Dr. Ramsey directed the staff instrumental in developing *Croson* study methodologies, including the creation of statistical models to measure disparity. Having established the research parameters, she ensures the legal and scientific integrity of Mason Tillman's disparity studies. For all 127 completed disparity studies, a large team of staff and consultants had to be managed. Dr. Ramsey is also accountable for ensuring that sufficient resources are allocated to projects.

Dr. Ramsey has been responsible for client coordination, project scheduling, quality assurance, and cost control. She facilitates client and business community meetings, final report preparation, presentations at manager kick-off meetings, legislative briefings and public hearings. The success of the firm's completion of 127 unchallenged disparity studies is testament to her management skills and experience.

Additionally, Dr. Ramsey has more than 30 years of experience in core equity services. Dr. Ramsey has evaluated and designed contracting and workforce programs for quasi-government entities, cities, counties, school districts, and states. Dr. Ramsey has



conducted the research necessary to design S/M/W/DBE programs, as well as local and veteran programs, to meet judicial standards and local and federal regulations.

She has investigated and mediated disputes and challenges to S/M/W/DBE program requirements. This experience includes serving as an expert witness for entities attempting to defend the work of Mason Tillman's competitors. The breadth of Dr. Ramsey's experience ranges from fielding complaints from the business community and negotiating contentious public relations issues to building consensus and community support for new S/M/W/DBE policy. She has worked with large and small public agencies in the development and implementation of their equity programs. Dr. Ramsey has delivered training programs, seminars, and presentations on program requirements to a variety of audiences, both in the public and private sector. Her knowledge of equity programs allows her to formulate effective public outreach strategies, garner community attendance at public meetings and hearings, and develop community awareness, consensus, and diverse business participation in her clients' contracting and workforce programs.

Duties: As Principal, Dr. Ramsey will draw upon her experience managing 127 disparity studies and involvement with equity issues and policy development to direct the research and formulate program recommendations for the County specific to the findings of its completed disparity study. Dr. Ramsey will draw from her extensive experience in program design and implementation, while tailoring the recommendations to the County's specific findings. The proposed recommendations will comport with all legal



requirements. Dr. Ramsey's experience in facilitating program implementation and working with the business community will serve as a foundation for the development of consensus for the County-approved study recommendations. Dr. Ramsey will also provide guidance for the successful implementation of a recommended program, if the County so chooses.

On this project, Dr. Ramsey will lead Mason Tillman's proposed team of professional staff and consultants to complete a legally sound disparity study report within the specified time. Dr. Ramsey will oversee and review the preparation of the utilization and availability data for analysis, drafting of chapters, and preparation of the final report. Dr. Ramsey will ensure that all reports comply with the state and federal legal requirements. She will also present the study overview at the kick-off meetings and deliver final presentations for the County, Small Business Advisory Committee, and community constituents as well as at Public Hearings and individual hearings with the County.

PROJECT MANAGER: ALLURA SCOTT, ESQ.

Education: Ms. Scott received her law degree from Howard University and her bachelor's degree from California State University, Dominguez Hills.

Experience: Ms. Scott has managed 79 Mason Tillman disparity studies over the past 14 years. Her legal training has provided her with the foundation for sound policy analysis and formulation.



She has developed the management protocols for the coordination, production, and tracking of work products. Ms. Scott has implemented procedures for securing timely generation of contract records by clients. Her systems support real-time accountability for the research team and project consultants' work production. Ms. Scott has established protocols for identifying and soliciting anecdotal interviewees. Her carefully written anecdotal chapters have provided to anecdotal evidence the case law requires to support the statistical findings. Ms. Scott has also designed applications to search the transcripts for preliminary analysis and coding.

Her extensive experience in qualitative research and broad knowledge of case law informs her management of project staff and subconsultants completing the assigned tasks. Her legal training also ensures that the results derived are legally sound, applicable to the study findings, and applied to the development of recommendations.

Ms. Scott has also been responsible for project scheduling, managing outreach, data collection, and drafting of the final report. Her responsibilities for project coordination have been grounded with knowledge, skills, and ability to understand and perform the entire research process undertaken at Mason Tillman for the completion of disparity studies. As a lawyer, she has provided consultation and assistance for post-study implementation, drafted M/WBE policy, and secured legislative approval on study results. Her experience and involvement with a wide variety of disparity study components provides the framework to be an effective and successful Project Manager.



Duties: As Project Manager, Ms. Scott will supervise the research team in the collection of the County's contract records and procurement policies. She will supervise all aspects of the data collection and data validation for the database team. Anecdotal interviewee identification, transcript analysis, and report writing for the anecdotal analysis will be under her supervision. Ms. Scott will also supervise quality control for all chapters.

Ms. Scott will use monthly progress reports queried from the staff's daily status reports and team meeting minutes to supervise the project team and to maintain adherence to the production schedule. *Asana* is a web-based application that the team will use to facilitate communication and coordination of assignments. Ms. Scott is extremely effective in communicating with project staff, clients, and business constituents. Therefore, she will serve as the day-to-day contact point in order to facilitate communication between Mason Tillman and the County. Ms. Scott will ensure that all information is handled professionally and accurately, and the information garnered is used efficiently and effectively to inform the Study.

CHIEF LEGAL ADVISOR: EDWARD NORTON, LL.B.

Education/Qualifications: Mr. Norton earned a Bachelor of Laws degree from Columbia University and a Bachelor of Arts degree from Yale University. Mr. Norton is a member of the State Bar of New York and the District of Columbia Bar. Prior to joining Mason Tillman, Mr. Norton acted as general counsel to the U.S. Small Business Administration, deputy general counsel at the U.S. Department of Housing and Urban



Development, law professor, associate in a corporate law firm, and general counsel of the New York City Housing Authority.

Experience: Mr. Norton has advised Mason Tillman on the legal aspects of all 127 disparity studies since 1990. He has also served as an expert witness for several governments attempting to defend a challenged disparity study prepared by a competitor. Mr. Norton prepared the case law analysis which has shaped the research methodology Mason Tillman has used since 1990.

Duties: Legal updates will be prepared by Mr. Norton should a federal court rule on a disparity study or SBE program during the study period. He will oversee the recommendations prepared by the research team and address clients' concerns about the legal sufficiency of the factual predicate upon which race-based recommendations are based. Mr. Norton will be present for all presentations to clients' legislators, executives, and constituents.

SENIOR RESEARCH ASSOCIATE: TUYET LINH TAN, ESQ.

Education: Ms. Tan earned a Juris Doctor degree from University of California, Hastings College of the Law and a Bachelor of Science degree in economics and a Bachelor of Arts degree in German, both *summa cum laude*, from the University of Houston.



Experience: Ms. Tan has worked on 10 disparity studies in a research capacity. Along with her legal and writing skills, she brings fluency in German, French, and conversational Teochew. Her experience includes researching procurement policies and procedures, relevant case law governing equity programs, and regulatory frameworks. She also codes interview transcripts using standards developed by Ms. Scott. She also conducts research in procurement policies and regulations.

Duties: Ms. Tan will assist the transcription process for all the County's anecdotal accounts. She will also conduct research in the County's procurement and contracting regulations and programs.

SENIOR STATISTICIAN: MIKE LEONG, M.S.

Education: Mr. Leong earned a Master's degree in statistics and a Bachelor of Science degree from the University of California, Berkeley.

Experience: Mr. Leong developed the statistical model which has been used to perform the statistical analysis on all 127 of Mason Tillman's disparity studies conducted over the last 24 years. He also developed the multiple regression models the data base team uses to test the statistical significance of private sector data. He has also designed several large-scale surveys conducted to address questions of capacity and serve as the requirement for a broad-based input into the anecdotal process. Mike Leong also works in the University of California, Berkeley's Mathematics and Statistics Program.



Duties: Mr. Leong will advise Mason Tillman staff and County personnel on statistical matters which arise from unique conditions of the utilization and availability data. He will also be responsible for producing the County's research models and sampling plans as required.

STATISTICIAN: ROBERT RAMSEY, M.S.

Education: Mr. Ramsey earned a Master's degree in applied statistics from California State University, Hayward and a Bachelor of Science in theoretical mathematics from the University of California, Berkeley.

Experience: Mr. Ramsey has served as Mason Tillman's mathematician and systems designer on 32 disparity studies. He specializes in performing statistical analysis of data, as well as the design and maintenance of project databases. He is proficient in statistical software packages, such as R, SAS, STATA, and SPSS. His skills and ability using database management tools, like SQL and Microsoft Access, are extensive. Mr. Ramsey has written a web-scraping application in R to extract large online data files to build availability datasets and a "Monte Carlo" simulation function in R that has automated the statistical significance testing of disparity study results.

Duties: Mr. Ramsey will use his statistical training to address issues which arise in the performance of the County's statistical analysis. He will also create *ad hoc* utilities, as needed, to clean and scrape the County's client data. He will write utilities and functions



in Python and R to address the data manipulation challenges posed by unique aspects of the County's data. He will use these tools to web-scrape and normalize large sets of the County's data in order to conform the records to Mason Tillman's database structure.

RESEARCH MANAGER: AMINATU YUSUF, B.S.

Education: Ms. Yusuf earned a Bachelor of Arts degree from the University of Utah and a graduate certificate from Westminster College, Utah.

Experience: Ms. Yusuf has performed research, data collection, and surveys on 20 Mason Tillman disparity studies. Her experience includes conducting primary and secondary data collection and analysis using various qualitative and quantitative data analysis software programs. As an expert in determining M/WBE goals, Ms. Yusuf has produced three goal setting reports approved by the United States Department of Transportation in 2013. Ms. Yusuf is also expert in the preparation of workforce goals for local governments.

Duties: Ms. Yusuf will analyze the County's data and prepare workforce goals for the County's market areas, if applicable.



DATABASE MANAGER: ANTONINA SALINA, M.S.

Education: Ms. Salina earned a Master's degree in computer science and a Bachelor's degree from Saint Petersburg State Institute for Information Technologies, Precision Mechanics and Optics in Russia.

Experience: Ms. Salina has 25 years of applied experience manipulating massive data sets. She has been the database manager on 20 Mason Tillman disparity studies. She is responsible for designing surveys, developing database structures to capture information, and creating reports to present the information. Her related duties include developing, testing and supporting business applications to clean and analyze the contract records and availability sources, including Microsoft Access, Excel, SQL, and Visual Basic. Ms. Salina's knowledge of various financial systems and business practices of governments is also extensive. Her command of the procurement processes which govern contracting within small and large governments is impressive and grounded in years of experience examining the data that the business practices produce.

Duties: Using the proprietary statistical application designed by Mr. Leong, Ms. Salina applies the statistical test of significance to the utilization data she mines and cleans. She will manipulate the County's large-scale datasets, conduct data extraction and coding, perform data cleaning, and generate the County's technical reports.



DATABASE ANALYST: OLGA LEONTYEVA, M.S.

Education: Ms. Leontyeva earned a master's degree in mathematics from Lomonosov Moscow State University in Moscow, Russia.

Experience: Ms. Leontyeva has been Database Analyst for eight disparity studies. In those disparity studies, she was also responsible for utilization, market area, availability, disparity analysis, and extensive database management. As Database Analyst, her related duties include the management of database cleaning and sampling. Ms. Leontyeva also designs data management applications and subcontractor data extraction. She conducts regression analyses in R and uses applications in Microsoft Access, Microsoft Excel, SQL, and Python.

Duties: Ms. Leontyeva will be involved in the utilization, market area, availability, and disparity analyses for the County.

DATABASE ASSISTANT: FEN QIN, M.S.

Education: Mr. Qin earned a master's degree in applied statistics and a Bachelor of Science in statistics from California State University, East Bay in Hayward.

Experience: Mr. Qin has been the Data Assistant on eight disparity studies. His primary duties include identification, collection, cleaning, and analysis of prime contractor and



subcontract records. His experience in using Microsoft Access, Microsoft Excel, SQL, and R allow him to write queries and manipulate large datasets. Mr. Qin's experience includes large-scale data collection and cleaning.

Duties: Mr. Qin will identify, collect, clean, and analyze prime contractor and subcontractor records for the County.

RESEARCH ASSISTANT: NICHOLAS NEGORO, B.A.

Education: Mr. Negoro earned a Bachelor of Arts degree from California State University, Chico.

Experience: Mr. Negoro has been the Research Assistant on 20 disparity studies. He supervises the multiple business surveys required to produce a legally sound study, including surveys which are undertaken to determine ethnicity/gender, industry, and willingness to contract with the client.

Duties: Mr. Negoro will survey utilized prime contractors and subcontractors in order to compile comprehensive and verified subcontract records for the County. He will also utilize systems developed by the database manager to track the research process and maintain the integrity of the data collected.



B. Subconsultants

L.B. LIMITED & ASSOCIATES, INC., established in October 1990 is a MBE/WBE/SBE/DBE certified public relations agency. With over 23 years of experience, the firm has expertise in community relations, public involvement, community outreach media relations, government relations, small/minority construction management, and real estate development consulting services. L.B. Limited & Associates provides services such as: the development and implementation of a public involvement/education campaign for the FDOT/FEC Corridor Study, development and implementation of a community involvement campaign for the Center for Disease Control Health Survey Project, the development and implementation of a public education campaign for the Palm Beach International Airport Runway Extension/Improvement Project & EIS Study, and public involvement participation in redevelopment initiatives for the Cities of Boynton Beach & Riviera Beach, Indian River County Road 510, the Port of Palm Beach projects, and Marriott Vacation Club, Inc.

In special cases, the firm has combined its community relations/outreach and small business management consulting skills in projects that require such a mix of disciplines. The best examples are the Florida Scripps Research Institute and the Florida Max Planck Research Institute, Construction Projects where we serve as small business managers responsible for compliance and recruitment of qualified County certified small businesses to participate in the construction phase on behalf of Fluor, Jones Lang LaSalle, and Weitz/DPR. In addition, the firm served as the public information consultants on behalf of Palm Beach County government during project ramp-up. Additional examples are: the



Palm Beach County Convention Center where the firm served as the community relations consultant for URS Corporation, the construction project program manager, and assisted with the small business recruitment activities on behalf of the County; and currently, the Palm Beach County Convention Center Hotel Construction Project where the firm serve as small business managers and government relations liaison responsible for compliance and recruitment of qualified County certified small businesses to participate in the construction phase on behalf of Related Group of New York.

The firm has performed community relations, public involvement procedures, community outreach, media relations, government relations, small/minority construction management and real estate development consulting services for companies and government agencies, including governmental agencies, non-profit organizations, institutes, and businesses associations, such as The Scripps Research Institute, Max Planck Society, The Business Development Board of PBC, United Way of Palm Beach County, Area Agency on Aging, Children's Services Council of PBC, Armory Art Center, Red Cross of PBC, the Legal Aid Society of PBC (to government Agencies) - Center for Disease Control, Palm Beach County, The City of West Palm Beach, City of Riviera Beach, School District of Palm Beach County (SDPBC), South Florida Water Management District (SFWMD), Palm Beach County Division of Airports (PBIA), and Florida Department of Transportation; private companies, such as Related Group of NYC, Jones Lang LaSalle, Florida Public Utilities Company, Republic Properties of Washington D.C., Weitz Company, DPR Construction Inc., RDJ, TOD Development Advisors LLC aka – Transit Village, LLC, Parsons, Marriott Resorts International and 3D/International; and

engineering firms, such as URS Corporation, Stanley Consultants, Creech, Jacobs, Gannett Fleming, and East Bay Group; master planning and architectural firms, such as Kilday & Associates, Urban Design Studio, TCW, Schwab Twitty Hanser, Pinder-Troutman, and REG Architects.

L. B. Limited & Associates, Inc. is a member and registered certified MBE/WBE/SBE/DBE firm with the Palm Beach County, Office of Small Business Assistance, with extensive experience in S/M/WBE, community outreach, project compliance tracking/monitoring, small business construction management, and facilitation of business community meetings.

Mr. Bruce N. Lewis, President and CEO, received his BSEE degree in Electrical/Chemical Engineering from the University of Minnesota with a Minor in Business Administration. Bruce Lewis has 16 years' experience in R&D Chemical Design Engineering (semiconductors) for Fortune 500 corporations prior to starting LB Limited & Associates, Inc. Public Relations. Mr. Lewis has 23 years' experience as a strategic public relations practitioner. Mr. Lewis has won many awards for:

- Legacy Magazine of South Florida – Top 25 Most Powerful and Influential Black Professional in Business & Industry (2013)
- Palm Beach Partners Matchmaker Conference – Small Business Advocate of the Year (2008)
- United Way Volunteer of the Year – as the 2005/2006 Campaign Chair raising \$15.5 million (a record that stands currently)
- Boys & Girls Club of PBC – Service to Youth Award (1998)



- Delta Sigma Theta Sorority, Inc., West Palm Beach Chapter – Men of Excellence, Business Executive Award (2012)

S. DAVIS & ASSOCIATES, P.A. (SD&A), founded in 1991, has become one of the largest minority-owned CPA firms in the southeastern United States. SD&A currently has small/minority business certifications for Palm Beach County, Broward County, and the State of Florida. In addition to the main office in Hollywood, Florida, SD&A has offices in Miami Gardens, West Palm Beach, and Tallahassee, Florida. What started out as a one-man accounting firm has grown to over 20 employees and has expanded to become a full-service CPA firm adding tax, information technology services, and business consulting advice for all types of entities and industries to the firm's audit and accounting practice. SD&A's primary industry concentrations are not-for-profit and governmental organizations.

SD&A maintains continuing education (CPE) credits as required by Florida Statutes. The staff members attend seminars sponsored by the American and Florida Institutes of Certified Public Accountants and qualifying courses offered by Big Four accounting firms and local colleges, universities, and professional organizations. SD&A ensures that the partners, as well as staff, receive governmental CPE as required by Governmental Auditing Standards. All of the professional staff members are degreed accountants and business consultants. The firm's partners and several staff members have worked in international accounting firms, mid to large governments, and/or major fortune 500 companies.



SD&A bring a wealth of knowledge and new insight to its clients. A key aspect of its services is the significant level of partner, manager, and senior involvement in all phases of each engagement.

Shaun M. Davis is founder and managing partner of S. Davis & Associates, P.A. Backed by nearly two decades of experience in public accounting, auditing, tax, and consulting services, Mr. Davis oversees all aspects of the firm's business. He has worked with clients in a range of areas, including governmental, non-profit, real estate, public utilities, employee benefit plans, and banking.

Prior to launching his own firm in 1991, Mr. Davis was an audit manager at Ernst & Young, one of the world's largest accounting firms. He started his accounting career with Deloitte and Touche and holds a degree in accounting from Florida State University.

Mr. Davis has grown his once one-man accounting firm to more than 20 employees in three Florida office locations. The successful growth of the firm helped Mr. Davis expand the range of services offered to include auditing, business consulting, and other special services. S. Davis & Associates, P.A. is now proudly recognized as one of the top three minority CPA firms in the southeastern United States, and one of the top ten minority businesses in the state of Florida. Mr. Davis, in turn, has become nationally known as a CPA.



Mr. Davis has a rich history of involvement with educational, social, and other community-based organizations. He has provided advice and counseling to numerous African American students interested in entering the accounting field and has participated in and/or held seminars and training sessions for minorities seeking advice on starting new businesses. His success as a business owner and community leader has provided him with an invaluable opportunity to give back and serve others.

Mr. Davis has received several awards, such as the Price Waterhouse Up-and-Corner award, Hollywood Outstanding Community Leader award, South Florida's 50 Most Powerful Black Professionals, and recently, the South Florida Business Journal 2009 CEO Diamond Award. Mr. Davis is also a member of the Nova Southeastern University's Business Hall of Fame.

DECISION SUPPORT PARTNERS, INC. has provided research and consulting services to the nonprofit sector with a focus on arts and culture for over 20 years. Its research supports projects in building nonprofit organizational capacity, audience development and marketing strategy, community cultural planning, and program evaluation.

Its research has been the foundation for projects supported by the National Endowment for the Arts, Wallace Foundation, James Irvine Foundation, Paul G. Allen Family Foundation, and several community foundations. Prior to founding Decision Support



Partners, Inc. in 2002, Surale was Vice President for Research and Administration with ArtsMarket for 10 years.

Surale Phillips, the principle, has provided research and consulting services to the nonprofit sector with a focus on arts and culture for 20 years. Her research supports projects in building nonprofit organizational capacity, audience development and marketing, community cultural planning, and program evaluation. Currently, she is serving on the Advisory Committee for artsmarketing.org, a project of Americans for the Arts and the Cultural and Aesthetic Grants committee for the Montana State Arts Council. From 2005 to 2007, she served as the Executive Director for Classics for Kids Foundation.

CAREN HACKMAN, INC. (CHI) is a member and registered certified MBE/WBE/SBE/DBE firm with the Palm Beach County Office of Small Business Assistance, with extensive experience in graphic design services for print and web, consulting, communications, public relations, page design, and management and maintenance services. With more than 35 years of experience, the firm's President Caren Hackman has worked with organizations and government agencies, including: Children's Services Council of Palm Beach County, Healthcare District of Palm Beach County, Palm Healthcare Foundation, and many more. She is pleased to include her design talents in developing the marketing and communications phase of the disparities study.



Detailed below is a description of the qualifications and experiences of Caren Hackman, Inc.

Caren Hackman, Inc. was incorporated in 2003 and applies more than 35 years of uninterrupted direct services to public and private agencies as well as corporations gained through professional, creative skills, and experience.

CHI delivers comprehensive coordination and delivery of visual communication media including:

- Comprehensive Outreach Campaigns
- Website Design
- Email Campaigns
- Invitations
- Posters
- Flyers
- Strategic Marketing
- Branding
- Photo Editing



Caren Hackman, president of Caren Hackman, Inc., earned her bachelor's degree in industrial design from Syracuse University. She is experienced in visual communication, print and web design, creating ad campaigns, brochures and graphic identity systems. She

works with diverse clientele, including corporations, non-profit organizations and municipalities. Emphasis on client communication and budget, along with vigilance to deadlines guarantees client satisfaction.

Her work has won recognition by many in Palm Beach County as well as national organizations.

Q-Q RESEARCH CONSULTANTS (QQR) is a full-service M/WBE certified African American-owned consulting firm with extensive experience in research, statistical analysis, and program evaluation. QQR is comprised of a group of professionals with advanced academic training in quantitative and qualitative methodologies. For this Study, QQR will utilize SPSS for all quantitative data analysis, including regression and other multivariate statistical methods. All quantitative data will be imputed into SPSS and will be made available to programs in SPSS and excel formats. All data will be analyzed using descriptive, inferential, and advanced statistical analyses when applicable. QQR will be responsible for performing the private and public sector regression analyses.

Calonie Gray, Ph.D., received her Master's degree in Mental Health Counseling and doctorate in Developmental Psychology from Florida International University. She has received extensive training in advanced methodologies and statistical analyses, including biostatistics. She has experience leading teams in community settings, academia, and government. For years, Dr. Gray worked as a case manager for a community mental



health center and worked with others in the coordination of systems of care. Within a university setting, she coordinated federally funded randomized clinical trials. Dr. Gray also worked in government evaluating outcomes and providing technical assistance for programs funded by county tax dollars. She also has experience in instrument development, including evaluation of psychometric properties (e.g., exploratory factor analysis, assessment of the reliability and validity, and differential item functioning analysis). She is the recipient of numerous awards including ones from the American Psychological Association's Society for Multivariate Experimental Psychology, National Hispanic Science Network, and the Emerging Scholars Interdisciplinary Network at the University of Michigan.

Sandra Williams, Ph.D., received her Master's degree in Developmental Psychology from Teachers College, Columbia University, and doctorate degree from Florida International University. Dr. Williams' experience as a Research Analyst has afforded her excellent skills in both quantitative and qualitative research methods. She has extensive experience in conducting focus groups and analyzing qualitative data using software for qualitative analysis such as NVivo. Dr. Williams has experience entering large amounts of community and clinic data using various software packages (e.g., SPSS); analyzing data using advanced statistical analyses; and participating in ongoing clinical research and data collection for National Institute of Mental Health-funded research projects. As a Program Monitor, Dr. Williams evaluated after-school and summer programs and generated program monitoring reports which included suggestions for areas of concern and improvement. Because of her expertise in education and social



sciences, she is a grant reviewer for many entities including U.S. Department of Health and Human Services - Health Resources and Services Administration, Florida Department of Education's 21 Community Learning Centers, and some local municipalities.

Résumés of Mason Tillman's team can be found in **Appendix 1**.



Table 4: Mason Tillman Study Team's Expertise

Mason Tillman Key Personnel	Number of Disparity Studies	MAWBE Program Design	Statistical Analysis	Legal Analysis	Anecdotal Analysis	Community Outreach	Local Gov't Experience
MASON TILLMAN TEAM MEMBERS							
Eleanor Mason Ramsey, Ph.D. Principal	127	•	•		•	•	•
Allura Scott, Esq. Project Manager	79	•		•	•	•	•
Edward Norton, LL.B. Chief Legal Advisor	127	•		•			•
Mike Leong, M.S. Senior Statistician	127	•	•				•
Robert Ramsey, M.S. Statistician	32	•	•			•	
Aminatu Yusuf, B.S. Research Manager	20	•	•		•	•	•
Antonina Salina, M.S. Database Manager	20	•	•			•	•
Olga Leontyeva, M.S. Database Analyst	8	•	•				
Fen Qin, M.S. Database Assistant	8	•	•				
Tuyet Linh Tan, Esq. Senior Research Associate	10			•	•		
Nicholas Negoro, B.A. Research Assistant	20	•	•				
SUBCONSULTANTS							
L.B. Limited & Associates, Inc. SBE Subconsultant	--					•	•
S. Davis & Associates, P.A. SBE Subconsultant	--						•
Decision Support Partners, Inc. SBE Subconsultant	--				•	•	
Caren Hackman, Inc. SBE Subconsultant	--						•
Q-Q Research Consultants Subconsultant	2		•		•	•	

3.1.5 Mason Tillman's Expert Witness Credentials

Table 5: Mason Tillman Study Team's Expert Witness Credentials

	Case 1	Case 2
Caption Name of Litigation	Associated Builders and Contractors v. City of Memphis, 138 F. Supp. 2d 1015 (W.D. Tenn. 2000).	Midwest Fence Corporation v. USDOT, Case No. 10-CV-5627, filed in the Seventh Circuit.
Type of Witness	Daubert Witness	Daubert Witness
Qualification	Federal Rules of Civil Procedure 702: Qualification Based on Knowledge, Skill, Experience, Training, or Education	Federal Rules of Civil Procedure 702: Qualification Based on Knowledge, Skill, Experience, Training, or Education
Favorable Ruling for Client	Yes	Case Ongoing
Copy of Decision	See Appendix 2	Decision Not Available, See Appendix 2 for Third Amended Complaint
Lead Counsel	Monika Lorice Johnson (Former City of Memphis City Attorney) Chief Ethics Officer City of Memphis 3030 Poplar Avenue, Suite L-38 Memphis, TN 38111 Ph: (901) 415-2788 Email: monika.johnson@memphistn.gov	Thor Y. Inouye, Esq. Assistant Attorney General General Law Bureau 100 West Randolph Chicago, IL 60601 Ph: (312) 814-2035 Email: TInouye@atg.state.il.us



3.2 PROJECT APPROACH

3.2.1 Project Management

Mason Tillman also has a three-pronged project management structure in order to respond to clients' needs. The project management team will consist of three members. Eleanor Mason Ramsey, Ph.D., will be the project manager for the Study and oversee the entire Study process. Allura Scott, Esq. will act as Assistant Project Manager and manage the day-to-day operations of the Study. Aminatu Yusuf will oversee all activities related to research.

A. Eleanor Mason Ramsey, Ph.D., Project Manager

Dr. Ramsey holds a doctorate degree in anthropology from the University of California, Berkeley. As president of Mason Tillman, Dr. Ramsey directs the staff's performance of its disparity studies. Dr. Ramsey is a leading expert in program design and statistical analysis performed for disparity studies in accordance with legal rulings and policies. Under her direction and leadership, Mason Tillman has conducted the 127 unchallenged disparity studies on time and within budget. Dr. Ramsey is also accountable for ensuring that sufficient resources are allocated to projects.

Dr. Ramsey has been responsible for client coordination, project scheduling, quality assurance, and cost control. She facilitates client and business community meetings, final

report preparation, presentations at manager kick-off meetings, legislative briefings, and public hearings. The success of the firm's completion of 127 unchallenged disparity studies is testament to her management skills and experience.

On this project, Dr. Ramsey will lead Mason Tillman's proposed team of professional staff and consultants to complete a legally sound disparity study report within 24 months. Dr. Ramsey will oversee and review the analysis of the utilization and availability data for analysis, drafting of chapters, and preparation of the final report.

B. Allura Scott, Esq., Assistant Project Manager

Ms. Scott has worked on 79 Mason Tillman disparity studies for the past 13 years, and has served as assistant project manager for numerous disparity studies. Her legal training has provided her with the foundation for sound policy analysis and formulation.

She has developed the management protocols for the coordination and tracking of work production. Ms. Scott has implemented procedures for securing timely generation of contract records by clients. Her systems support real-time accountability for the research team and project consultants' work production. Ms. Scott has established protocols for identifying and soliciting anecdotal interviewees. Ms. Scott has designed computer-based applications to search the transcripts for preliminary analysis. Her extensive experience in qualitative research informs her management of project staff and subconsultants completing the assigned tasks.



Ms. Scott will use monthly progress reports queried from the staff's daily status reports and team meeting minutes to supervise the project team and to maintain adherence to the production schedule. *Asana* is a web-based application that the team will use to facilitate communication and coordination of assignments. Ms. Scott is extremely effective in communicating with project staff, clients, and business constituents. Therefore, she will serve as the day-to-day contact point in order to facilitate communication between Mason Tillman and the County.

C. Aminatu Yusuf, B.S., Research Manager

Ms. Yusuf has performed research, data collection, data analysis, surveys, and drafting services on 20 Mason Tillman disparity studies. Ms. Yusuf has experience conducting primary and secondary data collection and analysis using various qualitative and quantitative data analysis software programs. As an expert in determining DBE goals, Ms. Yusuf has produced three goal setting reports approved by the United States Department of Transportation in 2013. Ms. Yusuf is also expert in the preparation of workforce goals for local governments. Ms. Yusuf was the primary writer and researcher for the Metropolitan St. Louis Disparity Study. Therefore, she will act as primary researcher.

Table 6 is a summary of the individual team members' roles in this Study. Their biographies and duties can be found in *Section 3.1.4* above.

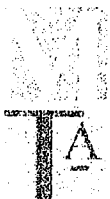


Table 6: Mason Tillman Project Roles and Responsibilities

MASON TILLMAN STUDY TEAM	
PROJECT ROLES AND RESPONSIBILITIES	
MASON TILLMAN TEAM MEMBERS	
Eleanor Mason Ramsey, Ph.D. Project Manager	Responsibilities: <ul style="list-style-type: none"> • Client Coordination • Project Scheduling Management • Quality Assurance / Cost Control • Meeting Facilitation • Final Report Preparation • Presentation
Allura Scott, J.D. Assistant Project Manager	Responsibilities: <ul style="list-style-type: none"> • Client Coordination • Project Scheduling Management • Coordinate Data Collection • Coordinate Program Analysis Research • Coordinate Anecdotal Interviews • Anecdotal Analysis
Edward Norton, LL.B. Chief Legal Advisor	Responsibilities: <ul style="list-style-type: none"> • Develop Research Methodology • Provide Legal Analysis • Draft Recommendations • Review Final Report
Mike Leong, M.S. Senior Statistician	Responsibilities: <ul style="list-style-type: none"> • Analyze Data Received for the Regression Analysis • Assist with Statistical Analysis
Robert Ramsey, M.S. Statistician	Responsibilities: <ul style="list-style-type: none"> • Assist with Statistical Analysis
Antonina Salina, M.S. Database Manager	Responsibilities: <ul style="list-style-type: none"> • Manage Database Preparation • Manage Subcontractor Data Extraction • Provide Support on Utilization, Market Area, Availability, and Disparity Analyses
Olga Leontyeva, M.S. Database Analyst	Responsibilities: <ul style="list-style-type: none"> • Manage Database Preparation • Manage Subcontractor Data Extraction • Provide Support on Utilization, Market Area, Availability, and Disparity Analyses
Fen Qin, M.S. Database Assistant	Responsibilities: <ul style="list-style-type: none"> • Clean and Analyze Prime Contractor and Subcontractor Data • Provide Support on Utilization, Market Area, Availability, and Disparity Analyses • Assist with Regression Analyses
Aminatu Yusuf, B.S. Research Manager	Responsibilities: <ul style="list-style-type: none"> • Coordinate Data Collection • Assist with Report Preparation



MASON TILLMAN STUDY TEAM		PROJECT ROLES AND RESPONSIBILITIES	
Tuyet Tan, Esq. Senior Research Associate		Responsibilities: <ul style="list-style-type: none">• Manage Transcription Process• Prepare Procurement Matrix• Manage Document Control	
Nicholas Negoro, B.A. Research Assistant		Responsibilities: <ul style="list-style-type: none">• Provide Program Analysis Research• Assist with Report Preparation	
LOCAL SUBCONSULTANTS			
Bruce N. Lewis L.B. Limited & Associated, Inc.		Responsibilities: <ul style="list-style-type: none">• Facilitate Business Community Meeting• Facilitate Public Hearings	
Shaun M. Davis S. Davis & Associates, P.A.		Responsibilities: <ul style="list-style-type: none">• Collect Data• Conduct Willingness Survey	
Surale Phillips Decision Support Partners, Inc.		Responsibilities: <ul style="list-style-type: none">• Conduct Anecdotal Interviews• Perform Transcriptions• Conduct Ethnicity and Gender Survey• Perform Business Outreach	
Caren Hackman Caren Hackman, Inc.		Responsibilities: <ul style="list-style-type: none">• Design Website• Design Business Community Meeting Materials	
Calonie Gray, Ph.D. QQ Research Consultants		Responsibilities: <ul style="list-style-type: none">• Perform Regression Analyses	

Résumés of Mason Tillman’s team can be found in **Appendix 1**.

3.2.2-3.2.5 Methodology

A. Introduction

Two United States Supreme Court decisions, *City of Richmond v. J.A. Croson Co.*¹ (*Croson*) and *Adarand v. Peña*² (*Adarand*), raised the standard by which federal courts will review race-based contracting programs and the criteria for a legally sound disparity study, upon which a race-based program must be predicated. In *Croson*, the Court

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

² Adarand Constructors, Inc. v. Federico Peña, 515 US. 200 (1995).

announced that the constitutionality of affirmative action programs that employ racial classifications would be subject to "strict scrutiny." An understanding of *Croson*, which applies to state and local governments, is necessary when developing a sound M/WBE program. Broad notions of equity or general allegations of historical and societal discrimination against minorities are insufficient to meet the requirements of the Equal Protection Clause of the Constitution. Instead, governments may adopt race-conscious programs only as a remedy for identified discrimination, and this remedy must be narrowly tailored to impose a minimal burden upon unprotected classes. In this context, *Croson* defines discrimination as a finding of statistically significant underutilization of available businesses. *Adarand*, which followed *Croson* in 1995, applied the strict scrutiny standard to federal programs.

An intermediate standard, which is less stringent than strict scrutiny, applies to the formulation of government contracting programs which do not involve race. Thus, government contracting programs that afford a preference to women, veterans, small and local businesses are subject to intermediate scrutiny. A simple finding of social or economic impediments to public contract opportunities can meet the intermediate standard. Thus, the statistical analysis required to implement any one of these four programs does not require a finding of statistically significant disparity. The strict scrutiny standard is, however, being applied to women because it is prudent, not legally required. The lesser standard is most appropriate for the formulation of the veterans, small and local business programs. Thus, the information completed for the examination



and application of strict scrutiny to M/WBEs can be used to fashion a veteran, small and local program.

**Disparity Study:
Critical Components**

- 1. Legal Framework**
- 2. Contracting and Procurement Policies and Programs**
- 3. Utilization Analysis**
- 4. Geographic Market Area Identification**
- 5. Availability Analysis**
- 6. Disparity Analysis**
- 7. Anecdotal Evidence**
- 8. Race and Gender-Neutral Policies**
- 9. Recommendations**

A legal review is the **first step** in the statistical analysis that Mason Tillman proposes to undertake. The County's contracting and procurement policies will be reviewed in **step two** to determine the contracting process employed. Utilization records will be collected in **step three** to members and its prime contractors procured Construction (horizontal and vertical, new and replacement), Professional Services, including

contracts under the Consultants' Competitive Negotiation Act (CCNA) and non-CCNA contracts, and Goods and Services/Commodities from SBEs, including M/WBEs, and non-SBEs. Identification of the County's market area is **step four**. Prime utilization records will be used to determine the market area in which prime contractors were located. **Step five**, the availability analysis, identifies businesses in the market area willing and able to provide Construction (horizontal and vertical, new and replacement), Professional Services (CCNA and non-CCNA), and Goods and Services/Commodities procured by the County and its prime contractors. **Step six** determines whether there is statistically significant underutilization of SBEs, including M/WBEs, and non-SBEs within each of the industries examined. In **step seven**, the anecdotal analysis, contemporary experiences of business owners in the County's market area will be



collected and reviewed. **Step eight** will be a review of the County's race and gender-neutral efforts. Finally, in **step nine**, Mason Tillman makes recommendations which include best practices to enhance the County's current business practices to remedy any identified disparity.

Please see **Appendix 2** for a complete discussion of the legal basis for the disparity study methodology.

B. Scope of Work

1. Phase I

Prepare Preliminary Work Plan

Within 30 days of receiving the notice to proceed, a detailed work plan will be developed. It will identify the tasks to be completed and the major milestones. The delivery schedule for the work products will be stipulated.

4.3 Convene Project Kick-Off Meetings

At the inception of the Study, Mason Tillman proposes to convene a series of preliminary meetings with officers of the County in order to review the County's contracting policies and procedures, as well as SBE program. These preliminary meetings would offer all parties the opportunity to discuss the procedures for identifying and reviewing data, introduction and function of staff, proposed management meetings, database meetings and proposed data assembly and data cleansing procedures, proposed computer data



programs, and North American Industry Classification System (NAICS) classification of data. These preliminary meetings will consist of at least two meetings with County staff.

- **Manager Meetings**

During the manager meetings, elements of a disparity study will be detailed, and questions from the managers will be addressed. Also, the County's role in providing the prime contractors and subcontractor awards and payments will be established.

- **Database Staff Meetings**

During the database staff meetings, the scope of the study will be defined, the utilization database structure will be described, and the County's AMS Advantage (AMS) and Vendor Self-Service (VSS) systems will be reviewed. A system and schedule for retrieving the required electronic data will be developed.

The kick-off meetings will also ensure that the minimum requirements of this RFP are met:

- identify key managers/stakeholders,
- advise/assist in the creation of a task force, if required,
- determine data requirements,
- facilitate required meetings,
- review past and existing contracts, expenditures and procurement methods,
- create status reports as agreed upon/required,
- upon agreement by the County, survey, and interview outside resources for anecdotal evidence,

- facilitate any public hearings recommended to gather information, and
- identify an expert witness that will testify in defense of the final disparity study report in the event that it or any program adopted as a result of the study is challenged in court; provide that expert witness's qualifications and experience in providing such expert testimony.

4.4.4 Review and Collect Data

1. Prime Contract Records – Active Participant Analysis

Prime contracts awarded during the study period will be analyzed using the electronic records provided by the County. Logistics for retrieving the required prime contract records will be determined during the County kick-off meetings. Mason Tillman's database staff will coordinate with the County to secure complete payment and award records for the contracts in each of the above industries studied. Collaboration between Mason Tillman and the County in the data collection process is crucial to ensure the accuracy of the analysis. The award amounts, as well as change orders, amendments, and payments for each prime contract, are the critical information necessary to compile a comprehensive database of the County's spending.

The compiled prime contract records for each industry must be cleaned before the analysis can be performed. Mason Tillman has developed a complex relational database to clean and analyze clients' contract records. The database contains various queries necessary to analyze utilization of businesses by ethnic group, gender group, and industry. The database is designed to allow for the various queries necessary to analyze utilization of businesses by ethnic group, gender group, and industry. A number of



proprietary utilities developed in SQL, Access, Python, and R allow Mason Tillman to scrub and analyze clients' data. These utilities identify contracts that should be excluded from analysis, such as non-profit and government records, contracts awarded outside of the study period, duplicate records, records with null values, and payments which exceed award amounts.

Once the prime contract data has been cleaned, a Data Verification Report will be produced detailing the excluded records and any other questions or issues to be reviewed by the County. Mason Tillman's database staff will also collaborate with the County to resolve any data issues identified in the Data Verification Report. All prime contract data will be housed in a proprietary relational database.

The data requirements for each prime contract are denoted in Table 7 below.

Table 7: Sample Utilization Database Structure

COLUMN HEADING	DESCRIPTION
Contract P.O. Number	Unique number assigned to contract/purchase order
Project Name	Project title or description
Business Name	Primary name of company
Contact	Contact person at company
Vendor ID	Unique vendor number assigned to company by accounts payable
Contractor Status	P = Prime Contractor S = Subcontractor
NIGP/Commodity Code	Codes for types of work
Work, Product, or Service	Description of type of service performed or product provided
Award Date	Date of contract award for prime contractors and date first contracted for all others (MMDDYY)
Award	Amount of each company's award (for prime contractors, input total amount initially awarded)
Contract Modification Date	Date of each contract modification (MMDDYY)
Contract Modifications Amount	Amount of each contract modification or total modifications



COLUMN HEADING	DESCRIPTION
Payment	Total payment made to contractor (may be different from AWARD)
Street	Company street address
City	Company city
State	Company state (two letter state code) FL = Florida
Zip	Company zip code

Deliverable: Data Verification Report

Industry-specific categories of Construction (horizontal and vertical, new and replacement), Professional Services (CCNA and non-CCNA), and Goods and Services/Commodities contracts, awarded by the County between 2009 and 2013, will be determined in accordance with National Institute of Governmental Purchasing (NIGP) codes. A bridge will be used to translate the NIGP and County commodity codes to NAICS codes for purposes of industry classification and analysis. In the absence of an industry classification system or incomplete coding, contract description will be used to classify the industries. The coding will be undertaken in consultation with the County when the codes are not available, or if classifications are not clearly delineated.

Each contract will be reviewed to determine its industry category. Specifically, each contract will be classified by NAICS code into one of the industries to be studied. All NAICS code assignments will be submitted to the County for review.

Deliverable: Industry Classification Tables

In order to produce the narrowly tailored disparity analysis required by *Croson*, the contract records classified by industry must also include reliable ethnic and gender



classifications. Therefore, the ethnicity and gender of each prime contractor will be determined. In the event that complete information on the prime contractors' ethnicity and gender is not provided in each vendor or contract record, it will be necessary to conduct research to secure the information. Certification lists, Internet research, and business surveys will be used to reconstruct the prime contract data. Logistics for collecting the required prime contract records will be determined during the project kick-off meetings. These meetings will explain the types and amounts of data to be collected as well as the data retrieval process. Any data not available in the County's AMS and VSS system will also be identified during the project kick-off meetings.

The cleaned and coded prime contract records will be analyzed by industry, ethnic group, gender group, and size. Prime utilization tables presenting the analysis by ethnic and gender group within each of the relevant industries will be prepared and submitted.

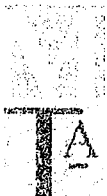
Deliverable: Prime Contractor Ethnicity and Gender Tables

Once the prime utilization tables are reviewed by the County and any resulting questions are addressed, an additional analysis will be performed to create tables presenting the prime utilization data by highly used vendors as well as by ethnic and gender group within each industry.

Deliverable: Prime Utilization Chapter

2. Subcontract Records – Passive Participant Analysis

Mason Tillman will identify and collect subcontract data for the study period between 2009 and 2013. A determination of whether the County is a passive participant in ethnic



or gender discrimination will be assessed through an analysis of subcontracts awarded by the County's prime contractors. Comprehensive subcontract data is essential to conduct a legally-sound subcontractor utilization analysis. According to the Q&A, dated July 24, 2014, the County's Office of Small Business Assistance maintains records of its subconsultants, including non-SBEs, in multiple locations and formats. As a rule, non-SBE subcontract records must be reconstructed because most local governments do not maintain comprehensive data. Given the possibility of incomplete electronic subcontractor records, the proposed subcontractor data collection process includes collaborating with the County's information technology staff to extract all electronic copies of subcontract records housed in the AMS and VSS systems and with project managers to collect subcontract records from paper files and surveys.

Mason Tillman has a well-honed stringent data collection strategy to garner comprehensive subcontract data. The data collection strategy has been effectively used in more than 100 disparity studies. It has produced the comprehensive subcontract records essential to producing an unbiased analysis of the utilization of S/M/WBE subcontractors. Mason Tillman's data collection process will be described to the County during the kick-off meetings. This process will only be employed in the event that the County's electronic subcontract records are not comprehensive.

The data collection process involving hard copy records and surveys includes securing M/WBE utilization reports, searching project files for bids/proposals, board resolutions, inspector logs, prevailing wage reports, invoice statements, and stop-payment notices, as



well as conducting surveys. One is a prime contractor survey to collect records not housed with the client. To verify the accuracy of the subcontract data compiled from electronic and hard copy files and provided by the prime contractors, a subcontractor survey is conducted. The survey queries the subcontractor to verify actual participation on the prime contracts included in the subcontract analysis. Once the electronic, hard copy, and survey data is compiled, the records will be cleaned and analyzed. All subcontract data will be housed and analyzed in the same proprietary relational database used to analyze the prime contract records.

Mason Tillman's relational database used to clean and analyze prime contract records will be the application used to analyze the subcontracts. The database includes various queries specifically developed to analyze subcontract utilization by ethnic group, gender group, and industry for the study period. The proprietary utilities to scrub and analyze clients' subcontract records have been developed in SQL, Access, Python, and R. These utilities identify contracts where the total subcontract award exceeds the prime contract award, duplicate subcontract records, prime contractors listed as subcontractors, and subcontractor payments which exceed the subcontract award amounts. Once the subcontract data have been cleaned, reports presenting the percent of subcontract award dollars per prime contract will be prepared.

Deliverable: Subcontract Records Sorted by Prime Award Amount

The race and gender of each subcontractor will be determined. The ethnicity and gender of business owners in the contract records will be verified, and ethnicity and gender of

business owners will be compiled for the subcontract records missing either classification. The reconstruction will be done using certification lists, Internet research, and surveys of business owners. Tables detailing the total award by ethnic and gender group within each industry will be prepared.

Deliverable: Subcontract Tables by Industry, Ethnicity, and Gender

Once the County's questions are addressed, the cleaned and coded subcontract records will be analyzed by industry, ethnic group, gender group, and size. Subcontract utilization tables presenting the analysis by ethnic and gender group within each of the relevant industries will be prepared and submitted.

Deliverable: Subcontractor Utilization Chapters

Recognizing the need for strict privacy protection of our client's data, Mason Tillman has installed data protection systems, including firewalls and data encryption software, used when transmitting information. For this project, Mason Tillman will sign a non-disclosure agreement with the County.

DEFINE RELEVANT GEOGRAPHIC MARKET AREA

Croson was explicit in stating that the local construction market was the appropriate geographical framework within which to perform statistical comparisons of business availability and business utilization. Therefore, the identification of the local market area is particularly important because it establishes the parameters within which to enumerate available businesses.

A cluster analysis will be the basis for determining the geographic distribution of contracts by industry, contract dollars, and contract awards. Mason Tillman will analyze the number of contracts and the dollars awarded by the County to map the location of the utilized businesses.

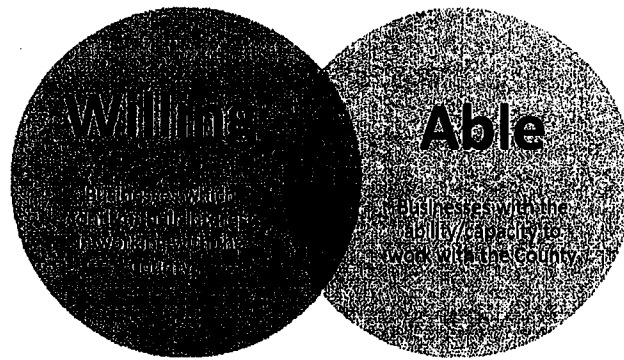
Deliverable: Market Area Chapter

4.4.5 PERFORM AVAILABILITY ANALYSIS

Availability is the crux of a constitutional disparity study and is often highly scrutinized and controversial. *Croson* defines "availability" as the number of businesses in the jurisdiction's market area which are willing and able to provide goods or services.³ Subsequent circuit court decisions have addressed the issue of capacity. Therefore, a constitutionally sound analysis must also address capacity of the willing businesses to perform the County's contracts. The methodology to enumerate available M/WBEs and non-M/WBEs within the market area is based on two aspects: (1) the business' interest in doing business with the County, as implied by the term "willing," and (2) the business' ability or capacity to provide a service or goods, as implied by the term "able." Businesses identified through non-government sources will be surveyed to assess their willingness to do business with the County and only those businesses which confirm their willingness to contract with the County will be included in the analysis. Businesses that are ready, willing, and able to perform construction (horizontal and vertical, new and replacement), professional services including CCNA and non CCNA, and goods and services contracts will be considered available and interested in performing for the County.

³ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509 (1989).

Chart 02: Determination of Availability



A combination of methods will be used to identify willing and able businesses that could perform the contracts awarded by the County and its prime contractors during the study period. Ability will be determined through a business profile assessment and a size analysis of awarded contracts. The businesses which provide the specific goods and services procured by the County will be used in the statistical analysis. The following methods will be employed to secure the sources of available businesses that could perform the prime contracts and subcontracts awarded by the County and its prime contractors during the study period.

1. Determine Pre-Qualification Standards

Any pre-qualification standards used by the County during the study period to determine a contractor's eligibility to bid and be selected for contracts must be defined before seeking to identify available businesses. Mason Tillman's review of pre-qualification standards will determine how and where they are applied in the contracting process to measure suitability to bid. After careful review of the pre-qualification process and any other formal standards, eligibility to bid or propose will be defined. Capacity measures



will be defined for each industry. The availability strategies discussed below are used to identify businesses that might reasonably have met the County's capacity requirements.

2. Collect Records from the County

The primary source for information on businesses that have indicated an interest in doing business with the County is the bidders list. The utilized bidders on the bidders list have demonstrated both willingness and capacity. Unsuccessful bidders on the bidders list have demonstrated willingness. Unsuccessful bidders can be retrieved from bid tabulations, vendor lists, and plan holder lists.

3. Compile Certification Directories

Mason Tillman maintains a comprehensive database of local, state, and federally certified Florida businesses. These lists, saved in Mason Tillman's proprietary database, are refreshed monthly. The database can be queried for market area businesses. A number of proprietary utilities developed by Mason Tillman's database staff in SQL, Access, Python, and R are used to analyze the data. These utilities identify vendors that should be excluded from analysis, such as duplicate records and ineligible NAICS codes. In addition, certification lists maintained by the County, as well as lists maintained by other federal and regional certification organizations, will be collected and queried for market area businesses.

4. Conduct Outreach

A targeted outreach campaign will be performed to identify businesses in the market area that are not utilized by the County or certified. Experience has shown that the number of firms identified using records maintained by certification agencies may not reflect the actual level of availability in the market area. The outreach will identify willing and able



M/WBEs, and non-M/WBEs, which may have been deterred for various reasons from bidding on County contracts or becoming certified SBEs.

Outreach efforts will be customized to target underrepresented firms which reflect the diversity of the County's market area. In order to reach SBEs, including M/WBEs, and non-SBEs not captured in certification sources, well-crafted and professionally executed outreach is critical. Business size, ethnicity, and language facility are characteristics of the targeted market segment that must be considered when structuring the outreach plan. Mason Tillman's multiethnic and multilingual outreach plan consists of seven components:

- a. *Trade and Professional Organization Partnerships:* Trade and professional associations will be targeted. Membership listings will be solicited from these M/WBE and non-M/WBE organizations. Palm Beach County trade and professional associations include Palm Beach Chapter of the American Institute of Architects, American Business Women's Association, National Association of Professional Women Palm Beach County, Public Relations Society of America Palm Beach Chapter, and Networking Hispanos.
- b. *Technical Assistance Center Partnerships:* The regional small business technical assistance centers funded by the U.S. Small Business Administration, colleges and universities, and state and local government agencies will be partners. These organizations' clients are small and minority-owned market area businesses. The centers will be contacted to promote the Study and asked to place a link to the Study webpage on their website.



- c. *Chamber of Commerce:* Ethnic, female, and metropolitan chambers of commerce are sources for identifying M/WBE and non-M/WBE businesses within the County's market area. These ethnic organizations' members are small, minority, and woman-owned market area businesses. The chambers will be contacted to promote the Study and asked to place a link to the Study's webpage on their website. Chambers of commerce in Palm Beach County include Black Chamber of Commerce of Palm Beach County, Chamber of Commerce of the Palm Beaches, Hispanic Chamber of Commerce, Central Palm Beach County Chamber of Commerce, Puerto Rican/Hispanic Chamber of Commerce for Palm Beach County, and Women's Chamber of Commerce of Palm Beach County.
- d. *Study Webpage:* Mason Tillman will develop and maintain an interactive webpage and provide the hyperlink to the County to post on its website. The webpage will provide information about the Study, its requirements, and the benefits the business community will derive from its successful completion. The webpage will also solicit business participation for anecdotal interviews and advertise the business community and public hearings.
- e. *Media Outreach:* Broad-based ethnic and gender-focused media will be utilized to print information about the Study. Drawing upon our team's established relationships with the ethnic media, articles will be placed in regional publications targeting African American, Hispanic American, Asian American, Native American, and Caucasian woman business-owned businesses.



- f. *Public Service Announcements:* Public service announcements will be distributed to targeted radio, television, and cable stations. In addition, press releases will be distributed to select print media.
- g. *Business Community Meetings:* Two (2) business community meetings will be organized in cooperation with the County. Our subconsultants will play a critical role in identifying the appropriate venues in area throughout the County. Mason Tillman's staff will work closely with our subconsultants to ensure that outreach is comprehensive and reaches the most underrepresented business owners.

Businesses will be invited using a mailing list generated from the availability database. The meeting notice also will be distributed through the trade associations, ethnic chambers of commerce, regional training facilities, and other partners. Value-added services, such as informal bid opportunities, certification services, financing and bonding program information, will be included in the agenda to encourage business owners to attend.

The meetings should quell any negative publicity regarding the Study and ensure that the public is accurately informed and advised. The business community meetings will also provide a forum to secure public testimony and identify additional businesses for the anecdotal interviews.



5. Assess Willingness

Willingness is defined in *Croson* as a business's interest in doing government contracting.⁴ A business that has bid on a County contract or secured government certification is considered "willing." The willingness of businesses identified from non-government sources will have to be determined. A telephone survey will be used to assess the willingness of businesses identified from sources other than records provided by the County or certification agencies. Only businesses which affirm willingness to contract with the County will be included in the capacity analysis.

6. Perform Capacity Analysis

A combination of methods will be used to assess capacity and the factors that affect capacity. The availability analysis will address or account for differences in capacity as a possible explanation for any findings of disparities. The County's utilized businesses, pre-qualified businesses, and firms identified from certification sources that meet capacity measures set forth in *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*⁵ will be presumed to have the requisite capacity. The four capacity components are detailed below:

- *Size Analysis:* A distribution of contracts by size and industry will be calculated to determine the average size of the County's contract awards. Contract size is a determinant of the capacity a willing business should have to be competitive. The contract awards will be analyzed by industry, ethnic group, and gender group to

⁴ *Croson*, 488 U.S. at 509.

⁵ 91 F.3d 586 (3rd Cir. 1996).

assess whether there are any statistically significant differences between the gender and ethnic groups within each contract size range and industry.

- **Largest Awards:** The analysis will determine the largest contract awards received by each ethnic and gender group, and industry in order to determine the demonstrated capacity of SBEs, including M/WBEs, to perform on large contracts.
- **Certification:** The certification procedures used by the certifying agencies will be reviewed to determine if they meet the standard capacity in *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*.⁶ In this case, the court found the certification process to be an adequate measure of capacity.
- **Capacity Assessment:** Businesses who affirmed their willingness to contract with the County will be surveyed to assess the relative capacity by ethnic and gender group. A stratified sample will be drawn so that the survey results will be reliable at a 95 percent significance level. A questionnaire designed to elicit information on key factors descriptive of a business's ability to perform County contracts will be used to conduct the survey. Businesses will be surveyed regarding their financial status, equipment, staffing, resources, and proof of bond and insurance, where applicable. The survey results will be used as an additional method to evaluate the capacity of the willing businesses. The survey questions will also elicit generally held perceptions regarding bidding on the County's contracts and obtaining bonding and SBE certification. The data will be sufficient to detail the respondents' reasons for not bidding on the County's contract opportunities or seeking SBE certification.

Deliverable: Availability Chapter

⁶ 91 F.3d 586 (3d Cir. 1996).

4.4.6 UTILIZATION AND DISPARITY ANALYSIS

a. Statistical Disparity Analysis

Mason Tillman's disparity model is based on a comprehensive legal analysis of the *Croson* decision and its progeny. As the first step in conducting the statistical test, Mason Tillman will calculate the number of dollars that each ethnic and gender group is expected to receive based on the group's availability in the market area. Next, Mason Tillman will calculate the difference between each ethnic and gender group's expected contract amount and the actual contract amount received by each group.

In analyzing the actual contract dollars received by a given ethnic/gender group and the expected contract dollars that each ethnic/gender group should receive, any difference between the actual and expected dollars can be interpreted as due either to chance or to discriminatory treatment through preferential practices in the contract award process. To test the significance of a disparity ratio, a P-value will be calculated.⁷ For disparity findings less than 1, Mason Tillman will test the statistical significance using one of three methods, (1) a parametric analysis,⁸ (2) a non-parametric analysis,⁹ and (3) a simulation analysis.

Deliverable: Prime Contractor and Subcontractor Disparity Tables by Ethnicity, Gender, and Industry

⁷ P-value is a measure of statistical significance.

⁸ Parametric analysis is a statistical examination based on the actual values of the variable. In this case, the parametric analysis consists of the actual dollar values of the contracts.

⁹ Non-parametric analysis is a method to make data more suitable for statistical testing by allowing one variable to be replaced with a new variable that maintains the essential characteristics of the original one. In this case, the contracts are ranked from the smallest to the largest. The dollar value of each contract is replaced with its rank order number.

The objective of the disparity analysis is to determine the levels at which M/WBEs are utilized on the prime contracts and subcontracts. The methodologies used by Mason Tillman to identify any disparity or disparities has been thoroughly researched, reviewed, and documented in order to withstand a potential legal challenge to the County's Study. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs would be equal to the proportion of available M/WBEs in the relevant market area. The disparity ratio will be determined by dividing the actual contract amount (utilization) by the expected contract amount (availability). Croson states that an inference of discrimination can be made *prima facie* if the disparity is statistically significant.

$$\text{Disparity Ratio} = \frac{\text{Utilization}}{\text{Availability}}$$

A disparity ratio of less than 0.8 indicates a degree of disparity. A statistical test will be conducted to determine the probability that the disparity is due to chance. If there is a low probability that the disparity is due to chance, the Supreme Court states that an inference of discrimination can be made.¹⁰

Deliverable: Prime Contractor and Subcontractor Disparity Chapter

1. Criteria to be Used to Determine Statistical Significance

There are two critical constraints in performing statistical tests for significance. First, the size of the population affects the reliability of the results. In other words, a relatively small population, whether in terms of the total number of contracts or the total number of

¹⁰ When conducting statistical tests, a confidence level must be established as a gauge for determining whether an observed occurrence is not due to chance. It is important to note that a 100 percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95 percent confidence level is considered by the Courts to be an acceptable level in determining whether an inference of discrimination can be made. Thus, the data analyzed here was done within the 95 percent confidence level.

available businesses, decreases the reliability of the statistical results. Therefore, when the population is too small, no meaningful conclusions can be drawn from the results. One or a few large contracts can also affect the reliability of a calculation of disparity using the standard parametric calculations.

Second, although an inference of discrimination cannot be made if statistical significance is not obtained from the test, the existence of discrimination cannot be ruled out. The results of the statistical disparity analysis are necessarily influenced by the size of the population in each contracting and ethnicity/gender category. Given these limitations, the anecdotal data has an especially important role in explaining the conditions of discrimination that might exist in the market area, although the anecdotal evidence should not be used in lieu of statistics to determine whether a disparity exists.

2. Standard of Review

Where a disparity is found in any of the County's contract awards by industry, gender, and ethnicity, an inference of discrimination can be made based on the *Croson* standard. The *Croson* standard will be the controlling factor in determining if a statistically significant disparity exists at the 95 percent confidence level in contracts awarded to M/WBEs that may lead to an inference of discrimination.

b. Private Sector Discrimination – Business Formation & Earnings

Private sector business practices can be indicators of marketplace conditions that adversely affect the formation and growth of M/WBEs. *Concrete Works of Colorado v. City of Denver (Concrete Works I)*¹¹ sets forth a framework for considering

¹¹ *Concrete Works I*, 86 F. Supp. 2d 1042, 1073 (D. Colo. 2000), rev'd on other grounds, 321 F.3d 950 (10th Cir. 2003), cert. denied, 540 U.S. 1027 (2003).

discriminatory private sector business practices. In accordance with *Concrete Works II*, Mason Tillman will examine three outcome variables: (1) business ownership rates, (2) business earnings, and (3) business loan approval rates.

The Business Ownership Analysis examines the relationship between the probability of being a business owner and independent socioeconomic variables. Business ownership, the dependent variable, includes business owners of incorporated and nonincorporated firms. A regression analysis will be used to determine if ethnicity and gender have a statistically significant effect on the business formation rates, when controlling for owners' characteristics, such as age, education, marital status, average revenues and revenue growth trends for M/WBEs and non-M/WBEs, and other variables. The United States Census Public Use Microdata Sample (PUMS) for 2007-2011, a subset of the 2007-2011 American Community Survey (ACS) and Puerto Rico Community Survey (PRCS), will be used to compare business formation rates and business earnings of M/WBEs to similarly situated non-M/WBEs.¹² The actual availability of M/WBEs will be compared to the expected or potential availability of M/WBEs using the business formation rates calculated in the regression analysis. However, it is notable that the application of such an analysis has limited descriptive value and no utility in any calculation of statistically significant disparity in the County's utilization of available businesses according to *Croson*.¹³



¹² The American Community Survey provides data on race and gender, but does not enumerate certified businesses. Therefore, any analysis using the American Community Survey is limited to an analysis of M/WBEs.

¹³ *Builders Ass'n of Greater Chicago v. Chicago*, 298 F.Supp 2d 725 (N.D. Ill. 2003).

The Earnings Disparity Analysis examines the relationship between the annual self-employment income and independent socioeconomic variables. An ordinary least squares (OLS) or linear regression analysis will be used to determine if ethnicity and gender have a statistically significant effect on business earnings, when controlling for owner characteristics, such as age, education, marital status, access to the capital, and other variables.

c. Private Sector Discrimination – Business Loan Approval and Bonding

The Business Loan Approval Analysis examines the relationship between the probability of obtaining a business loan and bonding and variables related to socioeconomic factors and business characteristics including, but not limited to credit as well as business, family, and social networks, as compared to non-M/WBEs while holding balance sheet and creditworthiness information constant. The model is an Ordered Logistic model where the dependent variable is the reported probability of obtaining a business loan or bonding. The National Survey of Small Business Finances will be used to compare loan approval rates or access to credit of M/WBEs and non-M/WBEs. The regression analysis will determine if ethnicity and gender have a statistically significant effect on loan approval rates and access to credit when controlling for business characteristics, such as credit history, demographics, and socioeconomic indicators.

It should be noted that many of these variables, such as access to capital, may appear race and gender-neutral, but can be correlated with race and gender. There is a limitation in utilizing census data to access socioeconomic factors on business formation. The dataset neither specifies the types of businesses owned, nor can it be limited to the types of



contracts that the County procures. Thus, these findings should be considered informational.

In the absence of a race and gender-neutral explanation for any existing disparities, the regression findings would point to racial and/or gender discrimination that depress business ownership, business earnings, and business loan approval rates. Such discrimination would be a manifestation of economic conditions in the private sector that impedes efforts of minorities and females to create, grow, and sustain businesses. It could then reasonably be inferred that these private sector conditions are manifested in the existing levels of M/WBEs' availability.

Deliverable: Regression Chapter

d. Statistical Disparity Analysis – Palm Beach County M/WBE Utilization

Similar to the disparity analysis in *Section a.*, Mason Tillman will determine if there is a statistical significant disparity when comparing the availability of willing and able M/WBEs to the utilization of M/WBEs by the County or its prime contractors. For this disparity analysis, any utilized prime contractors and subcontractors that are not located in Palm Beach County will be excluded from the dataset. The disparity findings, if any, will be presented by ethnic group, gender group, and industry.

e. Statistical Comparison with Non-County Public Sector Utilization

In order to conduct this analysis, Mason Tillman will collect other governmental agencies' utilization data, if available. Mason Tillman has performed disparity studies in Broward, Miami-Dade, Hillsborough, and Duval County. Therefore, utilization data for these counties are available in Mason Tillman's database. Mason Tillman also has several



competitors' reports on file. Additional reports may be publicly available. Mason Tillman will determine if there are additional similarly situated counties in Florida and nationwide and whether these counties have conducted a disparity study in order to collect non-County utilization data. The statistical findings of this analysis will inform the formulation of the race and gender-neutral recommendations if any disparity is found.

f. Private Sector Statistical Analysis – County Utilized Prime Contractors and Subcontractors

Mason Tillman has successfully performed comparative studies of private sector disparity by surveying the utilized prime contractors for data regarding their private sector jobs. The study population will be drawn from the utilized prime and subcontractors. The sample will be stratified by race, gender, industry, and size of County contract so that meaningful comparisons can be made with the private sector data.

The survey will elicit information about the profile of the private sector contracts awarded by type of awarding organization, the year of the award, and the amount of the contract. Information about the solicitation method will also be collected. Payment terms, change orders, bonding requirements and mobilization payments and conditions will be requested from the surveyed contractors. The survey will elicit similar information from the contractors regarding their County contracts. Specifically, the information collected regarding the private sector contracting that is not in the County's contract records will be solicited through the survey so that the comparisons can be made. The responses of similarly situated minority, woman-owned, and Caucasian male-owned businesses will be compared. A report will be prepared describing any differences in the contracting

practices of the private sector and the County and any disparities in the contracting practices evident in the experiences of each of the ethnic and gender groups that received a County contract. A test of statistical significance will be applied to the findings, as appropriate.

g. Perform Capacity Analysis

The findings of capacity analysis discussed in *Section 4.4.5* will be used in order to identify factors that affect capacity. The capacity survey will assess the relative capacity by ethnic and gender group. In addition to the questionnaire designed to elicit information on key factors descriptive of a business's ability to perform County, the anecdotal analysis in *Section 4.4.7* will provide additional factors that may cause overconcentration of M/WBEs in certain industries and sub-industry categories.

4.4.7 Collect Qualitative Evidence

b. In-depth Review of the County's Purchasing and Contracting Policies

Mason Tillman will review the County's policies, statutes, and regulations governing procurement during the study period of 2009-2013. The review will include an examination of purchase types, procurement methods, and regulations as well as the relevant federal, state, and local laws governing the County's procurement. A determination will also be made as to whether or not the County's purchasing procedures allow for equitable and fair participation of M/WBEs in contracting opportunities. Mason Tillman will summarize all relevant policies, procedures, statutes, and regulations and provide an analysis to the County. Any policy and procedural remedies will be included as race and gender-neutral recommendations.



c. Anecdotal Analysis

The Court considers a combination of statistics and anecdotal evidence to be the most effective way to establish the factual predicate necessary for a legally defensible M/WBE program.¹⁴ According to *Croson*, anecdotal evidence alone is insufficient to establish the existence of statistically significant disparity; however, anecdotal evidence must be considered when evaluating the existence of discrimination in the market area.

Three methods will be employed by Mason Tillman to collect anecdotal data: (1) in-depth interviews will be conducted with 35 business owners in the market area, (2) focus groups will be held, and (3) an e-survey will be used to elicit from all available market businesses their experiences in attempting to work with the County.

To that effect, Mason Tillman will collect, summarize, and evaluate anecdotal or qualitative evidence to determine the extent to which any identified disparity has likely been caused in part by various forms of unlawful race or gender discrimination, and will also identify with particularity and summarize any qualitative evidence that reflects barriers other than race and/or gender that may be adversely affecting the participation of M/WBE firms in County contracts. In addition to the in-depth interviews, e-survey, and focus groups, Mason Tillman will examine relevant statistical, historical, sociological evidence and other variables that may have impeded the formation, growth, availability, or utilization of M/WBEs. Mason Tillman will identify and analyze any documented historical discriminatory patterns and practices of trade associations, lending institutions, unions, suppliers, and insurance companies that may have impeded the growth and development of

¹⁴ *Coral Construction Co. v. King County*, 941 F.2d 910, 919 (9th Cir. 1991).

M/WBEs. Mason Tillman will also review all relevant state and federal judicial and administrative data to ascertain any allegations of discrimination against contractors, subcontractors, vendors, consultants, and the County. The historical review will disclose, if present, private sector discrimination as well.

This analysis shall determine whether discrimination has likely had an adverse effect on the ability of M/WBE firms to compete successfully in County's contracting and procurement processes.

Interviewees will be identified at the two business community meetings. Interviewees will also be identified using bidders lists, trade and professional business association membership rosters, and prequalification lists, and rosters of business community members. Interviews will be secured from both M/WBE and non-M/WBE business owners. They will be transcribed and analyzed utilizing SUMMATION™ litigation support software.

The e-survey will be designed as a self-administered instrument containing questions that will elicit information such as: (1) general background information; (2) experience submitting bids/proposals; (3) experience working with County; (4) utilization of supportive services; (5) recommendations to help businesses obtain work from the County; (6) interest in additional supportive services; (7) recommendations for the County; and (8) experiences with discrimination on County contracts.



The survey will include questions yielding either a yes or no, multiple choice, or rating scale response. In addition, there will be several open-ended questions. The survey questions will be imported into Survey Monkey™, an on-line research tool which converts the questions into an e-Survey. A link to the e-Survey will be placed on the County's website and will be distributed electronically to all businesses identified in the market area, including contractors, subcontractors, vendors, and bidders.

Deliverable: Anecdotal Analysis Chapter

4.4.8 Conclusion of Phase I: Provide Race and Gender-Neutral Recommendations

Race and gender-neutral initiatives can be employed without a finding of statistical disparity. Therefore, they are applicable to all ethnic groups, gender groups, and industries. These findings could also be applied to veterans and small businesses programs. Mason Tillman will identify and evaluate the effectiveness of any alternative race and gender-neutral policies and initiatives that have been used by the County or by other governments within the relevant geographic market in eliminating the effects of discrimination and/or increasing SBE participation in public contracting. Mason Tillman will also make recommendations for the adoption of alternative race and gender-neutral program policies and practices that may effectively address each identified barrier to M/WBE formation, growth, availability, and contract participation.

In addition, Mason Tillman will review the County's race and gender-neutral initiatives and compile a list of the policies enacted and practices used to eliminate discrimination during the study period. The race and gender-neutral policies and procedures extant

during the study period will be reviewed and analyzed for their effectiveness in providing access to County contracts. The findings of the regression analysis will be used to assess the effects of County's current race and gender-neutral measures, including the SBE program, and their effectiveness in increasing SBE participation in the County contracts within the study period.

The anecdotal analysis will provide insight into the barriers to contracting perceived by market area SBEs, including M/WBEs. Mason Tillman will formulate additional race and gender-neutral recommendations that encourage SBE participation and address any concerns voiced by market area SBEs.

Mason Tillman will also provide recommendations to increase the usability and accessibility of the County's website and a system to monitor compliance with the recommended program changes. In addition, any identified needs for staff augmentation will be outlined. Mason Tillman will also draw upon best management practices from similarly situated jurisdictions.

Additionally, an index of available race and gender-neutral remedies will be created assessing their effectiveness in eliminating identified discrimination. These remedies will be sourced from the best management practices and existing policies of other public agencies, cities, and states, focusing on those with profiles similar to the County. Special attention will be given to policies and best practices of local governments in the state of Florida. Comparable studies performed by Mason Tillman will also be used as a resource.



Once a sufficient number of best practices and policies have been identified, a determination of their effectiveness will be made. To determine the most appropriate race and gender-neutral alternatives for the County, specific criteria including implementation difficulty, purchasing environment, feasibility, and cost will be considered in conjunction with their overall effectiveness.

Deliverable: Race and Gender-Neutral Recommendations Chapter

2. Phase II

4.5.1 Provide Race and Gender-Conscious Remedies

Croson established that an initial burden of proof must be met in order to establish race and gender-conscious remedies that encourage the use of M/WBEs. *Croson* further requires jurisdictions to have a “strong basis in evidence” to ensure that any proposed race and gender-conscious program goals meet the “narrowly tailored” requirement to rectify the effects of discrimination without unduly burdening unprotected classes.¹⁵

To the extent that race and gender-neutral remedies alone are unlikely to fully eliminate the ongoing effects of marketplace discrimination on County contract awards and subcontracts, Mason Tillman intends to draft recommendations for reinstating the County’s race and gender-conscious M/WBE policies and procedures that are appropriately narrowly tailored to address Study findings, if applicable.

If Mason Tillman identifies statistically significant underutilization of M/WBEs that are in part caused by discrimination, Mason Tillman will recommend remedial programs to

¹⁵ *Concrete Works I*, 36 F.3d at 1522 (citing *Wygant v. Jackson Board of Education*, 476 U.S. 267, 292 (1986); see *Croson* 488 U.S. at 509).

address the effects of any such identified discrimination and to discourage its recurrence. In recommending remedial programs, Mason Tillman will assess the extent to which the effects of discrimination can be addressed through race and gender-neutral means. To the extent Mason Tillman determines that neutral remedies alone will be insufficient to fully remedy the effects of identified discrimination, it shall propose race and gender-conscious remedies that are narrowly tailored to address the effects of the discrimination.

Deliverable: Race and Gender-Conscious Recommendations Chapter

4.5.2 Conduct Program Comparison

a. Detailed Legal Review

The study must conform to the standards set forth in *Croson* and its progeny, as well as *Florida Associated General Contractors v. State of Florida*.¹⁶ Therefore, Mason Tillman maintains a detailed legal review of all applicable laws and judicial findings to ensure that each of its studies will withstand strict scrutiny review. The legal review will be updated if new decisions are adjudicated in the Eleventh Circuit as well as relevant persuasive authority in other circuits. A current legal analysis, maintained by Mason Tillman's legal advisors, will be provided to the County at no cost.

Deliverable: Legal Analysis Chapter

b. Recommendations

In *Croson*, the United States Supreme Court set the standard of review for determining when a race-conscious contracting program meets constitutional muster. The Supreme Court affirmed in *Croson* that pursuant to the 14th Amendment, the proper standard of review for state and local MBE programs, which are necessarily race-based, is strict

¹⁶ AGC, 303 F.Supp.2d 1307 (2004).

scrutiny.¹⁷ Specifically, the government must show that the classification is narrowly tailored to achieve a compelling state interest.¹⁸ The disparity findings, if any, will be presented by ethnic group, gender group, and industry. Therefore, any race and gender-conscious recommendations will be narrowly tailored to the statistically significant findings in the Study and pass constitutional muster. The disparity study methodology developed by Mason Tillman's legal and statistical team more than two decades ago has resulted in 127 unchallenged disparity studies. Over 90 percent of Mason Tillman's clients have chosen to enact the recommendations presented by Mason Tillman. None of the programs based on a Mason Tillman study has been challenged. Therefore, Mason Tillman will be able to produce a legally defensible study that conforms to the requirements of *AGC v. Florida, Croson*, and its progeny.

c.&d. Peer County Disparity Studies and M/WBE Programs

The objective is to identify any programs—or portions of programs—implemented by peer jurisdictions which have effectively increased its M/WBE participation. To that effect, Mason Tillman will examine, summarize, and compare the availability measures for the County's relevant industry categories of contracts and the disparity studies completed in Broward, Miami-Dade, Hillsborough, Pinellas, Orange, and Duval County. Mason Tillman has performed. Additionally, the availability, utilization, and disparity analyses will be compared to the County's Disparity Study, highlighting the differences and similarities across the jurisdictions.

¹⁷ *Croson*, 488 U.S. at 493-95.

¹⁸ *Id.* at 484-86.

Mason Tillman has performed disparity studies for Hillsborough School District, Hillsborough Aviation Authority, Duval County, and Miami-Dade County, and is currently performing the disparity study for the School Board of Broward County. Therefore, the firm has first-hand knowledge of the best management practices and the actual utilization of M/WBEs achieved in the peer counties, and will be able to provide recommendations based on its intimate knowledge of these peer programs.

4.5.3 Provide the Final Study Report

1. Prepare Monthly Progress Reports

A monthly activity report will identify the current production and the outstanding issues affecting the timeline in the work plan.

A Microsoft Access form designed to capture the occurrence of task activities and deliverables will be used to produce the written report. The report will track the activities in the work plan. This computer-aided tool will permit the efficient logging of tasks and activities on a daily basis and the electronic generation of monthly reports. The reports will also include the status of each task, and whether additional information is needed to meet the agreed-upon deadlines.

2. Prepare Draft Chapters

To meet the 24-month schedule, chapters of the report will be submitted as they are completed during the Study process. Submitting chapters intermittently will enable the County to manage the production process more effectively and provide timely comments. This process will allow Mason Tillman to complete the Study in accordance with the County's timeframe. The submissions will include a description of the information



considered, the methodology employed to produce the findings, recommendations, and data files. All chapters, except the recommendations chapter, will be submitted for review and comment before the draft report is released.

The recommendations chapter will be the last chapter to be produced. Using this approach, the review of the chapters in the draft reports will effectively be complete before the Draft Final Report is submitted.

3. Prepare Draft Final Report

A Draft Final Report will be submitted to the County detailing the methodology and findings from the Study.

4. Prepare Final Report

After completion and approval of the Draft Report, the Final Report will incorporate the comments and concerns raised by the County in reviewing the Draft Report. The Final Study Report will detail the methodology and findings from the Study. The findings will be presented by ethnic and gender groups, including African American, Hispanic American, Asian American, Native American, Caucasian Woman-owned, and non-Minority Male-owned businesses, and industry. The Final Report will also include recommendations on how often a study update should be conducted. The Final Report will be submitted to the County in hardcopy and electronic format.

The Final Report will contain at least the following elements:

- Name and Signature of the Principle
- Executive Summary

- Definitions Section
- Background Section
- Legal Analysis Chapter
- Assumptions Section

Any and all notes, work papers, databases, records, and documentation necessary to support the results of the Study shall be submitted both in paper and electronic formats. Tables containing the statistical data and draft chapters will be produced and submitted intermittently prior to completing the Draft Final Report. These submittals will provide documentation that the research is proceeding in accordance with the progress reported in the monthly status reports.

Deliverable: Final Report

4.5.4 Make Presentations

Mason Tillman will conduct the required presentations. Presentations will be made by the core team before the County Senior Staff, Small Business Advisory Committee, and community organizations. The presentations will explain the Study's methodology, results, and reports. In addition, key staff members of Mason Tillman will attend the public hearings with the Board of County Commissioners (BBC) and individual member of the BBC.



Additional Required Tasks

1. Creation of Task Force

Mason Tillman will assist in the creation of a task force, if required. A task force may be created if the County chooses to reinstate the M/WBE program based on the Study findings.

2. Litigation Support

Mason Tillman will be available for litigation support if litigation in connection with a program based on the Study arises, including identifying expert witnesses. In addition to serving as expert witnesses in defense of competitors' disparity studies, as described in *Section 3.1.5* above, Mason Tillman also has provided post-enactment legal support and litigation support as detailed below.

- **Post-Enactment Disparity Study Legal Support**

In *Kossman Contracting Co. v. Houston*, No. Civ-H-96-3100 (S.D. Tex., filed 1996), the City's M/WBE program, completed by a competitor in 1995, was challenged as unconstitutional. The disparity study upon which the Program was based was ruled to be invalid. In 2006, a settlement agreement allowed the City to introduce a post-enactment disparity study. Mason Tillman was retained in October 2006 to conduct the new disparity study. The judge approved Mason Tillman's study in January 2007, and the City Council reauthorized its M/WBE program in March 2007. According to the City's attorney, Mr. Patrick Zummo:



Neither the plaintiff nor the Court questioned the validity of the Mason Tillman study. In fact, both the plaintiff and the City relied on the study to support what each side believed the appropriate goals should be.¹⁹

- **Disparity Study Litigation Support**

In 1999, the Southern Florida Water District retained Mason Tillman to evaluate its disparity study, which was the factual predicate for the District's challenged M/WBE Program, *IT Corporation v. South Florida Water Management District*, No. 97-8872 CIV S.D. Fla., filed Nov. 13, 1997. The case was dismissed December 16, 1998, following a settlement. Mason Tillman prepared a critical review of the methodologies used by the District's consultant, and determined that the disparity study did not provide the factual predicate for the subcontracting goals which IT Corporation challenged. The District decided to modify its M/WBE Program in order to settle the case.



¹⁹ Letter from Patrick Zummo to Dr. Eleanor Mason Ramsey on February 5, 2009.

3.3 LOCATION

The proposed kick-off meetings allow the County and Mason Tillman to formulate a work plan and identify key contact persons in this project to ensure effective communication at the inception of the project. Mason Tillman will also be available for any additional meetings requested by the County. In order to ensure effective communication between Mason Tillman and the County throughout the Study, monthly status reports will be submitted to the County in order to indicate the status of each task and identify any challenges. In addition, Mason Tillman proposes weekly conference calls during Phase I of the Study to ensure greater involvement of the County.

Mason Tillman's management structure described in *Section 3.2.1* above will ensure that communications between Mason Tillman and County staff are streamlined. Therefore, any issues or concerns that may arise during the study can be addressed expeditiously.

Mason Tillman's management team is located at

Mason Tillman Associates, Ltd.

1999 Harrison Street, Suite 1440 • Oakland, CA 94612

Tel: (510) 835-9012 • Fax: (510) 835-2647

Additionally, Mason Tillman's team includes certified Palm Beach County SBEs who will be able to assist the County onsite, if necessary. The SBEs consist of experienced professionals who are experts in data collection, community outreach, anecdotal

interviews, transcription, community meeting and public hearing facilitation, surveying services, and website design. The four certified Palm Beach County SBEs are:

- **L.B. Limited & Associates, Inc.**

120 South Dixie Hwy, Suite 205

West Palm Beach, FL 33401

- **S. Davis & Associates, P.A.**

8144 Okeechobee Blvd., Ste. B

West Palm Beach, FL 33411

- **Decision Support Partners, Inc.**

P.O. Box 30547

Palm Beach Gardens, FL 33420

- **Caren Hackman, Inc.**

4305 Hickory Dr.

Palm Beach Gardens, FL 33418

Mason Tillman also has longstanding working relations with a Miami-based minority and woman-owned research firm. The firm has worked with Mason Tillman on the Miami-Dade County Disparity Study. The firm will perform the statistical and regression analyses.



- **Q-Q Research Consultants**

1444 Biscayne Blvd #115

Miami, FL 33132





3.4 FINANCIAL/BUSINESS STABILITY

The requested financial statements contain company confidential information and are enclosed in a separate sealed envelope.





3.5 PRICE PROPOSAL

The requested price proposal is enclosed herein.





APPENDIX A
REVISED PRICE PROPOSAL PAGES
RFP NO. 14-071/LJ

Page 1 of 2

The following price is submitted as the all inclusive price, excluding expert witness and litigation support, to provide the Office of Small Business Assistance with development and delivery of services in accordance with the Requirements/Scope of Work/Services set forth in this RFP document.

The proposer shall include the all inclusive price for each Phase, as set forth in Section 4.1 Contractor's Responsibilities, of the Scope of Work/Services. Additionally, proposer shall submit an hourly rate at which expert witness and litigation support services will be charged. Evaluation of each proposal shall be based on the total proposed price and the hourly rate for litigation support and expert witness services. One proposer shall be awarded the entire project consisting of the two (2) phases.

Phase	Description	Firm Fixed Price
I	Section 4.4 of the SOW/Services	\$ 581,945.00
II	Section 4.5 of the SOW/Services	\$ 168,050.00
	**TOTAL PROPOSED PRICE	\$ 749,995.00

**For Evaluation Purposes Only

Description	Unit	Quantity	Unit Price
Expert witness	Hourly	As needed	\$ 225.00
Litigation support	Hourly	As needed	\$ 225.00

Documented travel related expenses for airfare, lodging, and car rental are reimbursable expenses that will be paid in accordance with Chapter 112.061, Florida Statutes and Palm Beach County PPM CW-F-009, Travel.

The Proposer certifies by signature below the following:

- a. This price is current, accurate complete, and is presented as the Total Price, including "out-of-pocket" expenses (if any), for the performance of this Contract in accordance with the Requirements/Scope of Work/Services of this RFP.
- b. This Proposal is current, accurate, complete, and is presented to the County for the performance of this Contract in accordance with all the requirements as stated in this RFP.

APPENDIX A
REVISED PRICE PROPOSAL PAGES
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c. This Proposal is submitted without prior understanding, agreement, or connection with any corporation, firm, or person submitting a Proposal for the same materials, services, and supplies and is, in all respects, fair and without collusion or fraud.

d. The financial stability to fully perform the terms and conditions as specified herein. The County reserves the right to request financial information from the proposer at any time during the solicitation process and in any form deemed necessary by the County.

IMPORTANT:

FAILURE TO SUBMIT THESE PAGES, INCLUDING ALL REQUIRED INFORMATION AND SIGNATURES, WILL BE CAUSE FOR "IMMEDIATE REJECTION" OF THE ENTIRE PROPOSAL RESPONSE.

NAME (PRINT): Eleanor Mason Ramsey, Ph.D.

TITLE: President

COMPANY: Mason Tillman Associates, Ltd.

ADDRESS: 1999 Harrison Street Suite 1440

CITY/STATE/ZIP: Oakland CA, 94612

TELEPHONE NO. (510) 835-9012

SIGNATURE: 

Cost

Table A: Cost Summary for Milestones and Categories

Tasks	Hours	Subtotal
Task 1: Prepare Preliminary Work Plan	37	\$7,570.00
Task 2: Convene Project Kick-Off Meetings	95	\$11,500.00
Task 3: Review and Collect Data	683	\$75,000.00
Task 4: Perform Utilization Analysis	881	\$105,050.00
Task 5: Define Market Area	108	\$11,920.00
Task 6: Perform Availability Analysis	1,052	\$127,445.00
Task 7: Utilization and Disparity Analysis	675	\$78,430.00
Task 8: Collect Qualitative Evidence	983	\$127,530.00
Task 9: Provide Race and Gender-Neutral Recommendations	287	\$37,500.00
Task 10: Provide Race and Gender-Conscious Remedies	287	\$37,500.00
Task 11: Conduct Program Comparison	251	\$37,500.00
Task 12: Provide the Final Study Report	390	\$45,000.00
Task 13: Make Presentations	371	\$45,000.00
Task 14: Creation of a Task Force	15	\$3,050.00
GRAND TOTAL		\$749,995.00

Table B: Hourly Rates and Percent Involvement by Personnel

Name	Title	Hours Involvement	Hourly Rate
Eleanor Mason Ramsey, Ph.D.	Project Manager	5.90%	\$300.00
Edward Norton, L.L.P.	Chief Legal Advisor	2.67%	\$250.00
Allura Scott, Esq.	Anecdotal Manager	8.93%	\$200.00
Antonina Salina, M.S.	Database Manager	6.41%	\$110.00
Aminatu Yusuf, B.S.	Research Manager	11.77%	\$110.00
Mike Leong, M.S.	Senior Statistician	3.24%	\$150.00
Tuyet Tan, Esq.	Senior Research Associate	10.11%	\$90.00
Olga Leontyeva, M.S.	Data Analyst	7.42%	\$90.00
Fen Qin, M.S.	Database Assistant	9.60%	\$70.00
Robert Ramsey, M.S.	Statistician	3.68%	\$100.00
Nicholas Negoro, B.A.	Research Assistant	12.62%	\$70.00
L.B. Limited and Associates, Inc.	Subconsultant I	4.25%	\$130.00
S. Davis & Associates, P.A.	Subconsultant II	3.34%	\$135.00
Caren Hackman, Inc.	Subconsultant III	4.33%	\$85.00
Decision Support Partners, Inc.	Subconsultant IV	4.42%	\$125.00
Q-Q Research Consultants	Subconsultant V	1.31%	\$100.00

Cost

Staff	Position	Hourly Rate	Hours	Total
Task 1: Prepare Preliminary Work Plan				
Eleanor Mason Ramsey, Ph.D.	Project Manager	\$300.00	10	\$3,000.00
Edward Norton, L.L.P.	Chief Legal Advisor	\$250.00	5	\$1,250.00
Allura Scott, Esq.	Anecdotal Manager	\$200.00	10	\$2,000.00
Antonina Salina, M.S.	Database Manager	\$110.00	6	\$660.00
Aminatu Yusuf, B.S.	Research Manager	\$110.00	6	\$660.00
Mike Leong, M.S.	Senior Statistician	\$150.00	-	\$0.00
Tuyet Tan, Esq.	Senior Research Associate	\$90.00	-	\$0.00
Olga Leontyeva, M.S.	Data Analyst	\$90.00	-	\$0.00
Fen Qin, M.S.	Database Assistant	\$70.00	-	\$0.00
Robert Ramsey, M.S.	Statistician	\$100.00	-	\$0.00
Nicholas Negoro, B.A.	Research Assistant	\$70.00	-	\$0.00
L.B. Limited and Associates, Inc.	Subconsultant I	\$130.00	-	\$0.00
S. Davis & Associates, P.A.	Subconsultant II	\$135.00	-	\$0.00
Caren Hackman, Inc.	Subconsultant III	\$85.00	-	\$0.00
Decision Support Partners, Inc.	Subconsultant IV	\$125.00	-	\$0.00
Q-Q Research Consultants	Subconsultant V	\$100.00	-	\$0.00
Subtotal			37	\$7,570.00
Task 2: Convene Project Kick-Off Meetings				
Eleanor Mason Ramsey, Ph.D.	Project Manager	\$300.00	10	\$3,000.00
Edward Norton, L.L.P.	Chief Legal Advisor	\$250.00	-	\$0.00
Allura Scott, Esq.	Anecdotal Manager	\$200.00	10	\$2,000.00
Antonina Salina, M.S.	Database Manager	\$110.00	10	\$1,100.00
Aminatu Yusuf, B.S.	Research Manager	\$110.00	10	\$1,100.00
Mike Leong, M.S.	Senior Statistician	\$150.00	-	\$0.00
Tuyet Tan, Esq.	Senior Research Associate	\$90.00	-	\$0.00
Olga Leontyeva, M.S.	Data Analyst	\$90.00	-	\$0.00
Fen Qin, M.S.	Database Assistant	\$70.00	20	\$1,400.00
Robert Ramsey, M.S.	Statistician	\$100.00	15	\$1,500.00
Nicholas Negoro, B.A.	Research Assistant	\$70.00	20	\$1,400.00
L.B. Limited and Associates, Inc.	Subconsultant I	\$130.00	-	\$0.00
S. Davis & Associates, P.A.	Subconsultant II	\$135.00	-	\$0.00
Caren Hackman, Inc.	Subconsultant III	\$85.00	-	\$0.00
Decision Support Partners, Inc.	Subconsultant IV	\$125.00	-	\$0.00
Q-Q Research Consultants	Subconsultant V	\$100.00	-	\$0.00
Subtotal			95	\$11,500.00
Task 3: Review and Collect Data				
Eleanor Mason Ramsey, Ph.D.	Project Manager	\$300.00	20	\$6,000.00
Edward Norton, L.L.P.	Chief Legal Advisor	\$250.00	-	\$0.00
Allura Scott, Esq.	Anecdotal Manager	\$200.00	20	\$4,000.00
Antonina Salina, M.S.	Database Manager	\$110.00	60	\$6,600.00
Aminatu Yusuf, B.S.	Research Manager	\$110.00	50	\$5,500.00
Mike Leong, M.S.	Senior Statistician	\$150.00	10	\$1,500.00
Tuyet Tan, Esq.	Senior Research Associate	\$90.00	-	\$0.00
Olga Leontyeva, M.S.	Data Analyst	\$90.00	70	\$6,300.00
Fen Qin, M.S.	Database Assistant	\$70.00	75	\$5,250.00
Robert Ramsey, M.S.	Statistician	\$100.00	37	\$3,700.00
Nicholas Negoro, B.A.	Research Assistant	\$70.00	79	\$5,530.00
L.B. Limited and Associates, Inc.	Subconsultant I	\$130.00	-	\$0.00
S. Davis & Associates, P.A.	Subconsultant II	\$135.00	167	\$22,545.00
Caren Hackman, Inc.	Subconsultant III	\$85.00	95	\$8,075.00
Decision Support Partners, Inc.	Subconsultant IV	\$125.00	-	\$0.00
Q-Q Research Consultants	Subconsultant V	\$100.00	-	\$0.00
Subtotal			683	\$75,000.00

Use or disclosure of data contained on this page is restricted.

Cost

Staff	Position	Hourly Rate	Hours	Total
Task 4: Perform Utilization Analysis				
Eleanor Mason Ramsey, Ph.D.	Project Manager	\$300.00	50	\$15,000.00
Edward Norton, L.L.P.	Chief Legal Advisor	\$250.00	20	\$5,000.00
Allura Scott, Esq.	Anecdotal Manager	\$200.00	65	\$13,000.00
Antonina Salina, M.S.	Database Manager	\$110.00	85	\$9,350.00
Aminatu Yusuf, B.S.	Research Manager	\$110.00	75	\$8,250.00
Mike Leong, M.S.	Senior Statistician	\$150.00	47	\$7,050.00
Tuyet Tan, Esq.	Senior Research Associate	\$90.00	70	\$6,300.00
Olga Leontyeva, M.S.	Data Analyst	\$90.00	100	\$9,000.00
Fen Qin, M.S.	Database Assistant	\$70.00	100	\$7,000.00
Robert Ramsey, M.S.	Statistician	\$100.00	77	\$7,700.00
Nicholas Negoro, B.A.	Research Assistant	\$70.00	120	\$8,400.00
L.B. Limited and Associates, Inc.	Subconsultant I	\$130.00	-	\$0.00
S. Davis & Associates, P.A.	Subconsultant II	\$135.00	-	\$0.00
Caren Hackman, Inc.	Subconsultant III	\$85.00	-	\$0.00
Decision Support Partners, Inc.	Subconsultant IV	\$125.00	72	\$9,000.00
Q-Q Research Consultants	Subconsultant V	\$100.00	-	\$0.00
Subtotal			881	\$105,050.00
Task 5: Define Market Area				
Eleanor Mason Ramsey, Ph.D.	Project Manager	\$300.00	8	\$2,400.00
Edward Norton, L.L.P.	Chief Legal Advisor	\$250.00	-	\$0.00
Allura Scott, Esq.	Anecdotal Manager	\$200.00	10	\$2,000.00
Antonina Salina, M.S.	Database Manager	\$110.00	11	\$1,210.00
Aminatu Yusuf, B.S.	Research Manager	\$110.00	-	\$0.00
Mike Leong, M.S.	Senior Statistician	\$150.00	-	\$0.00
Tuyet Tan, Esq.	Senior Research Associate	\$90.00	20	\$1,800.00
Olga Leontyeva, M.S.	Data Analyst	\$90.00	19	\$1,710.00
Fen Qin, M.S.	Database Assistant	\$70.00	20	\$1,400.00
Robert Ramsey, M.S.	Statistician	\$100.00	-	\$0.00
Nicholas Negoro, B.A.	Research Assistant	\$70.00	20	\$1,400.00
L.B. Limited and Associates, Inc.	Subconsultant I	\$130.00	-	\$0.00
S. Davis & Associates, P.A.	Subconsultant II	\$135.00	-	\$0.00
Caren Hackman, Inc.	Subconsultant III	\$85.00	-	\$0.00
Decision Support Partners, Inc.	Subconsultant IV	\$125.00	-	\$0.00
Q-Q Research Consultants	Subconsultant V	\$100.00	-	\$0.00
Subtotal			108	\$11,920.00
Task 6: Perform Availability Analysis				
Eleanor Mason Ramsey, Ph.D.	Project Manager	\$300.00	50	\$15,000.00
Edward Norton, L.L.P.	Chief Legal Advisor	\$250.00	40	\$10,000.00
Allura Scott, Esq.	Anecdotal Manager	\$200.00	90	\$18,000.00
Antonina Salina, M.S.	Database Manager	\$110.00	80	\$8,800.00
Aminatu Yusuf, B.S.	Research Manager	\$110.00	90	\$9,900.00
Mike Leong, M.S.	Senior Statistician	\$150.00	75	\$11,250.00
Tuyet Tan, Esq.	Senior Research Associate	\$90.00	90	\$8,100.00
Olga Leontyeva, M.S.	Data Analyst	\$90.00	90	\$8,100.00
Fen Qin, M.S.	Database Assistant	\$70.00	140	\$9,800.00
Robert Ramsey, M.S.	Statistician	\$100.00	80	\$8,000.00
Nicholas Negoro, B.A.	Research Assistant	\$70.00	150	\$10,500.00
L.B. Limited and Associates, Inc.	Subconsultant I	\$130.00	-	\$0.00
S. Davis & Associates, P.A.	Subconsultant II	\$135.00	37	\$4,995.00
Caren Hackman, Inc.	Subconsultant III	\$85.00	-	\$0.00
Decision Support Partners, Inc.	Subconsultant IV	\$125.00	40	\$5,000.00
Q-Q Research Consultants	Subconsultant V	\$100.00	-	\$0.00
Subtotal			1,052	\$127,445.00

Use or disclosure of data contained on this page is restricted.

Cost

Staff	Position	Hourly Rate	Hours	Total
Task 7: Utilization and Disparity Analysis				
Eleanor Mason Ramsey, Ph.D.	Project Manager	\$300.00	25	\$7,500.00
Edward Norton, L.L.P.	Chief Legal Advisor	\$250.00	15	\$3,750.00
Allura Scott, Esq.	Anecdotal Manager	\$200.00	65	\$13,000.00
Antonina Salina, M.S.	Database Manager	\$110.00	80	\$8,800.00
Aminatu Yusuf, B.S.	Research Manager	\$110.00	80	\$8,800.00
Mike Leong, M.S.	Senior Statistician	\$150.00	35	\$5,250.00
Tuyet Tan, Esq.	Senior Research Associate	\$90.00	60	\$5,400.00
Olga Leontyeva, M.S.	Data Analyst	\$90.00	65	\$5,850.00
Fen Qin, M.S.	Database Assistant	\$70.00	84	\$5,880.00
Robert Ramsey, M.S.	Statistician	\$100.00	16	\$1,600.00
Nicholas Negoro, B.A.	Research Assistant	\$70.00	80	\$5,600.00
L.B. Limited and Associates, Inc.	Subconsultant I	\$130.00	-	\$0.00
S. Davis & Associates, P.A.	Subconsultant II	\$135.00	-	\$0.00
Caren Hackman, Inc.	Subconsultant III	\$85.00	-	\$0.00
Decision Support Partners, Inc.	Subconsultant IV	\$125.00	-	\$0.00
Q-Q Research Consultants	Subconsultant V	\$100.00	70	\$7,000.00
Subtotal			675	\$78,430.00
Task 8: Collect Qualitative Evidence				
Eleanor Mason Ramsey, Ph.D.	Project Manager	\$300.00	44	\$13,200.00
Edward Norton, L.L.P.	Chief Legal Advisor	\$250.00	21	\$5,250.00
Allura Scott, Esq.	Anecdotal Manager	\$200.00	107	\$21,400.00
Antonina Salina, M.S.	Database Manager	\$110.00	30	\$3,300.00
Aminatu Yusuf, B.S.	Research Manager	\$110.00	80	\$8,800.00
Mike Leong, M.S.	Senior Statistician	\$150.00	21	\$3,150.00
Tuyet Tan, Esq.	Senior Research Associate	\$90.00	78	\$7,020.00
Olga Leontyeva, M.S.	Data Analyst	\$90.00	60	\$5,400.00
Fen Qin, M.S.	Database Assistant	\$70.00	58	\$4,060.00
Robert Ramsey, M.S.	Statistician	\$100.00	-	\$0.00
Nicholas Negoro, B.A.	Research Assistant	\$70.00	23	\$1,610.00
L.B. Limited and Associates, Inc.	Subconsultant I	\$130.00	193	\$25,090.00
S. Davis & Associates, P.A.	Subconsultant II	\$135.00	-	\$0.00
Caren Hackman, Inc.	Subconsultant III	\$85.00	100	\$8,500.00
Decision Support Partners, Inc.	Subconsultant IV	\$125.00	158	\$19,750.00
Q-Q Research Consultants	Subconsultant V	\$100.00	10	\$1,000.00
Subtotal			983	\$127,530.00
Task 9: Provide Race and Gender-Neutral Recommendations				
Eleanor Mason Ramsey, Ph.D.	Project Manager	\$300.00	20	\$6,000.00
Edward Norton, L.L.P.	Chief Legal Advisor	\$250.00	16	\$4,000.00
Allura Scott, Esq.	Anecdotal Manager	\$200.00	41	\$8,200.00
Antonina Salina, M.S.	Database Manager	\$110.00	-	\$0.00
Aminatu Yusuf, B.S.	Research Manager	\$110.00	80	\$8,800.00
Mike Leong, M.S.	Senior Statistician	\$150.00	-	\$0.00
Tuyet Tan, Esq.	Senior Research Associate	\$90.00	70	\$6,300.00
Olga Leontyeva, M.S.	Data Analyst	\$90.00	-	\$0.00
Fen Qin, M.S.	Database Assistant	\$70.00	-	\$0.00
Robert Ramsey, M.S.	Statistician	\$100.00	-	\$0.00
Nicholas Negoro, B.A.	Research Assistant	\$70.00	60	\$4,200.00
L.B. Limited and Associates, Inc.	Subconsultant I	\$130.00	-	\$0.00
S. Davis & Associates, P.A.	Subconsultant II	\$135.00	-	\$0.00
Caren Hackman, Inc.	Subconsultant III	\$85.00	-	\$0.00
Decision Support Partners, Inc.	Subconsultant IV	\$125.00	-	\$0.00
Q-Q Research Consultants	Subconsultant V	\$100.00	-	\$0.00
Subtotal			287	\$37,500.00

Use or disclosure of data contained on this page is restricted.

Cost

Staff	Position	Hourly Rate	Hours	Total
Task 10: Provide Race and Gender-Conscious Remedies				
Eleanor Mason Ramsey, Ph.D.	Project Manager	\$300.00	20	\$6,000.00
Edward Norton, L.L.P.	Chief Legal Advisor	\$250.00	16	\$4,000.00
Allura Scott, Esq.	Anecdotal Manager	\$200.00	41	\$8,200.00
Antonina Salina, M.S.	Database Manager	\$110.00	-	\$0.00
Aminatu Yusuf, B.S.	Research Manager	\$110.00	80	\$8,800.00
Mike Leong, M.S.	Senior Statistician	\$150.00	-	\$0.00
Tuyet Tan, Esq.	Senior Research Associate	\$90.00	70	\$6,300.00
Olga Leontyeva, M.S.	Data Analyst	\$90.00	-	\$0.00
Fen Qin, M.S.	Database Assistant	\$70.00	-	\$0.00
Robert Ramsey, M.S.	Statistician	\$100.00	-	\$0.00
Nicholas Negoro, B.A.	Research Assistant	\$70.00	60	\$4,200.00
L.B. Limited and Associates, Inc.	Subconsultant I	\$130.00	-	\$0.00
S. Davis & Associates, P.A.	Subconsultant II	\$135.00	-	\$0.00
Caren Hackman, Inc.	Subconsultant III	\$85.00	-	\$0.00
Decision Support Partners, Inc.	Subconsultant IV	\$125.00	-	\$0.00
Q-Q Research Consultants	Subconsultant V	\$100.00	-	\$0.00
Subtotal			287	\$37,500.00
Task 11: Conduct Program Comparison				
Eleanor Mason Ramsey, Ph.D.	Project Manager	\$300.00	30	\$9,000.00
Edward Norton, L.L.P.	Chief Legal Advisor	\$250.00	30	\$7,500.00
Allura Scott, Esq.	Anecdotal Manager	\$200.00	31	\$6,200.00
Antonina Salina, M.S.	Database Manager	\$110.00	-	\$0.00
Aminatu Yusuf, B.S.	Research Manager	\$110.00	60	\$6,600.00
Mike Leong, M.S.	Senior Statistician	\$150.00	-	\$0.00
Tuyet Tan, Esq.	Senior Research Associate	\$90.00	60	\$5,400.00
Olga Leontyeva, M.S.	Data Analyst	\$90.00	-	\$0.00
Fen Qin, M.S.	Database Assistant	\$70.00	-	\$0.00
Robert Ramsey, M.S.	Statistician	\$100.00	-	\$0.00
Nicholas Negoro, B.A.	Research Assistant	\$70.00	40	\$2,800.00
L.B. Limited and Associates, Inc.	Subconsultant I	\$130.00	-	\$0.00
S. Davis & Associates, P.A.	Subconsultant II	\$135.00	-	\$0.00
Caren Hackman, Inc.	Subconsultant III	\$85.00	-	\$0.00
Decision Support Partners, Inc.	Subconsultant IV	\$125.00	-	\$0.00
Q-Q Research Consultants	Subconsultant V	\$100.00	-	\$0.00
Subtotal			251	\$37,500.00
Task 12: Provide the Final Study Report				
Eleanor Mason Ramsey, Ph.D.	Project Manager	\$300.00	29	\$8,700.00
Edward Norton, L.L.P.	Chief Legal Advisor	\$250.00	-	\$0.00
Allura Scott, Esq.	Anecdotal Manager	\$200.00	31	\$6,200.00
Antonina Salina, M.S.	Database Manager	\$110.00	30	\$3,300.00
Aminatu Yusuf, B.S.	Research Manager	\$110.00	70	\$7,700.00
Mike Leong, M.S.	Senior Statistician	\$150.00	10	\$1,500.00
Tuyet Tan, Esq.	Senior Research Associate	\$90.00	60	\$5,400.00
Olga Leontyeva, M.S.	Data Analyst	\$90.00	50	\$4,500.00
Fen Qin, M.S.	Database Assistant	\$70.00	50	\$3,500.00
Robert Ramsey, M.S.	Statistician	\$100.00	-	\$0.00
Nicholas Negoro, B.A.	Research Assistant	\$70.00	60	\$4,200.00
L.B. Limited and Associates, Inc.	Subconsultant I	\$130.00	-	\$0.00
S. Davis & Associates, P.A.	Subconsultant II	\$135.00	-	\$0.00
Caren Hackman, Inc.	Subconsultant III	\$85.00	-	\$0.00
Decision Support Partners, Inc.	Subconsultant IV	\$125.00	-	\$0.00
Q-Q Research Consultants	Subconsultant V	\$100.00	-	\$0.00
Subtotal			390	\$45,000.00

Cost

Staff	Position	Hourly Rate	Hours	Total
Task 13: Make Presentations				
Eleanor Mason Ramsey, Ph.D.	Project Manager	\$300.00	40	\$12,000.00
Edward Norton, L.L.P.	Chief Legal Advisor	\$250.00	-	\$0.00
Allura Scott, Esq.	Anecdotal Manager	\$200.00	20	\$4,000.00
Antonina Salina, M.S.	Database Manager	\$110.00	-	\$0.00
Aminatu Yusuf, B.S.	Research Manager	\$110.00	34	\$3,740.00
Mike Leong, M.S.	Senior Statistician	\$150.00	-	\$0.00
Tuyet Tan, Esq.	Senior Research Associate	\$90.00	40	\$3,600.00
Olga Leontyeva, M.S.	Data Analyst	\$90.00	-	\$0.00
Fen Qin, M.S.	Database Assistant	\$70.00	40	\$2,800.00
Robert Ramsey, M.S.	Statistician	\$100.00	-	\$0.00
Nicholas Negoro, B.A.	Research Assistant	\$70.00	60	\$4,200.00
L.B. Limited and Associates, Inc.	Subconsultant I	\$130.00	67	\$8,710.00
S. Davis & Associates, P.A.	Subconsultant II	\$135.00	-	\$0.00
Caren Hackman, Inc.	Subconsultant III	\$85.00	70	\$5,950.00
Decision Support Partners, Inc.	Subconsultant IV	\$125.00	-	\$0.00
Q-Q Research Consultants	Subconsultant V	\$100.00	-	\$0.00
Subtotal			371	\$45,000.00
Task 14: Creation of a Task Force				
Eleanor Mason Ramsey, Ph.D.	Project Manager	\$300.00	5	\$1,500.00
Edward Norton, L.L.P.	Chief Legal Advisor	\$250.00	-	\$0.00
Allura Scott, Esq.	Anecdotal Manager	\$200.00	5	\$1,000.00
Antonina Salina, M.S.	Database Manager	\$110.00	-	\$0.00
Aminatu Yusuf, B.S.	Research Manager	\$110.00	5	\$550.00
Mike Leong, M.S.	Senior Statistician	\$150.00	-	\$0.00
Tuyet Tan, Esq.	Senior Research Associate	\$90.00	-	\$0.00
Olga Leontyeva, M.S.	Data Analyst	\$90.00	-	\$0.00
Fen Qin, M.S.	Database Assistant	\$70.00	-	\$0.00
Robert Ramsey, M.S.	Statistician	\$100.00	-	\$0.00
Nicholas Negoro, B.A.	Research Assistant	\$70.00	-	\$0.00
L.B. Limited and Associates, Inc.	Subconsultant I	\$130.00	-	\$0.00
S. Davis & Associates, P.A.	Subconsultant II	\$135.00	-	\$0.00
Caren Hackman, Inc.	Subconsultant III	\$85.00	-	\$0.00
Decision Support Partners, Inc.	Subconsultant IV	\$125.00	-	\$0.00
Q-Q Research Consultants	Subconsultant V	\$100.00	-	\$0.00
Subtotal			15	\$3,050.00
Mason Tillman Associates Subtotal:			5,855	\$624,380.00
Subconsultants Subtotal:			260	\$125,615.00
Subconsultants Total Payment Percentage:				16.75%
Project Subtotal:			6,115	\$749,995.00
GRAND TOTAL:				\$749,995.00

Use or disclosure of data contained on this page is restricted.

**APPENDIX B
BUSINESS INFORMATION
RFP NO. 14-071/LJ**

Full Legal Name of Entity: Mason Tillman Associates, Ltd.
(Exactly as it is to appear on the Contract/Agreement)

Entity Address: 1999 Harrison Street, Suite 1440 Oakland, CA 94612-4710

Telephone Number: (510) 835-9012 Fax Number: (510) 835-2647

Form of Entity

- ☒ Corporation
☐ Limited Liability Company
☐ Partnership, General
☐ Partnership, Limited
☐ Joint Venture
☐ Sole Proprietorship

Federal I.D. Number: 94-3060835

(1) If Proposer is a subsidiary, state name of parent company.

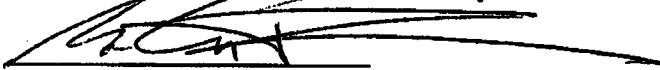
Caution: All information provided herein must be as to Proposer (subsidiary) and not as to parent company.

(2) Is Entity registered to do business in the State of Florida? Yes ☒ No ☐

If yes to the above, as of what date? 7/26/2011

If not presently registered with the Division of Corporations to do business in the State of Florida as either a Florida or foreign corporation, Proposer acknowledges, by signing below, that if it is the Awardee it will register with the State of Florida prior to the effective date of the contract with Palm Beach County.

SIGNATURE:



NAME (PRINT): Eleanor Mason Ramsey

TITLE: President

COMPANY: Mason Tillman Associates, Ltd.

3.7 AMENDMENTS OF THE RFP

A signed acknowledgment of Amendments No. 1 and 2 are enclosed herein.





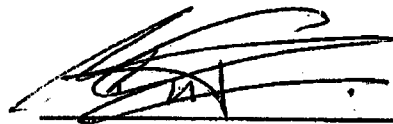
All changes addressed in this Amendment No. 1 shall be incorporated into RFP No. 14-071/LJ and the final contract. All other terms and conditions of the RFP remain the same and unchanged.

NOTE: Please acknowledge receipt of this Amendment No. 1 by signing below and returning this page with your Proposal Response. Each Amendment to the RFP shall be signed by an authorized agent and submitted with the proposal or the proposal shall be deemed non-responsive.


Donna Pagel, Purchasing Manager

ACKNOWLEDGMENT:

Mason Tillman Associates, LTD.
COMPANY NAME


SIGNATURE

7-29-2014
DATE

A.12. Amendment No. 2 to RFP No. 14-071/LJ provides for an hourly rate for expert witness and litigation support to be included on the Revised PRICE PROPOSAL PAGES.

All changes addressed in this Amendment No. 2 shall be incorporated into RFP No. 14-071/LJ and the final contract. All other terms and conditions of the RFP remain the same and unchanged.

NOTE: Please acknowledge receipt of this Amendment No. 2 by signing below and returning this page with your Proposal Response. Each Amendment to the RFP shall be signed by an authorized agent and submitted with the proposal or the proposal shall be deemed non-responsive.


Kathleen M. Scarlett, Purchasing Director

ACKNOWLEDGMENT:

Mason Tillman Associates, Ltd.
COMPANY NAME


SIGNATURE

7/30/14
DATE

3.8 ADDITIONAL INFORMATION

Appendix 1 – Résumés

Appendix 2 – Legal Documents

- a. Legal Analysis
- b. Copy of the *Associated Builders and Contractors v. City of Memphis*, 138 F. Supp. 2d 1015 (W.D. Tenn. 2000) Decision
- c. Copy of the Third Amended Complaint, *Midwest Fence Corporation v. USDOT*, Case No. 10-CV-5627, filed in the Seventh Circuit

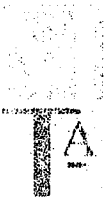
Appendix 3 – Insurance Certificates

Appendix 4 – Required Forms

- a. Appendix C – SBE Schedules 1 and 2
- b. Appendix D – Drug-free Workplace Certification
- c. Appendix E – Disclosure of Ownership Interests

Appendix 5 – Executive Summaries





APPENDIX 1 - RÉSUMÉS

Résumés of Mason Tillman's team are enclosed herein.





COMPANY TITLE

President

EDUCATION

Doctorate of Philosophy in Anthropology
University of California, Berkeley

Bachelor of Arts
Hunter College, New York

EMPLOYMENT HISTORY

Disparity Study Experience: 127 Studies
Employed With the Firm: 35 Years
Professional Work Years: 40

PROFESSIONAL ORGANIZATIONS

- Member, Board of Directors, Oakland African American Chamber of Commerce
- American Anthropological Association Executive Committee
- American Society of Ethnohistory
- Association of American Historians
- Association of Black Anthropologists
- Committee of Anthropologists in Environment Planning
- Conference of Minority Transportation Officials
- International Association of Business Communicators
- Oral History Association

EMAIL

eramsey@mtaltd.com

PROFILE

As president of Mason Tillman Associates, Ltd., Dr. Ramsey has directed all 127 disparity studies since 1990. She allocates resources and ensures the legal and scientific integrity of Mason Tillman's disparity studies. She has designed contract and employee equity programs for civic entities nationwide. She has provided investigation and mediation services regarding disputes and challenges to M/WBE programs, and built community support for M/WBE policy. Dr. Ramsey has also been verified as a Disparity Study Expert Witness by the federal court. Dr. Ramsey holds a doctorate degree in anthropology from the University of California, Berkeley, and a bachelor's degree from Hunter College, New York.

Mason Tillman Associates is a public policy research firm with specialized expertise in business affirmative action. The firm, established by Dr. Ramsey in 1978, is a national expert in the performance and evaluation of disparity studies examining procurement practices. Under the direction of its President and founder Mason Tillman Associates has produced legally sound disparity studies for state and local governments for over two decades.

For over thirty years of providing project management and business affirmative action consulting services to federal, state and local governments, and the private sector Dr. Ramsey has acquired a depth of knowledge regarding matters of contracting equity. Dr. Ramsey's consulting experience includes disparity/availability studies, economic impact studies, economic and social history assessments, regression analyses, public policy formulation and litigation support.

Since 1990 Dr. Ramsey has managed and performed disparity study research for cities, counties, states and special districts. As the principal investigator for Mason Tillman's disparity studies since 1990 Dr. Ramsey has authored 127 studies. In support of her work she has provided testimony regarding the legal standards for a constitutional disparity study before municipal and state legislative bodies. Dr. Ramsey has provided expert litigation support to several local governments in defense of an M/WBE program predicated on a competitor's disparity study. Two federal

departments have retained Dr. Ramsey as a subject matter expert in the rule making process. The Environmental Protection Agency retained Dr. Ramsey in 1997 to manage the rule making process required to implement the Fair Share Program authorized by the United States Congress in 1987. In 1983 Dr. Ramsey was commissioned by the United States Department of Transportation to assist in the formulation of the Disadvantaged Business Enterprise regulations for the Urban Mass Transit Administration.



ELEANOR MASON RAMSEY, PH.D.

Project Manager

PROFESSIONAL EXPERIENCE

Disparity Studies

Massachusetts Department of Transportation. As Project Manager on this study Dr. Ramsey was responsible for directing the comprehensive Multi-jurisdictional Disparity Study encompassing the Massachusetts Department of Transportation, Massachusetts Port Authority, and the Massachusetts Transportation Bay Authority based on the analysis of the experiences of disadvantaged business enterprises in contracting with the Massachusetts Department of Transportation. Dr. Ramsey as also tasked with drafting an Overall DBE Goal Setting Report.

Jacksonville, Florida Multi-jurisdictional Disparity Studies. As Project Manager for this multi-jurisdictional disparity study including the City of Jacksonville, Jacksonville Port Authority, Duval County Public Schools, Jacksonville Transportation Authority and JEA. Dr. Ramsey coordinated the entire project including supervising the data collection, including anecdotal interviews and the subcontractors on the project, and compilation of the final report. Dr. Ramsey also drafted an Overall Goal Setting Report for the Jacksonville Transportation Authority.

Illinois Department of Transportation/Illinois Toll Highway Authority. As Project Manager on this study Dr. Ramsey managed this disparity study for the Illinois Department of Transportation. Dr. Ramsey directed all aspects of data collection, including utilization, availability, anecdotal and final reports for the disparity study report.

Los Angeles County Metropolitan Transportation Authority. As Project Manager, Dr. Ramsey was responsible for organizing and managing this disparity study to determine the effectiveness of the Transportation Authority's DBE program by examining the agency's utilization of DBEs to determine whether a statistically significant disparity existed for the industries under review and to provide recommendations and draft a DBE Goal Setting Report.

Dallas Area Rapid Transit, Texas. As Project Manager, Dr. Ramsey coordinated this Availability and Disparity Study to evaluate DART's use of minority and women-owned business enterprises.

City of Fort Wayne, Indiana. As Project Manager on this study, Dr. Ramsey managed the Disparity Study for the City of Fort Wayne. This study examined minority, women-owned business enterprises participation in the city's procurement of construction contracts, professional services, and goods and other services.

Miami-Dade County, Florida. As Project Manager, Dr. Ramsey was responsible for directing this comprehensive Disparity Study analyzing minority participation in County contracts issued by the Departments of Public Works and Waste Management and the Water and Sewer Departments.

The Metropolitan St. Louis Sewer District, St. Louis, Missouri. As Project Manager, Dr. Ramsey was responsible for the management of the entire disparity study to determine whether or not a statistically significant disparity existed in MSD's award of contracts to ready, willing, and able minority, women-owned business enterprises.

Washington Suburban Sanitary Commission, Maryland. As Project Manager on this study, Dr. Ramsey managed the disparity study, focusing on four industries: construction, architectural and engineering, professional services, and goods and other services.

Bexar County, Texas. As Project Manager on this study, Dr. Ramsey was responsible for directing this study to determine whether a statistically significant disparity existed between the number of minority and women-owned business enterprises in individual industry groupings that were ready, willing, and able to provide services to the County and the number of these businesses that were actually providing those services to the County.



ELEANOR MASON RAMSEY, PH.D.

Project Manager

Wayne County Airport Authority, Michigan. As Project Manager, Dr. Ramsey managed the DBE Disparity Study including supervision of the utilization, procurement, availability, anecdotal, regression and disparity analyses as well as providing race and gender specific and race and gender neutral recommendations. Additionally, Dr. Ramsey was responsible for managing the DBE Overall Goal Setting Report.

City of Milwaukee, Wisconsin. As Project Manager, Dr. Ramsey managed the study to determine the effectiveness of the City's Emerging Business Enterprise Program including the supervision of the certification, subcontractor, procurement, availability, and utilization analysis including best management practices.

City of Davenport, Iowa. As Project Manager, Dr. Ramsey managed the project to conduct this Disparity Study for the City of Davenport focusing on four industries; construction, design and engineering, professional services, and general services.

Illinois Department of Central Management Services. Dr. Ramsey directed this Disparity Study for the central procurement and administrative agency for the entire state of Illinois. She was responsible for supervising the procurement, utilization, market area, availability, regression, anecdotal, and disparity analyses for minority, female and disabled person business enterprises.

Clayton County, Georgia. As Project Manager, Dr. Ramsey managed this Disparity Study to determine the participation of minority and women-owned business enterprises in procurement of contracts by the County. She was responsible for supervising the procurement, utilization, market area, availability, regression, anecdotal, and disparity analyses for minority and female business enterprises.

Multi Jurisdictional Disparity Studies. As Project Manager on this study which included the City of Cleveland and the Board of Cuyahoga County Commissioners, Cleveland-Cuyahoga County Port Authority, Cleveland Municipal School District, Cuyahoga Community College District, and Greater Cleveland Regional Transportation Authority. Dr. Ramsey managed the entire project including the collection of records from the jurisdictions and the subcontractors collecting data and performing anecdotal interviews. She supervised the sections of each of the seven volume report.

Pittsburgh, Pennsylvania Multiple Authority Disparity Studies. As Project Manager for this multiple agency study, Dr. Ramsey coordinated the entire project including the collection of utilization data from the City of Pittsburgh, and the Housing Authority, Public Parking Authority, Stadium Authority, Urban Development Authority, and Water and Sewer Authority. She directed the data collection, including anecdotal interviews and the subcontractors on the project. Dr. Ramsey supervised the compilation of the seven volume report.

Durham County Disparity Study. As Project Manager, Dr. Ramsey directed all aspects of this study and ensured the final report was delivered on time. The study included the analysis of the County's used of available businesses. The analysis produced an assessment of the presence of disparity in the County's contracting and procurement process.

City of Durham North Carolina Disparity Study. As Project Manager, Dr. Ramsey ensured that sufficient resources were provided to complete this project in a timely basis. A utilization and availability analysis was performed on prime and subcontracts awarded by the City. She also directed the data collection and production of the final report.

City of New Haven, Connecticut Disparity Study. As Project Manager for this disparity study, Dr. Ramsey directed all aspects of data collection, including utilization, availability, anecdotal and final reports for the disparity study report. This study included the construction industry only.



ELEANOR MASON RAMSEY, PH.D.

Project Manager

Sacramento Municipal Utility District Disparity Study. As Project Manager for this disparity study, Dr. Ramsey managed utilization and availability data collection, report generation, and the gathering of anecdotal evidence. She provided the client with program analysis and program recommendations.

City of Knoxville Disparity Study. Dr. Ramsey guided all facets of this disparity study. She directed the communication with the client and various consultants, the design and implementation of a media plan, coordination of community meetings, overseeing the collection of utilization and availability records, and writing and editing all sections of the final report.

State of Washington and Department of Transportation Disparity Study. As Project Manager, Dr. Ramsey led the project team for this multi-agency study. She oversaw the formulation of the methodology for the collection and analysis of statistical data, managed the collection of oral history data, and guided all aspects of the final two volume report.

East Bay Municipal Utilities District Disparity Study. Dr. Ramsey oversaw all aspects of this study. She managed a team of researchers who gathered anecdotal information, collected and analyzed utilization data, determined the market area, collected availability information, and generated a disparity analysis.

Seattle/King County Consortium Disparity Study. Dr. Ramsey led this multi-agency study. She oversaw all facets of the data collection and analysis. Dr. Ramsey managed the team of subconsultants and a staff of researchers and data management personnel that will execute the research.

Portland, Oregon Consortium Disparity and Employment Studies. Dr. Ramsey led Mason Tillman's staff and a team of subconsultants through these two studies that address various issues surrounding business affirmative action. Her public information skills and research expertise allowed the team to successfully complete the important availability survey, a market area analysis and the disparity analysis. Over two hundred interviews were conducted for the oral history component.

State of Missouri Disparity Study. As Project Manager, Dr. Ramsey led this ongoing statewide project. She directed all aspects of the study including, the market area determination, collection of availability information and disparity analysis generation. Dr. Ramsey also successfully directed five public hearings across the state.

City of Oakland MBE/WBE Disparity Study. Mason Tillman was the prime consultant for this project. The study included determining the relevant market area, supervising the City's collection of utilization data, and conducting the collection of both availability data and anecdotal testimony. Because Dr. Ramsey has long been involved in this market area and business community, her expertise was utilized to formulate both a thorough public relations strategy and a public outreach program designed to elicit the most accurate picture of the market area possible.

City of Indianapolis MBE/WBE Disparity Study. Mason Tillman was an integral part of the team of consultants that executed this study. Mason Tillman conducted an analysis of market area, collected utilization, availability data, and collected anecdotal testimony from business owners within the market area. Dr. Ramsey guided the team's efforts, utilizing public outreach rather than the census to ensure the accurate collection of availability data.

City of Richmond, California Disparity Study. Mason Tillman provided recommendations for possible modifications to the City's MBE/WBE programs to promote compliance with *Crosby* requirements and to promote the programs' overall effectiveness. Dr. Ramsey directed the identification of past discrimination in the market area, the appropriate statistical comparison for utilization of available minority firms, and the goal-setting methodology related to the disparity between availability and utilization. This study was honored by the National League of Cities when it was awarded the 1996 Cultural Diversity Award.



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Tennessee Department of Transportation Disparity Study. As Project Manager, Dr. Ramsey directed all aspects of this study and ensured the final report was delivered on time. It was determined that the historical background of the State dictated that the focus of the Study should be based on African American and Caucasian business participation and growth due to the historical absence of other races present in the State. Both construction and engineering and related consulting services were analyzed for the study.

Utilization Studies

State of Indiana Statistical Analysis of Utilization. As Project Manager for this state level disparity study, Dr. Ramsey managed the collection of utilization data from State agencies, including the State Department of Transportation, and the State Lottery. Construction, professional services, other services, and supply industries were included in the study. Dr. Ramsey managed the process of determining firms qualified, willing, and able to perform a service or provide a commodity to the State. She also directed the collection of anecdotal information and, as a skilled interviewer, participated in anecdotal interviews. Dr. Ramsey managed the compilation of the two volume final report.

Alameda County General Services Agency. This project involved a statistical analysis of the utilization of MBE/WBE firms, an evaluation of the Agency's procurement procedures, oral interviews with purchasing staff, and recommendations of race neutral methods to increase participation by local, minority, and woman-owned firms.

City of Hayward Minority and Women Business Enterprise Utilization Study. This project was commissioned to meet the strict standard now imposed by the Supreme Court in the *Croson* decision. The study included determination of the relevant market area, collection of utilization and availability data, collection of oral history accounts, statistical analysis, and evaluation of the current minority and women-owned business program.

University of California Business Affirmative Action Program Assessment. This project was undertaken in light of the *Croson* decision. Analysis of the University's implementation of AB 507, the law under which the University has operated its Disadvantaged Business Affirmative Action Program since 1984, included utilization review, certification review, market area definition and procurement review.

Workforce Assessment

Metropolitan St. Louis Sewer District Employment Study reviewed workforce participation levels for the purpose of assessing if the Metropolitan St. Louis Sewer District has a sufficiently skilled minority and women workforce, available and able to fulfill workforce goals, as applicable, comprised of all District Procurement contracts.

The City of Kansas City, Missouri Construction Industry Employment Study provided the City with an assessment of minority workers participation in the City's construction industry to determine if minorities, and particularly African Americans, were being prevented from entering the City's construction industry and to identify best practices being utilized nationwide to increase minority access to employment in the construction industry.

City of Pittsburgh, Pennsylvania Equal Employment Opportunity Study was commissioned to conduct a study of the City's construction apprenticeship employment system to determine if minorities and women are adversely affected when they apply and participate in apprenticeship programs, and to identify any barriers to their full participation in the programs. The assessment compared the program acceptance rates of minorities and women to the rates for Caucasian males.

Santa Clara County Workforce Assessment was performed for Santa Clara County, California following a rash of Civil Rights lawsuits. The assessment reviewed the recruitment program, patterns of promotion, disciplinary practices, and general supervision of the highly diverse workforce.



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City of San Francisco Fire Department Workforce Assessment was performed following a lawsuit claiming that the San Francisco Firefighters discriminated against women and minorities in hiring and promotions. Mason Tillman assessed the validity of the proposed Officer Candidate Program (OCP) and provisions, and recommended changes.

Lawrence Livermore National Laboratory Minority Managers Adverse Impact Study investigated and assessed complaints of discrimination by members of the engineering department.

Fairness in Hiring

City of Oakland, California Fairness in Hiring and Employment Disparity Study was a workforce comparison to the relevant labor pool to determine if there are manifests of racial or gender imbalances in traditionally segregated job classifications. The project was performed in two phases. The first phase was to determine if the City's workforce reflects the composition of the labor pool available in its recruitment area. The Phase II research addressed four separate tasks.

M/WBE Program Implementation

Contra Costa County MBE/WBE Technical Assistance Project. This project involved establishing a new MBE/WBE Contract Compliance Operation in the County Administrator's Contract Compliance Division. Dr. Ramsey conducted the necessary research to help define the policies and procedures needed to implement the program. The guidelines she developed for the new contract compliance operation set the standards for future county contracts in purchasing, professional, personnel service and construction. Dr. Ramsey provided technical assistance and training to ensure that the staff remained informed on contract compliance procedures. Ongoing technical assistance was provided to ensure DB/WBEs have complied with contract technical requirements and completed it on time and within budget.

Department of General Services Implementation of a Minority and Women Business Contracting Participation Program. This effort is being conducted in conformance with the goals mandated by AB 1933. The MBE/WBE program will be defined in relation to the new legislation, and recommendations for implementation of an improved participation program will be made. Also included in the program will be a public information and awareness campaign targeted to the MBE/WBE community and the general public.

Department of General Services Interim East Bay State Building Contract. This project involves achieving the goal of 15 percent MBE and 5 percent WBE participation in the construction of the East Bay State building. Dr. Ramsey implemented a program that effectively matches certified MBE/WBE firms with the prime contractor selected for the construction phase. The **EEO Compliance Newsletter**, a newsletter informing minority and woman-owned firms of contracts currently available at the East Bay Building, is produced by Mason Tillman.

Alameda County Transportation Authority Affirmative Action Program. This program involved the implementation of a professional service contract program. Dr. Ramsey evaluated the qualification of MBE/WBE firms in order to link prime contractors seeking minority and women business participation to contractors with capable, qualified firms. Technical assistance was provided to the DBE/WBE firms in preparing proposals and the certification process. An EEO plan and monitoring procedures were established.

State of Alabama Highway Department. Technical assistance was provided to the State of Alabama Highway Department managers and 30 rural transit operators to help identify, certify and secure Federal aid contracts for small businesses in compliance with the Federal DBE/EEO requirements. Emphasis was placed on the identification of van, taxi operators and maintenance service companies. Workshops were presented for certifiable firms and agency staff to



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explain the program's regulations and UMTA's reporting requirements. Technical assistance was provided to firms to help them with certification, obtaining permits and other regulatory compliance measures.

Urban Mass Transportation Administration Linkage Project. This effort involved the creation of a nationwide outreach program to small businesses involved in vehicle manufacturing and supplies. Dr. Ramsey ensured that the businesses were linked with Transit Vehicle Manufacturers. One of the goals of the Linkage Project was to establish business opportunities between small business entrepreneurs and Transit Vehicle Manufacturers. This was done by providing technical assistance, which included instruction on bidding and negotiating contracts. Dr. Ramsey also provided guidance in setting up financial management and the administrative framework needed to successfully meet contract requirements.

California Department of Transportation Investigations of DBE/WBE Fronts. This project involved systematic review of DBE/WBE firms and their operations to investigate charges that certain firms certified with the Department do not fulfill all the requirements of certification or are not performing in accordance with DBE/WBE requirements. Mason Tillman conducted desk audits and on-site investigations with regard to the managerial and operational requirements of the DBE/WBE certification program. Training was also provided to the Department's certification analysts to familiarize them with the current fraudulent business practices.

Program Compliance Training

California Department of Transportation, Division of Mass Transportation. Three regional training sessions for operators of the California Rural Transportation Programs were presented in three districts in the state. The training was designed to help directors of small transit properties understand and comply with the requirements of Federal regulations, 49 CFR Part 23, as amended. Coordination with the U.S. Department of Transportation was required to get Federal approval of the compliance program Mason Tillman designed.

City of Sacramento Regional Transit. This project provided technical assistance to bring the agency into compliance following a Federal program audit. Close oversight was undertaken to meet federal requirements. The Disadvantaged Business Enterprise program plan was assessed for compliance with the DBE Federal regulations. A DBE/WBE outreach program was developed and a workshop on how to comply with the Federal requirements was designed and conducted.

EXPERT WITNESS EXPERIENCE

The City of Memphis, Tennessee's litigation team engaged Mason Tillman in 2004 as an expert witness in *Associated Builders and Contractors v. City of Memphis*, 138 F. Supp. 2d 1015 (W.D. Tenn. 2000), a lawsuit challenging the city's MWBE program that was based on a disparity study prepared by DJ Miller Associates. Mason Tillman's project manager, Eleanor Mason Ramsey, Ph.D. and statistician, Tatiana Loudovina, M.S. were certified as expert witnesses and provided affidavits to the Court.

DISPARITY STUDY LITIGATION SUPPORT

In 1999, the Southern Florida Water District retained Mason Tillman to evaluate its disparity study, which was the factual predicate for the District's MWBE program that was challenged in federal court in the case, *IT Corporation v. South Florida Water Management District*, No. 97-8872 CIV (S.D. Fla. Filed Nov. 13, 1997; dismissed Dec. 16, 1998). Mason Tillman prepared a critical review of the methodologies used by their consultant, MGT of America.



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In *Kossmann Contracting Co v. The City of Houston*, No. Civ-H-96-3100 (S.D. Tex., filed 1996), Mason Tillman's disparity study methodology was reviewed by the Court without it having been subject to a legal challenge. The City's 1990 MWBE program was challenged. The study upon which the Program was based was ruled to be invalid. After ten years of litigation, the court allowed the City to prepare a constitutional study. Mason Tillman was retained to conduct the new disparity study which became the factual predicate for the City's MWBE program. The Judge approved Mason Tillman's study in January 2007 and the City's MWBE program was reinstated by the Houston City Council in March 2007.

The court opinion does not explicitly mention Mason Tillman as the author of the study; however, the City's Performance of Settlement Agreement submitted to the court March 2007 specifically discusses Mason Tillman's engagement with the City as well as the completion of the disparity study according to constitutional standard. With all parties agreeing, the settlement agreement enabled the court to authorize and reinstate the M/WBE program.

RELATED CONSULTING EXPERIENCE

Clean Creeks Campaign, Alameda County, California, 1995-present.

Berkeley Clean City Program, City of Berkeley, Public Works Department, Berkeley, California, 1994.

Public Information Campaign for the City of Oakland Recycling Program, City of Oakland, Department of Public Works, Oakland, California, 1993.

Berkeley Clean City Program, City of Berkeley, Public Works Department, Berkeley, California, 1991.

Public Information Campaign for the Consumer Product Educational Program, State Bar of California, San Francisco, California, 1990.

California State Bar Coordinated Consumer Education Program, State Bar of California, San Francisco, California, 1990.

Rincon Point-South Beach Environmental Assessment and Cultural Resource Study, San Francisco Redevelopment Agency, San Francisco, California, 1989.

University of California, Berkeley Long-Range Development Plan, Environmental Impact Assessment, University of California, Berkeley, California, 1989.

Old Oakland Mixed-Use Project, Environmental Impact Assessment, City of Oakland Planning Department, Oakland, California, 1989.

Supportive Services and Technical Assistance to Develop and Implement A Transit Program for the Central Contra Costa County Transit Authority, Central Contra Costa County Transit Authority, Walnut Creek, California, 1989.

Urban Mass Transportation Administration/Evaluation of Section 10 Managerial Staff Development, United States Department of Transportation, Urban Mass Transportation Administration, Washington, D.C., 1988.

Assessment of Vanpool Services and Subsidy Programs in the San Francisco Bay Area, California Department of Transportation, San Francisco, California, 1987.

California Department of Transportation Section 18 Program Directors Contract Compliance Training, California Department of Transportation, Sacramento, California, 1987.



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Showplace Market Center and Contract Center II Archival and Archeological Study, Environmental Science Associates, San Francisco, California, 1987.

Evaluation of Section 10 Managerial Training Grants Program, Urban Mass Transportation Administration, Washington, D.C., 1986.

National Historic Monument Feasibility/Suitability Study, National Park Service, Denver Service Center, Denver, Colorado, 1986.

Rock Creek II, Mini Hydroelectric Powerhouse Archaeological and Historic Cultural Resource Study, Pacific Gas and Electric Company, San Francisco, California, 1986.

Archeological Investigations at the Lower Stanislaus River Recreation Areas: Calaveras, Tuolumne, Stanislaus and San Joaquin Counties, California, Interagency Archeological Service, Department of Interior, Washington, D.C., 1985.

Wise II Archeological and Historic Cultural Resource Assessment, Pacific Gas and Electric Company, San Francisco, California, 1985.

Beatty Land Exchange Archeological Survey, Plumas National Forest, Quincy, California, 1985.

Ricci and Kruse Lumber Company Site History Study, Ricci and Kruse Lumber Company, San Francisco, California, 1985.

Richard B. Russell Lake and Dam Cultural Resource Study and Environmental Assessment, Department of Interior Interagency, 1985.

Richmond Harbor Cultural Resource and Environmental Impact Assessment, Department of City Planning, Richmond, California, 1984.

Allensworth Historic Cemetery Project, National Council of Negro Women, San Bernadino, California, 1984.

Ethnic Historic Cultural Resource Survey, State Historic Preservation Office, California Department of Parks and Recreation, Sacramento, California, 1984.

Staff Scientist, Solar Energy Research Institute, Golden, Colorado, 1978

Consultant, Education Commission of the States, Denver, Colorado, 1977-78.

TECHNICAL PRESENTATIONS AND TRAINING WORKSHOPS

Joint Availability and Disparity Study Workshop, ACCA 23rd National Training Institute Fort Worth, Texas, 2009.

History of Affirmative Action and Its Economic Impact, ACCA 22nd National Training Institute Fort Worth, Texas, 2008.

City of Milwaukee Emerging Business Enterprise Effectiveness Study, TRB Disadvantaged Business Enterprises Conference, Milwaukee, WI, 2007.

A Small Business Program: A Win-Win Strategy, De Anza Community College District Audit and Finance Committee, 2005.



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M/WBE Programs's Factual Predicate Disparity Studies and Beyond, The National Forum for Black Public Administrators, Portland, Oregon, 2002.

M/WBE Rule Making, The 3rd Annual EPA /State Tribal MBE/WBE Conference, United States Environmental Protection Agency, Albuquerque, New Mexico, 2001.

Twenty Years After the DBE Regulations, National Transportation Civil Rights Conference, Biloxi, Mississippi, 2000.

Best Management Practices—A Strategic Approach, American Contract Compliance Association, Burlingame, California, 2000.

The Role of the Private Certifier in the Small Business Administration, Small Business Administration, Oakland, California, 1999.

Overview of the Fair Share Requirements, United States Environmental Protection Agency, Albuquerque, New Mexico, 1999.

African American Youth and Family Summit: A Demographic Profile of San Jose's African American Community, San Jose, California, 1999.

Establishing Availability and Selling Defense Goals, National Forum of Black Public Administrators, Seattle, Washington, 1997.

Disparity Study Legal Update, National Forum of Black Public Administrators, Tampa, Florida, 1996.

Reaching Beyond Croson, City of Richmond, California & Bay Area Contract Compliance Officers Association (BACCOA), Richmond, California, 1995.

Overcoming the Internal Barriers that Hinder M/W/DBEs, Clark County, Las Vegas, Nevada, 1995.

Marketing Your Presentation, Association of Black Business Accountants, 1994.

Entrepreneurial Opportunities, University of San Francisco, San Francisco, California, 1993.

Certification: Current Issues and Concerns, National Minority Suppliers Council, New York, New York, 1993.

Alternative Employment for the Next Century, California State University of the East Bay, Hayward, California, 1993.

Affirmative Action in the Workplace, Bay Area Contract Compliance Officers, Annual Workshop, San Francisco, California, 1993.

Doing Business with the Lottery and its Corporate Partners, California State Lottery, Oakland, California, 1992.

Minority Business Opportunities, Bay Area Purchasing Council Trade Fair, Oakland, California, 1992.

A Diverse Workforce: "What's In It For Me?" A presentation to employees of Lockheed Missile & Space Company, 1991.

AB 1933 Update, Bay Area Purchasing Council, Oakland, California, 1991.



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AB 1933, SB 1517 Business Fair, Department of General Services, Oakland, Fresno, and Los Angeles, California, 1990 and 1991.

Small Business Service Center Resource Panel, Urban Mass Transportation Administration, 6th Annual Private Sector Conference, Louisville, Kentucky, 1991.

Minority Business Opportunities, Bay Area Purchasing Council Trade Fair, Oakland, California, 1990.

MBE Programs after Croson, Federal Aviation Administration, San Francisco, California, 1990.

Minority and Women Business Enterprise Programs, Assembly Committee on Governmental Efficiency and Consumer Protection Hearing, Sacramento, California, 1989.

UMBE DBE Certification Workshop, DBE Workshop, 1989.

Doing Business on Federal Aid: Construction Architectural, Design, Personal and Professional Contracting, Contra Costa County, 1988.

Small Business in Public Transportation: Developing Entrepreneurial Opportunities in Transportation, Urban Mass Transportation Administration, New Orleans, Louisiana, 1988.

Bringing DBE Architectural and Engineering Business into the DART Expansion Program, Dallas Area Rapid Transit District, Dallas, Texas, 1988.

New Contracting Opportunities for DBE Business Expansion, Conference of Minority Transit Officials, San Francisco, California, 1987.

How to Do Business with the U.S. DOT: The Rules and the Contracts, EXPO, San Francisco, California, 1987 and EXPO, Chicago, Illinois, 1987.

Section 18 District Representative and Provider DBE Program Training, California Department of Transportation, Eureka, Stockton and Bakersfield, California, 1986

Transpo '86 Conference, California Department of Transportation, Los Angeles and Oakland, California, 1986.

Federal Procurement: A New Opportunity, National White House Conference on Small Business, Washington, D.C., 1986.

A National Transportation Symposium: Strategies for Section 18 Grantees to Use in Meeting Disadvantaged Business Enterprise Requirements, Urban Mass Transportation Administration, Atlanta, Georgia, 1985.

Strategies to Use in Meeting Federal Guidelines on Minority Procurement, Alabama Transit Association Fall Workshop and General Conference, Mobile, Alabama, 1985.

Certifying with the U.S. Department of Transportation, U.S. Department of Transportation Women's Business Conference, Transcom I, Los Angeles, California, 1985.



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How To Do Business with RTD: Marketing and Outreach with DBEs, Sacramento Regional Transit District DBE Workshop, Sacramento, California, 1985.

Future Opportunities for Disadvantaged Business Enterprises, Urban Mass Transportation Administration's Minority Issues on Public Transportation," Washington, D.C., 1984.

Doing Business in Transit Construction with Architectural and Engineering Services, Conference of Minority Transit Officials, Mid-Year Meeting, Chicago, Illinois, 1984.

President's Women Business Owners' Conference, Doing Business with the Government, U.S. Small Business Administration, San Francisco, California, 1984.

Starting Up and Staying Up as MBE, U.S. Black Chamber of Commerce Minority Business Fair, Oakland, California, 1984

Happy Birthday DBE, American Public Transit Association Annual Meetings, Washington, D.C., 1984.

How to Do Business with the City and County of Fresno, City of Fresno, Directions in Contracting Conference, Fresno, California, 1984.

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Ramsey, Eleanor Mason, et al., **Los Angeles County Metropolitan Transportation Authority, 2012 Disadvantaged Business Enterprise (DBE) Program Disparity Study Update,** 2013. http://www.metro.net/about_us/disparity_study/Images/Final_Disparity_Study_Report.pdf

Ramsey, Eleanor Mason, et al., **Metropolitan St. Louis Sewer District, Missouri Disparity Study,** 2012 <http://www.stlmsd.com/aboutmsd/diversityinformation/supplierdiversity/disparity-study.pdf>

Ramsey, Eleanor Mason, et al., **Dallas Area Rapid Transit, Texas Disparity Study,** 2012. http://www.metro.net/about_us/disparity_study/images/DEOD_Disparity_metro_kickoff_meeting_presentation_2011_1205.pdf

Ramsey, Eleanor Mason, et al., **Washington Suburban Sanitary Commission, Maryland Disparity Study Final Report,** 2010, <http://www.wsscwater.com/file/SLMBEGrp/WSSC%202010%20Disparity%20Study%20Final%20Report.pdf>

Ramsey, Eleanor Mason, et al., **Illinois Department of Transportation, Illinois Disparity Study,** 2011. <http://www.dot.il.gov/press/dbedisparitystudy.pdf>

Ramsey, Eleanor Mason, et al., **Illinois State Tollway, Illinois Final Disparity Study Report,** 2011, <http://www.illinoistollway.com/documents/10157/15890/Final+Disparity+Study+Report>

Ramsey, Eleanor Mason, et al., **North Central Texas Council of Governments Joint Availability and Disparity Study Final Report,** 2010, <http://www.arlingtontx.gov/finance/purchasing/bids/pdf/City%20of%20Arlington%20Volume%202%20Availability%20and%20Disparity%20Study%20Final%20Report%206-16-10.pdf>

Ramsey, Eleanor Mason, et al., **City of Davenport, Iowa Disparity Study Final Report,** 2009. <http://www.design.iastate.edu/TownCraft/roundtables/033010/City%20of%20Davenport%20DBE%20Disparity%20Study%20Final%20Report%206-09.pdf>



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Ramsey, Eleanor Mason, et al., San Francisco Bay Area Rapid Transit Final Availability and Utilization Study, California, 2009, http://www.bart.gov/docs/Final_Availability_and_Utilization_Study_4-6-09.pdf

Ramsey, Eleanor Mason, et al., Commonwealth of Pennsylvania Department of General Services Disparity Study in Building Construction and Building Design, 2007, http://www.portal.state.pa.us/portal/portal/server.pt/gateway/PTARGS_0_2_119531_0_0_18/

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Ramsey, Eleanor Mason, et al., City of Oakland and Redevelopment Agency, Fairness in Purchasing and Contracting Disparity Study, 2007. <http://cces.oaklandnet.com/ContComp/Pdf/CityofOaklandExecutiveSummaryMay20075-11-07.pdf>

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Ramsey, Eleanor Mason, et al., City of Indianapolis Disparity Study Final Report, 1995.

Ramsey, Eleanor Mason, et al., City of San Jose, California Disparity Study Final Report, 1995

Ramsey, Eleanor Mason, et al., City, Port and Redevelopment Agency of Oakland Disparity Study, 1995.

Ramsey, Eleanor Mason, et al., State of Missouri Disparity Study Final Report, 1995.

Ramsey, Eleanor Mason, et al., Alameda County Transportation Authority Disparity Study Final Report, 1994.

Ramsey, Eleanor Mason, et al., City of Richmond, California Disparity Study Final Report, 1994.

Ramsey, Eleanor Mason, et al., Oakland Unified School District Disparity Study Final Report, 1994.

Ramsey, Eleanor Mason, et al., City of Los Angeles Department of Airports Disparity Study Final Report, 1993.

Ramsey, Eleanor Mason, and Sheila Foster, New Ties: The 1990s Will Foster Innovative Relationships Between Small Businesses and the Private Sector, *MBE Magazine*, March/April, 1993.

Ramsey, Eleanor Mason, and Sheila Foster, The Availability Dilemma, *MBE Magazine*, November/December, 1992.

Ramsey, Eleanor Mason, et al., Sacramento Municipal Utility District Disparity Study, Final Report, 1992.

Ramsey, Eleanor Mason, et al., Maricopa County, Arizona Disparity Study Final Report, 1991.

Ramsey, Eleanor Mason, et al., University of California, Berkeley Disparity Study Final Report, 1990.



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Project Manager

Ramsey, Eleanor Mason, and Janice S. Lewis. A History of Black Americans in California. Five Views: An Ethnic Historic Site Survey for California, Sacramento: California Department of Parks and Recreation Office of Historic Preservation, 1988.

Ramsey, Eleanor Mason. Allensworth, California, *Arts & Architecture*, Vol. 2, Number 4, 1984.

SPEAKING ENGAGEMENTS

The City of Richmond, California & Bay Area Contract Compliance Officers Association (BACCOA), "Reaching Beyond Croson," Richmond, California, 1995.

Clark County, "Overcoming the Internal Barriers that Hinder M/W/DBEs," Las Vegas, Nevada, 1995.

Association of Black Business Accountants, "Marketing Your Presentation," 1994.

University of San Francisco, "Entrepreneurial Opportunities," San Francisco, California, 1993

California State University at Hayward, "Alternative Employment for the Next Century," Hayward, California, 1993.

Bay Area Contract Compliance Officers, Annual Workshop, "Affirmative Action in the Workplace," San Francisco, California, 1993.

Bay Area Purchasing Council Trade Fair, "Minority Business Opportunities," Oakland, California, 1992.

Third Annual Zora Neale Hurston Festival of the Arts and Humanities Conference, "Allensworth: A Dream Deferred," Eatonville, Florida, 1992.

American Public Transit Association's Southeastern Regional Meeting, "Absenteeism and Bus Operators' Work Environment," Nashville, Tennessee, 1982.

A Presentation to Employees of Lockheed Missile & Space Company, "A Diverse Workforce; What's in It For Me," 1991.

National Minority Suppliers Council, Certification: "Current Issues and Concerns," New York, New York (invited speaker), 1991.

Regional Managers of IBM, "When is a Win a Win?" A Discussion of Post-Croson Requirements, Orlando, Florida, 1991.

California State Lottery, "Doing Business with the Lottery and its Corporate Partners," Oakland, California, 1991.

California Department of Transportation Black History Celebration, "Diversity in the Workforce," San Francisco, California, 1991.

Bay Area Purchasing Council, AB 1833 Update, Oakland, California, 1991.

Department of General Services, AB 1933/SB 1517 Business Fair, Oakland, Fresno, and Los Angeles, California, 1991.

Department of General Services, AB 1933/1517 Business Fair, California, 1990.



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Bay Area Purchasing Council Trade Fair, Minority Business Opportunities, Oakland, California, 1990.

Federal Aviation Administration, "MBE Programs after Croson," San Francisco, California, 1990.

Urban Mass Transportation Administration, 6th Annual Private Sector Conference, Small Business Service Resource Panel, Louisville, Kentucky, 1990.

Assembly Committee on Governmental Efficiency and Consumer Protection Hearing, Minority and Women Business Enterprise Programs, Sacramento, California, 1989.

Contra Costa County, "Doing Business on Federal Aid: Construction, Architectural, Design, Personal and Professional Contracting," Martinez, California, 1988.

Urban Mass Transportation Administration, "Small Business In Public Transportation: Developing Entrepreneurial Opportunities In Transportation," New Orleans, Louisiana, 1988.

Dallas Area Rapid Transit District, "Bringing DBE Architectural and Engineering Businesses into the DART Expansion Program," Dallas, Texas, 1988.

Conference of Minority Transit Officials, "New Contracting Opportunities for D/WBE Business Expansion, San Francisco, California," 1987.

EXPO, "How To Do Business with U.S. DOT: The Rules and the Contracts," San Francisco, California, 1987 and Chicago, Illinois, 1987.

California Department of Transportation, Section 18 District Representative and Provider M/W/DBE Program Training, Eureka, Stockton and Bakersfield, California, 1986.

California Department of Transportation, Transpo '86 Conference, Los Angeles and Oakland, California, 1986.

National White House Conference on Small Business, "Federal Procurement: A New Opportunity," Washington, D.C., 1986.

Urban Mass Transportation Administration, "A National Transportation Symposium: Strategies for Section 18 Grantees to Use in Meeting Disadvantaged Business Enterprise Requirements," Atlanta, Georgia, 1985.

Alabama Transit Association Fall Workshop and General Conference: "Strategies to Use in Meeting Federal Guidelines on Minority Procurement," Mobile, Alabama, 1985.

U.S. Department of Transportation Women's Business Conference, "Transcom I: Certifying with the U.S. Department of Transportation," Los Angeles, California, 1985.

Sacramento Regional Transit District DBE Workshop, "How To Do Business with RTD: Marketing and Outreach with M/W/DBEs," Sacramento, California, 1985.



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TEACHING EXPERIENCE

University of California, Berkeley Institute for the Study of Social Change.
Associate Research Anthropologist, 1980-1982.

University of California, Berkeley, Department of African-American Studies.
Instructor, 1976-1977.

University of California, Berkeley, Department of Anthropology.
Teaching Assistant, 1972-1973.

University of California, Berkeley, Department of African-American Studies.
Teaching Assistant for Mr. Alex Haley (author of Roots), 1970-1971.

TESTIMONIES

United States Senate Small Business Committee, Testimony on Increasing Effectiveness of Section 105(f), November 1983.

State of California Assembly Committee on Governmental Efficiency and Consumer Protection, Testimony on Verification of MBE/WBE Eligibility, November, 1989.

FELLOWSHIPS

National Institute of Mental Health, Post-Doctoral Fellowship (1979-1980).

Chancellor's Post-Doctoral Fellowship, University of California, Berkeley (1979-1980).

Robert F. Lowie Fellowship, University of California, Berkeley (1976-1977).

National Institute of Mental Health, Institute of Human Learning Traineeship (1969-1975).

RECOGNITIONS AND AWARDS

2002 Director's Award U.S. Environmental Protection Agency, Office of Small Disadvantaged Business Utilization

1999 Entrepreneurial Woman Award. Working Woman Magazine

1997 Signature Award. Leadership America, Inc. Awarded for leadership in the promotion of the personal, economic, and professional status of women through educational programs and projects.

1996 Outstanding Public Policy Advocate of the Year. National Association of Women Business Owners and Executives, July 1996



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1996 Challenge Award. California State Association of Counties. Awarded to Alameda County Transportation Authority (Oakland) for its Business Enterprise Construction Program, October 1996

1996 Cultural Diversity Award. National League of Cities. Awarded to the City of Richmond for its Disparity Study and Business Opportunity Program, March 1996

Certificate of Appreciation. Northern California Purchasing Council Board of Directors. Awarded for commitment to the development of minority business development, April 14, 1993

Certificate of Appreciation. Northern California Purchasing Council Board of Directors. Awarded for valued contribution to minority supplier development, 1991-1992

State Resolution. San Francisco Mayor, Willie Brown, Jr., then Speaker of the California State Assembly, Recognition and commendation of endless commitment to the growth of minority women business participation in both private and public sector contracting, September 23, 1987

Congressional Resolution. The 100th Congress, First Session, Recognized for responsibility in the unprecedented participation of minority women businesses in the American Public Transit Association's Annual Expo. Also recognized for successful implementation of a MBE/WBE program that was funded by the Mass Transportation Administration and managed by the Minority Affairs Committee, June 3, 1988

State Resolution. Milton Marks, 5th Senatorial District and the Honorable Samuel Farr of the 28th District, Commendation for participation in the California Heritage Task Force. December 11, 1984.



ALLURA J. SCOTT, ESQ.

Anecdotal Manager/Assistant Project Manager

COMPANY TITLE

Senior Project Manager

EDUCATION

Juris Doctorate

Howard University School of Law

Bachelor of Arts

California State University, Dominguez Hills

EMPLOYMENT HISTORY

Disparity Study Experience: 79 Studies

Employed With the Firm: 14 years

Professional Work Years: 20

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ascott@mtatfd.com

PROFILE

Ms. Scott has worked for Mason Tillman Associates, Ltd., for more than 10 years. With her legal background as Senior Project Manager and as Anecdotal Manager at Mason Tillman, Ms. Scott provides legal analysis and program design. Ms. Scott has been an assistant project manager on disparity studies for the Massachusetts Department of Transportation, Illinois Department of Transportation, Illinois Toll Highway Authority, City of Jacksonville, District of Davenport, City of Milwaukee, Commonwealth of Pennsylvania, Tennessee Department of Transportation, Illinois Department of Transportation, and Clayton County, Georgia.

PROFESSIONAL EXPERIENCE

Recent Disparity Studies

Massachusetts Department of Transportation. Ms. Scott management of the Multi-jurisdictional Disparity Study encompassing Massachusetts Department of Transportation, Massachusetts Port Authority, and Massachusetts Transportation Bay Authority was essential for the success and completion of

the Study. Ms. Scott provided the anecdotal analysis for all of the agencies, and managed community outreach and internal communication coordination. Ms. Scott also drafted chapter for the final report, and provided the legal recommendations for the Study.

Jacksonville Transportation Authority, Florida. Ms. Scott managed the entire anecdotal collection and analysis for several Mason Tillman disparity studies completed for Jacksonville agencies, including the City of Jacksonville, Duval County Public Schools, Jacksonville Transportation Authority, Jacksonville Electric Authority, and Jacksonville Port Authority. Ms. Scott also was responsible for the management of research staff and the completion of the final report. Ms. Scott also conducted legal research for the Jacksonville Disparity Studies.

Illinois Department of Transportation District 4. Ms. Scott provided legal research of the pertinent procurement policies and procedures for Mason Tillman's disparity study performed for the Illinois Department of Transportation's District 4. She also drafted chapters for the final report. Ms. Scott's legal consulting ensured that the findings for the disparity study were legally sound and enforceable.

Los Angeles County Metropolitan Transportation Authority, California. Ms. Scott performed anecdotal analysis for the Los Angeles County Metropolitan Transportation Authority for Mason Tillman's assessment of the agency's DBE program. Ms. Scott also managed the outreach and availability analysis, and assisted with the management of research staff.

Dallas Area Rapid Transit Disparity Study Update 2012, Texas. Ms. Scott provided project scheduling and management for the Availability and Disparity Study performed for the Dallas Area Rapid Transit. She also assisted in drafting the final report and managing the report completion.

Metropolitan St. Louis Sewer District, St. Louis, Missouri. Ms. Scott assisted with the management and coordination of subcontractors, Mason Tillman staff, and client communication for the disparity study performed for the Metropolitan St. Louis Sewer District. As Assistant Project Manager, Ms. Scott ensured timely completion of tasks and reviewed final report completion.

Ms. Scott's Additional Disparity Study Experience:

Alameda County, California
Baltimore County, Maryland
Bexar County, Texas
Broward County School Board, Florida
California High-Speed Rail Authority
City of Arlington, Texas
City of Berkeley Management & Review, California
City of Boston, Massachusetts
City of Bridgeport, Connecticut
City of Cincinnati, Ohio
City of Cleveland, Ohio
City of Dallas, Texas
City of Davenport, Iowa
City of Durham, North Carolina
City of Fort Wayne, Indiana
City of Fort Worth, Texas
City of Houston, Texas
City of Jacksonville, Florida
City of Kansas City, Missouri
City of New Haven, Connecticut
City of New York, New York
City of Oakland Update Study, California
City of Pittsburgh, Pennsylvania
City of St. Louis, Missouri
City of Tampa, Florida
Clayton County, Georgia
Cleveland Cuyahoga Port Authority, Ohio
Cleveland Municipal School District, Ohio
Commonwealth of Pennsylvania
Cuyahoga Community College District, Ohio
Cuyahoga County, Ohio
Dallas Area Rapid Transit 2001 Update Study, Texas
Dallas County Community College District, Texas
Dallas Fort Worth International Airport, Texas
Dallas Independent School District, Texas
Durham County, North Carolina
Duval County Public Schools, Florida

Fort Worth Independent School District, Texas
Fort Worth Transportation Authority, Texas
Greater Cleveland Regional Transit Authority, Ohio
Hillsborough County Aviation Authority, Florida
Illinois Department of Transportation
Illinois Department of Transportation Update Study
Illinois State Tollway, Illinois
Jacksonville Electric Authority, Florida
Jacksonville Port Authority, Florida
Kansas City Area Transportation Authority, Missouri
Kansas City School District, Missouri
Knox County, Tennessee
Knoxville Community Development Agency, Tennessee
Massachusetts Bay Transit Authority
Massachusetts Port Authority
Miami-Dade County, Florida
Montgomery County, Maryland
New Haven Housing Authority, Connecticut
New Jersey Department of Transportation
North Texas Tollway Authority, Texas
Pittsburgh Housing Authority, Pennsylvania
Pittsburgh Urban Development Agency, Pennsylvania
Sacramento Municipal Utility District Update Study, California
San Francisco Bay Area Rapid Transit, California
School District of Hillsborough County, Florida
State of Illinois
State of Indiana
State of Indiana Lottery
State of Indiana Riverboat Casinos
State of New Jersey
State of Ohio (Anecdotal Study)
State of Texas Update Study
Tennessee Department of Transportation
Washington Suburban Sanitary Commission, Maryland
Wayne County Airport Authority, Michigan
Wyandotte County, Kansas



EDWARD NORTON, ESQ.

Chief Legal Advisor

COMPANY TITLE

Chief Legal Advisor

EDUCATION

Bachelor of Laws
Columbia University

Bachelor of Arts
Yale University

EMPLOYMENT HISTORY

Disparity Study Experiences: 127 Studies
Employed With the Firm: 23 Years
Professional Work Years: 43

EMAIL

enorton@mtaltd.com

PROFILE

Mr. Norton has been a sole practitioner since January 1992, specializing in small business, minority business development, housing and urban development law, and administrative practice before federal, state, and local agencies. He has provided legal advice on all of Mason Tillman's disparity studies, and is the chief architect of the M/WBE programs predicated on those disparity studies (1990-present).

PROFESSIONAL EXPERIENCE

Recent Disparity Studies

Dallas Area Rapid Transit Disparity Study Update 2012, Texas. Mr. Norton provided legal research and analysis for Mason Tillman's Availability and Disparity Study for Dallas Area Rapid Transit. As Chief Legal Advisor, Mr. Norton's consultation and review of the final report ensured that the findings and recommendations were legally sound.

Los Angeles County Metropolitan Transportation Authority, California. Mr. Norton provided legal analysis of the Los Angeles County Metropolitan Transportation Authority's DBE program and its procurement policies and practices. Mr. Norton also assisted in drafting chapters for recommendations and setting DBE goals.

Metropolitan St. Louis Sewer District, St. Louis, Missouri. Mr. Norton developed the research methodology used in Mason Tillman's disparity study for the Metropolitan St. Louis Sewer District. He also reviewed the final report and ensured that the research methodology, findings, and recommendations were legally sound.

California High-Speed Rail Authority. Mr. Norton provided legal analysis and developed the methodology used for the California High-Speed Rail Authority. His background and expertise in small business law informed his analysis of the Authority's procurement policies and practices.

Jacksonville Transportation Authority, Florida. Mr. Norton provided client consultation for all of the Mason Tillman disparity studies performed for Jacksonville's participating agencies, including the City of Jacksonville, Duval County Public Schools, Jacksonville Transportation Authority, Jacksonville Electric Authority, and Jacksonville Port Authority. He also reviewed the final report to ensure comportment with legal standards.

Massachusetts Department of Transportation. Mr. Norton assisted in the drafting of recommendations and setting DBE goals for the disparity study encompassing the Massachusetts Department of Transportation, Massachusetts Port Authority, and the Massachusetts Transportation Bay Authority. Mr. Norton also managed the legal analysis and review of pertinent procurement policies and practices.

Mr. Norton's Additional Disparity Study Experience:

Alameda County Transportation Authority,
California
Alameda County, California

Baltimore County, Maryland
Bexar County, Texas
Broward County School Board, Florida

City College of San Francisco, California
City of Arlington, Texas
City of Berkeley Management & Review, California
City of Boston, Massachusetts
City of Bridgeport, Connecticut
City of Cincinnati, Ohio
City of Cleveland, Ohio
City of Dallas, Texas
City of Davenport, Iowa
City of Durham, North Carolina
City of Fort Wayne, Indiana
City of Fort Worth, Texas
City of Gresham, Oregon
City of Houston, Texas
City of Indianapolis, Indiana
City of Jacksonville, Florida
City of Kansas City, Missouri
City of Knoxville, Tennessee
City of New Haven, Connecticut
City of New York, New York
City of Oakland Update Study, California
City of Oakland, California
City of Pittsburgh, Pennsylvania
City of Portland, Oregon
City of Richmond, California
City of San Jose, California
City of San Jose, California (additional industries)
City of Seattle, Washington
City of St. Louis, Missouri
City of Tampa, Florida
Clayton County, Georgia
Cleveland Cuyahoga Port Authority, Ohio
Cleveland Municipal School District, Ohio
Commonwealth of Pennsylvania
Cuyahoga Community College District, Ohio
Cuyahoga County, Ohio
Dallas Area Rapid Transit 2001 Update Study, Texas
Dallas Area Rapid Transit, Texas
Dallas County Community College District, Texas
Dallas Fort Worth International Airport, Texas
Dallas Independent School District, Texas
Durham County, North Carolina
Duval County Public Schools, Florida
East Bay Municipal Utility District, California

Fort Worth Independent School District, Texas
Fort Worth Transportation Authority, Texas
Greater Cleveland Regional Transit Authority, Ohio
Hillsborough County Aviation Authority, Florida
Illinois Department of Transportation
Illinois Department of Transportation District 4
Illinois Department of Transportation Update Study
Illinois State Tollway, Illinois
Jacksonville Electric Authority, Florida
Jacksonville Port Authority, Florida
Kansas City Area Transportation Authority, Missouri
Kansas City School District, Missouri
King County and the Department of Metropolitan Services, Washington
Knox County, Tennessee
Knoxville Community Development Agency, Tennessee
Knoxville Transit Agency, Tennessee
Maricopa County, Arizona
Massachusetts Bay Transit Authority
Massachusetts Port Authority
Metropolitan Airports Commission, Minnesota
Metropolitan Board of Education, Nashville Tennessee
Metropolitan Council, Minnesota
Metropolitan Development and Housing Agency, Nashville, Tennessee
Metropolitan Government of Nashville and Davidson County, Tennessee
Metropolitan Mosquito Control District, Minnesota
Metropolitan Service District, Portland, Oregon
Metropolitan Sports Facilities Commission, Minnesota
Metropolitan Transit Agency, Nashville
Miami-Dade County, Florida
Minnesota Airport, Minnesota
Minnesota Department of Transportation
Montgomery County, Maryland
Multnomah County, Oregon
Nashville Airport Authority, Tennessee
Nashville Electric Service, Tennessee
New Haven Housing Authority, Connecticut
New Jersey Department of Transportation

North Texas Tollway Authority, Texas
Oakland Unified School District, California
Pittsburgh Housing Authority, Pennsylvania
Pittsburgh Urban Development Agency,
Pennsylvania
Port of Oakland, California
Port of Seattle, Washington
Portland Redevelopment Agency, Oregon
Redevelopment Agency, City of Oakland, California
Sacramento Municipal Utility District Update
Study, California
Sacramento Municipal Utility District, California
San Francisco Bay Area Rapid Transit, California
San Francisco City and County Human Rights
Commission, California
San Jose Redevelopment Agency, California
School District of Hillsborough County, Florida
Seattle Public Facilities District, Washington
Seattle School District No. 1, Washington
State of Illinois
State of Indiana
State of Indiana Lottery
State of Indiana Riverboat Casinos
State of Minnesota
State of Missouri
State of New Jersey
State of Ohio (Anecdotal Study)
State of Oregon Department of Administrative
Services
State of Oregon Higher Education, Portland
State of Texas Update Study
State of Washington
Tennessee Department of Transportation
Tri-County Metropolitan Transportation District
Portland, Oregon
University of California, California
Washington County, Oregon
Washington Suburban Sanitary Commission,
Maryland
Wayne County Airport Authority, Michigan
Wyandotte County, Kansas



MIKE LEONG, M.S.

Senior Statistician

COMPANY TITLE
Senior Statistician

EDUCATION
Master of Science
University of California, Berkeley

Bachelor of Science
University of California, Berkeley

EMPLOYMENT HISTORY
Disparity Study Experience: 127 Studies
Employed With the Firm: 23 Years
Professional Work Years: 30

EMAIL
mleong@mtatld.com

PROFILE

Mike Leong, M.S., developed the models used for statistical analysis on all Mason Tillman's disparity studies. These analytical models fulfill the standards set forth by *Crosen*. Multiple regression models to test statistical significance of private sector data and to analyze the PUMS metrics available from the US Census were also designed by Mr. Leong. Mr. Leong has also conducted large regression analyses for the President's Office, University of California, Berkeley, wherein he teaches Statistics as an adjunct profession.

PROFESSIONAL EXPERIENCE

Recent Disparity Studies

Massachusetts Department of Transportation. Mr. Leong assisted with all of the aspects of statistical analysis for the disparity study performed for the Massachusetts Department of Transportation, Massachusetts Port Authority, and the Massachusetts Transportation Bay Authority. The findings served as a foundation for the final report recommendations

Jacksonville Transportation Authority, Florida. Mr. Leong provided statistical consulting for all of the disparity studies Mason Tillman performed for Jacksonville, including the City of Jacksonville, Duval County Public Schools, Jacksonville Transportation Authority, and Jacksonville Electric Authority.

Illinois Department of Transportation District 4. Mr. Leong coordinated the data analysis for all aspects of the disparity study performed for Illinois Department of Transportation. Mr. Leong successfully coordinated data extraction, management, and analysis by working with a wide variety of Mason Tillman team members.

Los Angeles County Metropolitan Transportation Authority, California. Mr. Leong assisted with all of the statistical analysis required for the Los Angeles County Metropolitan Transportation Authority Disparity Study.

Dallas Area Rapid Transit Disparity Study Update 2012, Texas. As Senior Statistician, Mr. Leong analyzed all of the regression data pertinent to Mason Tillman's disparity study performed for the Dallas Area Rapid Transit.

Metropolitan St. Louis Sewer District, St. Louis, Missouri. Mr. Leong managed the statistical analysis required for this disparity study. In addition to following the methodology proposed by other team members, he also provided statistical consulting to ensure that the data analysis was statistically sound.

Mr. Leong's Additional Disparity Study Experience:

Alameda County Transportation Authority, California
Alameda County, California
Baltimore County, Maryland
Bexar County, Texas
Broward County School Board, Florida
California High-Speed Rail Authority
City College of San Francisco, California
City of Arlington, Texas

City of Berkeley Management & Review, California
City of Boston, Massachusetts
City of Bridgeport, Connecticut
City of Cincinnati, Ohio
City of Cleveland, Ohio
City of Dallas, Texas
City of Davenport, Iowa
City of Durham, North Carolina



MIKE LEONG, M.S.

Senior Statistician

City of Fort Wayne, Indiana
City of Fort Worth, Texas
City of Gresham, Oregon
City of Houston, Texas
City of Indianapolis, Indiana
City of Jacksonville, Florida
City of Kansas City, Missouri
City of Knoxville, Tennessee
City of New Haven, Connecticut
City of New York, New York
City of Oakland Update Study, California
City of Oakland, California
City of Pittsburgh, Pennsylvania
City of Portland, Oregon
City of Richmond, California
City of San Jose, California
City of San Jose, California (additional industries)
City of Seattle, Washington
City of St. Louis, Missouri
City of Tampa, Florida
Clayton County, Georgia
Cleveland Cuyahoga Port Authority, Ohio
Cleveland Municipal School District, Ohio
Commonwealth of Pennsylvania
Cuyahoga Community College District, Ohio
Cuyahoga County, Ohio
Dallas Area Rapid Transit 2001 Update Study, Texas
Dallas Area Rapid Transit, Texas
Dallas County Community College District, Texas
Dallas Fort Worth International Airport, Texas
Dallas Independent School District, Texas
Durham County, North Carolina
Duval County Public Schools, Florida
East Bay Municipal Utility District, California
Fort Worth Independent School District, Texas
Fort Worth Transportation Authority, Texas
Greater Cleveland Regional Transit Authority, Ohio
Hillsborough County Aviation Authority, Florida
Illinois Department of Transportation
Illinois Department of Transportation Update Study
Illinois State Tollway, Illinois
Jacksonville Electric Authority, Florida
Jacksonville Port Authority, Florida
Kansas City Area Transportation Authority, Missouri
Kansas City School District, Missouri
King County and the Department of Metropolitan
Services, Washington
Knox County, Tennessee
Knoxville Community Development Agency, Tennessee

Knoxville Transit Agency, Tennessee
Maricopa County, Arizona
Massachusetts Bay Transit Authority
Massachusetts Port Authority
Metropolitan Airports Commission, Minnesota
Metropolitan Board of Education, Nashville Tennessee
Metropolitan Council, Minnesota
Metropolitan Development and Housing Agency,
Nashville, Tennessee
Metropolitan Government of Nashville and Davidson
County, Tennessee
Metropolitan Mosquito Control District, Minnesota
Metropolitan Service District, Portland, Oregon
Metropolitan Sports Facilities Commission, Minnesota
Metropolitan Transit Agency, Nashville
Miami-Dade County, Florida
Minnesota Airport, Minnesota
Minnesota Department of Transportation
Montgomery County, Maryland
Multnomah County, Oregon
Nashville Airport Authority, Tennessee
Nashville Electric Service, Tennessee
New Haven Housing Authority, Connecticut
New Jersey Department of Transportation
North Texas Tollway Authority, Texas
Oakland Unified School District, California
Pittsburgh Housing Authority, Pennsylvania
Pittsburgh Urban Development Agency, Pennsylvania
Port of Oakland, California
Port of Seattle, Washington
Portland Redevelopment Agency, Oregon
Redevelopment Agency, City of Oakland, California
Sacramento Municipal Utility District Update Study,
California
Sacramento Municipal Utility District, California
San Francisco Bay Area Rapid Transit, California
San Francisco City and County Human Rights
Commission, California
San Jose Redevelopment Agency, California
School District of Hillsborough County, Florida
Seattle Public Facilities District, Washington
Seattle School District No. 1, Washington
State of Illinois
State of Indiana
State of Indiana Lottery
State of Indiana Riverboat Casinos
State of Minnesota
State of Missouri
State of New Jersey



MIKE LEONG, M.S.

Senior Statistician

State of Ohio (Anecdotal Study)
State of Oregon Department of Administrative Services
State of Oregon Higher Education, Portland
State of Texas Update Study
State of Washington
Tennessee Department of Transportation
Tri-County Metropolitan Transportation District
Portland, Oregon
University of California, California
Washington County, Oregon
Washington Suburban Sanitary Commission, Maryland
Wayne County Airport Authority, Michigan
Wyandotte County, Kansas



ROBERT RAMSEY, M.S.

Statistician

COMPANY TITLE

Statistician

EDUCATION

Master of Science

California State University, East Bay

Bachelor of Science

University of California, Berkeley

EMPLOYMENT HISTORY

Disparity Study Experience: 33 Studies

Employed With the Firm: 5 Years

Professional Work Years: 5

EMAIL

rramsey@mtaltd.com

PROFILE

During his five years as Statistician at Mason Tillman, Robert Ramsey, M.S., has performed statistical analysis, as well as designing and maintaining project databases, for 33 Disparity Studies. He has also analyzed the procurement process for these Studies, as well as formulating recommendations for the enhancement of the clients' procurement processes. His mathematical training enables him to address *ad hoc* issues which arise in the performance of statistical analysis. His expertise also enables him to create *ad hoc* utilities to efficiently clean and scrape the unique structures of the clients' data. Mr. Ramsey also holds Adjunct Professorships in Mathematics and Statistics at San Mateo Community College and Contra Costa Community College.

PROFESSIONAL EXPERIENCE

Recent Disparity Studies

Dallas Area Rapid Transit, Texas. Mr. Ramsey assisted with the statistical analysis for the Availability and Disparity Study performed to evaluate DART's use of minority and women-owned business enterprises.

Los Angeles County Metropolitan Transportation Authority, California. Mr. Ramsey developed statistical models used in Mason Tillman's disparity study to determine the Transportation Authority's DBE program effectiveness. Mr. Ramsey analyzed data to develop findings for the final report.

California High-Speed Rail Authority. Mr. Ramsey provided statistical analysis for the disparity study performed for the California High-Speed Rail Authority. As part of the analysis, Mr. Ramsey was responsible for the simulation and linear regression models.

Jacksonville Transportation Authority, Florida. Mr. Ramsey provided statistical consulting and analysis for all of the disparity studies conducted for Jacksonville, including the city of Jacksonville, Jacksonville Port Authority, Duval County Public Schools, Jacksonville Transportation Authority, and Jacksonville Electrical Authority.

Massachusetts Department of Transportation. Mr. Ramsey assisted with all of the statistical analysis performed for Mason Tillman's Disparity Study for the Massachusetts Department of Transportation, Massachusetts Port Authority, and the Massachusetts Transportation Bay Authority. The findings from this analysis informed the set goals and recommendations.

Miami-Dade County, Florida. Mr. Ramsey performed as a supporting statistician on the Study. His responsibilities included the analysis of availability and utilization data, report writing, statistical consulting, and methodology development.

Mr. Ramsey's Additional Disparity Study Experience:

Bexar County, Texas

Broward County School Board, Florida

City of Arlington, Texas

City of Berkeley Management & Review, California

City of Cincinnati, Ohio
City of Davenport, Iowa
City of Fort Wayne, Indiana
City of Fort Worth, Texas
City of Jacksonville, Florida
City of St. Louis, Missouri
Clayton County, Georgia
Commonwealth of Pennsylvania
Dallas Fort Worth International Airport, Texas
Duval County Public Schools, Florida
Fort Worth Independent School District, Texas
Fort Worth Transportation Authority, Texas
Illinois Department of Transportation District 4
Illinois Department of Transportation Update Study
Illinois State Tollway, Illinois
Jacksonville Electric Authority, Florida
Jacksonville Port Authority, Florida
Massachusetts Bay Transit Authority
Massachusetts Port Authority
Metropolitan St. Louis Sewer District, Missouri
North Texas Tollway Authority, Texas
San Francisco Bay Area Rapid Transit, California
Washington Suburban Sanitary Commission, Maryland



AMINATU R. YUSUF, B.S.

Project Administrator

COMPANY TITLE

Project Administrator

EDUCATION

Graduate Certificate

Westminster College

Bachelor of Science

University of Utah

EMPLOYMENT HISTORY

Disparity Study Experience: 20 Studies

Employed With the Firm: 2 Years

Professional Work Years: 2

EMAIL

ayusuf@mtaltd.com

PROFILE

Aminatu Yusuf, B.S., has supervised anecdotal research and analysis, and coordinated community meetings, and compiled client subcontract records. Management of research services to compile and analyze availability is also her responsibility.

PROFESSIONAL EXPERIENCE

Recent Disparity Studies

Massachusetts Department of Transportation. Ms. Yusuf coordinated business outreach, and the collection of anecdotal evidence from business owners and trade organization leaders. She also assisted in the generation of anecdotal quote file. Ms. Yusuf assisted with the drafting, compilation, and production of technical documents.

Jacksonville Transportation Authority, Florida. Ms. Yusuf managed the collection of prime expenditure surveys from prime contractors and anecdotal

evidence from business owners and trade organization leaders. Ms. Yusuf also assisted with the drafting and compilation of technical documents and reports.

Illinois Department of Transportation District 4. Ms. Yusuf coordinated business outreach, and the collection of anecdotal evidence from business owners and trade organization leaders. She also assisted in the generation of anecdotal quote file. Ms. Yusuf assisted with the drafting, compilation, and production of technical documents.

Los Angeles County Metropolitan Transportation Authority, California. Ms. Yusuf assisted with the drafting, compilation, and production of technical documents and reports. Ms. Yusuf also managed the collection of prime expenditure surveys from prime contractors and served as a point of contact to the public and business owners.

Dallas Area Rapid Transit Disparity Study Update 2012, Texas. Ms. Yusuf was responsible for providing program analysis for each report. She also assisted with report preparation.

Metropolitan St. Louis Sewer District, Missouri. Ms. Yusuf was responsible for collecting and analyzing secondary sources on employment, educational attainment, and population trends. She also provided report writing and research assistance

Ms. Yusuf's Additional Disparity Study Experience:

Broward County School Board, Florida

California High-Speed Rail Authority

City of Berkeley Management & Review, California

City of Cincinnati, Ohio

City of Fort Wayne, Indiana

City of Jacksonville, Florida

City of St. Louis, Missouri

Duval County Public Schools, Florida

Illinois Department of Transportation Update Study

Jacksonville Electric Authority, Florida

Jacksonville Port Authority, Florida

Massachusetts Bay Transit Authority

Massachusetts Port Authority

Miami-Dade County, Florida



ANTONINA SALINA, M.S.

Database Manager

COMPANY TITLE:

Database Manager

EDUCATION:

Master of Computer Science

St. Petersburg Institute for Information Technology

EMPLOYMENT HISTORY:

Disparity Study Experience: 20 Studies

Employed With the Firm: 3 Years

Professional Work Years: 17

EMAIL:

asalina@mtaltd.com

PROFILE

Ms. Salina has been employed with Mason Tillman as a Database Manager. With her background in Information Systems, Ms. Salina's primary responsibilities include developing, testing and supporting business applications, performing statistical analysis, and designing and maintaining relational databases. She has provided project management on 20 disparity studies. She has been responsible for developing the relational database systems and managing the development of statistical formulas and analyses.

PROFESSIONAL EXPERIENCE

Recent Disparity Studies

California High-Speed Rail Authority. Ms. Salina managed the project and prepared draft report chapters. She also manages internal project staff and subcontractors. As the database analyst for the study, she extracted and coded data, examined utilization and availability data by industry, ethnicity, and

gender, and provided statistical reports.

Massachusetts Department of Transportation. Ms. Salina assisted in supervising the research team and was responsible for data management and analysis. She analyzed data by industry, ethnicity, and gender for the utilization, market area, availability, and disparity analyses. She also designed the data management applications used for this Disparity Study.

Jacksonville Transportation Authority, Florida. Ms. Salina managed the database for the disparity studies completed for the Jacksonville Transportation Authority and the participating agencies. She designed the database used to examine utilization, availability and disparity ratios by industry, ethnicity, and gender. She also set new small business goals for the United States Department of Transportation contracts.

Illinois Department of Transportation District 4. Ms. Salina performed research team and database management for the disparity study completed for Illinois Department of Transportation's District 4. As Database Manager, Ms. Salina cleaned, extracted, and analyzed data by industry, ethnicity, and gender.

Los Angeles County Metropolitan Transportation Authority, California. Ms. Salina was responsible for managing the project's statistical research. She analyzed prime and subcontract data, and collected availability information, and prime and subcontractor expenditure survey data. She examined the Agency's utilization and availability data by industry, ethnicity, and gender.

Dallas Area Rapid Transit Disparity Study Update 2012, Texas. Ms. Salina assisted in the database analysis for the Study. She extracted and coded data, examined utilization and availability records by industry, ethnicity, and gender.

Ms. Salina's Additional Disparity Study Experience:

Broward County School Board, Florida
City of Berkeley Management & Review, California
City of Cincinnati, Ohio
City of Fort Wayne, Indiana
City of Jacksonville, Florida
City of St. Louis, Missouri
Duval County Public Schools, Florida
Illinois Department of Transportation Update Study

Jacksonville Electric Authority, Florida
Jacksonville Port Authority, Florida
Massachusetts Bay Transit Authority
Massachusetts Port Authority
Metropolitan St. Louis Sewer District Disparity Study, Missouri
Miami-Dade County, Florida



OLGA LEONTYEVA, M.S.

Database Analyst

COMPANY TITLE

Database Analyst

EDUCATION

Master of Science, Mathematics;
Lomonosov Moscow State University,
Moscow, Russia

"Software Quality Assurance," Portnov
Computer School, Los Altos, California

"Programming with Java," "Advanced
Programming with Java," and
"Advanced Programming with C and
C++," Diablo Valley College, Pleasant
Hill, California

"Introduction to Database" and
Algorithms: Design and Analysis,
Stanford University, California

"Case-Based Introduction to
Biostatistics" and "Computing for Data
Analysis," Johns Hopkins University,
Baltimore, Maryland

EMPLOYMENT HISTORY

Disparity Study Experience: 8 Studies
Employed With the Firm: 1 Year
Professional Work Years: 22

AWARDS AND HONORS

- Winner, International Mathematic Olympiad
- President, Russian connoisseur puzzle club "Diogenes"

EMAIL

oleontyeva@mtaltd.com

PROFILE

Olga Leontyeva, M.S., has applied her strong mathematical background in algorithm design and development, statistical analysis, quantitative analysis, mathematical modeling, and application of mathematical disciplines to the specific problems of data analysis. She has assisted in analyzing prime and subcontractor data, and has run disparity simulations using designed utilities for running.

PROFESSIONAL EXPERIENCE

Recent Disparity Studies

California High-Speed Rail Authority. Ms. Leontyeva assisted in analyzing prime and subcontractor data and prepared prime contractor utilization tables.

City of St. Louis, Missouri. Ms. Leontyeva ran queries to update industry classifications. She conducted analysis of available market area businesses and prepared and updated the NAICS code table. She cleaned data and wrote queries in preparation of availability analysis tables. She also conducted the analysis of prime contracts and prepared prime contractor utilization tables.

Massachusetts Department of Transportation. Ms. Leontyeva ran disparity simulations for the subcontract disparity analysis for the three agencies.

Miami-Dade County, Florida. Ms. Leontyeva ran queries to analyze prime contracts and create tables for the analysis of available market area businesses.

Ms. Leontyeva's Additional Disparity Study Experience:

Broward County School Board, Florida
City of Cincinnati, Ohio
Massachusetts Bay Transit Authority
Massachusetts Port Authority

COMPANY TITLE:
Database Assistant

EDUCATION

Master of Science, Applied Statistics,
California State University of the East
Bay, Hayward, California

Bachelor of Science, Statistics,
California State University of the East
Bay, Hayward, California

EMPLOYMENT HISTORY

Disparity Study Experience: 8 Years
Employed With the Firm: 1 year
Professional Work Years: 3

HONORS/CERTIFICATIONS

- Dean's List
- Graduated with Honors
- Golden Key International Honor Society
- Certificate in Linear Regression
- SAS Global Certification Program - Base Programmer for SAS@9

EMAIL

fqin@mtaltd.com

PROFILE

Fen Qin, M.S., uses Microsoft Access to create databases, link data files received from various sources, and create queries to prepare availability and utilization data for analysis. Mr. Qin also supports the Database Manager through data extraction, running reports, and data entry. Reporting on a daily basis to the manager, he is also responsible for data entry, quality control, and the resolution of data errors between various systems. He prepares summary statistics and *ad hoc* reports.

PROFESSIONAL EXPERIENCE

Recent Disparity Studies

California High-Speed Rail Authority. Mr. Qin prepared tables for the market area analysis. He ran queries in order to conduct the analysis of utilized prime and subcontractors. He also conducted the disparity analysis of prime contractors.

City of St. Louis, Missouri. Mr. Qin compiled availability sources and conducted internet research on prime vendors. He also assigned appropriate NAICS codes to vendors.

Massachusetts Department of Transportation. Mr. Qin ran simulations in order to analyze prime contracts and conduct the prime contractor disparity analysis. He is also assisted in the quality control process of the prime utilization chapter.

Miami-Dade County, Florida. Mr. Qin cleaned the availability list of business

through internet research. He assisted in data entry and prepared the prime expenditure survey for mailing. He also assisted in the preparation of the availability and capacity survey for market area business owners.

Mr. Qin's Additional Disparity Study Experience:

Broward County School Board, Florida

City of Cincinnati, Ohio

Massachusetts Bay Transit Authority

Massachusetts Port Authority

COMPANY TITLE

Senior Research Associate

EDUCATION

Juris Doctor, Hastings College of the Law, San Francisco, California

Bachelor of Science, Economics

Bachelor of Arts, German

University of Houston, Texas

EMPLOYMENT HISTORY

Disparity Study Experience: 10 Studies

Employed With the Firm: 1 Year

Professional Work Years: 4

EMAIL

ttan@mtaltd.com

PROFILE

Tuyet Linh Tan, Esq, has assisted with the research for nine disparity studies. She has also supervised the interview, transcription and coding processes for the anecdotal analyses portions of the studies. She has used her writing skills to assist with drafting of the anecdotal, availability, and utilization chapters of these studies, and has also assisted with legal research and analysis. Public policy has been drafted to implement M/WBE programs as supported by the disparity study findings.

PROFESSIONAL EXPERIENCE

Recent Disparity Studies

City of Cincinnati, Ohio. Ms. Tan assisted in coordinating the kick-off meeting. She acted as liaison for subconsultants and assisted in ensuring that work is performed according to the work plan. She attends weekly status meetings with the City. She also performed quality control of the legal chapter.

City of Berkeley Management & Review, California. Ms. Tan assisted in conducting the interviews. She managed the transcription and coding process. She conducted internet research of personnel regulations of similar cities in the San Francisco Bay Area, as well as the City Berkeley Municipal Code and ordinances related to personnel systems regulations. She drafted the topline report.

Massachusetts Department of Transportation. Ms. Tan drafted and performed quality control for the availability and utilization chapters.

California High-Speed Rail Authority. Ms. Tan drafted the introduction and assisted with the drafting of the legal chapter. She performed legal research and analysis.

Ms. Tan's Additional Disparity Study Experience:

Broward County School Board, Florida

City of St. Louis, Missouri

Illinois Department of Transportation District 4

Massachusetts Bay Transit Authority

Massachusetts Department of Transportation

Massachusetts Port Authority

Miami-Dade County, Florida

COMPANY TITLE

Research Assistant

EDUCATION

Bachelor of Arts
California State University, Chico

EMPLOYMENT HISTORY

Disparity Study Experience: 20 Studies
Employed With the Firm: 3 Years
Professional Work Years: 5

EMAIL

nnegoro@mtaltd.com

PROFILE

Nicholas Negoro, B.A., has assisted the research team in the preparation of 20 disparity studies. The survey research protocols developed by Mr. Negoro are standard procedures for the efficient collection of race/gender information, willingness, and subcontractor award amounts. Mr. Negoro has also performed database cleaning, conducted extensive Internet research, and coordinated survey research.

PROFESSIONAL EXPERIENCE

Recent Disparity Studies

Massachusetts Department of Transportation. Mr. Negoro performed database cleaning and conducted extensive internet research. He also coordinated and managed ethnicity and gender, availability, and prime and sub expenditure surveys.

Jacksonville Transportation Authority, Florida. Mr. Negoro cleaned and entered data.

Illinois Department of Transportation District 4. Mr. Negoro coordinates data collection and receipt of data from the agency.

Los Angeles County Metropolitan Transportation Authority, California. Mr. Negoro standardized data to Mason Tillman format in preparation for analysis in database.

Dallas Area Rapid Transit Disparity Study Update 2012, Texas. Mr. Negoro identified availability sources of available, willing, and able businesses.

Metropolitan St. Louis Sewer District Employment Study, Missouri. Mr. Negoro performed database cleaning, conducted extensive Internet research, and coordinated survey research.

Miami-Dade County, Florida. Mr. Negoro cleaned and entered data. He also conducted internet research of available businesses in the market area.

Mr. Negoro's Additional Disparity Study Experience:

Broward County School Board, Florida
California High-Speed Rail Authority
City of Berkeley Management & Review, California
City of Cincinnati, Ohio
City of Fort Wayne, Indiana
City of Jacksonville, Florida
City of St. Louis, Missouri
Duval County Public Schools, Florida
Illinois Department of Transportation Update Study
Jacksonville Electric Authority, Florida
Jacksonville Port Authority, Florida
Massachusetts Bay Transit Authority
Massachusetts Port Authority



L.B. LIMITED & ASSOCIATES, INC.
STRATEGIC PUBLIC RELATIONS

BRUCE N. LEWIS
FOUNDER, PRESIDENT, CHIEF EXECUTIVE OFFICER AND TREASURER

Mr. Bruce N. Lewis, founded L B Limited & Associates, Inc. in October, 1990. Responsible for all business strategic planning oversight activities, strategic relationship development, new business development, public relations practitioner responsible for client/corporate image development, press briefings, proposal preparation, editing, advertisement, and Sr. project management responsible for all public relations, public involvement, outreach and community relations projects among others.

Previous Experience includes: R&D, Chemical Design Engineer (semiconductors) for Fortune 500 corporations including Honeywell, Digital Equipment Corporation, RCA, General Electric (GE) and Senior R&D Project Engineer for Intel. Commercial Package Design Engineer, Commodore Computer Corporation. Also, served as Sr. R&D Process Engineer for MCE, Solid State Semiconductors, Inc. and BIOMET 3i a leader in the oral reconstruction market (dental implants).

Education - Graduate of the University of Minnesota BSEE, Specialized in Chemical Design Engineering Design, Minor - Business Administration (1976). Continuing Education - Palm Beach State College, Commercial Graphic Design, Advertising Graphics I, II & III and Advanced Motion Computer Graphics (1991 - 1993).

Civic/Social Activities - City of West Palm Beach, Downtown Development Authority Board Chairman (2001-2013), Chairman - Black Chamber of Commerce of Palm Beach County (2011 - present), City of West Palm Beach Working Waterfront Committee Chair (2009 - 2011), Chairman - City of West Palm Beach CRA Advisory Board (2006 - 2008), Graduate - Leadership Palm Beach County, Class of 1997, Member - Board of Directors, Executive Board, 2005/2006 Campaign Chair, Co-Chair of Improving Futures for Children and Families Committee - United Way of Palm Beach County (1998 - 2011), Member of the M/WBE Advisory Committee appointed by the Palm Beach County Board of Commissioners (1990 -1992), Corporate Board of Directors and Executive Board - Boys and Girls Club of Palm Beach County (1995 - 2001), Chair Public Relations Committee, SunFest Inc.(1996- 2004), Advisory Committee Member - Palm Beach County World Trade Center (1992 - 1994).



L.B. LIMITED & ASSOCIATES, INC.
S T R A T E G I C P U B L I C R E L A T I O N S

Lorraine M. Smith

Objective:

To secure a position with an established organization where I can maximize my range of program development along with my interpersonal skills and contribute a strong administrative and customer service experience

Professional Profile

- Highly effective written and verbal communicator with an ability to build rapport with individuals from all cultural and socioeconomic backgrounds
 - Motivated and experienced team player who thrives on collaboration with team members planning projects, presenting innovative ideas and facilitating projects
 - Proven ability to manage multiple priorities with problem solving abilities and result oriented goals
-

Executive Administrative Assistant & Project Manager – 1997 - Present

- Provides high level of administrative and project coordination support to the President/CEO
- Conducts research and composes, proofed and edited text for business and marketing collaterals
- Manages installation of internal/external communications equipment and office inventory to ensure overall business operation
- Establishes, maintains, and updates files, database, records, documents and internal reports
- Assists with marketing, brand image, proposal preparation, monthly reports and project coordination
- Coordinates all Project communications

The Raymond F. Kravis Center for the Performing Arts - Education Associate 1994 - 1997

- Coordinated and facilitated the S*T*A*R Series program, ArtScholars program, Royal Palm School Project, Education Recognition Night and the Arts Ambassador program
- Conceptualized, developed and facilitated new programs such as; the Student Arts Enrichment Task Force, the Latin Cultural Celebration, The Broadway Showcase Project and Gospel Kids Jubilee
- Managed school reservations, bussing issues and addressed student/teacher needs
- Program coordinator for students with special needs and disabilities
- Managed purchase orders, check requisitions, petty cash, reconciled expenses and generated Petty Cash Reports for Education Department
- Reviewed and drafted press releases, articles and promotions for Student Arts Enrichment Task Force special events and workshops
- Documented Student Task Force special events by creating a video library
- Volunteer Coordinator for Education Department
- Recorded minutes for the Education and Community Relations Committee meetings

The Historical Society of Palm Beach County – Office Manager 1990 - 1994

- Responsible for overall operation of administrative office
- Managed database, membership database and membership support
- Managed purchases, installations and oversaw office supply inventory
- Drafted press releases and updates regarding upcoming special events
- Assisted Executive Director with lectures and special fundraising events
- Recorded minutes for Historical Society Board of Governors, Foundation Board and Executive Committee meetings
- Recruited and coordinated volunteers for special events, office duties and research

Education

University of Minnesota, College of Liberal Arts, Minneapolis, MN-Studio Art & Theatre Major
Prealpina, Institute des Jeunes Filles, Chexbres, Suisse

Activities/Awards

Junior Orange Bowl- 4 year volunteer, Service Award recipient Junior Orange Bowl Sports Disability World Games
SunFest-10 year volunteer in Media Headquarters and Operations Dispatch
Education Recognition Award 2003- presented by Dillon Country Day School

Skills

Intermediate Spanish-speak, read and write
Proofreading, Editing, Content Writing
Working knowledge of Microsoft Office, Excel, Outlook, Caretinium Medical Programs
Legal Office Administration-Corporate, Criminal and Entertainment - Miami, FL 10 years

- *Resumes of all staff participants*

SHAUN M. DAVIS, CPA
Partner

Professional Experience

Shaun is the Managing Partner of S. Davis & Associates, P.A. He has over twenty-six years of public accounting experience, including serving in his former position as Audit Manager with Ernst & Young. Shaun has attained pertinent experience in financial statement audits, single audits, and special services engagements in the governmental industry. Shaun has over twenty years of experience in auditing and consulting engagements for not-for-profit and governmental clients.

Education and Licensing

Graduate of Florida State University with a Bachelor of Arts degree in Accounting
CPA licensed to practice in Florida

Selected Current and Former Governmental Engagements

- City of Rivera Beach
- City of Rivera Beach Community Redevelopment Agency
- City of Lauderhill
- City of Hollywood
- City of North Miami
- City of Fort Lauderdale
- City of South Bay
- Palm Beach District School Board
- School Board of Broward County
- Miami-Dade Public Schools
- Palm Beach County
- Broward County
- South Florida Regional Planning Council
- South Broward Hospital District

Professional and Business Affiliations

- Past Board Member and Past Chairman, State of Florida Board of Accountancy
- Board of Governors Member, Florida State University School of Business
- Advisory Council Member, Florida State University School of Accounting
- Member of the American Institute of Certified Public Accountants (AICPA)
- Member of the Florida Institute of Certified Public Accountants (FICPA)

Annette Lewis CPA, MBA, CGMA
Manager

Annette is the Firm's consulting manager and has over twenty (20) years of combined governmental and public accounting experience. Annette is responsible for all of the firm's consulting and attestation engagements not managed by the partners. Annette's career began as an Operations Analyst at the City of Miami. She later became the City's Financial Systems Administrator, CFO and Executive Director for the City of Miami CRA. She also served as the Assistant Finance Director then Director of the City of Homestead. In her transition to public accounting, Ms. Lewis has gained significant experience in providing consulting and accounting services. Annette has experience in attestation, accounting, tax and consulting services.

Education and Licensing

Graduate of Boston College with a Bachelor of Science degree in Accounting and an MBA from Florida International University
CPA licensed to practice in Florida

Selected Current and Former Governmental Engagements

- City of Rivera Beach
- City of Rivera Beach Community Redevelopment Agency
- City of Lauderhill
- City of Hollywood
- City of North Miami
- City of Fort Lauderdale
- City of South Bay
- School Board of Broward County
- Broward County
- South Florida Water Management District
- South Florida Regional Planning Council

Professional and Business Affiliations

- Member of the American Institute of Certified Public Accountants (AICPA)
- Member of the Florida Institute of Certified Public Accountants (FICPA)
- Lifetime member of the National Association of Black MBAs

Surale Phillips

PO Box 30547
Palm Beach Gardens, FL 33420
surale@suralephillips.com

C: 406.600.7537
W: 561.328.3039

Professional Experience

**President, Lead Consultant
DECISION SUPPORT PARTNERS, INC.**

2002-present

Lead consultant to national client base of nonprofit organizations of varying budget sizes and disciplines in planning, market research, and program evaluation. Consulting team member with other national firms on community cultural needs assessment and planning projects. Conducts business development, manages operations, consultants, and networks and presents through national field service organizations. Founded company in 2002 in Bozeman, Montana and relocated during winter months to South Florida in 2013.

**Executive Director
CLASSICS FOR KIDS FOUNDATION**

2009-2011

Executive director responsibilities for grant-making organization through turnaround phase and redesign of grant-making program to national school base. Board member 2008.

**Vice President for Research and Administration
Research Director
Administrative Director
Administrative Assistant
ARTSMARKET, INC.**

2000-2002

1995-2000

1991-1995

1990-1991

Designed and led all company research, participated in onsite consulting, report writing, project management, and business development. Managed staff of three. National client base. Started with company in Marion, Massachusetts and moved with company to Bozeman, Montana in 1996.

**Account Representative
MASTERY EDUCATION**

1989-1990

Managed accounts for educational publishing company in Watertown, Massachusetts

Notable Training, Presentation, and Commissions

2002-2013

Committee Member: Cultural & Aesthetic Grants, State of Montana
Consulting Coach and Presenter, Americans for the Arts National Conventions
Consulting Coach and Presenter, National Arts Marketing Project Conference
National Field Assessment: Fund for Folk Culture
Sum of the Arts: Greater Kansas City Community Foundation
Workshops: Kentucky Arts Presenters, Midwest Council on Philanthropy, Pennsylvania Council for the Arts
Diversity Summit Presenter: San Diego Commission on Cultural Affairs
Panellist: Southeastern Council on Foundations
Retreat: Western States Folklore Society

Education and Training

B.A. in Art History with Arts Education Minor, University of Maryland 1986
Professional Certificates, SPSS, Inc. (Survey Design, Data Analysis, Text Analysis) 1998-2007
Professional training, Scan/US GIS market mapping

Skills: Excel, Word, PowerPoint, Adobe Acrobat, QuickBooks, SPSS, Inc., Scan/US, FileMaker Pro, Qualitative Research, Quantitative Research

References available upon request

caren@carenhackman.com ■ 561-622-4884 ■ 4305 Hickory Drive ■ Palm Beach Gardens ■ FL ■ 33418

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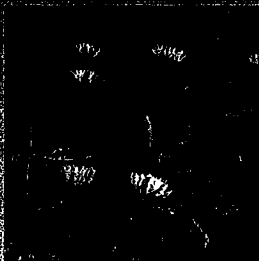
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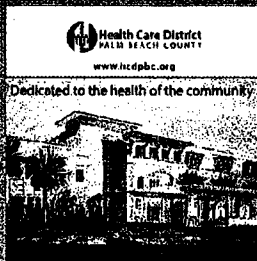
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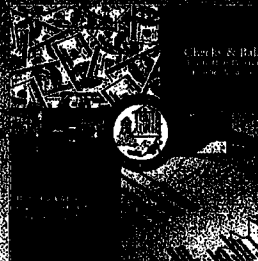
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fine art illustration



logos & branding



reports



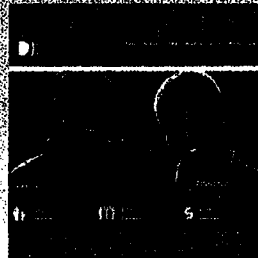
books & book jackets



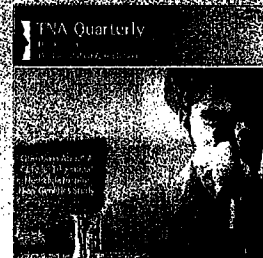
print ads



outdoor advertising



web design



newsletters & brochures

Experience in visual communication, print and web design, creating ad campaigns, brochures and graphic identity systems. Diverse clientele including corporations, non-profit organizations and municipalities. Emphasis on client communication and budget, along with vigilance to deadlines guarantees client satisfaction.

Additional experience as an illustrator and exhibiting fine artist.

Author of the book, Graphic Design Exposed.

- | | |
|-----------------|---|
| 2003 - present: | Graphic designer/principal, Caren Hackman, Inc. |
| 1995 - 2003: | Graphic designer/principal, XL Capital Corp. |
| 1988 - 1995: | Adjunct art program director,
City of Palm Beach Gardens, FL |
| 1984 - 1988: | Graphic and Industrial designer, project manager,
American Leather Industries, West Palm Beach, FL |
| 1982 - 1984: | Graphic and Industrial designer, Grimes Galley
Products/Midland Ross, Delray Beach, FL |
| 1980 - 1982: | Graphic and Industrial designer, Tumi Luggage,
Plainfield, NJ |
| 1979 - 1980: | Industrial designer, Pulos Design Associates,
Syracuse, NY |
| 1980: | BID (Bachelor of Industrial Design), Syracuse University |

Calonie Marie Kelli Gray
Curriculum Vita

Work Address

Q-Q Research Consultants
990 Biscayne Boulevard, Office #503
Miami, FL 33132
(305) 999-7772 ofc
cgray@qqresearchconsultants.com

Home Address

8103 SW 22nd Court
Fort Lauderdale, FL 33324
(305) 389-0126 cell
calonie.gray1@fiu.edu

EDUCATION

2003-2009

Doctor of Philosophy Degree (Life-Span Developmental Psychology)

Florida International University

Currently matriculating

Graduate Certificate in Epidemiology/ Biostatistics

Florida International University

2003-2006

Master of Science Degree (Counseling Psychology)

Florida International University

1997-2001

Bachelor of Arts Degree (Psychology major/ Spanish minor)

University of Tennessee at Chattanooga

RESEARCH EXPERIENCE

August 2011-present

Research Affiliate

Challenging Racism and Empowering Communities through Ethnocultural Research (CRECER)

University of Miami; Miami, FL

Duties: Responsible for leading manuscript development for three papers for publication and for providing consultation on research activities and protocols. Provide mentorship for doctoral students.

May 2010-present

Partner

Q-Q Research Consultants, LLC

Miami, FL

Duties: Responsible for securing and maintaining clientele for research projects and program evaluations.

Lead and manage all research and evaluation efforts, including managing client relationships, leading project teams, overseeing the development of products on time and within budget, and the preparation of reports and manuscripts for dissemination. Liaises between company and professional subcontractors.

September 2008-August 2011

Research Analyst

Children's Services Council of Broward County

Fort Lauderdale, FL

Duties: Completed data analysis for county-funded programs in many areas of youth development. Provided technical assistance with data entry and outcome measurement for community providers. Assisted with programmatic monitoring visits for funded community providers. Compiled results from data analyses for all reporting, including reports for county governmental officials, stakeholders, community providers, and community at large. Assisted in the development of Request for Proposals (RFP).

June 2007-December 2008

Program Coordinator

Guided Intervention for Real Life Skills (GIRLS) Project

(Marilyn Montgomery, Ph.D., Principal Investigator)

Community-Based Intervention Research Group (C-BIRG)

Florida International University; Miami, FL

Duties: Oversaw project operations for an NIAAA funded study. Directly supervised Evaluation Specialists and Therapists and conducted weekly supervision meetings with staff. Was responsible for maintaining compliance with study protocol, including adverse event reporting, annual IRB renewal, and NIH progress reports. Was responsible for quality control and organization of all data. Coordinated participant recruitment and assignment of participant cases to staff. Was responsible for maintaining study budget. Maintained and submitted weekly and monthly reports. Assisted in training of all new staff in compliance with protocols.

January 2005-June 2007

Evaluation Specialist

Guided Adolescent Problem Solving (GAPS) Project

(Eric Wagner, Ph.D., Principal Investigator)

Community-Based Intervention Research Group (C-BIRG)

Florida International University; Miami, FL

Duties: Recruited participants for research studies. Screened all potential candidates. Administered structured assessments to all participants. Assessed for suicidality when appropriate. Was responsible for organizing all data and completing participant file. Scheduled follow-up assessments for all participants. Entered data using SPSS.

September 2003-September 2006

Research Assistant

BSFT and Women and Trauma

(Jose Szapocznik, Ph.D. (BSFT) and Denise Hien, Ph.D. (Women and Trauma) Principal Investigators)

The Clinical Trials Network (CTN)

University of Miami and Village South, Inc.; Miami, FL

Duties: Recruited participants for two national research studies. Screened all potential candidates. Administered structured assessments to all participants. Was responsible for organizing all data and submitting it to data management in a timely manner. Randomized all participants in compliance with protocols. Scheduled follow-up assessments for all participants. Administered biological measures. Maintained and submitted weekly and monthly reports. Assisted in training and certifying all new staff persons in compliance with protocols.

December 2001-July 2002

Lead Research Assistant

The Memphis Health Project (MHP)

(Leslie A. Robinson, Ph.D., Principal Investigator)

The University of Memphis; Memphis, TN

Duties: Administered detailed research survey to participants. Utilized specialized tracking methods to locate difficult-to-reach participants. Generated monthly statistical report of participant information. Committed an average of 15 hours weekly to project.

PROFESSIONAL SERVICE

2011

Grant Reviewer
Broward County

2011

Grant Reviewer
City of Hallandale, FL

2009

Reviewer
Journal of Adolescent Health

2009

Grant Reviewer
Florida Department of Education

2005-2007

Editor
Cheers!, biannual departmental newsletter for Psychology Department at Florida International University

March 2004-March 2005

Graduate Student Association Representative
Developmental Mental Health Association (DMHA) at Florida International University

February 2005

Volunteer
Conference on Emerging Adulthood and Society for the Research on Identity Formation in Miami, FL

August 2000-May 2001

Chief Editor
Modern Psychological Studies (MPS), an undergraduate peer-reviewed journal
University of Tennessee at Chattanooga; Chattanooga, TN

CLINICAL WORK EXPERIENCE

September 2001-January 2003

Adult Continuous Treatment Team Case Manager
Whitehaven Southwest Mental Health Center; Memphis, TN

SELECTED HONORS AND AWARDS RECEIVED

Emerging Scholars Interdisciplinary Network, University of MI - \$5000 (2010)

Critical Issues in Latino Mental Health Conference Award Recipient - \$1300 (2010)

Independent Research Grant, Children's Services Council of Broward County - \$10,000 (2009)

Receipt of the National Hispanic Science Network Summer Training Institute Fellowship - \$2500 (2008)

Recipient of the McKnight Doctoral Fellowship for Doctorate Studies; (2004-2008)

Latino Drug Abuse Research Center Training Scholarship - \$6000 (2007)

SMEP Minority Fellowships for KU Summer Statistical Institute - \$425 (2007)

Trainee Travel Award, Florida Education Fund, KU Summer Statistical Institute - \$350 (2007)

Trainee Travel Award, Society of Multivariate Experimental Psychology (SMEP, Minority student conference) - \$1000 (2006 & 2007)

Trainee Travel Award, Florida Education Fund; Black Graduate Conference in Psychology - \$500 (2006)

Trainee Travel Award, Graduate Student Association of FIU - \$500 (2006)

CONFERENCE PRESENTATIONS

- Gray, C. M. K., Williams, S. & Sagon, B.** (2010, June). *Ethnicity, culture, and child maltreatment. Where are we now?* Paper symposium presented at annual conference for the American Psychological Association, San Diego, CA.
- Montgomery, M. J., Gray, C. M. K., & Menard, L.** (2009, November). *GIRLS: Guided intervention for real life skills for substance-using girls.* Paper presented at annual conference for the Florida Counseling Association, Miami, FL.
- Gray, C. M. K., Montgomery, M. J., Rodriguez, A. M. & Wagner, E. F.** (2008, July). *Maltreatment and alcohol and other drug use in adolescent girls.* Poster presented at annual conference for the Research Society on Alcoholism, Washington D.C.
- Montgomery, M. J., Gray, C. M. K., Rodriguez, A. M. & Wagner, E. F.** (2008, July). *Family-related triggers for girls' AOD use: An analysis of session transcripts.* Poster presented at annual conference for the Research Society on Alcoholism, Washington D.C.
- Oshri, A., Tubman, J. G., Mira, L., & Gray, C. M. K.** (2008, March). *Sensation Seeking, Condom Use Self-Efficacy and Sexual Risk Behavior Among AOD Using Adolescents: A Moderating Relationship.* Poster presented at the annual conference for the Society for Research on Adolescence, Chicago, IL.
- Des Rosiers, S. E., Gray, C. M. K., Surace, F. I., & Tubman, J. G.** (2008, March). *Integrating Person-Centered and Variable-Centered Frameworks: An Evaluation of Sex-Related Alcohol Expectancies Among Adolescents.* Poster presented at the annual conference for the Society for Research on Adolescence, Chicago, IL.
- Pienkowski, M., Gray, C. M. K., Hernandez, I., Sangiovanni, P., Alonso, A. Carter, R. & Silverman, W.K.** (2008, March). *Overdue for a reconceptualization of the test anxiety construct in elementary schools: A new approach to identifying children at risk for anxiety disorders.* Poster presented at the annual conference of Anxiety Disorders Association of America, Savannah, GA.
- Gray, C. M. K., Montgomery, M. J., & Wagner, E. F.** (2007, August). *Family system and adolescent substance abuse treatment: An SEM approach.* Poster presented at annual conference for the American Psychological Association, San Francisco, CA.
- Gray, C. M. K., & Montgomery, M. J.** (2007, February). *Assessing victimization in romantic relationships among emerging adults: Use of the timeline followback method.* Poster presented at the annual conference for Emerging Adulthood, Tucson, AZ.
- Gray, C. M. K., Montgomery, M. J. & Wagner, E. F.** (2006, June). *The Quality of the Parent-child relationship and family treatment for adolescent substance abuse.* Paper presented at the annual conference for the Black Graduate Student in Psychology Conference, Lafayette, IN.
- Gray, C. M. K., Montgomery, M. J., Wagner, E. F., Gil, A. G.** (2006, March). *The influence of familial factors on session attendance in family treatment for adolescent substance use.* Poster presented at the biennial conference of the Society for Research on Adolescence, San Francisco, CA.
- Rodriguez, M. Collado, A., Gray, C. M. K., Montgomery, M. J.** (2005, February). *The utility of the "timeline followback" method for collecting information about partner violence.* Poster presented at the annual conference of The Association for Women in Psychology, Tampa, FL.

PEER-REVIEWED PUBLICATIONS

- Gray, C. M. K., Carter, R., & Silverman, W. K. (2011). Anxiety symptoms in African American children: Relations with ethnic pride, anxiety sensitivity, and parenting. *Journal of Child and Family Studies*, 20, 205-213.
- Gray, C. M. K. (2010). [Review of the book *Smooth sailing or stormy waters? Family transitions through adolescence and their implications for practice and policy*]. *Journal of Adolescent Research*, 25, 494-496.
- Gray, C. M. K., & Montgomery, M. J. *Links between Alcohol and Other Drug Problems and Maltreatment among Adolescent Girls: Perceived Discrimination, Ethnic Identity, and Ethnic Orientation as Moderators*. Manuscript accepted for publication in *Child Abuse and Neglect*.
- Gray, C. M. K., & Montgomery, M. J. *Adolescent girls and family-related motivations for alcohol and other drug (AOD) use: In their own words*. Manuscript under review.

TECHNICAL AND EVALUATION REPORTS

- Q-Q Research Consultants. (2012). *Interim Report Preliminary Data Findings for Project SUCCESS and Teen Outreach Program*.
- Q-Q Research Consultants. (2011). *21st Century Community Learning Centers 2010-2011 Summative Evaluation Report, Florida International Academy*. Retrieved from [http://florida21stccclc.com/reports/download/Summative%20Evaluation%20Report%20-%202010-2011%20-%20Florida%20International%20Academy%20\(13J-1PCC1\).pdf](http://florida21stccclc.com/reports/download/Summative%20Evaluation%20Report%20-%202010-2011%20-%20Florida%20International%20Academy%20(13J-1PCC1).pdf)
- Q-Q Research Consultants. (2010). *Martin County Community Health Assessment*. Retrieved from http://www.martincountyhealth.com/Documents/MCCCommunityHealth_AssessmentFINAL.pdf

COURSES TAUGHT

Psychology of Adolescence

Research Methods in Psychology

Cross-Cultural Issues in Counseling

PROFESSIONAL MEMBERSHIPS

American Psychological Association (APA)

Division 43 of American Psychological Association-Family Psychology

Society for the Study of Social Problems (SSSP)

Association of Black Psychologists (ABPsi)

COMPUTER SKILLS

Proficient in the use of the Microsoft Office Suite and AMELIA, AMOS, MPlus, SPSS, and STATA statistical software packages.

LANGUAGES

Fluent in English (written and spoken). Intermediate proficiency in Spanish (written and spoken).

APPENDIX 2 - LEGAL DOCUMENTS

A. LEGAL ANALYSIS

Two United States Supreme Court decisions, *City of Richmond v. J.A. Croson Co.* (*Croson*)²⁰ and *Adarand v. Peña* (*Adarand*),²¹ are the cases which have established the legal framework for affirmative action contracting programs. These federal cases and their progeny define the legal framework for a constitutionally sound race-based contracting program.

Croson, decided in 1989, addressed locally funded contracting programs and established an evidentiary standard for a constitutionally sound race-based program. Post-*Croson*, this standard was applied to federally funded Disadvantaged Business Enterprise (DBE) programs.²² The Court ruled in *Croson* that programs employing racial classifications would be subject to "strict scrutiny," the highest legal standard.²³ Broad notions of equity or general allegations of historical and societal discrimination against minorities fail to meet the requirements of strict scrutiny. State and local governments, as set forth in *Croson*, may adopt race-conscious programs only as a remedy for identified statistical

²⁰ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

²¹ *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

²² *Id.*

²³ 488 U.S. at 493.

findings of discrimination. The remedy must impose a minimal burden upon unprotected classes.

A. State and Local Race and Gender-Based Programs

- **Standard of Review for Race-Based Remedies**

The standard of review represents the measure by which a court evaluates whether a particular legal claim meets a certain statute, rule, or precedent. In *Croson*, the United States Supreme Court set the standard of review for determining when a race-conscious contracting program meets constitutional muster. The Supreme Court affirmed in *Croson* that pursuant to the Fourteenth Amendment, the proper standard of review for state and local MBE programs, which are necessarily race-based, is strict scrutiny.²⁴ Specifically, the government must show that the classification is narrowly tailored to achieve a compelling state interest.²⁵ The Court recognized that a state or local entity may take action in the form of an MBE program to rectify the effects of *identified, systemic racial discrimination* within its jurisdiction.²⁶ Justice O'Connor, speaking for the majority, articulated various methods of demonstrating discrimination, setting forth guidelines for crafting MBE programs so that they are "narrowly tailored" to address systemic racial discrimination.²⁷

²⁴ *Croson*, 488 U.S. at 493-95.

²⁵ *Id.* at 484-86.

²⁶ *Id.* at 509.

²⁷ *Id.* at 501-502. Cases involving education and employment frequently refer to the principal concepts applicable to the use of race in government contracting: compelling interest and narrowly tailored remedies. The Supreme Court in *Croson* and subsequent cases provides fairly detailed guidance on how those concepts are to be treated in contracting. In education and employment, the concepts are not explicated to nearly the same extent. Therefore, references in those cases to "compelling governmental interest" and "narrow tailoring," for purposes of contracting, are essentially generic and of little value in determining the appropriate methodology for disparity studies.

- **Standard of Review for Gender-Based Remedies**

Since *Croson*, the Supreme Court has remained silent with respect to the appropriate standard of review for Woman-owned Business Enterprise (WBE) programs. In other contexts, however, the Supreme Court has ruled that gender classifications are not subject to the rigorous strict scrutiny standard applied to racial classifications. Instead, gender classifications are subject only to an “intermediate” level of review, regardless of which gender is favored.

- **Compelling Interest**

The compelling interest prong of the strict scrutiny standard requires that a government entity present a strong basis in evidence to remedy identified racial discrimination. The government must show that the remedial measure is narrowly tailored to achieve a compelling state interest.²⁸ The Supreme Court recognized that a government’s attempt to rectify the effects of identified, systemic racial discrimination within its jurisdiction is sufficient compelling interest to enact race-conscious remedial measures.²⁹ A governmental entity can satisfy the compelling interest requirement by “remedying the effects of past or present racial discrimination.”³⁰

- **Narrow Tailoring for Minority Business Enterprises**

The legal standard for the *Croson* requirement that a race-conscious remedy be “narrowly tailored” consists of the following: (1) the necessity of the policy and the efficacy as a

²⁸ *Croson*, 488 U.S. at 493.

²⁹ *Id.* at 509.

³⁰ *Shaw v. Hunt*, 517 U.S. 899, 909 (1996).

relationship between the numerical goal and the percentage of minority group members in the relevant geographic market area; (2) the flexibility of the policy, including the provision of waivers if the goal cannot be met; and (3) the burden of the policy on innocent third parties.³¹

- **Narrow Tailoring for Women Business Enterprises**

In 2010, the Fourth Circuit considered whether the statutory scheme for an M/WBE Program as it relates to WBEs met the narrowly tailored standard.³² In *H.B. Rowe Company v. Tippet*, the evidence demonstrated that the North Carolina Department of Transportation's prime contractors "substantially over-utilized" WBEs on public road construction projects.³³ Although WBEs were over-utilized, they were included in the gender-conscious goals based on anecdotal and private sector evidence. However, the circuit court determined that the private sector evidence did not provide "exceedingly persuasive justification" for gender-based remedies.³⁴

- **Crosby Evidentiary Framework**

Government entities considering race in public contracting programs must construct a strong evidentiary framework to stave off legal challenges, and to ensure that the adopted MBE program complies with the requirements of the Equal Protection Clause of the U.S. Constitution. The framework must comply with the stringent requirements of the strict scrutiny standard. Accordingly, there must be a strong basis in evidence, and the race-

³¹ *Northern Contracting*, 473 F.3d at 715. In 2005, IDOT successfully defended its DBE Program's compelling interest and narrow tailoring methodology in the constitutional challenge filed in the U.S. Federal District Court in *Northern Contracting*.³¹ In this case, the Seventh Circuit Court of Appeals determined that the statistical and anecdotal evidence was sufficient to satisfy the strict scrutiny standard and to justify IDOT's overall DBE goals.

³² *H.B. Rowe Co. v. Tippet*, 615 F.3d 233 (4th Cir. 2010).

³³ *Id.* at 255.

³⁴ *Id.* at 255. (citing *United States v. Virginia*, 518 U.S. 515, 531 (1996)).

conscious remedy must be “narrowly tailored,” as set forth in *Croson*. A summary of the appropriate types of evidence to satisfy the first element of the *Croson* standard follows.

- **Active and Passive Participation**

Croson requires that a state or local entity seeking to adopt an MBE program must have perpetrated the discrimination to be remedied by the program.³⁵ However, the entity need not be an active perpetrator of such discrimination, as reflected in the prime contracts awarded. Passive participation, through the awards made by the prime contractors, will satisfy this part of the Court’s strict scrutiny review.³⁶

- **Systemic Discriminatory Exclusion**

Croson clearly established that an entity enacting a business affirmative action program must demonstrate identified systemic discriminatory exclusion on the basis of race or any other illegitimate criteria (arguably gender).³⁷ Thus, it is essential to demonstrate a pattern and practice of such discriminatory exclusion in the relevant market area.³⁸ Using appropriate evidence of the entity’s active or passive participation in the discrimination,

³⁵ *Croson*, 488 U.S. at 548.

³⁶ *Id.* at 509.

³⁷ *Rowe*, 615 F.3d at 233; see also, *Monterey Mech. v. Wilson*, 125 F.3d 702 (9th Cir. 1997). The Fifth Circuit Court in *W.H. Scott Construction Co. v. City of Jackson*, 199 F.3d 206 (5th Cir. 1999), found that the City’s MBE program was unconstitutional for construction contracts because minority participation goals were arbitrarily set and not based on any objective data. Moreover, the Court noted that had the City implemented the recommendations from the disparity study it commissioned, the MBE program may have withstood judicial scrutiny (the City was not satisfied with the study and chose not to adopt its conclusions). *Id.* at 210. “Had the City adopted particularized findings of discrimination within its various agencies and set participation goals for each accordingly, our outcome today might be different. Absent such evidence in the City’s construction industry, however, the City lacks the factual predicates required under the Equal Protection Clause to support the Department’s 15% DBE participation goal.” *Id.* at 218.

In 1996, Houston Metro had adopted a study done for the City of Houston in which the statistics were limited to aggregate figures that showed *income* disparity between groups, without making any connection between those statistics and the City’s contracting policies. The disadvantages cited, which M/WBEs faced in contracting with the City, also applied to small businesses. Under *Croson*, that would have pointed to race-neutral remedies. The additional data on which Houston Metro relied were even less availing. Its own expert contended that the ratio of lawsuits involving private discrimination to total lawsuits and ratio of unskilled African Americans’ wages to unskilled Caucasians’ wages established that the correlation with low rates of African American self-employment was due to discrimination. Even assuming that nexus, there is nothing in *Croson* that accepts a low number of MBE business formations as a basis for a race-conscious remedy.

³⁸ *Croson*, 488 U.S. at 509.

the showing of discriminatory exclusion must cover each racial group to which a remedy would apply.³⁹ Mere statistics or broad assertions of purely societal discrimination will not suffice to support a race or gender-conscious program.

Croson enumerates several ways an entity may establish the requisite factual predicate. First, 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 an entity—or by the entity's prime contractors—may support an inference of discriminatory exclusion.⁴⁰ In other words, when the relevant statistical pool is used, a showing of gross statistical disparity alone “may constitute *prima facie* proof of a pattern or practice of discrimination.”⁴¹

The *Croson* Court made clear that both prime contract and subcontract data were relevant. The Court observed that “[w]ithout any information on minority participation in subcontracting, it is quite simply impossible to evaluate overall minority representation in the city's construction expenditures.”⁴² Subcontracting data is also an important means by which to assess suggested future remedial actions. Since the decision makers are different for awarding prime contracts and subcontracts, the remedies for discrimination identified at a prime contractor versus subcontractor level may also be different.

³⁹ *Croson*, 488 U.S. at 506. As the Court said in *Croson*, “[t]he random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggests that perhaps the city's purpose was not in fact to remedy past discrimination.” See, *N. Shore Concrete & Assoc. v. City of N.Y.*, 1998 U.S. Dist. LEXIS 6785 (E.D.N.Y. Apr. 12, 1998), which rejected the inclusion of Native Americans and Alaskan Natives in the City's program, citing *Croson*.

⁴⁰ *Id.* at 509.

⁴¹ *Id.* at 501 (citing *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307-308 (1977)).

⁴² *Id.* at 502-503.

Second, “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.”⁴³ Thus, if an entity has statistical evidence that non-minority contractors are systematically excluding minority businesses from subcontracting opportunities, it may act to end the discriminatory exclusion.⁴⁴ Once an inference of discriminatory exclusion arises, the entity may act to dismantle the closed business system.

In *Coral Construction*, the Ninth Circuit Court of Appeals further elaborated upon the type of evidence needed to establish the factual predicate that justifies a race-conscious remedy. The court held that both statistical and anecdotal evidence should be relied upon in establishing systemic discriminatory exclusion in the relevant marketplace as the factual predicate for an MBE program.⁴⁵ The court explained that statistical evidence alone often does not account for the complex factors and motivations guiding contracting decisions, many of which may be entirely race-neutral.⁴⁶

Likewise, anecdotal evidence alone is unlikely to establish a systemic pattern of discrimination.⁴⁷ Nonetheless, anecdotal evidence remains important because the

⁴³ *Croson*, 488 U.S. at 509.

⁴⁴ *Id.*

⁴⁵ *Coral Construction Co. v. King Cnty.*, 941 F.2d 910, 919 (9th Cir. 1991).

⁴⁶ *Id.* at 919.

⁴⁷ *Id.*

individuals who testify about their personal experiences bring “the cold numbers convincingly to life.”⁴⁸

- Anecdotal Evidence

In *Croson*, Justice O'Connor opined that “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 Persuasive statistical data combined with one-on-one anecdotal evidence can adequately establish a compelling governmental interest to justify an affirmative action program.⁵⁰ However, if the disparity findings determine a lack of statistically significant disparity for a specific ethnic or gender group, anecdotal evidence cannot be proffered as justification for race or gender conscious remedial measures.⁵¹

Anecdotal evidence should be gathered to determine how minority contractors are systematically being excluded from contracting opportunities in the relevant market area. Remedial measures fall along a sliding scale determined by their intrusiveness on non-targeted groups. At one end of the spectrum are race-neutral measures and policies, such as outreach to the M/WBE community, which are accessible to all segments of the business community regardless of race. They are not intrusive and, in fact, require no evidence of discrimination before implementation. Conversely, race-conscious measures,

⁴⁸ *Coral Construction*, 941 F.2d at 919 (quoting *Int’l Brotherhood of Teamsters v. United States*, 431 U.S. 324, 339 (1977)).

⁴⁹ *Croson*, 488 U.S. at 509. The Court specifically cited *Teamsters*, 431 U.S. at 338.

⁵⁰ *Northern Contracting*, 473 F.3d at 715.

⁵¹ *Rowe*, 615 F.3d at 233.

such as set-asides, fall at the other end of the spectrum and require a larger amount of evidence.⁵²

Given that neither *Croson* nor its progeny identifies the circumstances under which anecdotal evidence alone will carry the day, it is not surprising that none of these cases explicate bright line rules specifying the quantity of anecdotal evidence needed to support a race-conscious remedy. However, the foregoing cases and others provide some guidance by implication.

Philadelphia makes clear that 14 anecdotal accounts will not suffice.⁵³ While the matter is not free of countervailing considerations, 57 accounts, many of which appeared to be of the type referenced above, were insufficient to justify the program in *Coral Construction*.⁵⁴ The number of anecdotal accounts relied upon by the district court in approving Denver's M/WBE program in *Concrete Works I* is unclear, but by one count the number might have exceeded 139.⁵⁵ It is, of course, a matter of speculation as to how

⁵² Cf. *Associated Gen. Contractors of Cal., Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1417-18 (in finding that an ordinance providing for bid preferences was narrowly tailored, the Ninth Circuit stated that the program encompassed the required flexibility and further stated that "the burdens of the bid preferences on those not entitled to them appear relatively light and well distributed ... In addition, in contrast to remedial measures struck down in other cases, those bidding have no settled expectation of receiving a contract.").

⁵³ *Contractors Ass'n of Eastern Pa. v. City of Philadelphia*, 6 F.3d 990, 1002-1003 (3rd Cir. 1993), on remand, 893 F.Supp. 419 (E.D. Pa. 1995), aff'd, 91 F.3d 586 (3rd Cir. 1996).

⁵⁴ 941 F.2d at 917.

⁵⁵ See *Concrete Works of Colo. v. City & Cnty. of Denver*, 823 F.Supp. 821, 833-34 (D. Colo. 1993); rev'd on other grounds *Concrete Works II*, 36 F.3d 1513 (10th Cir. 1994). The Denver City Council enacted its M/WBE ordinance in 1990. The program was based on the results of public hearings held in 1983 and 1988 at which numerous people testified (approximately 21 people and at least 49 people, respectively), and on a disparity study performed in 1990. The disparity study consultant examined all this preexisting data, presumably including the anecdotal accounts from the 1983 and 1988 public hearings, as well as the results of its own interviews of 38 M/WBEs in the construction and design industries and representatives from 31 other firms, in preparing its recommendations. *Id.* Thus, short of analyzing the record in the case, it is not possible to determine a minimum number of accounts, because it is not possible to ascertain the number of consultant interviews and anecdotal accounts that are recycled statements or statements from the same people. Assuming no overlap in accounts, however, and also assuming that the disparity study relied on prior interviews in addition to its own, the number of M/WBEs interviewed in this case could be as high as 139,

many of these accounts were indispensable to the court's approval of the Denver M/WBE program.

As noted above, the quantum of anecdotal evidence that a court would likely find acceptable may depend on the remedy in question. The remedies that are least burdensome to non-targeted groups would likely require a lesser degree of evidence. Those remedies which are more burdensome to the non-targeted groups would require a stronger factual basis, likely extending to verification.

- **Geographic Market**

Croson did not speak directly as to how the geographic market is to be determined. In *Coral Construction*, the Court of Appeals held that "[a]n MBE program must limit its geographical scope to the boundaries of the enacting jurisdiction."⁵⁶ Conversely, in *Concrete Works II*, the Tenth Circuit Court of Appeals specifically approved the Denver MSA as the appropriate market area since 80 percent of the construction contracts were awarded there.⁵⁷

Read together, these cases support a definition of market area that is reasonable rather than dictated by a specific formula. *Croson* and its progeny did not provide a bright line rule for local market area, whose determination should be fact-based. An entity may limit consideration of evidence of discrimination within its own jurisdiction.⁵⁸ Extra-

and, depending on the number of new people heard by the Denver Department of Public Works in March 1988 (*see id.* at 833), the number might have been even greater.

⁵⁶ *Coral Construction*, 941 F.2d at 925.

⁵⁷ *Concrete Works II*, 36 F.3d 1520.

⁵⁸ *Cone Corporation v. Hillsborough Cnty.*, 908 F.2d 908 (11th Cir. 1990); *Associated Gen. Contractors*, 950 F.2d at 1401.

jurisdictional evidence may be permitted when it is reasonably related to where the jurisdiction contracts.⁵⁹

- **Current versus Historical Evidence**

In assessing the existence of identified discrimination through demonstration of a disparity between MBE utilization and availability, it may be important to examine disparity data both before and after the enactment of the current MBE program. This will be referred to as “pre-program” versus “post-program” data.

As discussed above, *Croson* requires that an MBE program be “narrowly tailored” to remedy current evidence of discrimination.⁶⁰ Thus, goals must be set according to the evidence of disparity found. For example, if there is a current disparity between the percentage of an entity’s utilization of Hispanic construction contractors and the availability of Hispanic construction contractors in that entity’s marketplace, then that entity can set a goal to bridge that disparity.

- **Statistical Evidence**

To determine whether statistical evidence is adequate to give rise to an inference of discrimination, courts have looked to the “disparity index,” which consists of the percentage of minority or women contractor participation in local contracts divided by the percentage of minority or women contractor availability or composition in the

⁵⁹ There is a related question of which firms can participate in a remedial program. In *Corpl Construction*, the Court held that the definition of “minority business” used in King County’s MBE program was overinclusive. 941 F.2d at 925. The Court reasoned that the definition was overbroad because it included businesses other than those who were discriminated against in the King County business community. *Id.* The program would have allowed, for instance, participation by MBEs that had no prior contact with the County. *Id.* Hence, location within the geographic area is not enough. *Id.* An MBE had to have shown that it previously sought business, or is currently doing business, in the market area. *Id.*

⁶⁰ See *Croson*, 488 U.S. at 509-10.

population of available firms in the local market area.⁶¹ Disparity indices have been found to be highly probative evidence of discrimination where they ensure that the “relevant statistical pool” of minority or women contractors is being considered.

- **Consideration of Race-Neutral Options**

A remedial program must address the source of the disadvantage faced by MBEs. If it is found that race discrimination places MBEs at a competitive disadvantage, an MBE program may seek to counteract the situation by providing MBEs with a counterbalancing advantage.⁶²

However, a MBE program cannot stand if the sole barrier to minority or woman-owned business participation is a barrier that is faced by all new businesses, regardless of ownership.⁶³ If the evidence demonstrates that the sole barrier to MBE participation is that MBEs disproportionately lack capital or cannot meet bonding requirements, then only a race-neutral program of financing for all small firms would be justified.⁶⁴ In other words, if the barriers to minority participation are race-neutral, then the program must be race-neutral or contain race-neutral aspects.

⁶¹ *Eng'g Contractors Ass'n of S. Fla. v. Metro. Dade Cnty.*, 943 F. Supp. 1546 (S.D. Fla. 1996), *aff'd*, 122 F.3d 895 (11th Cir. 1997). Although the disparity index is a common category of statistical evidence considered, other types of statistical evidence have been taken into account. In addition to looking at Dade County's contracting and subcontracting statistics, the district court considered marketplace data statistics (which looked at the relationship between the race, ethnicity, and gender of surveyed firm owners and the reported sales and receipts of those firms), the County's Wainwright study (which compared construction business ownership rates of M/WBEs to those of non-M/WBEs and analyzed disparities in personal income between M/WBE and non-M/WBE business owners), and the County's Brimmer Study (which focused only on African American-owned construction firms and looked at whether disparities existed when the sales and receipts of African American-owned construction firms in Dade County were compared with the sales and receipts of all Dade County construction firms).

The court affirmed the judgment that declared appellant's affirmative action plan for awarding county construction contracts unconstitutional and enjoined the plan's operation because there was no statistical evidence of past discrimination, and appellant failed to consider race and ethnic-neutral alternatives to the plan.

⁶² *Cf. Associated Gen. Contractors*, 950 F.2d at 1417-18.

⁶³ *Croson*, 488 U.S. at 508.

⁶⁴ *Id.* at 507.

The requirement that race-neutral measures be considered does not mean that they must be exhausted before race-conscious remedies can be employed. The district court recently wrote in *Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County*:

The Supreme Court has recently explained that although “narrow tailoring does not require exhaustion of every conceivable race-neutral alternative” it “does require serious, good faith consideration of workable race-neutral alternatives that will achieve...diversity[.]” *Grutter*, 123 S.Ct. at 2344, 2345. The County has failed to show the necessity for the relief it has chosen, and the efficacy of alternative remedies has not been sufficiently explored.⁶⁵

If the barriers appear race-related but are not systemic, then the remedy should be aimed at the specific arena in which exclusion or disparate impact has been found. If the evidence shows that in addition to capital and bonding requirements, which are race-neutral, MBEs also face race discrimination in the awarding of contracts, then a race-conscious program will stand, so long as it also includes race-neutral measures to address the capital and bonding barriers.⁶⁶

The Ninth Circuit Court of Appeals in *Coral Construction* ruled that there is no requirement that an entity exhaust every possible race-neutral alternative.⁶⁷ Instead, an entity must make a serious, good-faith consideration of race-neutral measures in enacting an MBE program. Thus, in assessing MBE utilization it is imperative to examine barriers to MBE participation that go beyond “small business problems.” The impact on the

⁶⁵ *Hershell Gill Consulting Eng'rs, Inc. v. Miami-Dade Cnty.*, 333 F.Supp. 2d 1305, 1330 (S.D. Fla. 2004).

⁶⁶ *Id.* (upholding MBE program where it operated in conjunction with race-neutral measures aimed at assisting all small businesses).

⁶⁷ *Coral Construction*, 941 F.2d at 923.

distribution of contract programs that have been implemented to improve MBE utilization should also be measured.⁶⁸

B. Eleventh Circuit Cases

1. *Engineering Contractors Association of Southern Florida v. Metropolitan Dade County*⁶⁹

The impetus for this Eleventh Circuit Court of Appeals case was the challenge to the Equal Protection Clause regarding the County's three affirmative action programs. The programs were designed to increase the participation of M/WBEs on the County's construction projects. The three affirmative action programs included the Black Business Enterprise program,⁷⁰ the Hispanic Business Enterprise program,⁷¹ and the Women Business Enterprise program.⁷²

The affirmative action programs applied to construction categories within three Standard Industry Classification (SIC) codes. These codes included general building construction, heavy construction other than building construction, and specialty trade construction (i.e., electrical, plumbing, heating, ventilation, and air conditioning). Participation goals were set at 15 percent for Black Business Enterprises, 19 percent for Hispanic Business

⁶⁸ *Eng'g Contractors Ass'n of S. Fla.*, 122 F.3d at 927. At the same time, the Eleventh Circuit's caveat in *Dade County* should be kept in mind: "Supreme Court decisions teach that a race-conscious remedy is not merely one of many equally acceptable medications that a government may use to treat race-based problems. Instead, it is the strongest of medicines, with many potentially harmful side-effects, and must be reserved to those severe cases that are highly resistant to conventional treatment." For additional guidance, see, *supra*, the discussion of narrow tailoring in *Concrete Works I*, *Adarand*, *Builders Ass'n of Greater Chicago v. Cnty. of Cook*, 256 F.3d 642 (7th Cir. 2001), and *Builders Ass'n of Greater Chi. v. City of Chicago*, 298 F. Supp. 2d 725 (N.D. Ill. 2003).

⁶⁹ 122 F.3d 895 (11th Cir. 1997).

⁷⁰ Enacted in 1982 and amended in 1994.

⁷¹ Enacted in 1994.

⁷² Enacted in 1994.

Enterprises, and 11 percent for Women Business Enterprises for construction contracts valued in excess of \$25,000.

The Black Business Enterprise program was challenged in 1984 wherein the Eleventh Circuit Court of Appeals upheld the program.⁷³ Relying on *Fullilove v. Klutznick*, the court ruled that the strict scrutiny standard was not applicable, along with any other standard of equal protection review.⁷⁴ A few years later the Supreme Court in *Croson* held that local and state affirmative action programs based on race must satisfy the strict scrutiny standard.⁷⁵

As a result of the *Croson* decision, a second constitutional challenge was lodged against the County's Black Enterprise Program. Even though the case was settled in 1992 and dismissed with prejudice, evidence from that case was incorporated into the subsequent case challenging the County's three affirmative action program by claiming a violation of the Equal Protection Clause. The district court declared the three affirmative action programs unconstitutional and permanently enjoined them.

The district court held that the County had not shown the compelling government interest required to institute a race-conscious program. The court reasoned that the statistically significant disparities upon which the County relied disappeared when the size of the

⁷³ *S. Fla. Ch. of Associated Gen. Contractors v. Metro. Dade Cnty.*, 723 F.2d 846 (11th Cir.1984).

⁷⁴ 448 U.S. 448 (1980).

⁷⁵ *Croson*, 488 U.S. at 469.

M/WBEs was taken into account.⁷⁶

2. *Associated General Contractors v. Florida*

In *Associated General Contractors (AGC) v. Florida*, a state statute required contractors doing business in Florida to make a good faith effort to meet the State's spending goals regarding race and gender. AGC argued that the race and gender preferences authorized by Florida statute chapter 287.09451, et. seq. violated the Equal Protection Clause of the Fourteenth Amendment.

The Florida legislature found that there was "evidence of a systemic pattern of past and continuing racial discrimination against minority business enterprises and a disparity in the availability and use of minority business enterprises in the state procurement system."⁷⁷ To combat this evidence, a race and gender-conscious remedial program was implemented to increase minority participation on the state's public contracts. The statute was implemented to support minority business suppliers on state contracts for commodities, services, and construction services. Thus, spending goals for minority participation on state contracts were sanctioned by the statute.

AGC argued that the goals were impermissible racial and gender classifications because the state's program failed to meet the strict scrutiny constitutional standard. They claimed

⁷⁶ *Eng'g Contractors Ass'n of S. Fla.*, 122 F.3d. at 1546.

⁷⁷ FLA. STAT. § 287.09451(1).

that the goals did not serve a compelling state interest and were not narrowly tailored pursuant to *Wygant v. Jackson Board of Education*.⁷⁸

To determine whether the State had a compelling government interest to remedy past or present discrimination, the court reasoned that "the true test of an affirmative action program is usually not the nature of the government's interest, but rather the adequacy of the evidence of discrimination offered to show that interest."⁷⁹

The court ruled that the Florida state legislature's argument set forth in section 287.09451(1) for the spending goals was sufficient to justify a compelling governmental interest. Relying on *Croson*, the court reasoned that "where there is a significant disparity between the number of 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."⁸⁰

Next, the court considered the issue of whether spending goals delineated in Florida statute 287.09451(1) was narrowly tailored pursuant to the strict scrutiny standard. The *Florida Senate Interim Project Report 2001-042* described the legislative history for section 287.09451 and the utilization of minority business enterprises on the State's contracts. This evidence proffered by AGC in support of its motion for a summary

⁷⁸ 476 U.S. 267 (1986) (stating that racial classifications are only justified by a "compelling governmental interest" and that the means chosen to implement the classifications' purposes must be narrowly tailored to achieve the goal).

⁷⁹ *Ensley Branch, N.A.A.C.P. v. Seibels*, 31 F.3d 1548, 1565 (11th Cir. 1994).

⁸⁰ *Croson*, 488 U.S. at 509.

judgment provided a sufficient basis to determine that the State's statute was not narrowly tailored to serve a compelling government interest.

The northern district court held that the Florida statute violated the Equal Protection Clause because the spending goals were not narrowly tailored to further that interest. Additionally, the State failed to present evidence that it had considered incorporating race-neutral means in order to accomplish its objectives.

3. Recent Eleventh Circuit Opinion

In 2005, the Eleventh Circuit Court of Appeals convened *Virdi v. DeKalb County School District (DeKalb County)*, a challenge to a M/WBE program.⁸¹ In this unpublished opinion, the plaintiff proffered that DeKalb County's Minority Vendor Involvement Program violated the 42 U.S.C. §§ 1981 and 1983 and the Fourteenth Amendment. The Eleventh Circuit Court held that strict scrutiny is applicable to any racial classification whether or not the program's remedial measures are implemented as aspirational, set-asides, or mandatory quotas. The court declined to determine whether the DeKalb County had a compelling government interest because the court opined that the Minority Vendor Involvement Program was not narrowly tailored.⁸² The court struck down the program ruling that the defendant, DeKalb County, failed to seriously consider and implement race-neutral initiatives before implementing race-based remedies and it lacked a sunset provision establishing a definite duration for the program.

⁸¹ *Virdi v. DeKalb Cnty. Sch. Dist.*, 135 Fed. Appx. 262, 2005 (11th Cir. 2005).

⁸² *Id.* at 268.

**C. Recent Opinions In Other Federal Circuit Court of Appeals
Involving the Legal Requirements for M/WBE Programs**

1. H.B. Rowe Company v. Tippet

H.B. Rowe Company (Rowe) v. Tippet challenged the constitutionality of the North Carolina General Assembly's Statute 136-28.4 (Statute), promulgated in 1983.⁸³ The Statute set forth a general policy to promote the use of small, minority, physically handicapped, and women contractors in non-federally funded state construction projects. The 1983 Statute directed NCDOT to encourage and promote the policy. Seven years later, in 1990, the Statute was amended to include specific participation goals on state-funded transportation construction contracts for minority and women-owned businesses.

As a result of the amendment, NCDOT created a Minority Business Enterprise and Women Business Enterprise Programs (M/WBE Program) for non-federally funded highway and bridge construction contracts. The program, for all intents and purposes, mirrored the federal DBE Program pursuant to 49 CFR Part 26. In 1991, the Statute was challenged in a district court regarding its constitutionality. The district court ruled in favor of the plaintiff, stating that in order to implement race-conscious measures to remedy discrimination, the governmental entity must identify with "some specificity" the racial discrimination it seeks to remedy. As a result of the district court decision, NCDOT suspended its M/WBE program in 1991.

In 1993, NCDOT commissioned a disparity study on state-funded transportation

⁸³ *Rowe*, 615 F.3d at 233.

construction contracts. The study determined that minority and women subcontractors were underutilized at a statistically significant level and the M/WBE Program was re-implemented. In 1998, the North Carolina General Assembly again commissioned an update to the 1993 study. The 1998 update study concluded that M/WBEs continued to be underutilized in state-funded road construction contracts.

In 2002, *Rowe* was denied a NCDOT contract because the company's bid included 6.6 percent women subcontractor participation and no minority subcontractor participation. NCDOT claimed that *Rowe* failed to meet the good faith effort requirements. A third study was commissioned in 2004 to again study minority and women contractor participation on the State's highway construction industry. In 2006, relying on the 2004 study, the North Carolina General Assembly amended Statute 136-28.4. The principle modifications were:

- Remedial action should only be taken when there is a strong basis in evidence of ongoing effects of past or present discrimination that prevents or limits disadvantaged M/WBEs from participating as subcontractors in state-funded projects;
- The minority/women classification was limited to those groups that suffered discrimination;
- A disparity study should be performed every five years to respond to changing conditions; and
- Inclusion of a sunset provision.



First, the court considered whether the statutory scheme as it relates to minorities survives the strict scrutiny standard. The circuit court reviewed the statistical evidence detailed in the 2004 disparity study to determine if the statutory scheme was based on strong statistical evidence to implement race-conscious subcontractor goals. The statistical evidence was also examined to determine if the statute's definition of minorities was over-inclusive by including minority groups that did not suffer discrimination pursuant to the statistical standards set forth in the 2004 disparity study.

The court did not consider whether the statistical methodology employed in the 2004 disparity study was sufficient to support a compelling state interest. The court noted and accepted that the statistical measure to determine whether the underutilization of minorities on the State's subcontracts was statistically significant was the disparity index. The 2004 disparity study calculated a disparity at .05 confidence level. A statistical calculation is significant at the .05 confidence level because the probability of that result occurring by chance is five percent or less.⁸⁴ The .05 confidence level is used in social sciences as a marker of when a result is a product of some external influence, rather than ordinary variation or sampling error.⁸⁵

The circuit court admonished that "the study itself sets out the standard by which one could confidently conclude that discrimination was at work," but the standard was not followed in the State's statutory scheme. The statistical evidence in the 2004 disparity

⁸⁴ Fourth Circuit Court citing, SHERRI L. JACKSON, RESEARCH METHODS AND STATISTICS: A CRITICAL THINKING APPROACH (Erik Evans ed., Wadsworth 2006) (2009).

⁸⁵ Fourth Circuit Court citing, EARL BABBIE, THE PRACTICE OF SOCIAL RESEARCH (Chris Caldeira ed., Wadsworth 2007) (2010).

study demonstrated that African American and Native American subcontractors were underutilized at a disparity index of .05 and Hispanic American and Asian American subcontractors were also underutilized, but not at a .05 confidence level. The 2004 Study determined that the underutilization for the latter groups was not statistically significant.

Therefore, the statutory scheme was ruled “narrowly tailored” to achieve the State’s compelling interest as it relates to African American and Native American subcontractors, but not Hispanic American and Asian American subcontractors. Thus, the State provided a strong basis in evidence for minority subcontractor participation goals pertaining to African American and Native American subcontractors.

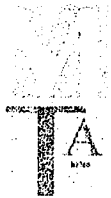
Second, the court considered whether the statutory scheme as it relates to women survives the intermediate scrutiny standard. The evidence demonstrated that the State’s prime contractors “substantially over-utilized” women-owned businesses on public road construction projects. The 2004 disparity study calculated the overutilization of women subcontractors as statistically significant at a 96 percent confidence level. The circuit court further noted that the private sector evidence was insufficient to overcome the strong evidence of overutilization. Consequently, the circuit court determined that the evidence in the 2004 disparity study did not provide “exceedingly persuasive justification” to include women-owned businesses in gender-based remedies.

In light of the *Rowe* decision, caution should be exercised when determining which minority or gender group is appropriate for race-conscious or gender-conscious remedies.

For an M/WBE program to be narrowly tailored there must be a statistical finding of underutilization of minority subcontractors. Where the underutilization of a minority group is not found to be statistically significant, the minority group should not be included in race-conscious remedies.

The intermediate scrutiny standard for gender classifications can be met with statistical evidence of underutilization that is not statistically significant. However, this does not apply when there is demonstrated overutilization. Women-owned businesses should be considered for gender-based remedies when the statistical evidence demonstrates that the overutilization is not statistically significant.





W. Tenn. Chptr. of Assoc. Builders & Contrs., Inc. v. City of Memphis

United States District Court for the Western District of Tennessee, Western Division
December 20, 2000, Decided ; December 20, 2000, Filed; December 21, 2000, Entered
No. 99-2001

Reporter: 138 F. Supp. 2d 1015; 2000 U.S. Dist. LEXIS 20383

WEST TENNESSEE CHAPTER OF ASSOCIATED BUILDERS AND CONTRACTORS, INC., and ZELLNER CONSTRUCTION COMPANY, INC., Plaintiffs, v. CITY OF MEMPHIS, Defendant.

Disposition: [**1] Defendant's motion for an interlocutory appeal of the Court's June 9, 1999 Order refusing to admit post-enactment evidence for the purpose of showing a compelling state interest GRANTED. Defendant's motion for a stay of the proceedings pending the Sixth Circuit's disposition of the interlocutory appeal GRANTED.

Case Summary

Procedural Posture

Plaintiff asserted that defendant's affirmative action plan violated equal protection. Pursuant to 28 U.S.C.S. § 1292(b), defendant moved for reconsideration of the court's refusal to certify for appeal its interlocutory order concerning admissibility of post-enactment studies. If the court certified its interlocutory order, defendant requested a stay.

Overview

Defendant commissioned a study, examining whether racial disparities existed in the procurement of contracts. Based on these statistics, it enacted a program to address defendant's alleged discrimination. Plaintiffs challenged the program's constitutionality, arguing that under the Equal Protection Clause, defendant must have a compelling interest. According to plaintiffs, defendant's disparity study did not meet the evidentiary standards required to show such an interest. In response, defendant proposed to supplement the legislative record with studies commissioned after

enactment. The court previously ruled that post-enactment evidence was inadmissible to show that defendant had a compelling interest to enact legislation based on racial classifications, and denied certification. On reconsideration, the court found that its order involved a controlling question of law as to which there was a substantial ground for difference of opinion, that an immediate appeal from the order would materially advance the litigation's ultimate termination, and that the issues should be promptly adjudicated. Relevant factors weighed in favor of granting defendant's motion to stay.

Outcome

The court granted defendant's motion for an interlocutory appeal of its order refusing to admit post-enactment evidence for the purpose of showing a compelling state interest. It also granted defendant's motion for a stay of the proceedings pending the Sixth Circuit's disposition of the interlocutory appeal.

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ASSOCIATES, INC., third-party defendants:
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WARING COX, Memphis, TN.

Judges: BERNICE BOUIE DONALD,
UNITED STATES DISTRICT COURT.

Opinion by: BERNICE BOUIE DONALD

Opinion

[*1017] ORDER GRANTING DEFENDANT'S MOTION FOR CERTIFICATION OF INTERLOCUTORY APPEAL AND STAY OF PROCEEDINGS

In this action, Plaintiffs assert that Defendant City of Memphis's affirmative action plan violates the Fourteenth Amendment's Equal Protection Clause. Pursuant to 28 U.S.C. § 1292(b), Defendant moves for reconsideration of the Court's refusal to certify for appeal its interlocutory order concerning the admissibility of post-enactment studies. In its order the Court found post-enactment evidence inadmissible to show that Defendant had a compelling interest to enact legislation based on racial classifications. In the event the Court certifies its interlocutory order for appeal, Defendant requests a stay of all proceedings. The Court has jurisdiction under 28 U.S.C. § 1331. For the reasons [**3] stated

herein, the Court **GRANTS** Defendant's motions.

I. Procedural and Factual Background

The City of Memphis ("City") and other public entities commissioned a study, examining whether racial disparities existed in the procurement of contracts. Based on these statistics, the City passed a Minority and Women Business Enterprise program ("MWBE program") to address the City's alleged passive and active discrimination in its procurement of construction contracts. Caucasian contractors challenged the MWBE program's constitutionality, arguing that under the Equal Protection Clause, the City must have a compelling interest to legislate on the basis of racial classifications. According to Plaintiffs, the City's disparity study did not meet the evidentiary standards required to show a compelling interest. In response, the City proposed to supplement the legislative record with studies commissioned *after* enacting [**1018] the MWBE program. The City's post-enactment evidence would cover a five-year period between 1993 and 1998 and supplement the City's original disparity study.

On June 9, 1999, the Court ruled that post-enactment evidence may not be used to demonstrate the City's [**4] compelling interest. Defendant timely filed for certification of an interlocutory appeal. On July 14, 1999 the Court denied Defendant's motion for certification.

II. Analysis

A. Defendant's motion for interlocutory appeal

The appellate jurisdiction of circuit courts is generally limited to reviewing a district court's final judgment. 28 U.S.C. § 1291; Catlin v. United States, 324 U.S. 229, 233, 65 S. Ct. 631, 633, 89 L. Ed. 911 (1945). Congress recognized, however, that the orderly administration of justice is frustrated when parties are forced to

grind forward to final judgment before they can challenge the correctness of some isolated, but determinative, question of law. *Iron Workers Local Union No. 17 Ins. Fund v. Philip Morris Inc.*, 29 F. Supp. 2d 825, 831 (N.D. Ohio 1998); 16 Charles Alan Wright, et al., *Federal Practice and Procedure*, § 3929, at 368 (2d ed. 1996) (citing *Hadjipateras v. Pacifica, S.A.*, 290 F.2d 697, 702-03 (5th Cir. 1961)). To address these exceptional circumstances, Congress created the interlocutory appeal to permit immediate appellate review of an order that does not [**5] dispose of the case on its merits. 28 U.S.C. § 1292(b).

Under 28 U.S.C. § 1292(b), interlocutory appeal is appropriate when the district court's order involves a controlling question of law as to which there is a substantial ground for difference of opinion, and that an immediate appeal from the order would materially advance the litigation's ultimate termination. *Vitols v. Citizens Banking Co.*, 984 F.2d 168, 170 (6th Cir. 1993) (per curiam). Exceptional circumstances must exist [**6] or irreparable harm must seem imminent before leave is granted for an interlocutory appeal. *Coopers & Lybrand*, 437 U.S. 463, 475, 98 S. Ct. 2454, 2461, 57 L. Ed. 2d 351 (1978); *United States v. Bilsky*, 664 F.2d 613, 619 (6th Cir. 1981); *Orson, Inc. v. Miramax Film Corp.*, 867 F. Supp. 319, 321 (E.D.Pa. 1994). Accordingly, § 1292(b) should be sparingly applied and used only to avoid protracted and expensive litigation. *Cardwell v. Chesapeake & Ohio Ry. Co.*, 504 F.2d 444, 446 (6th Cir. 1974).

1. Controlling law

A matter of law is "controlling" if its resolution could materially affect the litigation's outcome. *Rafoth v. Nat'l Union Fire Ins. Co.*, 954 F.2d 1169, 1172 n.8 (6th Cir. 1992); *Sokaogon Gaming Enter. Corp. v. Tushie-Montgomery*

Assocs., Inc., 86 F.3d 656, 658 (7th Cir. 1996); *North Fork Bank v. Abelson*, 207 B.R. 382, 389 (E.D.N.Y. 1997). An issue is therefore controlling if its resolution on appeal could result in a reversal of a district court's final judgment. *Katz v. Carte Blanche Corp.*, 496 F.2d 747, 755 (3rd Cir. 1974), cert. denied, [**7] 419 U.S. 885, 95 S. Ct. 152, 42 L. Ed. 2d 125 (1974). In addition, an issue may be considered controlling if its resolution has precedential value, *Rafoth v. National Union Fire Insurance*, 954 F.2d 1169, 1172 n.8 (6th Cir. 1992); if it is [**1019] central to liability, *Takacs v. Hahn Auto. Corp.*, 1999 U.S. Dist. LEXIS 21694, No. C-3-95-404, 1999 WL 33117266, at *1 (S.D. Ohio April 23, 1999); or if it would save the Court and the litigants substantial time and resources. *Katz*, 496 F.2d at 755; 16 Charles Alan Wright, et al., *Federal Practice and Procedure*, § 3929, at 426 (2d ed. 1996).

Admissibility of post-enactment evidence is a controlling issue of law. If the Court were to decide the case in Plaintiff's favor on pre-enactment evidence, its decision would be subject to reversal if the Sixth Circuit found exclusion of post-enactment evidence improper. If the post-enactment evidence is deemed relevant, the Court's final judgment would be vacated and the case remanded.

Moreover, the Sixth Circuit's resolution of this issue would have significant precedential value. First, the issue is important as a matter of law because its resolution would clarify the evidentiary burden necessary to [**8] satisfy equal protection principles. See e.g., *Shaw v. Hunt*, 517 U.S. 899, 909-10, 116 S. Ct. 1894, 1902-03, 135 L. Ed. 2d 207 (1996); *City of Richmond v. Croson*, 488 U.S. 469, 505, 109 S. Ct. 706, 728, 102 L. Ed. 2d 854 (1989). Second, the issue affects many litigants, as governmental entities across the nation have sought to use post-enactment evidence to supplement their

¹ The Court's order holding post-enactment evidence inadmissible to show a compelling interest is not a final order. The merits of Plaintiffs' claim depend not on the admissibility of the post-enactment evidence, but rather on whether the City had a compelling interest to legislate on the basis of racial classifications. Accordingly, the Court's order is interlocutory, not final, and any attempt to appeal under 28 U.S.C. § 1291 would be premature.

legislative records.² Resolving this issue would therefore provide guidance to cities and states attempting the delicate task of ending discriminatory practices through the use of racial classifications.

[**9] Finally, resolution of this issue is central to determining a city's or state's exposure to liability regarding its affirmative action program. The admissibility of post-enactment evidence has serious repercussions for cities and states throughout the nation that have continually culled new information, are in the process of reevaluating their plans, or, like Defendant, are faced with litigation and realize that the legislative record must be supplemented. Whether or not such post-enactment evidence is admissible can be the lynchpin of a governmental entity's exposure to liability.

In sum, the Court finds the admissibility of post-enactment evidence to be a controlling issue of law because its resolution by the Sixth Circuit (1) could result in the reversal of the Court's final judgment; (2) would possess precedential value; and (3) impacts a government entity's exposure to liability.

2. Substantial grounds for difference of opinion

Substantial grounds for a difference of opinion exist when (1) the issue is difficult and of first impression. *Klinghoffer v. Achille Lauro Lines*, 921 F.2d 21, 25 (2nd Cir. 1990); (2) a difference of opinion exists within the controlling [**10] circuit, *German v. Federal Home Loan Mortg. Corp.*, 896 F. Supp. 1385, 1399 (S.D.N.Y. 1995), *Brown v. Mesirow Stein Real Estate, Inc.*, 7 F. Supp. 2d 1004, 1008 (N.D.Ill. 1998); or (3) the circuits are split on the issue. *Rafoth*, 954 F.2d at 1172.

[*1020] a. Sixth Circuit decisions

There is no Sixth Circuit decision disposing of the present issue. See, e.g., *Assoc'd Gen. Contractors of Ohio, Inc. v. Drabik*, 214 F.3d 730 (6th Cir. 2000). Though the Sixth Circuit in *Drabik* upheld the lower court's preclusion of post-enactment evidence, the district court barred supplementation on relevance grounds, but not as a matter of law. *Id.* at 738.

b. Supreme Court's decisions

Like the Sixth Circuit, the Supreme Court has not squarely decided whether and when supplementation of a governmental entity's legislative record is appropriate to defend challenges to an affirmative action plan. In addition, as evidenced by other circuit courts' decisions, the Supreme Court's opinions leave room for a substantial disagreement over their reasoning and results. *Slater*, 228 F.3d at 1161, 1166-67 (stating that [**11] the Supreme Court's declarations in the affirmative action area are riven by plurality and split opinions and by the overruling of precedent).

Laws classifying citizens on the basis of race are constitutionally suspect and must pass the strict scrutiny test. Strict scrutiny applies whether or not the racial classification is remedial and allegedly founded on a benign legislative purpose. *Shaw*, 517 U.S. at 904, 116 S. Ct. at 1900; *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 228-29, 115 S. Ct. 2097, 2113, 132 L. Ed. 2d 158 (1995). Governmental entities may draw racial distinctions only when pursuing a "compelling state interest." *Shaw*, 517 U.S. at 908, 116 S. Ct. at 1902. The methods of achieving these goals must be narrowly tailored to accomplish that purpose. *Id.* While the strict scrutiny test, as applied to affirmative action programs, is not "strict in theory, fatal in fact," certain evidentiary standards must be satisfied.

² See, e.g., *Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo*, 981 F.2d 50, 60 (2nd Cir. 1992); *Contractors Assoc. of E. Pa., Inc. v. City of Phila.*, 6 F.3d 990, 1003-04 (3rd Cir. 1993); *Coral Constr. Co. v. King County*, 941 F.2d 910, 921 (9th Cir. 1991) cert. denied 502 U.S. 1033, 112 S. Ct. 875, 116 L. Ed. 2d 780 (1992); *Concrete Works of Colo., Inc. v. Denver*, 36 F.3d 1513, 1521 (10th Cir. 1994); *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1161, 1166-67 (10th Cir. 2000); *Eng'g Contr. Assoc. of S. Fla., Inc. v. Metro. Dade County*, 122 F.3d 895, 911 (11th Cir. 1997), cert. denied, 523 U.S. 1004, 118 S. Ct. 1186, 140 L. Ed. 2d 317 (1998).

Adarand Constructors, Inc. v. Peña, 515 U.S. at 237, 115 S. Ct. at 2117; *Fullilove v. Klutznick*, 448 U.S. 448, 519, 100 S. Ct. 2758, 2795, 65 L. Ed. 2d 902 (1980) (Marshall, [**12] J., concurring in judgment); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 361-62, 98 S. Ct. 2733, 2784, 57 L. Ed. 2d 750 (1978) (Brennan, J., concurring); *Shaw*, 517 U.S. at 909-910, 116 S. Ct. at 1902-03.

Post-enactment evidence is admissible to determine whether legislation is narrowly tailored. *Drabik*, 214 F.3d at 736 (expecting a city to update statistics to ensure that remedial plan is narrowly framed to meet its objectives). The controversy surrounds a governmental entity's use of post-enactment evidence to show it had a compelling interest in passing its affirmative action program. Compare *Assoc'd Gen. Contractors of Am. v. Columbus*, 936 F. Supp. 1363, 1383 (S.D. Ohio 1995) (vacated on other grounds) with *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 990 at 1003-04 (holding such evidence admissible).

Remedying the effects of past or present racial discrimination may constitute a compelling state interest in enacting remedial legislation based on race. *Shaw*, 517 U.S. at 909, 116 S. Ct. at 1902; *Croson*, 488 U.S. at 498-506, 109 S. Ct. at 724-28. Such legislation will survive [**13] strict scrutiny analysis only if the governmental entity can meet two conditions. Under the first condition, the governmental entity must proffer evidence identifying either private or public discrimination with some specificity. *Shaw*, 517 U.S. at 909, 116 S. Ct. at 1902; *Croson*, 488 U.S. at 504, 109 S. Ct. at 727. A generalized assertion of past discrimination in a particular industry is inadequate. *Shaw*, 517 U.S. at 909, 116 S. Ct. at 1902; *Croson*, 488 U.S. at 498, 109 S. Ct. at 724. The first condition emphasizes the necessity of tracing discrimination to the actions of the governmental entity. [*1021] *Croson*, 488 U.S. at 492, 109 S. Ct. at 721 (Powell, J.; Rehnquist,

C.J., White, J.); *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 274, 106 S. Ct. 1842, 1847, 90 L. Ed. 2d 260 (1986); *Drabik*, 214 F.3d at 737 (holding that a governmental entity must produce statistics that expose "pervasive, systematic, and obstinate discriminatory conduct") (citing *Adarand*, 515 U.S. at 237, 115 S. Ct. 2097).

The second condition requires the governmental entity to have a "strong [**14] basis" in evidence that remedial action was necessary "before it embarks" on an affirmative action program. *Shaw*, 517 U.S. at 908 n.4, 910, 116 S. Ct. at 1903 (emphasis in original); *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 277, 106 S. Ct. 1842, 1848-49, 90 L. Ed. 2d 260 (1986) (plurality). This condition ensures that the legislative body is motivated by the constitutionally permissible purpose of remedying past or present racial discrimination when it enacted the law. ³*Shaw*, 517 U.S. at 910, 116 S. Ct. at 1903.

1. Competing views of *Shaw*

In *Shaw*, the plaintiffs challenged North Carolina's redistricting plan. The Court rejected North Carolina's [**15] effort to base its race-conscious plan on remedying past discrimination. Although North Carolina proffered evidence that might have supported the first condition, identifying with specificity instances of past discrimination, the state failed to satisfy the second condition, having a strong basis in evidence of past discrimination before implementing the plan. North Carolina's sole evidence of past discrimination was derived from two post-enactment studies prepared during litigation. *Shaw*, 517 U.S. at 910, 116 S. Ct. at 1903. It was apparent in the record that a few legislators invoked North Carolina's sorry past of racial discrimination, but there was no evidence of any study or report that formed the basis for legislative action. *Id.*

³ The question as to whether race-sensitive means are necessary to accomplish the legislature's objective is relegated to the "narrowly tailored" prong, not the "compelling interest" prong. *Associated General Contractors v. Drabik*, 214 F.3d 730, 738 (citing *Croson*, 488 U.S. at 507, 109 S. Ct. 706.)

In its June 9, 1999 Order, the Court interpreted Shaw to completely bar the use of post-enactment evidence in determining whether the city had a compelling interest in using a racial classification.⁴ The Court interpreted Shaw to imply that the first condition is met when a city or state develops a statistical foundation for its plan consistent with Croson before it implements race-conscious relief. To satisfy [**16] the second condition, Shaw unambiguously requires that strong evidence justify a remedial purpose before enacting legislation based on racial classifications. Shaw, 517 U.S. at 910, 116 S. Ct. at 1093 (emphasizing the word "before"). Id.

[**17] Despite the import of Shaw's plain language, the Court does acknowledge that a colorable argument can be advanced that Shaw does not preclude post-enactment evidence if the governmental entity can [*1022] proffer some degree of pre-enactment evidence. Although Shaw holds that post-enactment evidence alone is insufficient to justify remedial legislation, id., it may fairly be interpreted to leave open the possibility that other evidence may supplement a plan's "proper factual basis."⁵ Id. at 908 n. 4, 116 S. Ct. at 1902. Shaw may stand for the proposition that a "strong basis" in pre-enactment evidence does not constitute the "only basis"--requiring a minimum level of pre-enactment evidence does not foreclose supplementation of the legislative record with post-enactment evidence.

North Carolina's preparation for its re-districting plan in [**18] Shaw is distinguishable from the

City's preparation for its MWBE program. North Carolina did not rely on any pre-enactment evidence of racial discrimination. Id. at 910, 116 S. Ct. at 1903. In contrast, the City's council possessed a report, commissioned and funded by nine closely knit governmental entities at the cost of roughly \$ 900,000.00.⁶ Unlike North Carolina's legislature, which may or may not have heeded the words of some of its members painting an ugly history of racial discrimination, the City's council relied on statistics that allegedly showed discrepancies in the area's hiring practices towards minorities. Where individual North Carolina legislators may have planted personal experience and hearsay in the legislative record, the City's council relied on findings that evinced discriminatory patterns within the City's procurement of services.

[**19] In highlighting these differences, it is not the Court's purpose to assess whether the City's report constitutes a strong basis in evidence to demonstrate that the City's council was motivated by a constitutionally permissible purpose to remedy past discrimination. Such a determination would be premature, absent further briefing by the parties. The Court merely distinguishes the present case to emphasize one possible interpretation of Shaw and its potential impact on the parties.

Under this alternative interpretation of Shaw, post-enactment evidence is appropriate if it is used only to assess the first condition of the compelling interest test, whether the City's MWBE program meets evidentiary requirements suggested by Croson. See, e.g., Concrete Works

⁴ See the Court's June 19, 1999 Order for its full analysis. The specific language of Shaw, in articulating the compelling interest test, is as follows. "First, the discrimination must be 'identified discrimination.' While the States and their subdivisions may take remedial action when they possess evidence of past or present discrimination, they must identify that discrimination, public or private, with some specificity before they may use race-conscious relief." 517 U.S. at 909, 116 S. Ct. at 1902 (citations omitted). "Second, the institution that makes the racial distinction must have had a 'strong basis in evidence' to conclude remedial action was necessary *before* it embarks on an affirmative-action program." Id., 116 S. Ct. at 1903. (emphasis in original) (citations omitted).

⁵ The term "proper factual basis" refers to the evidence forming a strong basis for using a racial classification as a remedial tool. Id.

⁶ The City's Request For Proposals had required that the consultant determine whether there existed a "significant statistical disparity between the number of qualified [MWBE] contractors willing and able to provide goods and services and the number of such contractors actually engaged by Consortium Members or the Consortium Member's prime contractors."

of Colo., Inc. v. Denver, 36 F.3d 1513, 1521 (10th Cir. 1994) (holding that the *Croson* requirements do not foreclose supplemental post-enactment evidence). On the other hand, its use in determining whether the legislative body meets the second condition, whether it had a strong basis in evidence of past discrimination before implementing the plan, is antithetical to equal protection doctrine. *Shaw*, 517 U.S. at 910, 116 S. Ct. at 1903. **[**20]** Post-enactment evidence cannot be used to assess whether or not the motivations in using a racial classification were driven by proper purposes --such facts were not in existence at the time of implementation. Further, hindsight is irrelevant to one's original motivation. This view is consistent with *Croson*'s characterizing racial classification as a "highly suspect tool," emphasizing the importance of "smoking out" illegitimate motives, such as racial prejudice. 488 U.S. at 493, 109 S. Ct. at 721. However, after an assurance that **[*1023]** the governmental entity passed legislation for remedial purposes, *Shaw* can be read to allow post-enactment evidence to supplement the statistical foundation showing the City's passive or active discriminatory practices. ⁷*Id.* at 291, 106 S. Ct. at 1856 (O'Connor, J., concurring); *Shaw*, 517 U.S. at 908 n. 4, 910, 116 S. Ct. at 1903.

[21]** This view allows the flexibility necessary to address one of the more complex and pressing issues facing cities and states today. Requiring a city to have strong evidence that remedial action is necessary before using racial classifications balances the tensions inherent in using racial classifications to cure racial discrimination. Though the *Fourteenth Amendment* generally prohibits racial classifications, *Shaw*, 517 U.S. at 907, 116 S. Ct. at 1902, its core purpose is to do away with governmentally imposed discrimination based on race. *Palmore v. Sidoti*, 466 U.S. 429, 432,

104 S. Ct. 1879, 1881-82, 80 L. Ed. 2d 421 (1984). Cities and states may therefore be faced with the delicate task of using racial classifications to remedy racial discrimination. For though racial classifications are a suspect remedy, *id.* at 273, 106 S. Ct. at 1846, they may nevertheless be necessary to correct the impact of past discrimination. *Shaw*, 517 U.S. at 909, 116 S. Ct. at 1903. Reconciling these seemingly conflicting principles requires extraordinary care. *Wygant*, 476 U.S. at 277, 106 S. Ct. at 1848 (plurality). Requiring a political **[**22]** entity to prove anything more than "strong evidence" of racial discrimination before enacting an affirmative action plan could undermine the incentive to voluntarily meet its civil rights obligations. *Id.* at 290, 106 S. Ct. at 1855 (O'Connor, J., concurring). If there is a strong basis in the evidence to show the government's purpose was proper, there may be little justification in disallowing governmental entities from supplementing pre-enactment evidence with post-enactment studies reinforcing the statistical integrity of their initial findings.

2. Competing views of *Wygant* and *Croson*

Although the Court adopted one interpretation of *Shaw*, the Court acknowledges that decisions preceding *Shaw* could be interpreted to favor either position. In *Wygant*, a school board terminated non-minority teachers before terminating less senior minority colleagues. The Court held that the school board's termination policy violated the *Fourteenth Amendment*. 476 U.S. at 271, 273, 106 S. Ct. at 1845, 1846. Although the school board's plan was based on a finding of societal discrimination, the Court found this evidence insufficient. Notably, the Court rejected **[**23]** the school board's offer of post-enactment evidence to supplement the legislative record, but not on protection principles. Rather, the post-enactment evidence was not part of the record, and the Court held it violated the "unquestioned rule that [the] Court

⁷ More than evidence of societal discrimination must be shown. *Croson*, 488 U.S. at 500, 109 S. Ct. at 725. For example, evidence that suggests discrimination is traceable to the public entity's actions would suffice. *Wygant*, 476 U.S. at 277, 288, 106 S. Ct. at 1849, 1854 (plurality).

decides cases based on the record before it." *Id.* at 278 n.5, 106 S. Ct. at 1849 (plurality). Moreover, the Court was not required to reach the admissibility issue, because it held that, even if the school board had a compelling purpose, its plan was not narrowly tailored. *Id.* at 283, 106 S. Ct. at 1852. The Court in *Wygant*, therefore, did not reject post-enactment evidence *because* it was post-enactment evidence.

[*1024] In *Croson*, Caucasian contractors challenged Richmond, Virginia's affirmative action program. The Court held that the City proffered insufficient evidence supporting the first condition --that a city develop evidence meeting the *Fourteenth Amendment's* specificity requirements. In *Croson*, the *only* evidence that supported Richmond's decision to pass an affirmative action plan compared the city's minority population to the percentage of contracts awarded to minority [****24**] firms.⁸ 488 U.S. at 485, 109 S. Ct. at 717. According to the Court, such statistics did little to show that the council's actual purpose was to pass remedial legislation and not to create a racial preference. *Id.* The Court suggested that instead, Richmond might have conducted a disparity study comparing the percentage of contracts going to minorities to the percentage of minorities qualified to undertake the particular task. *Id.* at 501, 109 S. Ct. at 726.⁹

[**25] c. Other circuit court decisions

Though the five circuit courts deciding the issue are unanimous in permitting supplementation, they take different paths to reach the same destination. *Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo*, 981 F.2d 50, 60 (2d Cir. 1992)¹⁰; *Contractors Assoc. of E. Pa., Inc. v. City of Phila.*, 6 F.3d 990, 1003-04 (3rd Cir. 1993); *Coral Constr. Co. v. King County*, 941 F.2d 910, 921 (9th Cir. 1991), cert. denied, 502 U.S. 1033, 112 S. Ct. 875, 116 L. Ed. 2d 780 (1992); *Concrete Works of Colo., Inc. v. Denver*, 36 F.3d 1513, 1521 (10th Cir. 1994); *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1161, 1166-67 (10th Cir. 2000); *Eng'g Contr. Assoc. of S. Fla., Inc. v. Metro. Dade County*, 122 F.3d 895, 911 (11th Cir. 1997), cert. denied, 523 U.S. 1004, 118 S. Ct. 1186, 140 L. Ed. 2d 317 (1998). To complicate matters, decisions by the Second, Third, and Ninth Circuits preceded *Shaw*, while decisions by the Tenth and Eleventh Circuits succeed *Shaw*.

[**26] The Ninth Circuit, held, consistent with *Shaw's* subsequent holding, that legislating on the basis of race without any pre-enactment evidence of discrimination is presumptively void. *Coral Constr.*, 941 F.2d at 921. The Ninth Circuit went on to hold that, where a state has a good faith reason to believe that systemic discrimination has occurred, it would not strike down a program for inadequacy of the record if post-enactment [***1025**] fact-finding supports the program. *Id.* Imposing the *Shaw* decision over *Coral Constr.*, once a city can show strong

⁸ The *Croson* decision implies that the city council did not attempt to supplement the legislative record with post-enactment evidence. 488 U.S. 469, 477-86, 109 S. Ct. 706, 713-18, 102 L. Ed. 2d 854.

⁹ The Court in *Croson* also found that the evidence proffered by the Richmond City Council failed to constitute a "strong basis in evidence" for its conclusion that remedial legislation was necessary. Although the *Croson* does not describe what constitutes such evidence, it did describe what evidence did not suffice. *Croson* held that evidence of societal discrimination is insufficient to establish "strong evidence." *Id.* at 500, 109 S. Ct. at 725.

¹⁰ *Harrison* is of dubious importance. Like *Drabik*, it does not directly reach the issue of whether post-enactment evidence is admissible. *Harrison* involved New York City's set-aside regulations passed pursuant to state law. State law empowered cities to encourage and assist minority businesses to participate in work on governmental contracts. *Harrison*, 981 F.2d at 60. The constitutionality of the state legislation was not at issue. *Id.* Instead, plaintiffs challenged the constitutionality of the city's regulations. *Id.* The case was ultimately dismissed against the city. The court held that a prospective injunction was moot because the city had dismantled its existing program and was in the process of drafting new regulations in light of new studies. *Id.* The damage claims were dismissed on qualified immunity grounds because the city's previous plan was passed before *Croson*, and officials had reasonably thought that they were compliant with equal protection requirements when enacting the original regulations. *Id.* at 61.

evidence justifying a proper purpose, then post-enactment evidence can supplement those findings.

The Third Circuit, faced with facts similar to the case *sub judice*, questioned whether evidence generated after enactment, but covering a pre-enactment period, is properly characterized as post-enactment evidence.¹¹ Contractors Ass'n of E. Pa., 6 F.3d at 1003-04. Nevertheless, it reasoned that disallowing post-enactment evidence would put cities and states in a precarious position. Governmental entities must pro-actively remedy past discrimination and ensure their efforts in doing so do not violate **[**27]** the Equal Protection Clause. Id. at 1004. If post-enactment evidence was inadmissible, despite some evidence showing complicit participation in discriminatory practices, a city would be forced to wait for further study despite its continuing perpetration of discriminatory practices. Id.

The Ninth Circuit's decision reflected similar reasoning. Rejecting post-enactment evidence would in effect force governmental entities to wait for the completion of time consuming studies before acting, despite knowledge that current practices were discriminatory. This would unfairly expose cities and states to liability while they are forced to continue violating equal protection principles pending further studies. Coral Constr., 941 F.2d at 921; see also Wygant, 476 U.S. at 291, 106 S. Ct. at 1856. The Ninth Circuit found it unacceptable **[**28]** to interpret the Constitution as mandating such a Hobson's choice --if a city acts

it violates the Constitution, and if a city doesn't act it violates the Constitution.

The Third Circuit, as well as the Tenth and Eleventh Circuits, highlighted the appropriateness of supplementing the record when injunctive relief is requested. Contractors Ass'n of E. Pa., 6 F.3d at 1004. As injunctions seek prospective relief only, it follows that all evidence preceding the issuance of an injunction must be considered, including post-enactment evidence. Id.; Concrete Works, 36 F.3d at 1521; Eng'g Contractor's Ass'n of S. Fla., 122 F.3d at 911. In the instant case, Plaintiffs have requested injunctive relief.

In permitting the use of post-enactment evidence, the Tenth Circuit seized on Croson's language that a city must "identify [the] discrimination . . . with some specificity before [it] may use race-conscious relief." Concrete Works, 36 F.3d at 1521 (quoting Croson, 488 U.S. at 504, 109 S. Ct. at 727) (emphasis added). The Court in Concrete Works reasoned that Croson therefore does not foreclose **[**29]** consideration of post-enactment evidence, because Croson only required identification of racial discrimination with "some" specificity.¹²

[30]** **[*1026]** d. Summary of Sixth Circuit, Supreme Court, and other circuit court decisions

Shaw, Wygant, and Croson are all susceptible to competing interpretations, and the Sixth Circuit has not rendered a decision on the matter. The five circuit court decisions permitting post-enactment supplementation of the

¹¹ As mentioned, the City's "post-enactment" evidence covers the years between 1992 and 1996. The MBWE plan was not enacted until 1996.

¹² The Court notes, though the Tenth Circuit may ultimately be correct in its conclusion, it quoted Croson's language out of context. "Some specificity" refers not to the quantum of evidence required, but to the permissible geographic scope of the statistics; i.e., a city cannot rely on a study showing *national* or *state-wide* disparities in the percentage of public contracts awarded to minority business. Croson, h 488 U.S. at 504, 109 S. Ct. at 727.

The Eleventh Circuit also interpreted the Supreme Court's language out of context when it seized on Wygant's statement that a "contemporaneous or antecedent finding of past discrimination by a court or other competent body is not a constitutional prerequisite to a public employer's voluntary agreement to an affirmative action plan." See e.g., Eng'g Contractors Ass'n of S. Fla., 122 F.3d at 911. Rather than stand for the proposition that post-enactment evidence is appropriate, the Court's statement was intended to relieve a city or state from showing that it actually discriminated; showing passive participation in discriminatory practices would be sufficient. Wygant, 476 U.S. 292, 106 S. Ct. at 1856 (O'Connor, J., concurring).

legislative record reached identical results, but through different means. Accordingly, a substantial disagreement of opinion exists as to the proper role played by post-enactment evidence.

3. Materially advance the litigation

Interlocutory appeal is favored where reversal would substantially alter the course of the district court proceedings or relieve the parties of significant burdens. *Iron Workers*, 29 F. Supp. 2d at 833. Interlocutory appeal is most appropriate early in the proceedings. *Id.* at 835. In contrast, the role of interlocutory appeal is diminished when a case is nearing trial and large expenditures have already been made. *Id.*; see also *Takacs v. Hahn Auto. Corp.*, 1999 U.S. Dist. LEXIS 21694, No. C-3-95-404, 1999 WL 33117266, at *4 (S.D. Ohio April 23, 1999).

Parties have engaged in minimal discovery to this point. An interlocutory decision [**31] will potentially save substantial judicial resources and litigant expense. Discovery in this case will be immense and is estimated to take eighteen months.¹³ Absent an interlocutory appeal, depositions of relevant witnesses would focus on pre-enactment evidence. If the admissibility issue was found in error on final appeal, however, depositions would have to be re-taken to address post-enactment evidence, probably taking an additional eighteen months.

Though the potential savings will be substantial for discovery proceedings, an interlocutory decision could have a major impact on the time and expense involved at trial. The trial is expected to last ten days and involve extensive expert testimony. The first trial will inevitably test the sufficiency of the pre-enactment evidence. A second trial would duplicate expert testimony on pre-enactment evidence because a new jury would be empaneled. Immediate resolution [**32] of this issue has the potential to materially advance this litigation because it will potentially save judicial resources and litigant expense.

4. Exceptional circumstances

An interlocutory appeal should only be granted in exceptional circumstances, used sparingly to avoid protracted and expensive litigation. *Cardwell*, 504 F.2d 444, 446 (6th Cir. 1974). In *Cardwell*, the Sixth Circuit held that it was inappropriate to certify for interlocutory appeal a simple personal injury or wrongful death case that could be disposed of on their merits in a few days. In stark contrast, the legal and statistical issues in the instant case are complex, and the financial and legal stakes are high. Resolving the post-enactment evidence issue early in the proceedings would potentially save time and avoid duplicative litigation over issues that should, because of the constitutional dimension, be promptly adjudicated.

[*1027] 5. Conclusion

Immediately resolving this issue may materially affect and advance the outcome of the proceedings. Interlocutory appeal is proper, because, evident through Supreme Court and circuit court decisions, substantial disagreement of opinion exists as [**33] to the admissibility of post-enactment evidence. That discovery is undeveloped does not hinder the Sixth Circuit's review, as a well-developed record is unnecessary to determine whether post-enactment evidence is admissible to show a compelling state interest. 16 Charles Alan Wright, et al., *Federal Practice and Procedure*, § 3929, at 380-83 (2d ed. 1996). In fact, that discovery is undeveloped supports immediate review, as early intervention potentially will relieve the Court and the parties from future burdens created by duplicative and expensive proceedings. *Id.* at 416.

Additional considerations support certification of interlocutory appeal. This issue is inextricably linked to the substance of equal protection review. Because this issue involves an important question of law, interlocutory appeal is especially appropriate. *Atl. City Elec. Co. v. Gen.*

¹³ At the parties scheduling conference in May, 2001, the discovery deadline was set for August, 2001.

Elec. Co., 207 F. Supp. 613, 620, (D.C.N.Y. 1962), *aff'd*, 312 F.2d 236 (2nd 1962), cert. denied, 373 U.S. 909, 83 S. Ct. 1298, 10 L. Ed. 2d 411. 16 Wright, et al., § 3930 at 422.

While proximity in time to the final judgment on the merits weighs against interlocutory **[**34]** appeal, here litigation is in its early stages. Parties are not scheduled for trial until February, 2002, over a year from now. Moreover, parties have engaged in very little discovery. Because parties are in early stages of litigation, interlocutory appeal is advantageous. *Baranski v. Serhant*, 602 F. Supp. 33, 36 (D.C. Ill. 1985). In accordance with 28 U.S.C. § 1292 (b), the Court **GRANTS** Defendant's motion to certify for appeal its June 9, 1999 Order precluding the admission of post-enactment evidence to show a compelling state interest.

B. Defendant's motion for a stay

In evaluating whether a stay should be granted pending the circuit court's disposition of an interlocutory appeal, the Court considers the same factors as it does for a preliminary injunction: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay. *Mich. Coalition v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). **[**35]**

Due to the procedural posture of this case, the first factor must be assessed in light of incomplete factual findings and is therefore afforded a fair degree of deference. *Id.*; *Roth v. Bank of the Commonwealth*, 583 F.2d 527, 537 (6th Cir. 1978). At minimum, Defendant must show serious questions going to the merits of the district court's decision. *In re DeLorean Motor*

Co., 755 F.2d 1223, 1229 (6th Cir. 1985). Defendant emphasizes five circuit courts decisions in its favor. Serious questions, therefore, exist as to the proper application of post-enactment evidence to show a compelling state interest. See *Ohio ex rel. Celebrezze v. Nuclear Reg. Comm'n*, 812 F.2d 288, 290 (6th Cir. 1987) (implying that the necessary showing of likelihood of success on the merits is inversely proportional to the strength of other factors in the moving party's favor).

Defendant contends that it will be irreparably harmed absent a stay. In evaluating the harm to Defendant, the Court looks to the substantiality of the injury alleged, the likelihood of its occurrence, and the adequacy of the proof provided. **[*1028]** *Mich. Coalition*, 945 F.2d at 154. **[**36]** When Plaintiff moves for a preliminary injunction, the Court will be restricted to examining only pre-enactment evidence, making a preliminary injunction's issuance more likely than if the Court admitted post-enactment evidence. If, however, the Sixth Circuit subsequently reverses this Court's June 9, 1999 Order and holds that post-enactment evidence is permissible to supplement the legislative record, there may exist grounds to dissolve the preliminary injunction. In the meantime, the City would have had to implement race-neutral procedures, reassess all contracting bids before it, and then, if the injunction is dissolved, re-engage the MWBE program. This would cause a major disruption and possibly frustrate the City's constitutional obligation to ensure it does not discriminate against its citizens. ¹⁴*Palmore v. Sidoti*, 466 U.S. 429, 432, 104 S. Ct. 1879, 1881-82, 80 L. Ed. 2d 421 (1984). As the harm is constitutional in nature, it is irreparable. 11A Charles Alan Wright, et al., *Federal Practice and Procedure*, § 2948.1, at 161 (2d ed. 1996); see also *Coalition for Econ. Equity v. Wilson*, 1996 U.S. Dist. LEXIS 18488, No. C 96 4024 TEH, 1996 WL

¹⁴ The Sixth Circuit has stated that harm to the moving party cannot be speculative. *Michigan Coalition*, 945 F.2d at 154. Instead, the harm must be certain and immediate. *Id.* The Court emphasizes that, though it is speculative as how the Sixth Circuit will decide the post-enactment evidence issue, it is certain that Plaintiffs will move for a preliminary injunction. See Complaint, P 3 at *12. Defendant does not have to wait to be injured before moving for a stay. 11A Wright, et al., § 2948.1, at 155.

691962, at *3 (N.D.Cal. Nov. 27, 1996). [**37] Additionally, the City would suffer irreparable non-compensatory harm because there is no way to calculate any damages to the City for forcing a gap in the enforcement of its MWBE program. Moreover, the program's re-engagement would not alter contracts secured when a preliminary injunction was in place.

On the other hand, if Plaintiffs are correct that the MWBE program violates their equal protection rights, a stay may prolong their exposure to unconstitutional conditions. Indeed, considerations [**38] of the City's financial health and administrative efficiency cannot run roughshod over plaintiff's constitutional rights. See *Reed v. Rhodes*, 549 F.2d 1050, 1052 (6th Cir. 1976). At the same time, a stay also implicates the constitutional interests of minorities in the construction business and their continuing employment opportunities. If the MWBE program is enjoined, minority business's would likely be severely and negatively impacted, resulting in irreparable harm. See *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1161, 1167 (10th Cir. 2000) (stating that ample evidence shows that when race-conscious public contracting programs are struck down or discontinued, minority business participation in the relevant market drops sharply) (citing 144 Cong. Rec. S1421 (March 5, 1998) (statement of Sen. Moseley-Braun)). Moreover, a stay is shorter in duration than a preliminary injunction. The possible harm to Plaintiffs' constitutional interests in granting a stay are therefore less than the possible harm to the minority businesses' constitutional interests in denying a stay.

Public interest strongly favors a stay. Eleven of the twelve council members [**39] who were present voted to pass the MWBE program. See Defendant's Memorandum in Support of Motion for Certification of Interlocutory Appeal and Motion to Stay Proceedings, at *9. Additionally, it would be in the public interest to maintain coherence, stability, and integrity in the judicial proceedings surrounding the MWBE program's

legality. Absent a stay, the Court [*1029] is faced with the prospect of temporarily dismantling the MWBE program which the City's elected officials voted to pass. The Court would further be faced with the prospect of dissolving the injunction and reinstating the MWBE program if the Sixth Circuit holds post-enactment evidence is admissible. The Court does not shy away from the repercussions of protecting constitutional rights. On the contrary, because the issues at stake are so important the Court should make a fully informed decision before disrupting the status quo. The Court finds that constitutional interests at stake are best protected if the Court waits for guidance from the Sixth Circuit on an issue that is undisputably central to the complete and fair disposition of the case.

Finally, the Court notes that not issuing a stay would frustrate the very [**40] objectives of the interlocutory appeal, which is to achieve judicial economy and discourage piecemeal litigation. Moreover, staying the proceedings facilitates a seamless and fair adjudication of the merits, and saves judicial resources and litigant expense. *Fed. R. Civ. P. 1*. Although the Court recognizes the possible harms to others in granting a stay, the factors ultimately weigh in Defendant's favor. Defendant's motion to stay all proceedings pending resolution of the interlocutory appeal is accordingly **GRANTED**.

III. Order

For the foregoing reasons, the Court **GRANTS** Defendant's motion for an interlocutory appeal of the Court's June 9, 1999 Order refusing to admit post-enactment evidence for the purpose of showing a compelling state interest. The Court also **GRANTS** Defendant's motion for a stay of the proceedings pending the Sixth Circuit's disposition of the interlocutory appeal.

IT IS SO ORDERED this 20th day, December 2000.

BERNICE BOUIE DONALD

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MIDWEST FENCE CORPORATION,)	
A Delaware corporation,)	
)	Case No. 10-CV-5627
Plaintiff,)	
)	Judge Leinenweber
v.)	
)	Magistrate Judge Denlow
UNITED STATES DEPARTMENT OF)	
TRANSPORTATION, et al.)	
)	
Defendants.)	

THIRD AMENDED COMPLAINT

NOW COMES the plaintiff, MIDWEST FENCE CORPORATION ("Midwest Fence"), by and through its attorneys, Dashiell Law Offices, LLC, and amends its second amended complaint by adding Count XVIII to assert punitive damages against the Tollway Defendants. In all other respects, this Third Amended Complaint is identical to the Second Amended Complaint.

NATURE OF CLAIMS

1. Both the Illinois Department of Transportation ("IDOT") and the Illinois State Toll Highway Authority ("the Tollway") have instituted programs ("the IDOT Program" and "Diversity Program") to increase the flow of public dollars for road construction to certain types of companies described as "disadvantaged business enterprises" ("DBEs"). Both agencies have achieved the vast majority of their DBE participation through contract requirements for prime contractors to use DBEs as subcontractors ("contract goals"). On those projects receiving federal financial assistance, IDOT is subject to federal regulations promulgated by the United States Department of Transportation

("DOT") and its administrative agency, the Federal Highway Administration ("FHWA") and is subject to a degree of monitoring by those federal agencies. Since it receives no federal funding, the Tollway is not subject to federal regulations or oversight, nor is IDOT on its state funded projects. Plaintiff claims that the contract goals imposed by IDOT and the Tollway deny it equal protection of the laws and is seeking declarative, injunctive and monetary relief.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, because the controversy arises under the Constitution and laws of the United States pursuant to 28 U.S.C. § 1343(a), because this complaint is brought to redress the deprivation, under color of State law, of the plaintiff's right to equal protection of the laws under the United States Constitution and Acts of Congress and pursuant to 28 U.S.C. § 1343(b), because this complaint seeks to recover money damages and equitable relief under Acts of Congress providing for the protection of civil rights.

3. This matter presents an actual controversy within the meaning of 28 U.S.C. § 2201(a), and the plaintiff is seeking further necessary and proper relief based on the declaratory judgment it asks of the Court as allowed by 28 U.S.C. § 2202.

4. This Court has supplemental jurisdiction over any claims brought under state law pursuant to 28 U.S.C. § 1367.

5. Venue is proper pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events or omissions, which gave rise to this cause of action, occurred within this judicial district.

PARTIES

6. Midwest Fence is a Delaware corporation with its main office and principle place of business located in Chicago, Illinois. Midwest Fence is a guardrail, bridge rail and fencing contractor. It is 100 percent owned and controlled by white males and does not qualify as a Disadvantaged Business Enterprise (DBE) under the FHWA regulations or under IDOT's DBE Program.

7. Midwest Fence bids primarily as a subcontractor on contracts let by IDOT.

8. As detailed below, Midwest Fence has been subject to illegal discrimination based on race and gender and has suffered, and continues to suffer, substantial damages as a consequence thereof.

9. Ray LaHood is the Secretary of the DOT ("Secretary"), which is an executive branch of the United States Government. See 49 U.S.C. § 102(a). The DOT is responsible for, among other things, overseeing the construction and maintenance of our nation's roads and highways. As Secretary, Mr. LaHood is responsible for the overall operation of the DOT. He is named herein solely in his capacity as Secretary.

10. Victor M. Mendez is the Federal Highway Administrator ("Administrator"). As such, he is in charge of the Federal Highway Administration ("FHWA"). 49 U.S.C. § 104(b)(1). The FHWA is an administration in the DOT. 49 U.S.C. § 104 (a). The Administrator is responsible for carrying out the duties and powers vested in the Secretary for highway development related to highway design, construction and maintenance. 49 U.S.C. § 104(c)(2). Mr. Mendez is named herein solely in his capacity as Administrator.

11. IDOT is a department of the executive branch of the Illinois government. 20 ILCS 5/5-15. It is responsible for overseeing the design, construction and maintenance of the State's system of highways and roads. 20 ILCS 2705/2705-1, *et seq.*; 605 ILCS 5/4-101, *et seq.*

12. Ann L. Schneider is the Acting Secretary of IDOT ("Secretary of Transportation") and serves on the board of the Tollway, *ex officio*. As the Secretary of Transportation, Ms. Schneider has overall responsibility for IDOT's operations and is its chief procurement officer. 30 ILCS 500/1-15.15(2). She is named herein solely in her capacities as Secretary of Transportation and as a board member of the Tollway.

13. The Tollway is an instrumentality and administrative agency of the State of Illinois authorized by the Toll Highway Act in 1968 to construct, operate, regulate and maintain a system of toll highways in the State. 605 ILCS 10.1 *et seq.* It is governed by an 11-member board of directors. 605 ILCS 10/3.

14. Upon information and belief, the Tollway is funded entirely through user fees and receives no federal funding.

15. The Governor of Illinois and the Secretary of Transportation serve as *ex officio* members of the Tollway board. The remaining nine members are named by the governor.

16. Paula Wolff is the current Chairperson of the Tollway and serves on its board.

17. Patrick Quinn is the governor of the State of Illinois and serves on the board of the Tollway, *ex officio*.

18. Ann L. Schneider is the Secretary of Transportation and serves on the board of the Tollway, *ex officio*.

19. James J. Banks, George Pradel, Carl O. Towns, James M. Roolf, Thomas Canham, Bill Morris, Tom Weisner, and Maria N. Saldana, are the other members of the Tollway board.

20. All of the members of the Tollway board are named herein solely in their official capacities as board members of the Tollway with the exception of Ann L. Schneider, who is also named in her capacity as Secretary of Transportation, and are hereinafter collectively referred to as "the board members."

I. CLAIMS AGAINST IDOT, SCHNEIDER, LAHOOD and MARTINEZ

Background – IDOT, Schneider, LaHood and Martinez Claims

A. IDOT's Contracting Process

21. IDOT's contracts for construction, with a few exceptions itemized in the applicable Illinois statutes and regulations, must be let to the lowest responsible bidder in open, competitive bidding after an appropriate invitation for bids and public notice. 30 ILCS 500/30-15(a); 30 ILCS 500/20-10.

22. Section 108.1 of IDOT's Standard Specifications for Road and Bridge Construction requires the prime contractor to perform with its own organization work items accounting for at least 50 percent of the total contract amount. Consequently, no more than 50 percent of the total contract amount can ever be given to subcontractors on any given contract. In fact, prime contractors retain well over one-half of the work on most contracts so that much less than one-half of the total contract dollars actually goes to subcontractors.

B. IDOT's DBE Program

23. IDOT's DBE Program is an affirmative action program, which relies primarily on contract requirements to increase participation of DBEs on IDOT construction projects.

24. IDOT's DBE Program, with respect to federally funded projects, is governed by the DOT regulations. With respect to state funded programs, IDOT also follows the DOT regulations.

25. IDOT must formulate an annual, overall DBE participation goal, which must be submitted to the FHWA. 49 C.F.R. §§ 26.45(a)(1) and 26.45(f)(1).

26. IDOT must continue to provide data about its DBE Program to the DOT as directed by the FHWA. 49 C.F.R. § 26.11(b).

27. In the administration of its DBE Program, IDOT may consult with the FHWA in its role as an operating administration of the DOT. 49 C.F.R. § 26.51(E)(3).

C. The DOT Regulations

28. The DOT regulations governing the DBE participation programs for federally funded projects of the state departments of transportation, including IDOT's, are set forth in 49 C.F.R. pt. 26.

29. The DOT regulations define a DBE as "a for-profit business concern –

“(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent 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 disadvantaged individuals who own it.” 49 C.F.R. § 26.5

30. All recipients of DOT funds ("recipients") "must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the [Small Business Administration ("SBA")] are socially and economically disadvantaged individuals." 49 C.F.R. §§ 26.61(c) and 26.67a). This means that members of the above groups do not have the burden of proving that they are socially or economically disadvantaged. *See* 49 C.F.R. § 26.61(c).

31. The groups that receive the presumption of social and economic disadvantage are broadly defined, so that they include all groups of people within the United States except for white males. 49 C.F.R. § 26.5 (definition of socially and economically disadvantaged individual, Section (2)).

32. Individuals who are not presumed to be socially and economically disadvantaged, i.e., white males, have the burden of proving by a preponderance of the evidence that they are socially and economically disadvantaged. 49 C.F.R. §§ 26.61(d) and 26.67(d).

33. To be deemed socially disadvantaged when a man (all women are presumed socially and economically disadvantaged) is not a member of one of the above groups, he must prove that he has been subjected to racial or ethnic prejudice or cultural bias within American society because of his identity as a member of a group and without regard to his individual qualities. 49 C.F.R. pt. 26, Appendix E. ("Appendix E"). Appendix E lists specific elements of "individual social disadvantage," which are required to be considered socially disadvantaged.

34. To qualify as economically disadvantaged, an individual must also be socially disadvantaged. Appendix E. As a consequence, it is impossible for almost all firms that are majority-owned by white males to qualify as a DBE.

D. DBE Goals Are Met Almost Exclusively at the Expense of Non-DBE Subcontractors Even Though Subcontractors Receive Only a Small Percentage of Total Contract Dollars

35. Virtually all of the contract dollars that go to DBEs from IDOT come from subcontract dollars, i.e., money that flows from prime contractors to subcontractors, even though subcontractors receive only about 25 percent of the total contract dollars.

36. For example, in federal fiscal year 2007 (October 1, 2006, through September 30, 2007), \$1,354,577,435 went directly to prime contractors as a whole, while \$338,513,578 went to subcontractors. \$183,267,044 went to DBEs, of which \$146,532,174 came from subcontract dollars. Only \$38,734,870 went to DBEs serving as prime contractors. This is because a firm must be economically disadvantaged to qualify as a DBE under the DOT regulations. Their economic limitations make it impossible for DBEs to bid on any but the smallest prime contracts. The only reason DBEs receive any prime contracts is because IDOT "unbundles" a small percentage of the contracts it lets. Those contracts are small in dollar amount and consist only of the specialized type of work done by subcontractors, not the large, comprehensive road projects typically done by prime contractors.

37. Furthermore, IDOT requires prime contractors to be prequalified, which severely restricts the number of firms who can bid for most prime contracts dollars. 49 C.F.R. §26.6538. By virtue of the foregoing, DBEs are not able to bid for the vast majority of prime contract dollars and, therefore, are not similarly situated to prime contractors.

39. Upon information and belief, in recent months, IDOT has been dramatically increasing the DBE participation rates required by contract to the point where its DBE contract requirements threaten to drive non-DBE subcontractors out of the public road building market.

**DECLARATORY RELIEF – IDOT, SCHNEIDER, LAHOOD and MARTINEZ –
COUNTS I through VII**

COUNT I

Declaratory Relief – The DOT Regulations Are Unconstitutional On Their Face

40. The plaintiff incorporates herein by reference all of the above allegations.

**A. The Constitutional Justification and Requirements for a Legitimate
Affirmative Action Program**

41. Section 1 of Fourteenth Amendment to the Constitution states in relevant part:

“No State shall ... deny any person within its jurisdiction the equal protection of the laws.”

42. Section 5 of the Fourteenth Amendment states: “The Congress shall have the power to enforce, by legislation, the provisions of this article.”

43. The Fifth Amendment to the Constitution provides in relevant part: “No person shall ... be deprived of life, liberty or property without due process of law.” This clause guarantees equal protection of the laws of the federal government to the same extent that the Equal Protection Clause of the Fourteenth Amendment guarantees equal protection of the laws of the states and local governments. *Adarand v. Pena*, 515 U.S. 200, 213 - 217 (1995).

43. Section 1 of the Civil Rights Act of 1866 as amended states in part:

“(a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.” 42 U.S.C. § 1981.

44. The foregoing statute affords protection to white citizens as well as nonwhite citizens. *McDonald v. Santa Fe Trail*, 427 U.S. 273 (1976).

45. Title VI of the Civil Rights Act of 1964 provides: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d.

46. Discrimination based on race is suspect and is subject to strict judicial scrutiny, whether imposed by the state or the federal government. *Richmond v. Croson*, 488 U.S. 469 (1989); *Adarand*, 515 U.S. at 235 and 236.

47. In order to justify an affirmative action program based on race, ethnicity or gender, the DOT must demonstrate a compelling state interest. With the single exception of desired diversity in certain forms of higher education, only the correction of past or present discrimination based on race, ethnicity or gender by the governmental unit providing preferential treatment can provide the necessary compelling governmental interest. *Croson*, 488 U.S. at 492.

48. An affirmative action program that gives preferential treatment based on race, ethnicity or gender must be narrowly tailored to address the compelling state interest.

There “must be the most exact connection between the justification and classification.”

Wygant v. Jackson Board of Education, 476 U.S. 267, 280 (1986); *Croson*, 488 U.S. at 506 and 507.

49. While it is not impermissible to burden innocent third parties in the implementation of a legitimate affirmative plan, that burden must be slight and diffuse. *Wygant*, 476 U.S. at 281 through 283.

B. The Constitutional Flaws Inherent in the DOT Regulations

50. For the reasons set forth below, the DOT regulations are not narrowly tailored to address the DOT’s claimed compelling interest. The regulations force IDOT and other recipients of DOT funds to single out non-DBE subcontractors, who at best receive only a small percentage of the total contract dollars at issue, to bear virtually the entire burden of meeting remedial goals directed toward all contract dollars spent by IDOT and by other recipients of federal funds on construction contracts. As a consequence, the DOT regulations are unconstitutional on their face and violate the rights of Midwest Fence and other non-DBE subcontractors to equal protection of the laws guaranteed by the Fifth and Fourteenth amendments of the Constitution, by 42 U.S.C. § 1981, and by 42 U.S.C. § 2000(d).

51. As explained below, the regulations are also vague and permit unfettered, subjective and secretive formulation of the substantive rights of others with no clear guidelines or limitations. They also establish an unconstitutional quota system.

1. The DOT Regulations Force an Undue Burden on Non-DBE Subcontractors

52. The DOT regulations require recipients to set an overall DBE participation goal based on the total amount of contract dollars. 49 C.F.R. § 26.45(a)(1). However, contract

goals are, as a practical matter, met using only subcontract dollars, and contract goals must be set so that they will cumulatively result in meeting any portion of the overall goal that cannot be met using race-neutral means. 49 C.F.R. §§ 26.45(e)(1) and (2);

53. In an attempt to avoid an unconstitutional quota system, the DOT regulations establish the following scheme for attaining overall DBE participation goals:

- a. The use of quotas for DBEs is prohibited. 49 C.F.R. § 26.43(a).
- b. Set-aside contracts for DBEs are also prohibited except in limited and extreme circumstances when no other method could be reasonably expected to redress egregious instances of discrimination. 49 C.F.R. § 26.43(b). Thus, a recipient may not simply require that only DBEs bid on enough prime contract dollars to meet a goal. Neither the DOT regulations nor the Constitution would permit this.
- c. A recipient may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities. 49 C.F.R. § 26.51(e)(1). "Contract goals" is a well-known phrase within the industry, which refers to contractual requirements of DBE participation rates measured in terms of dollars for individual contracts. These provisions require prime contractors to use "good faith efforts" to subcontract out a portion of a contract to DBEs, so that DBEs receive a percentage of the total contract dollars equal to the required percentage. (*See, e.g.*, 49 C.F.R. §26.53(a) and 26.53(g) explaining that contract goals are contract requirements imposed on prime contractors. 49 C.F.R. §26.53(a) permits a recipient to

award a contract only to bidders who make good faith efforts to meet the DBE contract goal.)

54. As explained in paragraphs 26 through 28 above, DBEs can only bid on a tiny percentage of prime contract dollars. By consequence, the foregoing regulatory scheme *forces* recipients, such as IDOT, to set a DBE participation goal as a percentage of total contract dollars while also forcing them to achieve that goal almost entirely at the expense of non-DBE subcontractors. Yet total subcontract dollars constitute only about 25 percent of the total sum at issue.

55. Thus, by design the DOT regulations impose a remedy that is not narrowly tailored to their goal of attaining a certain overall DBE participation rate, and, therefore, they are not narrowly tailored on their face. *Builders Association of Greater Chicago v. County of Cook*, 256 F. 3d 642, 646 (7th Cir.2001) (There must be “a close match between the evil against which the remedy is directed and the terms of the remedy... [T]he remedy must be ‘narrowly tailored’ to the wrong that it seeks to correct.”).

56. For the same reason, the burden imposed on innocent third persons is not diffuse; it is the opposite. The regulations specifically target non-DBE subcontractors to shoulder almost the entire burden of their contract goals.

57. The burden on non-DBE subcontractors is not slight. The DOT regulations force a grossly disproportionate burden on non-DBE subcontractors and now threaten to drive non-DBE subcontractors from the public road building market.

58. The details of the regulations reflect a pervasive disregard for non-DBE subcontractors. For example, 49 C.F.R. § 26.45(g) requires all recipients to provide for public participation in determining overall goals. To meet this obligation, 49 C.F.R.

§ 26.45(g)(1) requires the following:

“Consultation with minority, women’s (sic) and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.”

Thus, the regulations specifically acknowledge the interest of minorities, women and general contractors while ignoring the interest of the very group against which the regulations are designed to discriminate: non-DBE subcontractors. This profoundly disturbing omission demonstrates at best a failure to realize that non-DBE subcontractors are not mere abstractions but are real entities fully entitled to the rights and privileges of Equal Protection. At worst, the omission manifests an astounding arrogance in presuming the regulations to be above the Constitution.

59. In concentrating the burden on non-DBE subcontractors, the regulations unduly burden a group with relatively little financial or political power, which is precisely the type of discrimination the guarantees of Equal Protection are intended to guard against.

2. The Classification of DBEs Is Overly Broad and Makes No Attempt to Correlate the Identical Preferential Treatment Afforded a Vast Array of Disparate Groups to the Degree of Discrimination Each Group May or May Not Have Endured.

60. There is no explanation or factual foundation for the broad scope of the presumption of social and economic disadvantage equally bestowed on all women and a vast, diverse set of various racial and ethnic groups, whose relative disadvantages due to discrimination within the DOT’s jurisdiction, if any, cannot reasonably be expected to be identical. *See, e.g., Croson*, 488 U.S. at 506.

61. Neither the United States government nor the State of Illinois can have the same compelling interest in correcting past and present discrimination, if any, with respect to all of the various, disparate groups given the same preferential treatment by the regulations. Similarly, the tailoring of the remedy to address any wrongs suffered by each group cannot be identical, so that the regulations lack the necessary compelling state interest and narrow tailoring on their face.

3. The Regulations Are Unconstitutionally Vague – Providing a Guise of Flexibility to a Rigid Quota System and Allowing an Excess Burden on Certain Types of Work, Even Within Subcontracting.

a. The Waiver System Does Not Provide Flexibility.

62. The individual contract goals are said to be aspirational, not absolute. The recipient must only administer its DBE program in good faith. 49 C.F.R. § 26.47. In this fashion, the regulations ostensibly avoid imposing a rigid quota system, which would be unconstitutional. *See e.g., Grutter v. Bollinger*, 539 U.S. 306 (2003); *Croson*, 488 U.S. at 499.

63. The requisite flexibility in attaining contract goals is presumed to come, in part, from the allowance of waivers to prime contractors in meeting contractually mandated percentage goals of DBE participation if they demonstrate a good faith effort to meet the goals. 49 C.F.R. § 26.53(a); Appendix A to Part 6 (“Appendix A”).

64. However, the regulations lack clear guidelines to determine “good faith efforts” to permit a waiver. *See, e.g.,* Appendix A, Section II. (“We emphasize, however, that your judgment concerning the sufficiency of the firm’s good faith efforts is a judgment call: meeting quantitative formulas is not required.”). This lack of guidance expressly endorses subjective judgments and permits recipients to keep the waiver process secret and to

allow waivers so infrequently that they do not provide flexibility, thereby only serving to hide an unconstitutional, rigid quota system.

65. For example, in 2008 and 2009, IDOT allowed waivers equaling only about 3/10ths of one percent of the total contract dollars it spent on construction. Allowing a *de minimis* variance from contractually mandated goals does not render those goals “flexible” but makes the use of contract goals a rigid quota system.

b. The “Graduation” System Defined by the Regulations Discourages Success in the Form of Firms Evolving from DBE Status Into Competitive Firms No Longer Needing Preferential Treatment.

66. When DBEs reach a certain level of economic success, they are no longer DBEs by definition. 49 C.F.R. § 26.67(b). In this fashion, the regulations purport to provide flexibility by allowing DBEs to graduate from the preferential scheme.

67. However, by forcing recipients to meet almost all of their overall DBE goals from the pool of subcontract dollars, the regulations provide a disincentive for DBEs to graduate from the system.

68. For example, as described above, IDOT’s overall aspirational goal in recent years has been 22.77 percent DBE participation with respect to all contract dollars. The plaintiff has been informed and believes that IDOT now seeks to approach or surpass that goal in terms of actual DBE participation. Yet subcontractors receive only about 25 percent of all contract dollars, thereby allowing non-DBE subcontractors to compete for only slightly over 2 percent of the total contract dollars. No DBE whose owners are of sound mind would strive to “graduate” into the position of being forced to compete on these terms. “Graduation” or “success” actually mean passing into extinction in the public market.

69. For the above reasons, the “graduation” allowed by the regulations does not provide flexibility. Instead, it perpetuates and encourages an unconstitutional quota system.

70. To further aggravate the problem, the regulations do not properly account for success. A DBE who graduates is considered a success only in the sense that it is no longer certifiable as a DBE. This success, however, is not factored into future calculations of DBE availability or the need to correct past or present discrimination. Each success story should reduce the need for contract goals in some fashion. Instead, a successful DBE is simply converted into an abstraction, otherwise known as a non-DBE subcontractor. This treatment cannot foster “success” in the true meaning of the word and impedes, rather than creates, flexibility.

c. The DOT Regulations Encourage an Undue Burden on Subcontractors Who Perform Certain Types of Work.

71. The DOT regulations require recipients to unduly burden non-DBE subcontractors who perform certain types of work, including those who are in the business of supplying and installing guardrail and fencing, such as Midwest Fence, in the following manner:

a. 49 C.F.R. § 26.51(E)(4) states: “Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.”

b. The difficulty is that the regulations, as noted, require contract goals to come from subcontracting dollars. There is no way for a recipient to determine the amount of work that can be done by DBEs without determining those line items that can be subcontracted and then determining whether DBEs are available

to perform the type of work described in each line item. In fact, this is precisely what IDOT does.

c. In order for a prime contractor to obtain a DBE participation rate based on total contract dollars, non-DBE subcontractors – who engage in types of work for which there is presumed to be high DBE availability – are disproportionately burdened.

d. Guardrail and fencing are line items that have large DBE possibilities, encouraging prime contractors to use DBEs for this type of work.

e. The undue burden on non-DBE subcontractors doing guardrail and fencing is further aggravated, because this type of work is typically a relatively large line item with subcontracting possibilities. As a result, a prime contractor can meet a large percentage of a contract DBE requirement by selecting a DBE guardrail and fencing subcontractor, providing further incentive for prime contractors to give this particular type of work to DBEs.

C. Summary: The DOT Regulations Are Unconstitutional

72. The DOT regulations are not narrowly tailored, as they single out a uniquely vulnerable group to bear the brunt of their claimed remedial goal. They fail to articulate, much less explain, why the DOT has the same compelling interest to correct past and present discrimination for all women and a vast, diverse multitude of racial and ethnic groups. They attempt to circumvent the Constitutional prohibition against quotas by creating ploys to give a false impression of flexibility.

73. For all of the foregoing reasons, to the extent they impose contract goals, the DOT regulations flagrantly disregard the guarantees of equal protection of the laws provided by the United States Constitution and are, therefore, void.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays as follows:

A. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that, to the extent they impose contract goals, the DOT regulations are in violation of the equal protection guarantees of the United States Constitution and, as such, are unconstitutional;

B. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that the DOT regulations improperly impede the rights of Midwest Fence Corporation to enter into and enforce contracts in violation of 42 U.S.C. § 1981;

C. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that Midwest Fence Corporation, by virtue of the DOT regulations, has been subjected to discrimination under a program or activity receiving Federal financial assistance in violation of 42 U.S.C. § 2000d;

D. For costs, including a reasonable attorney's fee and expert fees, if applicable, pursuant to 42 U.S.C. § 1988(b);

E. For such further necessary and proper relief based on the declaratory judgment or decree as detailed below in accordance with 28 U.S.C. § 2202; and

F. For such further interim and permanent relief as this Court deems necessary and appropriate.

COUNT II

Declaratory Relief – The DOT Regulations Are Unconstitutional As Applied

74. The plaintiff incorporates herein by reference all of the above allegations.

75. Pursuant to the foregoing, the DOT regulations have been improperly applied by the DOT, the FHWA and IDOT, rendering IDOT's DBE Program unconstitutional.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays as follows:

A. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that the DOT regulations, as applied by the DOT, the FHWA and IDOT, are in violation of the equal protection guarantees of the United States Constitution and, as such, are unconstitutional, or, alternatively, that the IDOT DBE Program is unconstitutional;

B. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that the DOT regulations, as applied by DOT, the FHWA and IDOT, improperly impede the rights of Midwest Fence Corporation to enter into and enforce contracts in violation of 42 U.S.C. § 1981;

C. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that Midwest Fence Corporation, by virtue of the DOT regulations, as applied by DOT, the FHWA and IDOT, has been subjected to illegal discrimination under a program or activity receiving Federal financial assistance in violation of 42 U.S.C. § 2000d;

D. For costs, including a reasonable attorney's fee and expert fees, if applicable, pursuant to 42 U.S.C. § 1988(b);

E. For such further necessary and proper relief based on the declaratory judgment or decree as detailed below in accordance with 28 U.S.C. § 2202; and

F. For such further interim and permanent relief as this Court deems necessary and appropriate.

COUNT III

Declaratory Relief – The DOT Regulations Have Not Been Properly Authorized by Congress

76. The plaintiff incorporates herein by reference all of the above allegations.

A. The Statutory Authority for the Regulations Is Incomplete

77. The official publication of the DOT regulations lists the following as providing the necessary Congressional authority for those regulations: 23 U.S.C. § 324, 42 U.S.C. § 2000d, *et. seq.* 49 U.S.C. § 1615, 42 USC §§ 47107, 47113 and 47123, and Sect. 1101(b), Pub. L. 105-178, 112 Stat. 107, 113.

78. 23 U.S.C. §324 pertains only to gender discrimination. 42 U.S.C. § 2000d, *et. seq.* is race-neutral, so it cannot be read to allow reverse discrimination, and 42 U.S.C. §§ 47017, 47113 and 47123 pertain to aviation, not road construction.

79. 49 U.S.C. § 1615 does not even exist.

80. Only Section 1101(b) of Public Law 105-178 provides any authority for the Secretary to issue regulations with respect to DBE programs for state road construction, which involve racial and ethnic groups in addition to women. 23 U.S.C. § 101 note. That provision is part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU").

81. Section (1) of the above provision incorporates the definition of "socially and economically disadvantaged individuals," which is given in the Small Business Act and

the relevant subcontracting regulations issued pursuant to that Act. Section (4) of the same provision gives the Secretary authority to issue regulations to establish minimum uniform criteria for certifying DBEs. 23 U.S.C. § 101 note, Sections (1) and (4). Hence, those DOT regulations defining who is economically and socially disadvantaged and setting forth the procedures for uniform DBE certification are authorized by SAFETEA-LU.

82. What is problematic are the balance of the DOT regulations, which provide exhaustive rules and procedures to determine DBE availability and participation rates. These are the very regulations that now threaten to drive non-DBE subcontractors from the public market as set forth above. The only arguably pertinent provision in this regard is Section (2) of the above SAFETEA-LU provision, which states as follows:

“General rule. – Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts made available for any program under titles I, III, and V of this Act [citations omitted] shall be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals.” 23 U.S.C. § 101 note, Section (2).

83. The authority extended to the Secretary by this section is very limited: He may determine when a recipient may distribute less than 10 percent of the total funds received from the FHWA to small business concerns owned and controlled by socially and economically disadvantaged individuals. On this slender thread of authority, the Secretary and the Administrator have founded a regulatory crusade, dramatically impacting the road construction industry, shifting jobs between firms by altering the landscape of competition, increasing the costs to taxpayers, severely disrupting businesses and depriving persons of their constitutional rights.

B. The Regulations May Not Create Substantive Rights

84. Federal regulations are to implement the mandates of Congress and may not of their own accord create substantive rights. *Alexander v. Sandoval*, 532 U.S. 275 (2001).

85. By severely limiting the rights of non-DBE subcontractors to compete for business and to earn a living, the DOT regulations have greatly affected the substantive rights of others. They have increased costs to the industry and to taxpayers. In unilaterally creating regulations that allow the states to determine DBE availability and participation rates mandated by contracts, and in determining the group of innocent third parties from whom the preferential benefits are drawn, the regulations create, and deprive some of, substantive rights.

86. This administrative legislation has not been authorized by Congress and is not permitted by the separation of powers inherent in the Constitution.

C. The Enabling Statute of the DOT and the FHWA Prohibit the Delegation of Regulatory or Substantive Authority to the State Departments of Transportation

87. Section 322(b) of the enabling statute for the DOT allows the Secretary to delegate and authorize successive delegations of duties to an officer or employee of the DOT. An officer, in turn, can delegate successively. However, the authority of the Administrator to carry out the duties and powers of the Secretary for development related to highway construction and maintenance cannot be delegated to anyone outside of the FHWA. 49 U.S.C. § 322(b); 49 U.S.C. § 104(c)(1).

88. Pursuant to the foregoing, the Secretary and the Administrator have no authority to delegate to the state departments of transportation the various duties delegated to them

in the DOT regulations, the same being expressly reserved for the FHWA by the above statutory provisions.

WHEREFORE, the plaintiff, Midwest Fence prays as follows:

A. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that the DOT regulations, to the extent they provide rules and regulations for the determination of DBE availability, DBE participation rates, and individual contract goals, are not authorized by Congress and are void.

B. For costs, including a reasonable attorney's fee and expert fees, if applicable, pursuant to 42 U.S.C. § 1988(b);

C. For such further necessary and proper relief based on the declaratory judgment or decree as detailed below in accordance with 28 U.S.C. § 2202; and

D. For such further interim and permanent relief as this Court deems necessary and appropriate.

COUNT IV

Declaratory Relief – SAFETEA-LU IS UNCONSTITUTIONAL

89. The plaintiff incorporates herein by reference all of the above allegations.

90. As noted in paragraph 82 above, SAFETEA-LU provides in relevant part as follows:

“Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts made available for any program under titles I, III, and V of this Act [citations omitted] shall be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals.”
23 USC 101 note, Section (2).

91. In 49 C.F.R. § 26.41, the Secretary and Administrator interpret the statutory 10 percent provision as follows:

“(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.

“(b) This 10 percent goal is an aspirational goal at the national level, which the [DOT] uses as a tool in evaluating and monitoring DBEs’ opportunities to participate in DOT-assisted contracts.

“(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.” 49 CFR § 26.41.

92. Hence, the above regulation interprets the statutory 10 percent provision to be meaningless. This untenable interpretation was used because, when interpreted in accordance with its substantive meaning, the 10 percent provision constitutes an unconstitutional quota. The discretion given the Secretary to waive the quota has no meaning because the Secretary is provided no guidelines. Giving the Secretary a blank check to determine the substantive rights of others based on race, ethnicity and gender against a statutory backdrop, which is either a quota or gratuitous verbiage, cannot withstand strict judicial scrutiny.

93. As discussed in paragraph 83 above, the Secretary and Administrator have interpreted the phrase, “Except to the extent that the Secretary determines otherwise” to empower them to issue all of the regulations that require the setting of overall DBE participation goals, the setting of individual contract goals, and the determination of DBE availability.

94. If the interpretation of the above SAFETEA-LU provision given it by the Secretary and Administrator is correct, then the statute itself is unconstitutional as being an unconstitutionally vague determiner of substantive rights and for attempting an

unconstitutional delegation of legislative authority to administrative agencies in contravention of the separation of powers inherent in the Constitution.

95. To the extent SAFETEA-LU attempts to articulate a compelling interest, it is so amorphous that it cannot survive strict judicial scrutiny, and its broad delegation of authority to the Secretary is not precisely tailored to address that interest.

WHEREFORE, the plaintiff, Midwest Fence prays as follows:

A. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that 23 U.S.C. § 101 note, Section (2) is unconstitutional and, as a consequence, void;

B. For costs, including a reasonable attorney's fee and expert fees, if applicable, pursuant to 42 U.S.C. § 1988(b);

C. For such further necessary and proper relief based on the declaratory judgment or decree as detailed below in accordance with 28 U.S.C. § 2202; and

D. For such further interim and permanent relief as this Court deems necessary and appropriate.

COUNT V

Declaratory Relief against Ann L. Schneider in her Official Capacity as Acting Secretary of IDOT – The State Statutes Authorizing IDOT's DBE Program for State Funded Projects Are Unconstitutional

96. The plaintiff incorporates herein by reference all of the above allegations.

97. The United States Supreme Court has held race-based affirmative action programs cannot rely on a quota system. *See e.g., Grutter v. Bollinger, supra.*

98. Section 4(b) of the Business Enterprise for Minorities, Females and Persons with Disabilities Act, 30 ILCS 575/4(b), states in part: "Not less than 10% of the total dollar

amount of State construction contracts is established as a goal to be awarded to minority and female owned businesses, and contracts representing 50% of the amount of all State construction contracts awarded to minority and female owned businesses shall be awarded to female owned businesses.”

99. The mandatory percentage requirements amount to an impermissible quota system that is unconstitutional on its face.

100. In addition, Section 2705-593(c) of the State Civil Administrative Code of Illinois for the Department of Transportation, 20 ILCS 2705/2705-593(c), states, in part:

(c) Applicant firms must be found eligible to be certified as a Disadvantaged Business Enterprise (DBE) program under the federal regulations contained in 49 CFR part 26 and part 23.

As the State statute follows the federal regulations for certification of DBEs, the statute is unconstitutional on its face for the same reasons laid out in Count I, paragraphs 52 and 53 above.

The prior Target Market Statute

101. Section 2705-600, 20 ILCS 2705/2705-600, effective July 1, 2010, to July 28, 2011, attempted to establish a “Target Market Program,” and stated, in part, the following:

(a) In January of each year, the chief procurement officer shall estimate the dollar value of all contracts to be awarded by the Department during that year and shall multiply that total by the minority-owned business target market percentage and the women-owned business target market percentage for that year. Contracts with an estimated dollar value equal to those products shall be set aside (prior to advertisement in the case of contracts to be awarded by bid) to be let only to qualified minority-owned businesses and qualified women-owned businesses, respectively.

102. 20 ILCS 2705/2705-600, as it existed from July 1, 2010, to July 28, 2011, was unconstitutional on its face. It patently violated equal protection of the laws guaranteed by the United States Constitution, Section 1 of the Civil Rights Act of 1866, Title VI of the Civil Rights Act of 1964, and the Illinois Civil Rights Act of 2003 by creating unconstitutional set asides or quotas.

102a. After implementing two lettings under the above Target Market Program, 20 ILCS 2705/2705-600, was amended effective July 28, 2011 (sometimes hereinafter “the amended statute” or “the statute”).

The current Target Market Statute

102b. The amended statute provides: “In order to remedy particular incidents and patterns of *egregious* race or gender discrimination, the chief procurement officer, in consultation with [IDOT], shall have the power to implement a target market program,” which is to incorporate an exhaustive list of required terms. (emphasis added) 20 ILCS 2705/2705-600.

102c. Each fiscal year, IDOT shall review any and all evidence of discrimination related to transportation construction projects. The evidence may include various rates of utilization and availability of minority and women owned enterprises, 20 ILCS 2705/2705(0.5)(i) through (iv); comparative rates of business formation, 20 ILCS 2705/2705(0.5)(v); and anecdotal evidence. 20 ILCS 2705/2705(0.5)(vi).

102d. “If after reviewing such evidence, [IDOT] finds,” with the concurrence of the chief procurement officer, “that [IDOT] has a strong basis in evidence that it has a compelling interest in remedying the identified discrimination against a specific group, race, or gender, and that the only remedy for such discrimination is a narrowly tailored

target market, the chief procurement officer, in consultation with [IDOT], has the power to establish and implement a target market program tailored to address the specific findings of egregious discrimination” following a public hearing. 20 ILCS 2705/2705(0.5).

102e. The Target Market Program to be implemented shall be limited to minority-owned and female-owned businesses. Businesses predominately owned by white males are prohibited from bidding on Target Market Program projects.

102f. The amended statute is unconstitutional including, without limitation, the following particulars:

- a. The General Assembly had no strong basis in evidence to enact the statute.
- b. The only remedy provided in the statute is a set-aside, which imposes quotas based exclusively on race, ethnicity and gender.
- c. The statute does not provide for alternative remedies that are less discriminatory or race-neutral.
- d. It is impossible for IDOT and the chief procurement officer to adequately investigate “egregious” discrimination based on statistical disparities as directed by the amended statute within the time allotted by the statute.
- e. An *ad hoc*, as-applied constitutional challenge each year to the implementation of the statute would not be able to provide injunctive relief because, by the time a court was ready to rule based on the annual Target Market program, the construction season would be over and IDOT and the chief procurement officer would be investigating for a strong basis in evidence for the next year.

f. The statute makes liberal use of undefined terms, such as “egregious discrimination,” making it impossible for the public or contractors to know the standards of behavior purportedly being addressed. As a consequence, the statute is unconstitutionally vague.

g. The latest disparity study commissioned by IDOT, which was released at the end of September, 2011, after a delay of approximately one year, does not find “egregious” discrimination that would justify set-asides or quotas.

h. IDOT keeps an inadequate database to rely on statistics to determine if there is any discrimination, much less the type of “egregious” discrimination envisioned by the statute, which might give rise to a colorable argument for quotas based on race, ethnicity and gender.

i. The specific statistics IDOT is directed to review and consider by the statute cannot justify a finding of egregious discrimination, which might give rise to a colorable argument for quotas based on race, ethnicity and gender.

j. The Target Market program authorized by the statute specifically targets small contractors predominantly owned by white males who typically do specialty subcontracting to bear most of the burden. Therefore, the remedy imposed by the statute cannot be narrowly tailored and the burden it imposes on innocent third parties is neither light nor diffuse.

k. The Target Market program authorized by the statute makes no attempt to avoid over-concentration of the favored firms in any type of work, and, therefore, is not narrowly tailored.

I. The amended statute fails to explain how a male is determined to be a member of a favored race. As such, it is unconstitutionally vague.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays for relief against Ann L. Schneider, in her official capacity as Acting Secretary of IDOT, as follows:

A. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring Section 4(b) of the Business Enterprise for Minorities, Females and Persons with Disabilities Act, 30 ILCS 575/4(b), Section 2705-593(c) of the State Civil Administrative Code of Illinois for the Department of Transportation, 20 ILCS 2705/2705-593(c), and Section 2705-600 of the State Civil Administrative Code of Illinois for the Department of Transportation, 20 ILCS 2705/2705-600, to be in violation of the Equal Protection guarantees of the United States Constitution and, as such, unconstitutional as of the filing of the original complaint and at the present time;

B. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that the foregoing state statutes improperly impede the rights of Midwest Fence Corporation to enter into and enforce contracts on Illinois state funded projects in violation of 42 U.S.C. §1981 as of the filing of the original complaint and at the present time;

C. For costs, including a reasonable attorney's fee and expert fees, if applicable, pursuant to 42 U.S.C. § 1988(b);

D. For such further necessary and proper relief based on the declaratory judgment or decree as detailed below in accordance with 28 U.S.C. § 2202; and

E. For such further interim and permanent relief as this Court deems necessary and appropriate.

COUNT VI

**Declaratory Relief against Ann L. Schneider in her Official Capacity as
Secretary of IDOT – IDOT Has Not Followed the DOT Regulations**

103. The plaintiff incorporates herein by reference all of the above allegations and pleads the following allegations in this count in the alternative.

104. On those contracts which require contract goals, the regulations provide that the prime contractor need not meet the goal each time, if it can demonstrate good faith efforts to meet those goals. 49 C.F.R. §§ 26.53(a) and (b)(2); Appendix A. If a good faith effort has been demonstrated, the recipient is to waive the contractual DBE goal requirement. This is to help the DBE Program to be flexible and not a rigid quota system.

105. However, as explained in paragraphs 64 and 65 above, IDOT has so restricted the use of waivers that they do not provide flexibility.

106. The DOT regulations require recipients to avoid imposing undue burdens on non-DBE subcontractors. 49 C.F.R. §§ 26.33(a) and (b) and 49 C.F.R. § 26.45(f)(5)(ii);

107. As explained in paragraphs 35 through 38 above, IDOT has placed a grossly disproportionate burden on non-DBE subcontractors.

108. As explained in paragraph 71, IDOT's DBE Program violates 49 C.F.R. § 26.33(a) by over-concentrating DBEs in certain types of work performed by subcontractors.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays for relief against Ann L. Schneider, in her official capacity as Acting Secretary of IDOT, as follows:

A. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that IDOT's DBE Program is in violation of the DOT regulations and the Equal Protection guarantees of the United States Constitution;

B. For an Order of this Court entered in accordance with 28 U.S.C. §2201 declaring that IDOT's DBE Program improperly impedes the rights of Midwest Fence Corporation to enter into and enforce contracts in violation of 42 U.S.C. § 1981 because IDOT has failed to properly implement the DOT regulations;

C. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that Midwest Fence Corporation, by virtue of IDOT's DBE Program, has been subjected to discrimination under a program or activity receiving federal financial assistance in violation of 42 U.S.C. § 2000d;

D. For costs, including a reasonable attorney's fee and expert fees, if applicable, pursuant to 42 U.S.C. § 1988(b);

E. For such further necessary and proper relief based on the declaratory judgment or decree as detailed below in accordance with 28 U.S.C. § 2202; and

F. For such further interim and permanent relief as this Court deems necessary and appropriate.

COUNT VII

Declaratory Relief against Ann L. Schneider in her Official Capacity as Acting Secretary of IDOT – The IDOT DBE Program Is Unconstitutional and Illegal

109. The plaintiff incorporates herein by reference all of the above allegations.

A. Federally Funded Projects

110. For all of the reasons set forth in Counts I through IV and VI, the IDOT Program violates the requirements of the United States Constitution and is illegal in its entirety, including its federally funded projects.

111. In addition, neither IDOT nor the DOT and the FHWA have a strong basis in evidence for increasing DBE goals within the past year when little or nothing has changed to justify such an increase, and, upon information and belief, none of those agencies has reviewed additional studies or data to support that increase.

B. State Funded Projects

112. In addition and in the alternative, for all of the reasons set forth in Counts I through VI, IDOT's DBE Program violates the requirements of the United States Constitution and is illegal as it applies to its state funded projects.

113. Further, with respect to state funded projects, IDOT may not rely on a compelling state interest of the federal government, as it does not receive federal funds for those projects, and IDOT has no strong basis in evidence to justify its contract goals program on state funded projects.

114. Similarly, with respect to state funded projects, IDOT may not rely on the DOT's nationwide regulations to tailor its statewide program to its statewide compelling interest. For this additional reason, IDOT's DBE Program is not narrowly tailored to address its claimed compelling interest with respect to its state funded projects.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays for relief against Gary Hannig, in his official capacity as Secretary of IDOT, as follows:

A. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that IDOT's DBE Program is in violation of the Equal Protection guarantees of the United States Constitution;

B. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that IDOT's DBE Program improperly impedes the rights of Midwest Fence

Corporation to enter into and enforce contracts in violation of 42 U.S.C. § 1981 because IDOT has failed to properly implement the DOT regulations;

C. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that Midwest Fence Corporation, by virtue of IDOT's DBE Program, has been subjected to discrimination under a program or activity receiving federal financial assistance in violation of 42 U.S.C. § 2000d;

D. In the alternative, for an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that IDOT's DBE Program is in violation of the equal protection guarantees of the United States Constitution and in violation of 42 USC § 1981 with respect to state funded projects;

E. For costs, including a reasonable attorney's fee and expert fees, if applicable, pursuant to 42 U.S.C. § 1988(b);

F. For such further necessary and proper relief based on the declaratory judgment or decree as detailed below in accordance with 28 U.S.C. § 2202; and

G. For such further interim and permanent relief as this Court deems necessary and appropriate.

**INJUNCTIVE RELIEF – LaHOOD, MENDEZ AND SCHNEIDER –
COUNTS VIII through X**

COUNT VIII

Injunctive Relief – LaHood and Mendez – Ex Parte Young

115. The plaintiff incorporates herein by reference all of the above allegations.

116. Pursuant to the foregoing, the plaintiff is entitled to preliminary and permanent injunctive relief enjoining Ray LaHood in his capacity as Secretary of the DOT and

Victor Mendez in his capacity as Administrator of the FHWA from implementing the DOT regulations.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays as follows:

A. For a preliminary and permanent injunction enjoining Ray LaHood in his capacity as Secretary of the DOT and Victor Mendez in his capacity as Administrator of the FHWA from implementing the DOT regulations nationwide or, alternatively, within the State of Illinois;

B. For a preliminary and permanent injunction enjoining Ray LaHood in his capacity as Secretary of the DOT and Victor Mendez in his capacity as Administrator of the FHWA from approving or otherwise facilitating the IDOT DBE Program.

C. For costs, including a reasonable attorney's fee and expert fees, if applicable, pursuant to 42 U.S.C. § 1988(b); and

D. For such further interim and permanent relief as this Court deems necessary and appropriate.

COUNT IX

Injunctive Relief – Schneider – Ex Parte Young

117. The plaintiff incorporates herein by reference all of the above allegations.

118. Pursuant to the foregoing, the plaintiff is entitled to preliminary and permanent injunctive relief enjoining Gary Hannig in his capacity as Secretary of the Illinois Department of Transportation from implementing the IDOT DBE Program.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays as follows:

A. For a preliminary and permanent injunction enjoining Ann L. Schneider, in her capacity as Secretary of the Illinois Department of Transportation, from implementing the IDOT DBE Program.

B. In the alternative, for order directing Schneider to follow the DOT regulations in the implementation of the IDOT DBE Program.

C. For costs, including a reasonable attorney's fee and expert fees, if applicable, pursuant to 42 U.S.C. § 1988(b); and

D. For such further interim and permanent relief as this Court deems necessary and appropriate.

COUNT X

Injunctive Relief – IDOT – Illinois Civil Rights Act of 2003

119. The plaintiff incorporates herein by reference all of the above allegations.

120. Section 5 of the Illinois Civil Rights Act of 2003 provides in part as follows:

“Sec. 5. Discrimination prohibited.

(a) No unit of State, county, or local government in Illinois shall:

(1) exclude a person from participation in, deny a person the benefits of, or subject a person to discrimination under any program or activity on the grounds of that person's race, color, national origin, or gender; or (2) utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or gender.

(b) Any party aggrieved by conduct that violates subsection (a) may bring a civil lawsuit, in a federal district court or State circuit court, against the offending unit of government. Any State claim brought in federal district court shall be a

supplemental claim to a federal claim. This lawsuit must be brought not later than 2 years after the violation of subsection (a). If the court finds that a violation of paragraph (1) or (2) of subsection (a) has occurred, the court may award to the plaintiff actual damages. The court, as it deems appropriate, may grant as relief any permanent or preliminary negative or mandatory injunction, temporary restraining order, or other order.

(c) Upon motion, a court shall award reasonable attorneys' fees and costs, including expert witness fees and other litigation expenses, to a plaintiff who is a prevailing party in any action brought:

(1) pursuant to subsection (b)..” 740 ILCS 23/5.

121. Pursuant to the foregoing, the plaintiff is entitled to preliminary and permanent injunctive relief enjoining IDOT from implementing the IDOT Program.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays for a judgment in its favor and against IDOT as follows:

A. For a preliminary and permanent injunction enjoining IDOT from implementing its DBE Program;

B. For reasonable attorneys' fees and costs, including expert witness fees, if applicable, and other litigation expenses; and

C. For such further interim and permanent relief as this Court deems necessary and appropriate.

MONETARY RELIEF – IDOT – COUNTS XI and XII

COUNT XI

Money Damages – IDOT – Abrogation or Waiver of Sovereign Immunity

122. The plaintiff incorporates herein by reference all of the above allegations.

A. IDOT's Sovereign Immunity Has Been Abrogated or Waived

123. 42 U.S.C. § 2000d precludes intentional discrimination. *Alexander v. Sandoval*, 532 U.S. 275 (2001).

124. 42 U.S.C. § 2000d-7 provides that “[a] State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of ... title VI of the Civil Rights Act of 1964 [42 U.S.C. § 2000d et seq.]...”

125. Pursuant to the above provision, the State of Illinois has waived sovereign immunity with respect to the plaintiff's claim for money damages against the IDOT.

126. Alternatively, the sovereign immunity of Illinois against the plaintiff's claim has been abrogated by Congress.

B. The Damages Sustained by Midwest Fence

127. Midwest Fence has sustained damages in excess of \$1 million.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays for a judgment in its favor and against the Tollway as follows:

A. For money damages in an amount sufficient to compensate Midwest Fence for the damages it has suffered as set forth above and as to be determined through discovery and proven at trial;

B. For costs, including a reasonable attorney's fee and expert fees, if applicable, pursuant to 42 U.S.C. § 1988(b); and

C. For such further interim and permanent relief as this Court deems necessary and appropriate.

COUNT XII

Money Damages – IDOT – Illinois Civil Rights Act of 2003

128. The plaintiff incorporates herein by reference all of the above allegations.

129. Pursuant to the Section 5(b) of Illinois Civil Rights Act of 2003 set forth above, the State of Illinois has consented to liability against any unit of State government for actual damages caused by discrimination prohibited by Section 5(a) of that Act.

130. Pursuant to the foregoing acts and omissions of IDOT, it has discriminated against Midwest Fence in violation of Section 5(a) of the Illinois Civil Rights Act of 2003.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays for a judgment in its favor and against IDOT as follows:

A. For its actual damages in excess of \$1 million as to be determined through discovery and proven at trial;

B. For reasonable attorneys' fees and costs, including expert witness fees, if applicable, and other litigation expenses pursuant to Section 5(c) of the Illinois Civil Rights Act of 2003; and

C. For such further interim and permanent relief as this Court deems necessary and appropriate.

II. CLAIMS AGAINST THE TOLLWAY AND ITS BOARD MEMBERS

131. Midwest Fence bids primarily as a subcontractor on contracts let by the Tollway.
132. As detailed below, Midwest Fence has been illegally discriminated against by the Tollway based on race and gender and has suffered, and continues to suffer, substantial damages as a consequence thereof.

BACKGROUND

A. The Tollway Contracting Process

133. All Tollway contracts for construction, except for procurement of work for \$30,000 or less or for contracts for completion of a terminated or defaulted contract, must be let to the lowest responsible bidder on open, competitive bidding after appropriate public advertisement. 605 ILCS 10/16; 30 ILCS 20-20.

134. Section 108 of the Tollway's Standard Specifications, including all supplements thereto, requires the prime contractor to perform with its own organization work items accounting for at least 45 percent of the total contract award amount. Consequently, no more than 55 percent of the total contract amount can ever be given to subcontractors on any given contract. In fact, prime contractors retain well over one-half of the work on most contracts so that less than one-half of the total contract dollars go to subcontractors.

B. The Tollway Diversity Program

135. As stated above, the Tollway has instituted a voluntary, affirmative action program to increase participation of DBEs on Tollway projects.
136. To qualify as an eligible DBE in road construction for the Tollway, a business must be certified as a DBE by one of the following:

- a. The Illinois Department of Transportation ("IDOT");

- b. The Chicago Transit Authority ("CTA");
- c. Metra;
- d. PACE; or
- e. The City of Chicago ("the City").

137. The above agencies and the City participate in the Illinois Unified Certification Program ("IL UCP"), which provides for a uniform protocol and identical requirements to qualify as a DBE. Hence, DBE certification requirements are the same for the Tollway as for IDOT. These requirements are set forth in Subpart D of part 26 of Title 49 of the Code of Federal Regulations ("Subpart D"). 49 C.F.R. part 26, Subpart D.

138. During 2006 through 2008, no prime contracts were let to DBEs by the Tollway. All contract dollars that went to DBEs came from money that flowed from prime contractors to subcontractors. This is because a firm must be economically disadvantaged to qualify as a DBE, making it impossible for DBEs to bid on any but the smallest prime contracts.

139. By virtue of the foregoing, DBEs are not similarly situated to prime contractors.

140. The Tollway does not maintain any record of the percentage of total contract dollars that goes to subcontractors as a whole, so it is impossible to know the exact degree of disparate impact intentionally focused on non-DBE subcontractors. However, as noted above, IDOT records indicate that approximately 25 percent of its total contract dollars went to subcontractors as a whole during federal fiscal year 2007, and there is no reason to believe that the Tollway's percentages are substantially different.

COUNT XIII

Declaratory Relief – The Tollway and Its Board Members

141. The plaintiff incorporates herein by reference all of the above allegations.

142. For the reasons set forth below, the Tollway's Diversity Program, both on its face and as applied, violates the rights of Midwest Fence and other non-DBE subcontractors guaranteed by the Equal Protection Clause and by 42 U.S.C. § 1981.

A. The Discrimination Based on Race and Gender in the Design and Implementation of the Tollway's Diversity Program

143. Part 26 of Title 49 of the Code of Federal Regulations defines a DBE as "a for-profit business concern –

“(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent 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 disadvantaged individuals who own it.” 49 C.F.R. § 26.5

144. Sections 26.61(c) and 26.67(a) of Subpart D require all participants in the IL UCP to “rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the [Small Business Administration (“SBA”)] are socially and economically disadvantaged individuals.” 49 C.F.R. § 26.67a). This means that members of the above groups do not have the burden of proving that they are socially or economically disadvantaged. 49 C.F.R. § 26.61(c).

145. Individuals who are not presumed to be socially and economically disadvantaged, i.e., white males, have the burden of proving by a preponderance of the evidence that they are socially and economically disadvantaged. 49 C.F.R. §§ 26.61(d) and 26.67(d).

146. To be deemed socially disadvantaged when a man (all women are presumed socially and economically disadvantaged) is not a member of one of the above groups, he must prove that he has been subjected to racial or ethnic prejudice or cultural bias within American society because of his identity as a member of a group and without regard to his individual qualities. 49 C.F.R. pt. 26, Appendix E. ("Appendix E"). Appendix E lists specific elements of "individual social disadvantage," which are required to be considered socially disadvantaged.

147. To qualify as economically disadvantaged, an individual must also be socially disadvantaged. Appendix E. As a consequence, it is extremely difficult and rare for a firm that is majority-owned by white males to qualify as a DBE.

148. The Tollway has achieved overall DBE participation rates in construction services expressed as percentages of overall construction contract dollars expended by the Tollway of approximately 5.5 percent in 2006, 21.3 percent in 2007 and 21.6 percent in 2008. Upon information and belief, the Tollway has sought and achieved overall DBE participation rates similar to those achieved in 2007 and 2008 since that time until the present.

149. Upon information and belief, the vast majority of DBE participation has been achieved through mandatory goals set forth as contract requirements ("contract-goals"). The use of contract-goals is sometimes hereinafter referred to as "goal-conscious measures."

150. To implement contract-goals, the Tollway requires the winning bidder on a contract to make a "good faith effort" to subcontract a certain percentage of the total contract dollars to DBEs. DBE participation goals on Tollway contracts in recent years have typically ranged from 10 percent to 30 percent of total contract dollars with an average DBE goal of 20 percent to 22 percent of total dollars.

151. As a consequence, the vast majority of subcontract dollars flow to DBEs, virtually excluding non-DBE subcontractors from the public road building market.

152. If the low bidder on a project does not have DBE commitments equal to or greater than the contract-goal, that prime contractor may obtain a waiver of the DBE requirement ("Waiver") if it is able to convince the Tollway that it made a good faith effort to meet the contract-goal.

153. Waivers, however, are extremely rare. The total waivers granted from 2007 through 2009 amounted to less than one percent of total contract dollars. The infrequency with which waivers are granted is further evidenced by the fact that the Tollway has essentially met its stated, average contract-goal for the last three years that those statistics have been made available. Consequently, the use of contract-goals is rigid and constitutes an unconstitutional system of set-asides.

154. Unlike IDOT, which must submit annual plans detailing its diversity program to the Federal Highway Administration, the Tollway does not submit such plans to any oversight agency or committee, nor are its actions reviewed by any such agency or committee. In fact, the Tollway has not prepared a comprehensive and coherent written plan for its Diversity Program.

B. No Compelling Interest

155. As the Tollway receives no federal funding, it cannot rely on a compelling interest of the federal government.

156. Discrimination by a governmental unit may be direct or passive to justify preferential treatment based on race, ethnicity or gender. *Croson*, 488 U.S. at 492 and 493.

157. There is no evidence of direct discrimination by the Tollway in awarding contracts by open bidding to the lowest qualified bidder as the system precludes intentional discrimination on the basis of race, ethnicity or gender. Hence, there is no compelling interest justifying preferential treatment based on race, ethnicity or gender in the Tollway's distribution of total contract dollars.

158. Passive discrimination is discrimination in the construction industry within a governmental unit's jurisdiction in which that unit may have been a passive participant. *Croson*, 488 U.S. at 492 and 493.

159. Due to the nature of the Tollway's contracting process, passive discrimination, if any, could only have been in the distribution of subcontract dollars by prime contractors or upper-tier subcontractors.

160. Therefore, if there was passive discrimination, the remedy must be tailored to the distribution of subcontract dollars and not to total contract dollars, especially if the remedy places the burden almost exclusively on non-DBE recipients of subcontract dollars.

C. Not Narrowly Tailored – Disproportionately Burdens Non-DBE Subcontractors and Is Not Tailored to Address the Implicitly Alleged Wrong

161. An affirmative action program that gives preferential treatment based on race, ethnicity or gender must be narrowly tailored to address the compelling state interest. There “must be the most exact connection between the justification and classification.” *Wygant v. Jackson Board of Education*, 476 U.S. 267, 280 (1986); *Croson*, 488 U.S. at 506 and 507.

162. As the Tollway receives no federal funding, it cannot rely on the tailoring of the federal regulations to the federal government’s claimed compelling interest.

163. The Tollway’s overall DBE participation goals are based on total contract dollars. However, in achieving those goals the Tollway relies almost exclusively on subcontract dollars that would have otherwise gone to non-DBE subcontractors. Therefore, the means of achieving the goal is not tailored to the goal, i.e., the remedy is not tailored to address the perceived compelling state interest.

164. To the extent the Tollway claims that it has been a passive participant in industry discrimination, it is claiming that it has passively participated in discrimination by prime contractors in the distribution of Tollway contract dollars to subcontractors. In that case, the remedy should address only the perceived discrimination in the distribution of subcontract dollars and not the distribution of total contract dollars, and the overall goal of DBE participation should be based on distribution of subcontract dollars only, not on total contract dollars.

165. While it is not impermissible to burden innocent third parties in the implementation of a legitimate affirmative plan, that burden must slight and diffuse. *Wygant*, 476 U.S. at 281 through 283.

166. The Tollway's Diversity Program places a burden on innocent third parties, non-DBE subcontractors, which is not slight but which threatens to drive that group out of the public road building market.

167. The burden is not diffuse but targets a small group: subcontractors owned by white males.

168. The Tollway's Diversity Program, by design, unduly burdens a group with relatively little financial or political power, which is precisely the type of discrimination the Equal Protection Clause is intended to guard against.

169. The Tollway's Diversity Program unduly burdens non-DBE subcontractors who perform certain types of work, including those who are in the business of supplying and installing guardrail and fencing, such as Midwest Fence, in the same manner as the IDOT Program as described in paragraph above.

170. The Tollway's Diversity Program lacks clarity and transparency including, but necessarily limited to, the following particulars:

a. There is no published comprehensive and coherent diversity plan.

Without a clearly articulated plan, it is impossible to identify the compelling state interest claimed by the Tollway, much less determine its extent or accuracy. *See, e.g., Northern Contracting v. The State of Illinois, et al.*, 2005 U.S. Dist. LEXIS 19868 at *58 and *59. ("In order to survive strict scrutiny, the government must first articulate a compelling government interest...") It is also impossible to determine if the plan is narrowly tailored to address the claimed compelling interest and to monitor the implementation of the plan to ensure that it is operated to narrowly address the claimed wrong. *See, e.g., Parents v. Seattle School Dist.*

No. 1, 551 U.S. 701, 784-787 (2007) (Kennedy, J., concurring). It is impossible to evaluate the Tollway's determination of DBE availability and impossible to evaluate the extent to which alternative, nondiscriminatory programs might be equally or better suited to correct or alleviate the perceived wrongs.

b. There is no explanation for the broad scope of the presumption of social and economic disadvantage equally bestowed on all women and a vast, diverse set of various racial and ethnic groups, whose relative disadvantages due to discrimination within the Tollway's jurisdiction, if any, cannot reasonably be expected to be identical. *See, e.g., Croson*, 488 U.S. at 506.

c. The determination of individual contract goals is secretive. While the Tollway purports to follow a basic procedure, it is lacking in critical details, such as the determination of DBE availability. Keeping the deliberative process secret allows for subjective and political considerations and fosters the undue burdening of non-DBE subcontractors who do certain types of work as described above.

d. The process for determining Waivers has not been reduced to writing, much less made available for public review. The secretive nature of the deliberation process also allows subjective and political considerations. It creates uncertainty for prime contractors, encouraging them to rely on commitments from DBEs, even if inordinately expensive, rather than risk an unlikely waiver. This makes the Tollway's Diversity Program an unconstitutionally rigid quota system based on race, ethnicity and gender.

e. It is impossible to know if the Tollway's waiver system evaluates whether a DBE's higher price is attributable to the effects of past discrimination, a

minimal requirement for such a procedure to have value. *Croson*, 488 U.S. at 508 (“...the congressional scheme upheld in *Fullilove* allowed for a waiver of the set-aside provision where an MBE’s higher price was not attributable to the effects of past discrimination. Based upon proper findings, such programs are less problematic from an equal protection standpoint because they treat all candidates individually, rather than making the color of an applicant’s skin the sole relevant consideration.”)

f. The Tollway does not maintain any record of the percentage of total contract dollars that goes to subcontractors as a whole, so it is impossible to know the exact degree of disparate impact intentionally focused on non-DBE subcontractors.

g. There is no record of the percentage of DBE participation achieved from race-neutral efforts. Therefore, the Tollway cannot determine the extent to which its goal-conscious measures are needed.

171. Pursuant to the foregoing, the Tollway’s Diversity Program is unconstitutionally vague.

172. The Tollway has not adequately implemented alternative, non-discriminatory programs. For example, the Tollway could require prime contractors to continue to make reasonable, good faith efforts to solicit available DBEs while obligating them to accept the lowest qualified bid on all subcontracted items, thereby precluding any qualified subcontractor from being discriminated against by virtue of the owner’s race, ethnicity or gender. *See, e.g., Croson*, 488 U.S. at 507 (“In determining whether race-conscious

remedies are appropriate we look to several factors, including the efficacy of alternative remedies.”)

173. The Tollway has not made adequate efforts to implement less discriminatory measures to aid DBEs, such as those “race-neutral” measures described in the federal regulations.

174. The Tollway allowed Waivers totaling less than one percent of total contract dollars from 2007 through 2009, making the contract-goal measures of its Tollway’s Diversity Program rigid, so that its contract-goals are an unconstitutional quota system based on race, ethnicity and gender.

175. The Tollway’s use of waivers is inadequate because, it focuses solely on the availability of DBEs and makes no inquiry into whether a DBE, which bids a higher price than a non-DBE subcontractor, has suffered from the effects of past discrimination by the Tollway or by prime contractors. *Croson*, 488 U.S. at 508 (“Unlike the program upheld in *Fullilove*, the Richmond Plan’s waiver system focuses solely on the availability of MBE’s; there is no inquiry into whether or not the particular MBE seeking a racial preference has suffered from the effects of past discrimination by the city or prime contractors.”) Such an evaluation is especially necessary for the Tollway, because it relies exclusively on other governmental units to determine DBE status in the first instance.

176. Pursuant to the foregoing, the Tollway has deliberately, continuously, and systematically flaunted the fundamental requirements of the United States Constitution and 42 U.S.C. § 1981 in its use of contract goals in the Tollway’s Diversity Program.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays as follows:

A. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring the Diversity Program of the Illinois State Toll Highway Authority to be in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and, as such, unconstitutional;

B. For an Order of this Court entered in accordance with 28 U.S.C. § 2201 declaring that the Tollway's operation of its Diversity Program has violated, and continues to violate, the rights of Midwest Fence Corporation to enter into and enforce contracts as guaranteed by 42 U.S.C. § 1981;

C. For costs, including a reasonable attorney's fee and expert fees, if applicable, pursuant to 42 U.S.C. § 1988(b);

D. For such further necessary and proper relief based on the declaratory judgment or decree as detailed below in accordance with 28 U.S.C. § 2202; and

E. For such further interim and permanent relief as this Court deems necessary and appropriate.

COUNT XIV

Injunctive Relief – Tollway Defendants – Federal Law

177. The plaintiff incorporates herein by reference paragraphs 1 through 6, 8, 13 through 20, 41 through 46, 48, 49, and 131 through 176 above.

178. Pursuant to the foregoing, the Tollway, through its DBE program, has hindered the ability of Midwest Fence to make and enforce contracts in violation of 42 U.S.C. § 1981.

179. 42 U.S.C. § 1983 states in relevant part as follows:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ...”

180. The Tollway’s DBE program has been established and is implemented pursuant to Section 16.3 of the Illinois Toll Highway Act. 605 ILCS 10/16.3. Accordingly, the Tollway operates its DBE program under color of State law.

181. As described above, the Tollway’s DBE program has deprived Midwest Fence of its rights and privileges secured by the Constitution and the laws in violation of 42 U.S.C. § 1983.

182. Pursuant to the foregoing, the plaintiff is entitled to preliminary and permanent injunctive relief enjoining the Tollway and its board members from implementing the Tollway’s Diversity Program.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays as follows:

- A. For a preliminary and permanent injunction enjoining the Tollway and its board members from implementing its Diversity Program;
- B. For costs, including a reasonable attorney’s fee and expert fees, if applicable, pursuant to 42 U.S.C. §1988(b); and
- C. For such further interim and permanent relief as this Court deems necessary and appropriate.

COUNT XV

Injunctive Relief – the Tollway – Illinois Civil Rights Act of 2003

183. The plaintiff incorporates herein by reference all of the above allegations.
184. Section 5 of the Illinois Civil Rights Act of 2003 provides in part as follows:

“Sec. 5. Discrimination prohibited.

(a) No unit of State, county, or local government in Illinois shall:

(1) exclude a person from participation in, deny a person the benefits of, or subject a person to discrimination under any program or activity on the grounds of that person's race, color, national origin, or gender; or (2) utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or gender.

(b) Any party aggrieved by conduct that violates subsection (a) may bring a civil lawsuit, in a federal district court or State circuit court, against the offending unit of government. Any State claim brought in federal district court shall be a supplemental claim to a federal claim. This lawsuit must be brought not later than 2 years after the violation of subsection (a). If the court finds that a violation of paragraph (1) or (2) of subsection (a) has occurred, the court may award to the plaintiff actual damages. The court, as it deems appropriate, may grant as relief any permanent or preliminary negative or mandatory injunction, temporary restraining order, or other order.

(c) Upon motion, a court shall award reasonable attorneys' fees and costs, including expert witness fees and other litigation expenses, to a plaintiff who is a prevailing party in any action brought:

(1) pursuant to subsection (b)..” 740 ILCS 23/5.

185. Pursuant to the foregoing, the plaintiff is entitled to preliminary and permanent injunctive relief enjoining the Tollway from implementing its Diversity Program.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays for a judgment in its favor and against the Tollway as follows:

A. For a preliminary and permanent injunction enjoining the Tollway from implementing its Diversity Program;

B. For reasonable attorneys' fees and costs, including expert witness fees, if applicable, and other litigation expenses; and

C. For such further interim and permanent relief as this Court deems necessary and appropriate.

COUNT XVI

The Tollway – Monetary Damages – Federal Law

186. The plaintiff incorporates herein by reference paragraphs 1 through 6, 8, 13 through 20, 41 through 46, 48, 49, and 131 through 185 above.

A. Applicable Federal Law

187. Pursuant to the foregoing, the Tollway, through its DBE program, has hindered the ability of Midwest Fence to make and enforce contracts in violation of 42 U.S.C. § 1981.

188. As described above, under color of State law, the Tollway's DBE program has deprived Midwest Fence of its rights and privileges secured by the Constitution and the laws in violation of 42 U.S.C. § 1983.

B. The Damages Sustained by Midwest Fence

189. Since March 16, 2006, Midwest Fence has sustained damages in the approximate sum of \$1,854,000 as a direct consequence of the contract-goals required by the Tollway's Diversity Program.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays for a judgment in its favor and against the Tollway as follows:

A. For money damages in an amount sufficient to compensate Midwest Fence for the damages it has suffered as set forth above and as to be determined through discovery and proven at trial;

B. For costs, including a reasonable attorney's fee and expert fees, if applicable, pursuant to 42 U.S.C. § 1988(b); and

C. For such further interim and permanent relief as this Court deems necessary and appropriate.

COUNT XVII

Tollway – Monetary Damages – Illinois Civil Rights Act of 2003

190. The plaintiff incorporates herein by reference all of the above allegations.

191. Pursuant to the Section 5(b) of Illinois Civil Rights Act of 2003 set forth above, the State of Illinois has consented to liability against any unit of State government for actual damages caused by discrimination prohibited by Section 5(a) of that Act.

192. Pursuant to the foregoing acts and omissions of the Tollway, it has discriminated against Midwest Fence in violation of Section 5(a) of the Illinois Civil Rights Act of 2003.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays for a judgment in its favor and against the Tollway as follows:

- A. For its actual damages as set forth above and as to be determined through discovery and proven at trial;
- B. For reasonable attorneys' fees and costs, including expert witness fees, if applicable, and other litigation expenses pursuant to Section 5(c) of the Illinois Civil Rights Act of 2003; and
- C. For such further interim and permanent relief as this Court deems necessary and appropriate.

COUNT XVIII

Tollway Defendants – Punitive Damages

193. The plaintiff incorporates herein by reference all of the above allegations.

194. In November, 2011, the Tollway released a new disparity study it commissioned to be produced by Mason Tillman and Associates ("the MTA study").

195. On page 12-6 of the MTA study, it states that there is a statistically significant under-utilization of only African-American- and women-owned firms in public road construction subcontracting. Therefore, according to the Tollway's own study, only African-American- and women-owned firms are to be presumed disadvantaged. In fact, on page 12-10 the MTA study specifically recommends: "Contract specific subcontracting goals should only apply to these groups... To be narrowly tailored, the subcontracting goals should be set on a contract-specific basis limited to the groups determined to have a statistically significant disparity."

196. Regardless, at its last letting, the Tollway knowingly used the same pool of DBEs as it used before the release of the MTA study, thereby ignoring its own study and the recommendations contained therein.

197. These actions amount to willful discrimination and reckless disregard of the federally protected rights of, the plaintiff, Midwest Fence, and other non-DBE specialty subcontractors.

WHEREFORE, the plaintiff, Midwest Fence Corporation, prays for punitive damages against the Tollway Defendants in excess of \$10,000,000.00, plus attorneys fees pursuant to 42 U.S.C. §1988, and whatever other relief this Court deems appropriate.

Respectfully submitted,

MIDWEST FENCE CORPORATION

By: /s/James R. Dashiell
One of its attorneys

James R. Dashiell (6182044)
Courtney D. Lorentz (6281252)
Dashiell Law Offices, LLC
221 N. LaSalle Street, Suite 1300
Chicago, IL 60601
Phone: 312-920-9118

CERTIFICATE OF SERVICE

On July 20, 2012, I served all counsel of record with the above pleading by Electronic Case Filing (ECF).

/s/James R. Dashiell

APPENDIX 3 - INSURANCE CERTIFICATES

The requested insurance certificates are contained herein.





CERTIFICATE OF LIABILITY INSURANCE

OP ID: NF

DATE (MM/DD/YYYY)

07/11/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Crist, Fritsch & Paterson Inc
286 Grand Avenue, Suite 230
Oakland, CA 94610
Nancy Fleming

CONTACT NAME: Thomas K. Smith

PHONE (A/C No. Ext): 510-451-8000

FAX (A/C No): 510-451-4203

E-MAIL

ADDRESS

PRODUCER CUSTOMER ID #: MASON-1

INSURED
Mason Tillman Associates
1989 Harrison Street, #1440
Oakland, CA 94612

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: The Hartford Insurance Group

INSURER B: United States Liability Ins.

INSURER C:

INSURER D:

INSURER E:

INSURER F:

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURER	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	X X	57SBAKD8234	03/14/2014	03/14/2015	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		57UECIF7945	03/14/2014	03/14/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (PER ACCIDENT) \$ \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE \$ RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A				WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Professional Liab		SP1018886D	11/24/2013	11/24/2014	Ea Claim 1,000,000 Ded 10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Palm Beach listed as Additional Insured per attached forms.

CERTIFICATE HOLDER

CANCELLATION

Palm Beach County
c/o Insurance Tracking
Services, Inc.
PO Box 20271
Long Beach, CA 90801

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Nancy Fleming

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ACORD 25 (2009/09)

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POLICY NUMBER: 575BAKD8234



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PALM BEACH COUNTY

Form IH 12 00 11 85 J SEQ. NO.
Process Date: 07-11-14

Printed in U.S.A.

Page

Expiration Date:

**QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY**

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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section C. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the Insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the Insured against any "suit" seeking those damages. However, we will have no duty to defend the Insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D. - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (b) The "bodily injury" or "property damage" occurs during the policy period; and

- (c) Prior to the policy period, no Insured listed under Paragraph 1. of Section C. - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed Insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any Insured listed under Paragraph 1. of Section C. - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
 - d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
 - e. **Incidental Medical Malpractice**
 - (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
 - (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".
- 2. MEDICAL EXPENSES**
- Insuring Agreement**
- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
 - b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
 - (1) First aid administered at the time of an accident;
 - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
 - (3) Necessary ambulance, hospital, professional nursing and funeral services.
- 3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS**
- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
 - (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

BUSINESS LIABILITY COVERAGE FORM

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

(1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

(2) This insurance applies to such liability assumed by the insured;

(3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

(4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;

(5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

(6) The indemnitee:

(a) Agrees in writing to:

(i) Cooperate with us in the investigation, settlement or defense of the "suit";

(ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

(iii) Notify any other insurer whose coverage is available to the indemnitee; and

(iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(b) Provides us with written authorization to:

(i) Obtain records and other information related to the "suit"; and

(ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. - Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

(1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or

(2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

(1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or

(2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

(1) "Bodily injury" or "property damage"; or

(2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

(a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

BUSINESS LIABILITY COVERAGE FORM

(b) "Bodily Injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

(I) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and

(II) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily Injury" to:

- (1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily Injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants";

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

(I) "Bodily Injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(II) "Bodily Injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

BUSINESS LIABILITY COVERAGE FORM

- (III) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or

released as part of the operations being performed by such insured, contractor or subcontractor;

- (II) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (III) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

BUSINESS LIABILITY COVERAGE FORM

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

BUSINESS LIABILITY COVERAGE FORM

(8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;

(9) Any:

(a) Body piercing (not including ear piercing);

(b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and

(c) Similar services;

(10) Services in the practice of pharmacy; and

(11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.a. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

(1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

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o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

If such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

(8) Arising out of an offense committed by an insured whose business is:

(a) Advertising, broadcasting, publishing or telecasting;

(b) Designing or determining content of web sites for others; or

(c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section G. - Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

(9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;

(10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;

(11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

(12) Arising out of:

(a) An "advertisement" for others on your web site;

(b) Placing a link to a web site of others on your web site;

(c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or

(d) Computer code, software or programming used to enable:

(i) Your web site; or

(ii) The presentation or functionality of an "advertisement" or other content on your web site;

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(13) Arising out of a violation of any anti-trust law;

(14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or

(15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

(1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person's employment; or

(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".

(2) Any damages, judgments, settlements, loss, costs or expenses that:

(a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

(b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or

(c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or

(3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You - Exception For Damage By Fire, Lightning Or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

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2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

- a. Any Insured
To any insured, except "volunteer workers".
- b. Hired Person
To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. Injury On Normally Occupied Premises
To a person injured on that part of premises you own or rent that the person normally occupies.
- d. Workers' Compensation And Similar Laws
To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. Athletics Activities
To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.
- f. Products-Completed Operations Hazard
Included with the "products-completed operations hazard".
- g. Business Liability Exclusions
Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

- (1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

- (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;

- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

- (d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

- (2) "Property damage" to property:

- (a) Owned, occupied or used by,

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- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
- b. **Real Estate Manager**
Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
- c. **Temporary Custodians Of Your Property**
Any person or organization having proper temporary custody of your property if you die, but only:
- (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
- d. **Legal Representative If You Die**
Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.
- e. **Unnamed Subsidiary**
Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.
The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.
3. **Newly Acquired Or Formed Organization**
Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- b. Coverage under this provision does not apply to:
- (1) "Bodily injury" or "property damage" that occurred; or
 - (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
4. **Operator Of Mobile Equipment**
With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
 - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
5. **Operator of Nonowned Watercraft**
With respect to watercraft you do not own that is less than 61 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
 - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
6. **Additional Insureds When Required By Written Contract, Written Agreement Or Permit**
The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

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contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. — Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

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- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.
- c. Lessors Of Land Or Premises**
- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.
- d. Architects, Engineers Or Surveyors**
- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In connection with your premises; or
- (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.
- e. Permits Issued By State Or Political Subdivisions**
- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".
- f. Any Other Party**
- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In the performance of your ongoing operations;
- (b) In connection with your premises owned by or rented to you; or
- (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
- (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
- (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. - Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. - Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- Insureds;
- Claims made or "suits" brought; or
- Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to 2.a. or 2.b. above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage To Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the Insured or of the Insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional Insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any Insured, you or any additional Insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional Insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved Insured must:

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- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the Insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No Insured will, except at that Insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional Insured, such additional Insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional Insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional Insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional Insured that is an individual;
- (2) Any partner, if you or an additional Insured is a partnership;
- (3) Any manager, if you or an additional Insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional Insured is a corporation;
- (5) Any trustee, if you or an additional Insured is a trust; or
- (6) Any elected or appointed official, if you or an additional Insured is a political subdivision or public entity.

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This Paragraph f. applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each Insured against whom a claim is made or "suit" is brought.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. - Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. - Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

BUSINESS LIABILITY COVERAGE FORM

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

BUSINESS LIABILITY COVERAGE FORM

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor Of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision - Permits

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

BUSINESS LIABILITY COVERAGE FORM

Insured - State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured - Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured - Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

BUSINESS LIABILITY COVERAGE FORM

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured - Owners, Lessees Or Contractors - Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In the performance of your ongoing operations for the additional insured(s); or

(2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured - Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured - Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. - Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. - Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising Idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily Injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

BUSINESS LIABILITY COVERAGE FORM

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the internet or similar electronic means of communication
- provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.
7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or fromcomputer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;
- If such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.
12. "Insured contract" means:
 - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. - Liability and Medical Expenses Limits of Insurance.
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement; or
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.
- However, Paragraph f. does not include that part of any contract or agreement:

BUSINESS LIABILITY COVERAGE FORM

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
- (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

BUSINESS LIABILITY COVERAGE FORM

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
19. "Products-completed operations hazard";
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
20. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
23. "Volunteer worker" means a person who:
- a. Is not your "employee";

BUSINESS LIABILITY COVERAGE FORM

- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.

- e. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and

- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

- (2) The providing of or failure to provide warnings or instructions.



P.O. BOX 8192, PLEASANTON, CA 94588

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 07-14-2014

GROUP:
POLICY NUMBER: 0598528-2013
CERTIFICATE ID: 187
CERTIFICATE EXPIRES: 07-18-2014
07-18-2013/07-18-2014

PALM BEACH COUNTY
PO BOX 20270
LONG BEACH CA 90801-3270

NB

This is to certify that we have issued a valid Workers' Compensation Insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period that will expire or did expire as indicated above.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

A handwritten signature in black ink, appearing to read "Kurt R. V. Lenz".

Authorized Representative

A handwritten signature in black ink, appearing to read "Thomas E. Rone".

President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #2088 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 07-18-1998 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.

EMPLOYER

MASON TILLMAN ASSOCIATES, LTD. (A CORP.) NB
1888 HARRISON ST STE 1440
OAKLAND CA 94612

[P11,NB]

APPENDIX 4 - REQUIRED FORMS

The required forms requested in the RFP are contained herein.





SCHEDULE 1

LIST OF PROPOSED SBE-M/WBE PRIME AND/OR SUBCONTRACTOR PARTICIPATION

PROJECT NAME OR BID NAME: Palm Beach County Disparity Study

NAME OF PRIME BIDDER: Mason Tillman Associates, LTD.

CONTACT PERSON: Eleanor Mason Ramsey, Ph.D.

BID OPENING DATE: July 31, 2014

PROJECT NO. OR BID NO.: 14-071/LJ

ADDRESS: 1999 Harrison Street, Suite 1440 Oakland CA 94612

PHONE NO.: (510) 835-9012 FAX NO.: (510) 835-2647

USER DEPARTMENT: _____

THIS DOCUMENT IS TO BE COMPLETED BY THE PRIME CONTRACTOR AND SUBMITTED WITH BID PACKET. PLEASE LIST THE NAME, CONTACT INFORMATION AND DOLLAR AMOUNT OR PERCENTAGE OF WORK TO BE COMPLETED BY ALL SBE -M/WBE SUBCONTRACTORS ON THIS PROJECT. IF THE PRIME IS AN SBE-M/WBE, PLEASE ALSO LIST THE NAME, CONTACT INFORMATION AND DOLLAR AMOUNT OR PERCENTAGE OF WORK TO BE COMPLETED BY THE PRIME ON THIS PROJECT. THE PRIME AFFIRMS THAT IT WILL MONITOR THE SBES LISTED TO ENSURE THE SBES PERFORM THE WORK WITH ITS OWN FORCES.

Name, Address and Phone Number	(Check one or both Categories)		DOLLAR AMOUNT OR PERCENTAGE OF WORK				
	M/WBE	SBE	Black	Hispanic	Women	Caucasian	Other (Please Specify)
Decision Support Partners, Inc. 3121 Florida Blvd Palm Beach Gardens FL 33410 1. 561-328-3039	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			4.5%		
S. Davis & Associates, P.A. 8411 Okeechobee Boulevard Suite B 2. West Palm Beach, Florida 33411 (561) 547-0545	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	3.67%				
Caren Hackman, Inc. 4305 Hickory Dr. Palm Beach Gardens, FL 33418 3. 561.622.4884	<input type="checkbox"/>	<input checked="" type="checkbox"/>				3.0%	
L.B. Limited and Associates, Inc. 120 South Dixie Hwy, Ste.205, WPB, FL 33401 4. 561-833-8080	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	4.5%				
5. (Please use additional sheets if necessary)	<input type="checkbox"/>	<input type="checkbox"/>					
Total			8.17%		4.5%	3.0%	

Total Bid Price \$ 749,995.00

Total SBE-M/WBE Participation Dollar Amount or Percentage of Work 15.67%

I hereby certify that the above information accurate to the best of my knowledge:

Signature

President
Title

Note:

1. The amount listed on this form for a subcontractor must be supported by price or percentage listed on the signed Schedule 2 or signed proposal in order to be counted toward goal attainment.
2. Firms may be certified by Palm Beach County as an SBE and/or M/WBE. If firms are certified as both an SBE and M/WBE, please indicate the dollar amount or percentage under the appropriate category.
3. M/WBE information is being collected for tracking purposes only.

Revised 9/7/2011

OSBA SCHEDULE 2
LETTER OF INTENT TO PERFORM AS AN SBE-M/WBE SUBCONTRACTOR

This document must be completed by the SBE-M/WBE Subcontractor and submitted with bid packet. Specify in detail, the particular work items to be performed and the dollar amount and/or percentage for each work item. SBE credit will only be given for items which the SBE-M/WBE Subcontractor are SBE certified to perform. Failure to properly complete Schedule 2 may result in your SBE participation not being counted.

PROJECT NUMBER: 14-071/LJ PROJECT NAME: Palm Beach County Disparity Study

TO: Mason Tillman Associates, LTD.

(Name of Prime Bidder)

The undersigned is certified by Palm Beach County as a - (check one or more, as applicable):

Small Business Enterprise X Minority Business Enterprise _____

Black _____ Hispanic _____ Women X Caucasian _____ Other (Please Specify) _____

Date of Palm Beach County Certification: March 19, 2014

The undersigned is prepared to perform the following described work in connection with the above project.
Additional Sheets May Be Used As Necessary

Line Item/ Lot No.	Item Description	Qty/Units	Unit Price	Total Price/ Percentage
1	Ethnicity & Gender Survey		\$9,000	26.67%
2	Business Outreach		\$5,000	14.81%
3	Anecdotal & Transcription		\$19,750	58.52%

at the following price or percentage 4.5% OR \$33,750
(Subcontractor's quote)

and will enter into a formal agreement for work with you conditioned upon your execution of a contract with Palm Beach County.

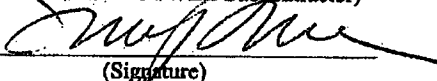
If undersigned intends to sub-subcontract any portion of this job to a certified SBE or a non-SBE subcontractor, please list the name of that subcontractor and the amount below.

Price or Percentage _____
(Name of Subcontractor)

The Prime affirms that it will monitor the SBE's listed to ensure the SBE's perform the work with its own forces. The undersigned subcontractor affirms that it has the resources necessary to perform the work listed without subcontracting to a non-certified SBE or any other certified SBE subcontractors except as noted above.

The undersigned subcontractor understands that the provision of this form to Prime Bidder does not prevent Subcontractor from providing quotations to other bidders.

Decision Support Partners, Inc.
(Print name of SBE-M/WBE Subcontractor)

By: 
(Signature)

Surale Phillips/ President
(Print name/title of person executing on behalf
of SBE-M/WBE Subcontractor)

Revised 10/11/2011

Date: July 28, 2013

OSBA SCHEDULE 2
LETTER OF INTENT TO PERFORM AS AN SBE-M/WBE SUBCONTRACTOR

This document must be completed by the SBE-M/WBE Subcontractor and submitted with bid packet. Specify in detail, the particular work items to be performed and the dollar amount and/or percentage for each work item. SBE credit will only be given for items which the SBE-M/WBE Subcontractor are SBE certified to perform. Failure to properly complete Schedule 2 may result in your SBE participation not being counted.

PROJECT NUMBER: 14-071/LJ PROJECT NAME: Palm Beach County Disparity Study

TO: Mason Tillman Associates, LTD.

(Name of Prime Bidder)

The undersigned is certified by Palm Beach County as a - (check one or more, as applicable):

Small Business Enterprise ☒ Minority Business Enterprise ☒

Black ☒ Hispanic ☐ Women ☐ Caucasian ☐ Other (Please Specify)

Date of Palm Beach County Certification: October 24, 2012

The undersigned is prepared to perform the following described work in connection with the above project.
Additional Sheets May Be Used As Necessary

Line Item/ Lot No.	Item Description	Qty/Units	Unit Price	Total Price/ Percentage
1	Data Collection	1	\$22,500	81.82%
2	Willingness Survey	1	\$5,000	18.18%

at the following price or percentage 3.67% or \$27,500
(Subcontractor's quote)

and will enter into a formal agreement for work with you conditioned upon your execution of a contract with Palm Beach County.

If undersigned intends to sub-subcontract any portion of this job to a certified SBE or a non-SBE subcontractor, please list the name of that subcontractor and the amount below.

Price or Percentage _____
(Name of Subcontractor)

The Prime affirms that it will monitor the SBE's listed to ensure the SBE's perform the work with its own forces. The undersigned subcontractor affirms that it has the resources necessary to perform the work listed without subcontracting to a non-certified SBE or any other certified SBE subcontractors except as noted above.

The undersigned subcontractor understands that the provision of this form to Prime Bidder does not prevent Subcontractor from providing quotations to other bidders.

S. Davis & Associates, P.A.
(Print name of SBE-M/WBE Subcontractor)
By: [Signature]
(Signature)
Shaun Davis/Partner
(Print name/title of person executing on behalf of SBE-M/WBE Subcontractor)

Revised 10/11/2011

Date: July 28, 2014

**OSBA SCHEDULE 2
LETTER OF INTENT TO PERFORM AS AN SBE-M/WBE SUBCONTRACTOR**

This document must be completed by the SBE-M/WBE Subcontractor and submitted with bid packet. Specify in detail, the particular work items to be performed and the dollar amount and/or percentage for each work item. SBE credit will only be given for items which the SBE-M/WBE Subcontractor are SBE certified to perform. Failure to properly complete Schedule 2 may result in your SBE participation not being counted.

PROJECT NUMBER: 14-071/LJ PROJECT NAME: Palm Beach County Disparity Study

TO: Mason Tillman Associates, LTD.

(Name of Prime Bidder)

The undersigned is certified by Palm Beach County as a - (check one or more, as applicable):

Small Business Enterprise ☒

Minority Business Enterprise ☒

Black ☒ Hispanic ☐ Women ☐ Caucasian ☐ Other (Please Specify) ☐

Date of Palm Beach County Certification: January 14, 2014

The undersigned is prepared to perform the following described work in connection with the above project.
Additional Sheets May Be Used As Necessary

Line Item/ Lot No.	Item Description	Qty/Units	Unit Price	Total Price/ Percentage
1	Community Meeting Coordination		\$25,000	74.08%
2	Public Hearing Facilitation		\$8,750	25.92%

at the following price or percentage 4.5% or \$33,750
(Subcontractor's quote)

and will enter into a formal agreement for work with you conditioned upon your execution of a contract with Palm Beach County.

If undersigned intends to sub-subcontract any portion of this job to a certified SBE or a non-SBE subcontractor, please list the name of that subcontractor and the amount below.

Price or Percentage _____
(Name of Subcontractor)

The Prime affirms that it will monitor the SBE's listed to ensure the SBE's perform the work with its own forces. The undersigned subcontractor affirms that it has the resources necessary to perform the work listed without subcontracting to a non-certified SBE or any other certified SBE subcontractors except as noted above.

The undersigned subcontractor understands that the provision of this form to Prime Bidder does not prevent Subcontractor from providing quotations to other bidders.

Mr. Bruce N. Lewis
(Print name of SBE-M/WBE Subcontractor)
By: Bruce N. Lewis
(Signature)
Bruce N. Lewis
(Print name/title of person executing on behalf of SBE-M/WBE Subcontractor)

Revised 10/11/2011

Date: 7/24/14

OSBA SCHEDULE 2
LETTER OF INTENT TO PERFORM AS AN SBE-M/WBE SUBCONTRACTOR

This document must be completed by the SBE-M/WBE Subcontractor and submitted with bid packet. Specify in detail, the particular work items to be performed and the dollar amount and/or percentage for each work item. SBE credit will only be given for items which the SBE-M/WBE Subcontractor are SBE certified to perform. Failure to properly complete Schedule 2 may result in your SBE participation not being counted.

PROJECT NUMBER: 14-071/LJ PROJECT NAME: Palm Beach County Disparity Study

TO: Mason Tillman Associates, LTD.
(Name of Prime Bidder)

The undersigned is certified by Palm Beach County as a - (check one or more, as applicable):

Small Business Enterprise x Minority Business Enterprise

Black Hispanic Women x Caucasian x Other (Please Specify)

Date of Palm Beach County Certification: December 4, 2012

The undersigned is prepared to perform the following described work in connection with the above project.
Additional Sheets May Be Used As Necessary

Line Item/ Lot No.	Item Description	Qty/Units	Unit Price	Total Price/ Percentage
1	Website Design		\$8,000	35.56%
2	Community Meeting and Public Hearing Facilitation		\$14,500	64.44%

at the following price or percentage 3% OR \$22,500
(Subcontractor's quote)

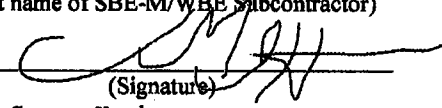
and will enter into a formal agreement for work with you conditioned upon your execution of a contract with Palm Beach County.

If undersigned intends to sub-subcontract any portion of this job to a certified SBE or a non-SBE subcontractor, please list the name of that subcontractor and the amount below.

Price or Percentage 3% or \$22,500 Caren Hackman, Inc.
(Name of Subcontractor)

The Prime affirms that it will monitor the SBE's listed to ensure the SBE's perform the work with its own forces. The undersigned subcontractor affirms that it has the resources necessary to perform the work listed without subcontracting to a non-certified SBE or any other certified SBE subcontractors except as noted above.

The undersigned subcontractor understands that the provision of this form to Prime Bidder does not prevent Subcontractor from providing quotations to other bidders.

Caren Hackman, Inc.
(Print name of SBE-M/WBE Subcontractor)
By: 
(Signature)
Caren Hackman
(Print name/title of person executing on behalf of SBE-M/WBE Subcontractor)

Revised 10/11/2011

Date: July 23, 2014

**Palm Beach County
Office of Small Business Assistance**

Certifies That

Decision Support Partners Inc.

VENDOR # **VC000001219**

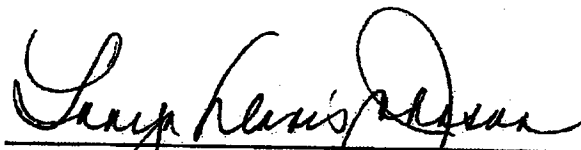
*is a Small/Women Business Enterprise as prescribed by section 2-80.21 – 2-80.35 of the Palm Beach
County Code for a three year period from March 19, 2014 - March 18, 2017*

The following Services and/or Products are covered under this certification:

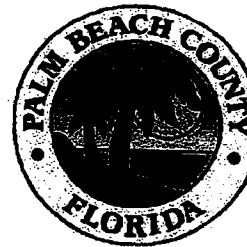
91827 - Community Development Consulting

91849 - Feasibility Studies (Consulting)

9616075 - Survey, Public Opinion


Tonya Davis Johnson, Director

March 19, 2014



Palm Beach County Board of County Commissioners

Priscilla A. Taylor, Mayor
Paulette Burdick, Vice Mayor
Hal R. Valeche
Shelley Vana
Steven L. Abrams
Mary Lou Berger
Jess R. Santamaria

County Administrator

Robert Weisman

Deputy County Administrator

Verdenia C. Baker

**Palm Beach County
Office of Small Business Assistance**

Certifies That
L.B. Limited & Associates, Inc.

VENDOR # **LBLI0001**

*is a Small/Minority Business Enterprise as prescribed by Section 2-80.21- 2-80.35 of the Palm Beach
County Code for a three year period from January 14, 2014 to January 13, 2017.*

The following Services and/or Products are covered under this certification:


**Communications Marketing Services
Communications: Public Relations Consulting
Outreach Services
Public Awareness Programs
Public Information Services**

Palm Beach County Board of County Commissioners

Priscilla A. Taylor, Mayor
Paulette Burdick, Vice Mayor
Val R. Valocchi
Shelley Vann
Steven L. Abrams
Mary Lou Berger
Jess R. Santamaria

County Administrator
Robert Weisman
Deputy County Administrator
Veronica C. Baker




Allen Gray, Manager
January 14, 2014

**Palm Beach County
Office of Small Business Assistance**

Certifies That

Caren Hackman, Inc.

VENDOR # VC0000125278

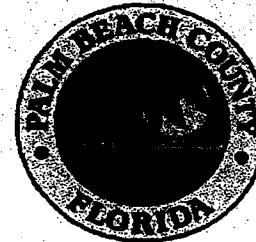
is a Small Business Enterprise as prescribed by section 2-80.21 – 2-80.35 of the Palm Beach County Code for a three year period from December 4, 2012 to December 3, 2015.

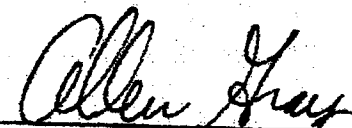
The following Services and/or Products are covered under this certification:

**Artist (Including Digital Artists)
Consulting, Communications, Public Relations
Web Page Design, Management and Maintenance Services
Graphic Design Services for Printing**

Palm Beach County Board of County Commissioners

Steven L. Abrams, Chairman
Priscilla A. Taylor, Vice Chair
Hal R. Valeche
Paulette Burdick
Shelley Vana
Mary Lou Berger
Jess R. Santamaria
County Administrator
Robert Weisman
Deputy County Administrator
Verdenia C. Baker




Allen Gray, Manager

11/01/2012

INTERLOCAL CERTIFICATION COVER SHEET

Initiating Agency: **PBC Office of Small Business Assistance** By: 

Authorized Signature

To be presented to: ☐ Palm Beach County Office of Small Business Assistance (SBE)
☐ Palm Beach County School Board (SBE – MW/BE)
☐ City of West Palm Beach (SBE)

BUSINESS NAME ADDRESS (include d/b/a if applicable)	BUSINESS TEL. NO: 561-547-0545
S. Davis & Associates, P.A.	BUSINESS FAX NO: 561-256-2747
8144 Okeechobee Blvd, Suite B	DATE ESTABLISHED: 01/9/1997
West Palm Beach, FL 33411	# FULL-TIME EMPLOYEES: 10
	# PART-TIME EMPLOYEES:
CONTACT PERSON: Shaun Davis	# CONTRACT/TEMPORARY EMPLOYEES:
DOMICILE VERIFIED: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

BUSINESS FUNCTION: Accounting and Billing Services; Accounting/Financial: Bookkeeping, Billing and Invoicing, Budgeting, Payroll, Taxes, etc.; Auditing; Business Consulting, Large; Business Consulting, Minority and Small; Certified Public Accountant (CPA) Services; Tax Services (Including Tax Preparation, Advisory Services, etc.)

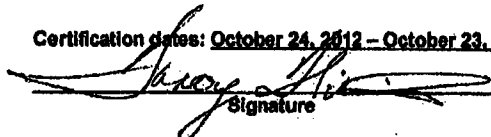
BUSINESS TYPE: Construction ☐ Commodities ☐ Professional Services ☒ Professional Services (CCNA Required) ☐

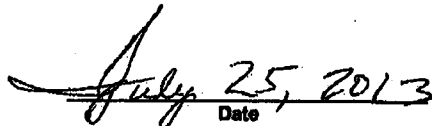
CERTIFICATION STATUS: ☒ SBE ☒ MBE ☐ WBE

BUSINESS ORG.	% OF OWNERSHIP		Gross Receipts	
<input checked="" type="checkbox"/> Corporation	<input type="checkbox"/> 100% African American	<input type="checkbox"/> 100% Male	Year	Dollar Amount
<input type="checkbox"/> Partnership	<input type="checkbox"/> Asian American	<input type="checkbox"/> Female	2011	\$0.00
<input type="checkbox"/> Sole Proprietor	<input type="checkbox"/> Hispanic American		2010	\$0.00
<input type="checkbox"/> Other _____	<input type="checkbox"/> Native American		2009	\$0.00
	<input type="checkbox"/> Non-Minority		Average	\$0.00

SBE: ☒ Certified ☐ Denied ☐ Deferred ☐ Site Visit
 MBE: ☒ Certified ☐ Denied ☐ Deferred ☐ Site Visit

Certification dates: October 24, 2012 – October 23, 2015


Signature


Date July 25, 2013

Documents	OSBA	School Board MWBE	School Board SBE	City of West Palm Beach
Palm Beach County Business Tax Receipt	✓			
Fictitious Name Certificate	✓			
Most recent three years' tax returns, signed as filed with the Internal Revenue Service	✓	✓		✓
All schedules from three years' corporate or partnership tax returns	✓	✓		✓
Schedule C from three years' personal tax returns	✓	✓		
Proof of Domicile	✓			✓
Palm Beach County CCNA Certification (Architects/Engineers)	✓			
Resumes of principals and/or partners and/or management personnel		✓		
PBC Vendor Registration	✓			
Bank signature card		✓		
List of Officers, Board of Directors and Shareholders	✓	✓		✓
Minutes of first corporate organizational meeting		✓		
Partnership's distribution of profits for previous year	✓			
Third Party Agreements (rental and lease agreements, management agreements, purchase agreements)		✓		
Application and Affidavit	✓	✓	✓	✓
Professional License/Certificate of Competency	✓			

APPENDIX D
DRUG-FREE WORKPLACE CERTIFICATION
RFP NO. 14-071/LJ

IDENTICAL TIE PROPOSALS - In accordance with Section 287.087, F.S., a preference will be given to vendors submitting with their proposals the following certification that they have implemented a drug-free workplace program which meets the requirements of Section 287.087; provided, however, that any preference given pursuant to Section 287.087, shall be made in conformity with the requirements of the Palm Beach County Code, Chapter 2, Article III, Sections 2-80.21 through 2-80.34. In the event tie proposals are received from vendors who have not submitted with their proposals a completed Drug-Free Workplace Certification form, the award will be made in accordance with Palm Beach County's purchasing procedures pertaining to tie proposals.

This Drug-Free Workplace Certification form must be executed and returned with the attached proposal, and received on or before time of proposal opening to be considered. The failure to execute and/or return this certification shall not cause any proposal to be deemed non-responsive.

Whenever two (2) or more proposals which are equal with respect to price, quality, and service are received by Palm Beach County for the procurement of commodities or contractual services, a proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

- (1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- (2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- (3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in number (1).
- (4) In the statement specified in number (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893, Florida Statutes, or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- (5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- (6) Make a good faith effort to continue to maintain a drug-free workplace through implementation Section 287.087, Florida Statutes.

THIS CERTIFICATION is submitted by Eleanor Mason Ramsey, Ph.D. the
(Individual's Name)

President of Mason Tillman Associates, Ltd.
(Title/Position with Company/Vendor) (Name of Company/Vendor)

who does hereby certify that said Company/Vendor has implemented a drug-free workplace program which meets the requirements of Section 287.087, Florida Statutes, which are identified in numbers (1) through (6) above.


Signature

7-29-14
Date

APPENDIX E
DISCLOSURE OF OWNERSHIP INTERESTS
RFP NO. 14-071/LJ

TO: **PALM BEACH COUNTY CHIEF OFFICER,
OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE**

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

BEFORE ME, the undersigned authority, this day personally appeared Eleanor Mason Ramsey, Ph.D., hereinafter referred to as "Affiant," who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant appears herein as:
☐ an individual or
☒ the President of Mason Tillman Associates, Ltd.
[position—e.g., sole proprietor, president, partner, etc.] [name & type of entity—e.g., ABC Corp., XYZ Ltd. Partnership, etc.].
The Affiant or the entity the Affiant represents herein seeks to do business with Palm Beach County through its Board of County Commissioners.

2. Affiant's address is: 1999 Harrison Street, Suite 1440
Oakland, CA 94612-4710


3. Attached hereto as Exhibit "A" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater interest in the Affiant's corporation, partnership, or other principal. Disclosure does not apply to nonprofit corporations, government agencies, or to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County policy, and will be relied upon by Palm Beach County and the Board of County Commissioners. Affiant further acknowledges that he or she is authorized to execute this document on behalf of the entity identified in paragraph one, if any.

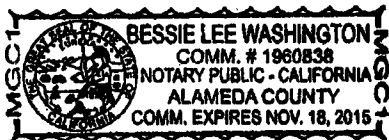
5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct and complete.

FURTHER AFFIANT SAYETH NAUGHT.


Eleanor Mason Ramsey, Ph.D., Affiant
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 16 day of July, 2014, by Eleanor M. Ramsey, [] who is personally known to me or [☒] who has produced California Drivers License as identification and who did take an oath.



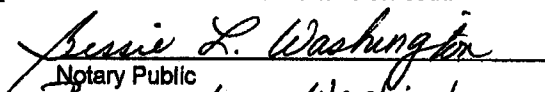

Notary Public
BESSIE Lee Washington
(Print Notary Name)
State of ~~Florida~~ California
My Commission Expires: November 18, 2015

EXHIBIT "A"

DISCLOSURE OF OWNERSHIP INTERESTS IN AFFIANT

Affiant must identify all entities and individuals owning five percent (5%) or more ownership interest in Affiant's corporation, partnership or other principal, if any. Affiant must identify individual owners. For example, if Affiant's principal is wholly or partially owned by another entity, such as a corporation, Affiant must identify the other entity, its address, and the individual owners of the other entity. Disclosure does not apply to any nonprofit corporation, government agency, or to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

Name**Address**

Eleanor Mason Ramsey, Ph.D.

1999 Harrison Street, Suite 1440 Oakland, CA 94612

APPENDIX 5 - EXECUTIVE SUMMARIES

The required executive summaries of the Mason Tillman disparity studies for the California High-Speed Rail Authority, Bexar County, and City of Fort Wayne are contained herein.



California High-Speed Rail Authority

Executive Summary Disparity Study

Final Report

MASON TILLMAN
ASSOCIATES, LTD

May 2014

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EXECUTIVE SUMMARY

I. STUDY OVERVIEW

A. Study Team

Mason Tillman Associates, Ltd., (Mason Tillman) a public policy consulting firm based in Oakland, California, performed the 2014 Business Market Availability and Disparity Study (Study) for the California High-Speed Rail Authority (Authority). Diversified Contract Management Group, Urban Strategic Solutions, Katherine Padilla & Associates, Inc., and Sullivan International, Inc. assisted Mason Tillman in the performance of the Study. The consultants performed data collection, surveying services and assisted in the planning and facilitation of the Public Participation Meetings.

Robert Padilla, Small Business Advocate and Kendall Darr, Esq, Legal Counsel managed the Study. Mr. Padilla facilitated Mason Tillman's access to the contract and procurement data needed to perform the Study.

B. Study Purpose

The purpose of the Disparity Study was to determine whether or not there was statistically significant underutilization in the award of the Authority's prime contracts and subcontracts to Disadvantaged Business Enterprises (DBEs) and businesses owned by minorities and women (M/WBEs) in the market area during the study period. The Study also analyzed the utilization of Disabled Veteran Business Enterprises (DVBES) and Small Businesses (SBEs), although underutilization of these businesses was not subject to a test of statistical significance. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs and DBEs, hereafter M/WBEs, should be relatively close to the corresponding proportion of available M/WBEs¹ in the relevant market area. If the available M/WBE prime contractors or subcontractors are underutilized, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event which is less probable.

¹ Availability is defined as the number of ready, willing and able firms. The methodology for determining willing and able firms is detailed in Chapter 4.

C. Study Period and Industries

Prime contracts and subcontracts awarded from July 1, 2006 to June 30, 2013 constituted the universe of contracts studied. Only professional services contracts, including architecture and engineering were awarded during this timeframe. Prime contracts the Authority awarded included construction management, landscape architecture, surveying, mapping, legal, accountants, technical, information technology, research, planning, and consultant services.

D. Ethnic and Gender Groups Studied

Consistent with 49 CFR Section 26.5, the analysis of disparity was disaggregated into nine ethnic and gender groups. The nine groups are listed in Table 1.

Table 1: Business Ethnic and Gender Groups

Ethnicity and Gender Category	Definition
African American Businesses	Businesses owned by male and female African Americans
Asian-Pacific American Businesses	Businesses owned by male and female Asian-Pacific Americans
Subcontinent Asian American Businesses	Businesses owned by male and female Subcontinent Asian Americans
Hispanic American Businesses	Businesses owned by male and female Hispanic Americans
Native American Businesses	Businesses owned by male and female Native Americans
Minority-owned Business Enterprises	Businesses owned by African American, Asian-Pacific American, Subcontinent Asian American, Hispanic American, and Native American males and females
Minority and Women-owned Business Enterprises	Businesses owned by Minority Males, Minority Females, and Caucasian Females
Non-Minority Female-owned Business Enterprises	Businesses owned by Caucasian Females



Ethnicity and Gender Category	Definition
Non-Minority Male-owned Business Enterprises	Businesses owned by Caucasian Males, and businesses that could not be identified as Minority or Female-owned

E. Prime Contract Data

The data for the prime contractor utilization analysis includes contract awards and amendments compiled by the Authority's Office of Contracts and Procurement, proposal budget amounts collected from bids and proposals on file with the Authority, and amendments provided by the Authority's prime contractors. The Authority also provided limited information on amendments to the original awards. However, the majority of the contract amendment amounts were secured directly from the prime contractors.

Payment data provided by the Authority was not adequate for the analysis. The payment data the Authority compiled was limited to payments made in the 2012-2013 fiscal year on 16 prime contracts. Since the Authority could not provide payment data for the contracts awarded during the entire study period, the prime utilization analysis was based on the original award amounts and amendments to the original awards. Contracts the Authority provided included not-for-profits, government agencies, educational institutions, and utilities. These contracts were marked for exclusion and were not included in the analysis.

Each contract was classified by industry based mainly on the contract title and the contractor's name. A few contracts did have a description of the services provided. The contract description information was also used to identify industry.

After the industry classifications of were assigned as either professional, architecture, or engineering services, the ethnicity and gender of each prime contractor were verified. The ethnicity and gender information the Authority maintained for prime contractors was incomplete. Since ethnicity and gender information is central to the validity of the prime contractor utilization analysis, Mason Tillman conducted research to reconstruct the ethnicity and gender for each prime contractor. The prime contractors' names were cross-referenced with certification lists, chambers of commerce lists, and trade organization membership directories. The prime contractors' websites were also reviewed for the business owners' ethnicity and gender. Prime contractors whose ethnicity and gender could not be verified through published sources were surveyed. Once the ethnicity and gender research was completed and the contract records were cleaned, the utilization analysis was performed. For purposes of the analysis, businesses that were employee-owned or publicly traded were also classified as non-minority male. Therefore Non-Minority Male-owned Business Enterprises is inclusive of these additional forms of business ownership.

F. Subcontractor Data

The Authority did not maintain comprehensive records of the subcontracts awarded by its prime contractors. Therefore, most of the award, payment, and demographic data on subcontracts awarded by the prime contractors had to be reconstructed. A number of steps were undertaken to compile the subcontract records. An initial research effort was made to retrieve hardcopy subcontract records from the Authority's archived files. Contract files and proposals housed in the Authority's file room were reviewed for documents containing subcontractor information. Bid documents, invoices, and close-out reports found in some of the stored files contained subcontractor names, award amounts, payment information, and contact data. The relevant documents were scanned and the information was entered into Mason Tillman's relational database.

The Authority anticipated that the contract files would contain complete records of all prime contractors and their subcontractors. However, the research effort undertaken in the Authority's contract files and proposals yielded only limited information. Since the stored files were not complete, additional research was undertaken.

The prime contractors were surveyed in an effort to reconstruct their subcontract records. Each of the Authority's prime contractors was contacted to request the subcontractors' name, contact information, initial awards and amendments, and total payment amounts. To verify subcontractor awards, payments, and participation on each prime contract, up to three attempts were made to contact prime contractors and subcontractors by telephone. Once contacted, the prime contractors and subcontractors had the option of verifying data by telephone, email, facsimile, or mail. If the subcontractor could not be contacted, the data collected from prime contractor or the Authority's project files were used in the utilization analysis. A total of 193 subcontractor records were compiled from the various sources and used in the subcontractor utilization analysis.

G. Contract Thresholds

Professional Services prime contracts were analyzed at five dollar levels. One level included all contracts regardless of award amount. A second level included all contracts \$14,000,000 and under. The third level included all contracts \$3,500,000 and under. The latter two levels were designated because under California Government Code (GC) and the California Code of Regulations (CCR)², the thresholds define a Small Business Enterprise and Microbusiness, respectively. The fourth and fifth levels, under \$250,000 and under \$50,000, are the informal thresholds defined in the California Department of General Services (DGS) procurement standards. DGS stipulates that contracts valued from \$5000.01 to \$249,999.99 can be awarded to a certified Small or Disabled Veteran-owned Business, provided that the department has received at least two responsive bids. As set forth in the California Public Contract Code (PCC), contracts under \$50,000 can

² GC § 14837(d)(1)-(2); 2 CCR 1896.12(a)-(b). <http://www.dgs.ca.gov/pd/programs/osds/sbeligibilitybenefits.aspx>. Last accessed March 17, 2014.

be awarded without a competitive bid process or advertising, regardless of business certification status.³

II. METHODOLOGY

A. Legal Framework

The *City of Richmond v. J.A. Croson Co.*⁴ (*Croson*) and related case law provided the legal framework for conducting the Disparity Study. Specifically, two United States decisions, *Croson* and *Adarand v. Peña*⁵ (*Adarand*), raised the standard by which federal courts review both local and federal government minority business enterprise and disadvantaged business enterprise contracting programs.

The City of Richmond, Virginia (City) adopted a Minority Business Utilization Plan (Plan) which required prime contractors awarded a City construction contract to meet a subcontract goal of at least 30 percent. The goal required 30 percent participation of minority businesses. The factual predicate for the plan included a statistical study demonstrating that 50 percent of the City's population was African American and the utilization of African Americans on the City's prime construction contracts was 0.67 percent. The plaintiff, J.A. Croson, Inc., was denied a waiver of the goal and challenged the City's Plan under 42 U.S.C. 1983, and argued that it was unconstitutional under the Fourteenth Amendment's Equal Protection Clause. The court announced the longstanding legal precedent that programs employing racial classification would be subject to "strict scrutiny," the highest legal standard. Government agencies such as the Authority, as set forth in *Croson*, may adopt race-conscious programs only as a remedy for identified statistical findings of discrimination and the remedy must impose a minimal burden upon unprotected classes. *Croson* ruled that an inference of discrimination can be made *prima facie* if the disparity is statistically significant. For this study, this analysis was applied to M/WBEs by ethnicity and gender within the one industry.

Adarand, which the United States Supreme Court decided in 1995, directly challenged the USDOT's Disadvantaged Business Enterprise (DBE) Program as set forth in statute and regulations. The Court found a compelling interest for the USDOT DBE Program but ruled, after applying the *Croson* "strict scrutiny" standard, that the DBE Program was not narrowly tailored. In response, the USDOT amended its regulations in 1999 to include goals which can be met by race-neutral and race-specific means.

³ GC §§ 11256, 14616, 14838.5 (a)-(b); PCC 10335.5 (c)(6), 10340 (b)(6). http://www.documents.dgs.ca.gov/pd/poliproc/y2Chapt04_10_0730.doc. Last accessed March 17, 2014.

⁴ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

⁵ *Adarand Constructors, Inc. v. Federico Peña*, 115 S.Ct. 2097 (1995).

Following *Adarand*, there were several circuit court cases which challenged the constitutionality of the USDOT DBE regulations.⁶ Until the 2005 Ninth Circuit Court of Appeals decision in *Western States Paving Co. v. State of Washington Dept. of Transportation*⁷ (*Western States*), the challenges had been unsuccessful. However, *Western States* found that the State of Washington's DBE Program was facially constitutional, but determined the State's application of the regulations was invalid because it was not narrowly tailored to a finding of statistically significant underutilization of the respective minority groups.

The following critical components were performed for the Authority's Disparity Study.

**Disparity Study:
Critical Components**

1. Legal Framework
2. Utilization Analysis
3. Market Area Analysis
4. Availability Analysis
5. Disparity Analysis
6. Anecdotal Analysis
7. Recommendations

A legal review (Regulatory Framework Analysis) was the **first step** in the disparity study. Case law sets the standard for the methodology employed in a disparity study. **Step two** was to collect utilization records and determine the extent to which Authority used M/WBEs to secure its needed professional services. Utilization records were also used to determine the geographical area in which companies that received the Authority's prime contracts were located. In **step three**, the Authority's market area was identified. Once the market area was defined, the **fourth step**, the availability analysis, identified businesses willing and able to provide professional services needed by the Authority. In the **fifth step**, a disparity analysis was performed to determine whether there was a statistically significant

underutilization of M/WBEs. In **step six**, the anecdotal analysis, the Authority-specific experiences of business owners in the State of California were collected. In **step seven**, the statistical and anecdotal analyses were reviewed and recommendations were written to enhance the Authority's efforts in contracting with M/WBEs in the State.

B. Structure of the Report

The Disparity Study findings are presented in ten chapters. The contents of each chapter are briefly described below

Overview of the Disparity Study Report

⁶ *Sherbrooke Turf Inc. v. Minnesota Department of Transportation*, 345 F.3d 964, 969-73 (8th Cir. 2003); *Gross Seed Co. v. Nebraska Department of Roads*, 345 F.3d 964 (8th Cir. 2003); *Western States Paving Co. v. State of Washington Dept. of Transportation*, 407 F. 3d 983 (9th Cir. 2005); *Northern Contracting Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (2007).

⁷ *Western States*, 407 F. 3d 983 (9th Cir. 2005)

- *Chapter 1: Regulatory Framework Analysis* presents the case law applicable to business affirmative action programs and the methodology based on those cases required for the Study
- *Chapter 2: Prime Contractor Utilization Analysis* presents the distribution of prime contracts by ethnicity, and gender
- *Chapter 3: Subcontractor Utilization Analysis* presents the distribution of subcontracts by ethnicity, and gender
- *Chapter 4: Market Area Analysis* presents the legal basis for geographical market area determination and defines Authority's market area
- *Chapter 5: Prime Contractor and Subcontractor Availability Analysis* presents the distribution of available businesses in the Authority's market area
- *Chapter 6: Anecdotal Analysis* presents the business owner's experiences of barriers and exemplary practices encountered in contracting or attempting to contract with Authority
- *Chapter 7: Prime Contractor Disparity Analysis* presents prime contractor utilization as compared to prime contractor availability by ethnicity and gender, and evaluates the statistical significance of any underutilization
- *Chapter 8: Subcontractor Disparity Analysis* presents subcontractor utilization as compared to subcontractor availability by ethnicity and gender, and evaluates the statistical significance of any underutilization
- *Chapter 10: Recommendations* presents race and gender-neutral remedies to enhance the Authority's Small and Disadvantaged Business Enterprise Program and its contracting with M/WBEs, DVBES and SBEs.

Appendix A: Business Market Availability and Capacity Analysis

III. NOTABLE FINDINGS

A. Utilization Analysis

The objective of the utilization analyses is to determine the level of M/WBE utilization as prime and subcontractors. This Study documents the Authority's utilization of M/WBE, DVBE and SBE prime and subcontractors by ethnicity and gender for the study period July 1, 2006 to June 30, 2013.

1. Prime Contractor Utilization Analysis

The Authority issued 74 contracts during the study period. The contract awards during the study period totaled \$1,020,574,634. Table 2 below summarizes the prime contractor utilization analysis by the percent of prime contract dollars awarded to each ethnic and gender group.

Table 2: Prime Contractor Utilization Summary

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American	0	0.00%	\$0	0.00%
Asian-Pacific Americans	0	0.00%	\$0	0.00%
Subcontinent Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	2	2.70%	\$110,000	0.01%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	5	6.76%	\$25,510,230	2.50%
Non-Minority Males	67	90.54%	\$994,954,404	97.49%
African American	0	0.00%	\$0	0.00%
Asian-Pacific Americans	0	0.00%	\$0	0.00%
Subcontinent Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	2	3.17%	\$110,000	0.13%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	5	7.94%	\$25,510,230	29.70%
Non-Minority Males	56	88.89%	\$60,286,211	70.17%
African American	0	0.00%	\$0	0.00%
Asian-Pacific Americans	0	0.00%	\$0	0.00%
Subcontinent Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	2	3.70%	\$110,000	0.55%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	2	3.70%	\$10,230	0.05%
Non-Minority Males	50	92.59%	\$20,016,211	99.40%
African American	0	0.00%	\$0	0.00%
Asian-Pacific Americans	0	0.00%	\$0	0.00%
Subcontinent Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	2	4.76%	\$110,000	2.33%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	2	4.76%	\$10,230	0.22%
Non-Minority Males	38	90.48%	\$4,607,670	97.46%
African American	0	0.00%	\$0	0.00%
Asian-Pacific Americans	0	0.00%	\$0	0.00%

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Subcontinent Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	1	5.56%	\$10,000	1.99%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	2	11.11%	\$10,230	2.03%
Non-Minority Males	15	83.33%	\$483,105	95.98%

Table 3: Certified Business Prime Contractor Utilization by Threshold

The Authority's Small and Disadvantaged Business Enterprise Program established in August 2012⁸ set an overall 30 percent SBE participation goal, which includes a 10 percent goal for DBEs and a 3 percent goal for DVBEs. No contracting goal was in place before the enactment of the Small and Disadvantaged Business Enterprise Program in August 2012. Table 4 details the Authority's use of SB/MBE/WBE/DBE/DVBE prime contractors as certified by CUCP and DGS.

Table 4: Prime Contractor Utilization Summary

Prime Contract Threshold	Number of Contracts Awarded to Certified Firms	Total Dollars Awarded to Certified Firms	Percent of Total Dollars Awarded	Number of Contracts Awarded to Non-Certified Firms	Total Dollars Awarded to Non-Certified Firms	Percent of Total Dollars Awarded
\$1 - \$49,999	2	\$33,400	0.003%	16	\$469,935	0.046%
\$50,000 - \$249,999	14	\$3,188,365	0.312%	10	\$1,036,200	0.102%
\$250,000 - \$3,499,999	1	\$408,041	0.040%	11	\$15,002,500	1.470%
\$3,500,000 - \$14,000,000	2	\$17,000,000	1.666%	7	\$48,750,000	4.777%
Greater than \$14,000,000	0	\$0	0.000%	11	\$934,688,193	91.585%
Total	19	\$20,627,806	2.021%	55	\$999,946,828	97.979%

2. Subcontractor Utilization Analysis

A total of 193 subcontracts were analyzed, which totaled \$125,631,181.97 dollars expended during the study period. Table 5 summarizes the subcontractor utilization by the percent of subcontract dollars expended with each ethnic and gender group.

Table 5: Subcontract Utilization Summary

⁸ California High-Speed Rail Authority Revised Small and Disadvantaged Business Enterprise Program http://www.hsr.ca.gov/docs/programs/small_business/Small%20and%20Disadvantaged%20Business%20Enterprise%20Program.pdf
^f Last accessed March 17, 2014.

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American	3	1.55%	\$ 693,321.80	0.55%
Asian-Pacific Americans	9	4.66%	\$ 2,046,754.13	1.63%
Subcontinent Asian Americans	6	3.11%	\$ 1,551,890.22	1.24%
Hispanic Americans	7	3.63%	\$ 2,717,111.89	2.16%
Native Americans	0	0.00%	\$ -	0.00%
Caucasian Females	20	10.36%	\$ 12,332,525.29	9.82%
Non-Minority Males	148	76.88%	\$106,289,778.64	84.60%
African American	1	10.00%	\$ 7,936.88	3.92%
Asian-Pacific Americans	0	0.00%	\$ -	0.00%
Subcontinent Asian Americans	0	0.00%	\$ -	0.00%
Hispanic Americans	0	0.00%	\$ -	0.00%
Native Americans	0	0.00%	\$ -	0.00%
Caucasian Females	0	0.00%	\$ -	0.00%
Non-Minority Males	9	90.00%	\$ 94,711.68	96.08%

Table 6 details the Authority's prime contractors' use of SB/MBE/WBE/DBE/DVBE subcontractors certified by CUCP and DGS.

Table 6: Certified Business Subcontractor Utilization by Threshold

Subcontract Threshold	Number of Subcontracts Awarded to SBEs	Total Dollars Expended with SBEs	Percentage of Total Award Dollars	Number of Subcontracts Awarded to Non-SBEs	Total Dollars Expended with Non-SBEs	Percentage of Total Award Dollars
\$1 - \$49,999	14	\$362,280	0.29%	61	\$832,869	0.66%
\$50,000 - \$249,999	14	\$1,736,388	1.38%	41	\$4,665,461	3.71%
\$250,000 - \$3,499,999	21	\$18,677,431	14.87%	33	\$28,203,411	22.45%
\$3,500,000 - \$13,999,999	3	\$18,722,686	14.90%	5	\$32,490,179	25.86%
\$14,000,000 and More	1	\$19,940,477	15.87%	0	\$0	0.00%
Total	53	\$59,439,261	47.31%	140	\$66,191,921	52.69%

B. Market Area Analysis

Croson was explicit in saying that the local construction market was the appropriate geographical framework within which to perform statistical comparisons of business availability and business utilization.⁹ The identification of the local market area is particularly important because it is the geographic area within which the available businesses are enumerated. Although *Croson* and its progeny do not provide a bright line

⁹ *Croson*, 488 U.S. at 497 (1989).

rule for the delineation of the local market area, taken collectively, the case law supports a definition of market area as within the geographic area where the jurisdiction spends a majority of its dollars.

During the study period the Authority awarded 74 professional services prime contracts valued at \$1,020,574,634. The Authority awarded 85.14 percent of these contracts and 98.24 percent of dollars to businesses located in the State of California. Given the distribution of the awarded contracts and the applicable case law, the State of California was defined as the market area. The analysis of contracts has been limited to an examination of contracts awarded to available market area businesses in California. Table 7 summarizes the market area analysis.

Table 7: Market Area Analysis

Market Area	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Professional Services (Including Architecture and Engineering)				
Market Area	\$1,002,609,084	63	98.24%	85.14%
Outside Market Area	\$17,965,550	11	1.76%	14.86%
Total	\$1,020,574,634	74	100.00%	100.00%

C. Availability Analysis

When considering sources for determining the number of willing and able M/WBEs and non-M/WBEs in the market area, the selection must be based on whether two aspects about the population in question can be gauged from the sources. One consideration is a business' interest in doing business with the jurisdiction, as implied by the term "willing," and the other is its ability or capacity to provide a service or good, as implied by the term "able." A list of available professional service M/WBEs and non-M/WBEs was compiled. The distribution of the available businesses is presented in Table 8.

Table 8: Prime and Subcontractor Contractor Availability Analysis

Ethnicity	Prime Contractors	Subcontractors
African American	7.13%	7.02%
Asian-Pacific Americans	9.96%	9.83%
Subcontinent Asian Americans	2.38%	2.39%
Hispanic Americans	8.04%	7.94%
Native Americans	0.67%	0.66%
Caucasian Females	16.26%	16.16%
Non-Minority Males	55.57%	56.01%



D. Contract Size Analysis

For the size analysis, the Authority's prime contracts and subcontracts were grouped into 12 dollar ranges.¹⁰ Each industry was analyzed to determine the number and percent of contracts within each of the nine size categories. The size distribution of contracts awarded to Non-M/WBEs was then compared to the size distribution of contracts awarded to Non-Minority Females, Minority Females, and Minority Males.

Table 9 which presents the size distribution of prime contracts awarded within the 12 dollar ranges, illustrates that 13.51 percent of the Authority's prime contracts were less than \$25,000; 24.32 percent were less than \$50,000; 28.38 percent were less than \$100,000; 56.76 percent were less than \$250,000; 58.11 percent were less than \$500,000; 62.16 percent were less than \$575,000; 62.16 percent were less than \$650,000; 64.86 percent were less than \$1,000,000; 72.97 percent were less than \$3,500,000; 85.14 percent were less than \$14,000,000; 87.84 percent were less than \$38,000,000 and 12.16 percent of the Authority's prime contracts were \$38,000,000 or more.

Table 9: Prime Contracts Size Analysis

Size	Non Minority				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$1 - \$25,000	2	2.70%	7	8.48%	1	1.35%	0		10	13.51%
\$25,001 - \$49,999	0	0.00%	8	10.81%	0	0.00%	0		8	10.81%
\$50,000 - \$99,999	0	0.00%	3	4.05%	0	0.00%	0		3	4.05%
\$100,000 - \$249,999	0	0.00%	20	27.03%	1	1.35%	0		21	28.38%
\$250,000 - \$499,999	0	0.00%	1	1.35%	0	0.00%	0		1	1.35%
\$500,000 - \$574,999	0	0.00%	3	4.05%	0	0.00%	0		3	4.05%
\$575,000 - \$649,999	0	0.00%	0	0.00%	0	0.00%	0		0	0.00%
\$650,000 - \$999,999	0	0.00%	2	2.70%	0	0.00%	0		2	2.70%
\$1,000,000 - \$3,499,999	0	0.00%	6	8.11%	0	0.00%	0		6	8.11%
\$3,500,000 - \$13,999,999	3	4.05%	6	8.11%	0	0.00%	0		9	12.16%
\$14,000,000 - \$37,999,999	0	0.00%	2	2.70%	0	0.00%	0		2	2.70%
\$38,000,000 and More	0	0.00%	9	12.16%	0	0.00%	0		9	12.16%
Total	5	6.76%	67	90.54%	2	2.70%	0	0.00%	74	100.00%

Table 10 which presents the size distribution for subcontracts awarded within the 12 dollar ranges illustrates that 28.5 percent of the Authority's contracts were less than \$25,000; 38.86 percent were less than \$50,000; 55.44 percent were less than \$100,000; 67.36 percent were less than \$250,000; 80.31 percent were less than \$500,000; 82.38 percent were less than \$575,000; 83.94 percent were less than \$650,000; 87.56 percent were less than \$1,000,000; 95.34 percent were less than \$3,500,000; 99.48 percent were less than \$14,000,000; 0.52 percent of the Authority's contracts were \$14,000,000 or more.

¹⁰ The nine dollar ranges are \$1 to \$25,000; \$25,001 to \$50,000; \$50,001 to \$100,000; \$100,001 to \$250,000; \$250,001 to \$500,000; \$500,001 to \$750,000; \$750,001 to \$1,000,000; \$1,000,001 to \$3,000,000; and \$3,000,001 and greater.

Table 10: Subcontracts Size Analysis

Size	Non-Minority				Minority				Total	
	Females		Males		Females		Males		Freq	Percent
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
\$1 - \$25,000	3	1.55%	46	23.83%	4	2.07%	2	1.04%	55	28.50%
\$25,001 - \$49,999	1	0.52%	15	7.77%	1	0.52%	3	1.55%	20	10.36%
\$50,000 - \$99,999	2	1.04%	27	13.99%	0	0.00%	3	1.55%	32	16.58%
\$100,000 - \$249,999	6	3.11%	15	7.77%	0	0.00%	2	1.04%	23	11.92%
\$250,000 - \$499,999	4	2.07%	15	7.77%	2	1.04%	4	2.07%	25	12.95%
\$500,000 - \$574,999	0	0.00%	4	2.07%	0	0.00%	0	0.00%	4	2.07%
\$575,000 - \$649,999	0	0.00%	2	1.04%	0	0.00%	1	0.52%	3	1.55%
\$650,000 - \$999,999	1	0.52%	4	2.07%	0	0.00%	2	1.04%	7	3.63%
\$1,000,000 - \$3,499,999	2	1.04%	12	6.22%	1	0.52%	0	0.00%	15	7.77%
\$3,500,000 - \$13,999,999	1	0.52%	7	3.63%	0	0.00%	0	0.00%	8	4.15%
\$14,000,000 - \$37,999,999	0	0.00%	1	0.52%	0	0.00%	0	0.00%	1	0.52%
\$38,000,000 and More	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Total	20	10.36%	148	76.68%	8	4.15%	17	8.81%	193	100.00%

IV. ANALYSIS OF STATISTICALLY SIGNIFICANT UNDERUTILIZATION

The objective of the disparity analysis is to determine the levels which M/WBEs and non-M/WBEs were utilized on the Authority's prime contracts and subcontracts. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs should be relatively close to the corresponding proportion of available M/WBEs¹¹ in the relevant market area. If the ratio of utilized M/WBE prime contractors to available M/WBE prime contractors is less than one, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event which is less probable. *Croson* states that an inference of discrimination can be made *prima facie* if the disparity is statistically significant. Under the *Croson* model, Non-M/WBEs are not subjected to a statistical test; therefore, underutilization is not analyzed for small and disabled veteran-owned businesses that are owned by Non-Minority Males.

A disparity analysis was performed on all prime contracts and subcontracts awarded from July 1, 2006 to June 30, 2013. Disparity was found at both the prime contract and subcontract levels for several ethnic and gender groups at both dollar thresholds.

¹¹ Availability is defined as the number of ready, willing, and able firms. The methodology for determining willing and able firms is detailed in Chapter 5.

A. Disparity Findings

1. Prime Contracts

As indicated in Table 11, underutilization was found for all ethnic groups on prime contracts under \$14,000,000. Statistically significant underutilization was found for African Americans, Asian-Pacific Americans, Hispanic Americans, MBEs and M/WBEs. On prime contracts under \$250,000 underutilization was found for all ethnic and gender groups. Statistically significant underutilization was found for African Americans, Asian-Pacific Americans, Hispanic Americans, MBEs and M/WBEs.

**Table 11: Prime Contract Disparity Summary
July 1, 2006 to June 30, 2013**

Ethnicity/Gender	Professional Services	
	Contracts under \$14,000,000	Contracts under \$250,000
African Americans	Statistically Significant Underutilization	Underutilization
Asian-Pacific Americans	Statistically Significant Underutilization	Statistically Significant Underutilization
Subcontinent Asian Americans	Underutilization	Underutilization
Hispanic Americans	Statistically Significant Underutilization	Underutilization
Native Americans	---	---
Minority-owned Business Enterprises	Statistically Significant Underutilization	Statistically Significant Underutilization
Non-Minority Female-owned Business Enterprises	Overutilization	Statistically Significant Underutilization
Minority and Women-owned Business Enterprises	Statistically Significant Underutilization	Statistically Significant Underutilization



2. Subcontracts

As indicated in Table 12, underutilization was found for all ethnic and gender groups on subcontracts. Disparity was found for African Americans, Asian-Pacific Americans, Hispanic Americans, MBEs and M/WBEs.

**Table 12: Subcontract Disparity Summary
July 1, 2006 to June 30, 2013**

Ethnic/Gender Group	All Subcontracts
African Americans	Statistically Significant Underutilization
Asian-Pacific Americans	Statistically Significant Underutilization
Subcontinent Asian Americans	Underutilization
Hispanic Americans	Statistically Significant Underutilization
Native Americans	---
Minority-owned Business Enterprises	Statistically Significant Underutilization
Non-Minority Female-owned Business Enterprises	Underutilization
Minority and Women-owned Business Enterprises	Statistically Significant Underutilization



V. ANECDOTAL FINDINGS

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

A. Summary of In-Depth Interviews

Public Participation Meetings were held in Oakland, Los Angeles and Fresno, California to collect oral anecdotal testimony from business owners. Business owners were also permitted to submit written comments following each meeting. The Authority only extended an invitation to contractors utilized by the Authority, members of the Business Advisory Council, the State ethnic chambers of commerce. The anecdotal testimony garnered for this Study was therefore too limited and insufficient to draw any inferences about active or passive barriers to contracting with the Authority or in its market area. The anecdotal data collection was required to take place in a public meeting and testimony was restricted to representatives of businesses which had either received or bid on an Authority's contract significantly limited both the number and quality of the accounts received. Given the constraints imposed on the anecdotal research methodology, no meaningful inferences can be made from the data compiled about market area businesses' perceptions of contracting with the Authority.. However, excerpts from the few comments received are presented below:

"Create a scope of work that is appropriate to small and medium-sized companies along with the appropriate financial requirements to deliver on the proposed scope of work."

"Most of the design work for this project has been made available to the very rich and powerful, and the very poor need not apply."

"I know DBE firms [that] have been proposed on contracts but not utilized—with no oversight by the [Authority] to make sure that the prime utilizes the DBE firm that was proposed—especially when the DBE firm's qualifications were used to the win the contract."

"Borrow some of the practices [from Caltrans]. Promote adding firms after an award, allowing the prime to continue to count towards accomplishing the goals. Locking the goal in one time is awful."

"Please reinforce the DBE and SBE participation [goals]."



"I think that developing the oversight through the SB Office, as well as developing goals, has been a huge asset in SB and DBE participation within the [Authority]."

VI. RECOMMENDATIONS

Although there are findings of statistically significant underutilization of M/WBEs, the Authority cannot implement race-based remedies because Section 31 of the State constitution bars the use of race and gender preferences, except as a condition of federal funding. The Authority is a recipient of United States Department of Transportation (USDOT) funding from the Federal Railroad Administration (FRA). However, the FRA funding is not subject to the goal setting requirements of USDOT DBE regulations 49 CFR Part 26, Subpart C. Consequently, the recommendations are limited to race and gender-neutral remedies that address the administration of the procurement process and the tracking, reporting, and publication of contract opportunities and awards.

Race and gender-neutral recommendations are offered to increase M/WBE, DVBE, SBE and DBE access to the Authority's prime and subcontracts and to track, monitor, report, and verify DBE and SBE prime contractor and subcontractor utilization. The recommended strategies address professional service and design-build contracts. These race and gender-neutral recommendations apply to all ethnic and gender groups. The recommendations are derived from an analysis of the Authority's Small and Disadvantaged Enterprise Program, a review of the Authority's web page, Public Participation Meeting testimonials, and government and corporate best management practices.

A. Administrative Strategies

- Issue Prompt Payment to DBE and SBE Prime Contractors
- Give Five-day Notice of Invoice Disputes
- Institute Payment Verification Program
- Require Fulfillment of DBE and SBE Goals at Bid Opening
- Assess Penalties for Not Achieving the DBE and SBE Contract Goals
- Improve SBE Program Accountability Standards
- Add a Cone of Silence Provision

B. Supportive Services Strategies

- Encourage Joint Ventures
- Assist DBEs and SBEs in Securing Contracting Opportunities
- Enhance Networking Opportunities
- Create a Listserv to Communicate with Interested DBEs and SBEs
- Post Contract Award Notices
- Post Contract Solicitations
- Publish a Newsletter Regularly

- Publish Pre-Proposal Meeting Announcements Timely
- Offer Additional Workshops

C. Procurement Strategies

- Revise Insurance Requirements
- Phase-out Retainage Requirements
- Provide Adequate Lead Time When Advertising Solicitations
- Publish Business Processes
- Implement Formal Dispute Resolution Standards
- Provide Debriefing Sessions for Unsuccessful Bidders
- Provide Evaluation Documents

D. Small and Disadvantaged Business Enterprise Program Administration

- Develop a Small Business Program Manual and Training Program
- Fully Staff the Office of Small Business
- Expand Business Advisory Council's Functions

E. DBE and SBE Program Tracking and Monitoring Strategies

- Implement a Financial Management System
- Use a Unique Identifier of All Contracts Regardless of Procurement Type
- Track the Type of Work Performed
- Implement Uniform Standard for Data Capture
- Utilize a Professional Archiving System
- Conduct Routine Post-Award Contract Compliance Monitoring
- Track and Monitor Pre-Award Subcontractor Commitments
- Improve Oversight of Noncompetitively Bid Contracts

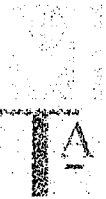
F. Contracting Strategies for Design-Build Projects

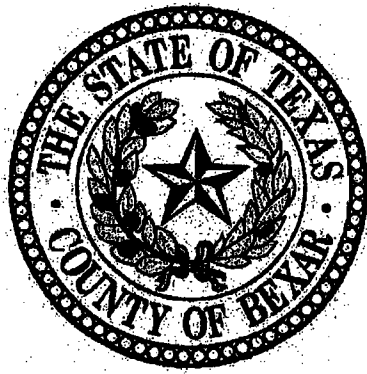
- Require a DBE and SBE Utilization Plan with the Bid
- Separate Design-Build Construction and Construction Related Goals
- Require DBE and SBE Goal Attainment on Each Task Order
- Track, Verify and Report SBE Utilization Monthly by Task Order
- Assess Penalties for Not Achieving the Project Goal on Each Task Order
- Unbundle Large Procurements into Smaller Contracts
- Reserve Smaller Contracts for Small Businesses
- Use Direct Contracting to Award Small Contracts
- Establish a Direct Purchase Program for Construction Contracts



G. Website Enhancement Strategies

- Post Key Staff Contract Information on the Contact Us Page
- Provide Accessibility for Visually Impaired Individuals
- Provide Option to Enlarge Text
- Provide Text-to-Speech Feature
- Offer Additional Foreign Languages
- Offer Mobile-Optimized Website
- Utilize Social Media Utilities
- Publish Contract Compliance Documents and Purchasing Guidelines
- List All Certified Subcontractors on the Website





BEXAR COUNTY

Disparity and Availability Study

1

VOLUME

EXECUTIVE SUMMARY

DRAFT FINAL REPORT | MARCH 2011

Submitted by: Mason Tillman Associates, Ltd.



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EXECUTIVE SUMMARY

I. STUDY OVERVIEW

A. Study Team

Mason Tillman Associates, Ltd., a public policy consulting firm based in Oakland, California, was selected to perform the Bexar County Disparity and Availability Study (Study). Mason Tillman also subcontracted with McCall & Associates to perform data collection activities and anecdotal interviews.

Renee Watson, Manager of the Bexar County SMWBE and DBE Programs, provided the overall leadership and guidance for the Study. Ms. Watson and her staff facilitated Mason Tillman's access to resources needed to complete the Study. The extraordinary effort of Bexar County and the business community should also be applauded.

B. Study Purpose

In 2010, Bexar County (County) commissioned Mason Tillman to determine whether or not a statistically significant disparity existed between the number of minority and women-owned business enterprises (M/WBEs) that were ready, willing, and able to provide construction, professional services, and goods and other services to the County and the number of M/WBEs that were actually providing the services to the County. The Disparity and Availability Study (Study) focused on three industries—construction, professional services, and goods and other services. The Study reviewed the award of prime contracts during the October 1, 2006 to September 30, 2009 study period.

C. Industries Studied

The Study included a statistical analysis and evaluation of construction, professional services, and goods and other services prime contracts and subcontracts awarded in the three industries.

Construction is defined as public work for new construction, remodeling, renovation, maintenance, demolition and repair of any public structure or building, and other public improvements.

Professional Services is defined as construction management, landscape architecture, surveying, mapping service, architecture and engineering, and services provided by

attorneys, accountants, medical professionals, technical services, research planning, and consultants.

Goods and Other Services is defined as materials, supplies, equipment, maintenance and other services which could be performed without a professional license, special education, or training.

D. Definition of Ethnic and Gender Groups Studied

The data in the Study is disaggregated into nine ethnic and gender groups. The nine groups are listed below in Table 1.

Table 1: Definition of Ethnic and Gender Groups Studied

Ethnic and Gender Category	Definition
African American Businesses	Businesses owned by male and female African Americans
Asian American Businesses	Businesses owned by male and female Asian-Pacific and Subcontinent Asian Americans
Hispanic American Businesses	Businesses owned by male and female Hispanic Americans
Native American Businesses	Businesses owned by male and female Native Americans
Caucasian Female Business Enterprises	Businesses owned by Caucasian females
Minority Business Enterprises	Businesses owned by African American, Asian American, Hispanic American, and Native American males and females
Women Business Enterprises	Businesses owned by Caucasian females
Minority and Women Business Enterprises	Businesses owned by Minority males, Minority females, and Caucasian females



Ethnic and Gender Category	Definition
Non-Minority Male Business Enterprises	Businesses owned by Caucasian males, businesses that did not declare their ethnicity, or businesses that could not be identified as minority- or female-owned ¹

E. Prime Contract Data

The dataset analyzed for the prime contractor utilization analysis consisted of payment data extracted from the County's B2Gnow Contract and Diversity Management System. The Study data was limited to payments that were issued during the October 1, 2006 to September 30, 2009 study period. The payments were grouped by Transaction ID in order to create unique transactions. In this Study, all unique transactions are referred to as contracts.

Each County contract was classified into one of the three industries. Mason Tillman worked closely with the County to classify the contracts into the appropriate industry by using both Object and Organization codes. Cooperative agreements and contracts with non-profits, government agencies, utilities, and contracts designated as non-competitive purchases were excluded from the Study. The industry classifications were reviewed and approved by the County.

After the industry classifications were approved by the County, the ethnicity and gender of each prime contractor was verified. The ethnicity and gender information the County maintained for prime contractors was incomplete and the information for many prime contractors had to be reconstructed. Since ethnicity and gender information is central to the validity of the prime contractor utilization analysis, Mason Tillman conducted research to reconstruct the ethnicity and gender for each contract.

The prime contractor names were cross-referenced with certification lists, chambers of commerce lists, and trade organization membership directories. Websites were also reviewed for ethnicity and gender of the business owner. Prime contractors whose ethnicity and gender could not be verified through published sources were surveyed. Mason Tillman also submitted the utilized vendor list to the County to review for ethnicity and gender classifications known to the County. Once the contract records were cleaned and the ethnicity and gender verified, the utilization analysis was performed.



¹ See Section II: Methodology for the methodology employed to identify the ethnicity and gender of the County's utilized prime contractors.

F. Subcontractor Data

Extensive research was undertaken to reconstruct the construction and professional services subcontracts issued by the County's prime contractors. Subcontracts for goods and other services contracts were not included in the analysis because goods and other services prime contractors traditionally do not subcontract out much of their work.

Several different sources were used to compile the subcontract data for the analysis. Mason Tillman identified contracts over \$100,000 and reviewed the Bexar County Commissioner's Court Meeting Minutes and project documents to extract subcontractor information. Subcontractor data was also extracted from the B2Gnow system.

In addition, Mason Tillman conducted a prime contractor expenditure survey to identify subcontractors. A request for subcontractors was mailed to each prime contractor that received at least one purchase order over \$100,000. For each subcontract, the prime contractor was asked to provide the subcontractor name, contact information, award amount, and total payments. Mason Tillman made three rounds of reminder telephone calls to encourage prime contractors to respond to the survey. After the third round of reminder calls, the County assisted in contacting the large prime contractors in order to encourage them to respond. This effort resulted in many additional prime contractor responses to the survey.

All subcontractors identified from the research were contacted to verify their participation on each prime contract and the amount of their payment.

The extraordinary effort of the County staff made it possible to reconstruct the subcontracts for many prime contracts.

G. Contract Thresholds

In the procurement process, there are two contract dollar thresholds. The first threshold is formal contracts, which require advertising and competitive solicitations, valued at over \$25,000 for construction, professional services,² and goods and other services. The second threshold is informal contracts, which do not require advertising and competitive solicitations valued at \$25,000 and under for construction, professional services, and goods and other services.



² Professional services do not require advertising per the Government Code Chapter 2254 Sub-Chapters A and B.

II. METHODOLOGY

A. Legal Framework

The review of *Croson*³ and related case law provided the legal framework for conducting the Study.

Disparity Study: Critical Components

1. Legal Framework
2. Utilization Analysis
3. Market Area Analysis
4. Availability Analysis
5. Disparity Analysis
6. Anecdotal Analysis
7. Recommendations

A legal review was the **first step** in the Study. Case law sets the standard for the methodology employed in a disparity study. **Step two** was to collect utilization records and determine the extent to which the County had used minority, women-owned, and other businesses to secure its needed construction, professional services, and goods and other services. Utilization records were also used to determine the geographical area in which companies that had received County contracts were located. In **step three**, the County's market area was identified. Once the

market area was defined, the **fourth step**, the availability analysis, identified businesses willing and able to provide construction, professional services, and goods and other services needed by the County. In the **fifth step**, a disparity analysis was performed to determine whether there was a statistically significant disparity within the three industries. In **step six**, the anecdotal analysis, the contemporary experiences of business owners in the County's market area were collected. In **step seven**, the statistical and anecdotal analyses were reviewed and recommendations were written to enhance the County's efforts in contracting with M/WBEs in its market area. Additionally, a regression analysis was conducted to determine if factors other than discrimination could account for any statistically significant disparity.

B. Structure of the Report

The Study findings are presented in eleven chapters. The contents of each chapter are briefly described below:

Study Report

- *Chapter 1: Legal Analysis* presents the legal cases applicable to business affirmative action programs and the methodology based on those cases required for the Study
- *Chapter 2: Contracting and Procurement Policies Analysis* presents the County's contracting and procurement practices



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

- *Chapter 3: Prime Contractor Utilization Analysis* presents the distribution of prime contracts by industry, ethnicity, and gender
- *Chapter 4: Subcontractor Utilization Analysis* presents the distribution of subcontracts by industry, ethnicity, and gender
- *Chapter 5: Market Area Analysis* presents the legal basis for geographical market area determination and defines the County's market area
- *Chapter 6: Prime Contractor and Subcontractor Availability Analysis* presents the distribution of available businesses in the County's market area
- *Chapter 7: Prime Contractor Disparity Analysis* presents prime contractor utilization compared to prime contractor availability by industry and M/WBE status, and determines whether the comparison is statistically significant
- *Chapter 8: Subcontractor Disparity Analysis* presents subcontractor utilization compared to subcontractor availability by industry and M/WBE status and determines whether the comparison is statistically significant
- *Chapter 9: Anecdotal Analysis* presents the business community's experiences and perceptions of barriers encountered in contracting or attempting to contract with the County
- *Chapter 10: Private Sector and Regression Analysis* presents an examination of whether there are private sector economic indicators of discrimination in the County's market area that could impact the formation and development of M/WBEs
- *Chapter 11: Recommendations* presents best management practices to enhance the County's contracting and procurement activities with M/WBEs and other small businesses

III. NOTABLE FINDINGS

A. Prime Contractor Utilization Analysis

The County issued 26,164 unique transactions during the October 1, 2006 to September 30, 2009 study period. The transactions are referred to as contracts in this Study. The 26,164 contracts included 967 for construction, 2,411 for professional services, and 22,786 for goods and other services.



The payments made by the County during the study period totaled \$290,957,798 for all 26,164 contracts. Payments included \$144,107,293 for construction, \$31,521,701 for professional services, and \$115,328,804 for goods and other services.

B. Subcontractor Utilization Analysis

Mason Tillman analyzed 446 subcontracts, which included 315 construction subcontracts and 131 professional services subcontracts for the October 1, 2006 to September 30, 2009 study period.

Of the subcontracts analyzed, there were \$100,553,337 total subcontract dollars expended during the October 1, 2006 to September 30, 2009 study period, which included \$93,950,526 for construction subcontracts and \$6,602,811 for professional services subcontracts.

C. Market Area Analysis

A review of the contracts awarded by the County shows that the one single jurisdiction where the businesses receive most of the 26,164 contracts and the majority of the contract dollars was Bexar County.

The County awarded 26,164 contracts valued at \$290,957,798 during the October 1, 2006 to September 30, 2009 study period. Businesses based in the County's market area received 57.73 percent of these contracts and 67.82 percent of the dollars.

D. Contract Size Analysis

A size analysis of prime contracts was undertaken to determine the capacity required to perform on the County's prime contracts. The size distribution illustrates the fact that limited capacity is needed to perform the overwhelming majority of the County's contracts. For the size analysis, the County's contracts were grouped into eight dollar ranges.⁴ Each industry was analyzed to determine the number and percentage of contracts that fell within the eight size categories. The size distribution of contracts issued to Non-Minority Males was then compared to the size distribution of contracts issued to Caucasian Females, Minority Females, and Minority Males.

The contract size analysis demonstrated that 95.738 percent of the County's contracts were less than \$25,000; 97.515 percent were less than \$50,000; 98.428 percent were less than \$100,000; and 99.617 percent were less than \$500,000. Only 0.383 percent of the County's contracts were \$500,000 or more.

⁴ The eight dollar ranges are \$1 to \$24,999; \$25,000 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; \$1,000,000 to \$2,999,999; and \$3,000,000 and greater.

IV. DISPARITY ANALYSIS STANDARD

The objective of the disparity analysis is to determine the levels at which M/WBEs are utilized on County contracts. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs should be relatively close to the corresponding proportion of available M/WBEs⁵ in the relevant market area. If the ratio of utilized M/WBE prime contractors to available M/WBE prime contractors is less than one, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event which is less probable. This analysis assumes a fair and equitable system.⁶ *Croson* states that an inference of discrimination can be made prima facie if the disparity is statistically significant. This analysis was applied to M/WBEs by ethnicity and gender within the three industries.

As discussed in the *Contract Size Analysis* section above on page 7, the majority of the County's contracts were small. The threshold levels for the disparity analysis were set to ensure that within the pool of willing businesses there was documented capacity to perform the formal contracts analyzed. The formal threshold for the three industries: construction, professional services, and goods and other services was limited to the \$500,000 level. The \$500,000 threshold was designated because at this level there was a demonstrated capacity within the pool of M/WBEs willing to perform the County's contracts.⁷ The informal contract analysis was performed at the \$25,000 threshold stipulated in the County's procurement policy.

V. STATISTICAL FINDINGS

There was a finding of statistically significant disparity of M/WBEs in the award of formal and informal prime contracts and the award of subcontracts.

A. Prime Contract Findings

1. Construction Contracts

As indicated in Table 2, disparity was found for African American and Hispanic American construction prime contractors for contracts under \$500,000. Disparity was

⁵ Availability is defined as the number of ready, willing and able firms. The methodology for determining willing and able firms is detailed in Chapter 6.

⁶ When conducting statistical tests, a confidence level must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100 percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95 percent confidence level is considered by the courts to be an acceptable level in determining whether an inference of discrimination can be made. Thus, the data analyzed here was done within the 95 percent confidence level.

⁷ See Chapter 6: *Prime and Subcontractor Availability Analysis – Section III* for a discussion of M/WBE capacity.

found for African American and Women Business Enterprise construction prime contractors at the informal contract level.⁸

Table 2: Disparity Summary: Construction Prime Contract Dollars, October 1, 2006 to September 30, 2009

Ethnicity/Gender	Construction	
	Contracts under \$500,000	Contracts \$25,000 and under
African American Male	Yes	Yes
African American Female	No	No
Asian American Male	No	No
Asian American Female	No	No
Hispanic American Male	Yes	Yes
Hispanic American Female	No	No
Native American Male	No	No
Native American Female	No	No
Minority Business Enterprises	Yes	No
Women Business Enterprises	No	Yes
Minority and Women Business Enterprises	Yes	Yes

Yes = The analysis is statistically significant
No = The analysis is not statistically significant or there are too few available firms to test statistical significance

⁸ There is no disparity for Hispanic Americans at the informal contract level when the genders are combined.

2. Professional Services Contracts

As indicated in Table 3, disparity was found for African American, Native American, and Women Business Enterprise professional services prime contractors on contracts under \$500,000.⁹ Disparity was found for Asian American and Native American professional services prime contractors at the informal contract level.¹⁰

Table 3: Disparity Summary: Professional Services Prime Contract Dollars, October 1, 2006 to September 30, 2009

Ethnicity/Gender	Professional Services	
	Contracts under \$500,000	Contracts \$25,000 and under
African American Male	No	No
African American Female	Yes	Yes
Asian American Male	No	Yes
Asian American Female	No	Yes
Hispanic American Male	No	Yes
Hispanic American Female	Yes	No
Native American Male	No	No
Native American Female	No	No
Minority Business Enterprises	Yes	No
Women Business Enterprises	Yes	No
Minority and Women Business Enterprises	Yes	Yes

Yes = The analysis is statistically significant

No = The analysis is not statistically significant or there are too few available firms to test statistical significance

⁹ There is no disparity for Hispanic Americans on contracts under \$500,000 when the genders are combined. There is a disparity for Native Americans on contracts under \$500,000 when the genders are combined.

¹⁰ There is no disparity for African Americans and Hispanic Americans at the informal contract level when the genders are combined. There is a disparity for Native Americans at the informal contract level when the genders are combined.

3. Goods and Other Services

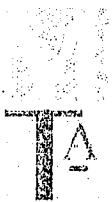
As indicated in Table 4, disparity was found for African American, Hispanic American, and Women Business Enterprise goods and other services prime contractors for contracts under \$500,000 and informal contracts.

Table 4: Disparity Summary: Goods and Other Services Prime Contract Dollars, October 1, 2006 to September 30, 2009

Ethnicity/Gender	Goods and Other Services	
	Contracts under \$500,000	Contracts \$25,000 and under
African American Male	Yes	Yes
African American Female	Yes	Yes
Asian American Male	No	No
Asian American Female	No	No
Hispanic American Male	Yes	Yes
Hispanic American Female	Yes	Yes
Native American Male	No	No
Native American Female	No	No
Minority Business Enterprises	Yes	Yes
Women Business Enterprises	Yes	Yes
Minority and Women Business Enterprises	Yes	Yes

Yes = The analysis is statistically significant

No = The analysis is not statistically significant or there are too few available firms to test statistical significance



B. Comparison of Utilization to Availability for All Prime Contracts, by Industry

A comparison of the utilization to the availability of all contracts by ethnicity and gender was performed. A summary is provided in Tables 5 to 7.

Table 5: Comparison of Utilization to Availability for All Construction Prime Contracts, October 1, 2006 to September 30, 2009

Minority and Females	Actual Dollars	Utilization	Availability
Minority Business Enterprises	\$46,339,102	32.156%	43.509%
Women Business Enterprises	\$4,030,658	2.797%	10.414%
Minority and Women Business Enterprises	\$50,369,760	34.953%	53.923%
Non-Minority Male Business Enterprises	\$93,737,533	65.047%	46.077%

Table 6: Comparison of Utilization to Availability for All Professional Services Prime Contracts, October 1, 2006 to September 30, 2009

Minority and Females	Actual Dollars	Utilization	Availability
Minority Business Enterprises	\$10,674,002	33.862%	33.048%
Women Business Enterprises	\$2,024,155	6.421%	14.697%
Minority and Women Business Enterprises	\$12,698,157	40.284%	47.745%
Non-Minority Male Business Enterprises	\$18,823,545	59.716%	52.255%

Table 7: Comparison of Utilization to Availability for All Goods and Other Services Prime Contracts, October 1, 2006 to September 30, 2009

Minority and Females	Actual Dollars	Utilization	Availability
Minority Business Enterprises	\$10,722,879	9.298%	34.532%
Women Business Enterprises	\$4,561,714	3.955%	16.982%
Minority and Women Business Enterprises	\$15,284,593	13.253%	51.514%
Non-Minority Male Business Enterprises	\$100,044,211	86.747%	48.486%



C. Subcontractor Disparity Findings

Extensive efforts were undertaken to obtain the County's construction and professional services subcontract records. The County's goods and other services prime contract records were not available and, thus, not considered for a subcontract analysis. The subcontractor disparity findings are summarized below.

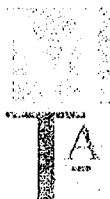
As indicated in Table 8, disparity was found for Hispanic American subcontractors in the construction industry and African American subcontractors in the professional services industry.¹¹

**Table 8: Subcontractor Disparity Summary,
October 1, 2006 to September 30, 2009**

Ethnicity/Gender	Construction	Professional Services
African Americans Male	No	No
African American Female	No	No
Asian American Male	No	No
Asian American Female	No	No
Hispanic American Male	Yes	No
Hispanic American Female	Yes	No
Native American Female	No	No
Native American Male	No	No
Minority Business Enterprises	Yes	No
Women Business Enterprises	No	No
Minority and Women Business Enterprises	Yes	No

Yes = The analysis is statistically significant

No = The analysis is not statistically significant or there are too few available firms to test statistical significance



¹¹ There is a disparity for African Americans when the genders are combined.

VI. ANECDOTAL FINDINGS

In addition to requiring a statistical analysis, the United States Supreme Court in *Croson* stated that anecdotal findings, "if supported by appropriate statistical proofs, lend support to a [local entity's] determination that broader remedial relief [be] justified." *Croson* authorizes anecdotal inquiries along two lines. The first approach examines barriers attributed to the local entity. Such action is defined as the active participation of the government entity. The second approach examines passive participation, which are the barriers created by the contractors that are awarded public funds.

A. Summary of In-Depth Interviews

Pursuant to the contract terms stipulated by the County, the anecdotal interviews were tape-recorded and videotaped in a County office. From August 2010 to October 2010, Mason Tillman performed outreach to engage local businesses to participate in the anecdotal interviews.

A total of 94 businesses were contacted for an interview, but only four business owners agreed to be interviewed. The other 90 businesses declined to participate in an interview due to the recording and videotaping requirement at a County facility. They expressed concern about possible retaliation or other adverse consequences if they made negative or critical comments about County agencies, agents, or its prime contractors.

The four interviews were less than 30 minutes in length. One interviewee left the interview after five minutes and did not return to complete the interview. The four interviews were transcribed, coded, and analyzed for barriers the interviewees encountered.

B. Anecdotal Interview Findings

The results of the interviews were insufficient to yield comprehensive personal anecdotes from the interviewees regarding their experiences working with or seeking work from the County.

VII. REGRESSION ANALYSIS

A regression analysis was conducted to examine three outcome variables—business ownership rates, business earnings, and business loan denial rates. The three regression models used to study the outcome variables were the Likelihood of Business Ownership Model, the Earnings Disparity Model, and the Likelihood of Business Loan Denial Model. Each regression model compared minorities and women to Caucasian males by controlling for race and gender-neutral explanatory variables such as the business owner's age, education, marital status, home value, disability status, and credit worthiness.

The findings of the regression analysis suggest areas of racial and gender discrimination in the construction, goods and other services, and professional services industries after controlling for race and gender-neutral factors. However, neither the Likelihood of Business Ownership Model nor the Earnings Disparity Model demonstrated statistically significant evidence of discrimination for minorities and females across all industries.

The Likelihood of Business Ownership Model results revealed that when controlling for race and gender-neutral factors, statistically significant disparities exist for Hispanic American males, Asian-Pacific American males, and Caucasian females in all industries. Only Asian-Pacific American females have a statistically significant business ownership disparity in the construction industry. In the professional services industry, only Asian-Pacific American males have a statistically significant business ownership disparity. The goods and other services industry has the most disparity as Hispanic American males, Asian-Pacific American males, Caucasian females, and African American females have significantly lower probabilities of owning a goods and other services business than Caucasian males.

The Earnings Disparity Model regression analysis documented statistically significant disparities in the business earnings of Asian-Pacific American males and Caucasian females in all industries combined. In the professional services industry, Other race males¹² and Caucasian females have statistically significant business earnings disparities. In addition, Caucasian females have significantly lower business earnings in the goods and other services industry. It is important to note that no statistically significant gender or racial business earnings disparities are present in the construction industry.

The Likelihood of Business Loan Denial Model reveals that even after controlling for race and gender-neutral factors, Hispanic American males and Asian-Pacific American males in the construction industry have a statistically significant higher likelihood of being denied a business loan. The professional services industry has the greatest amount of disparity with Hispanic American males, Other race males, and Other race females experiencing statistically significant higher probabilities of being denied a business loan. In the goods and other services industry, only Other race females have a statistically significant higher probability of being denied a business loan.

These analyses of the three outcome variables documented disparities that could adversely affect the formation and growth of M/WBEs within the construction, professional services, and goods and other services industries. In the absence of a race and gender-neutral explanation for the disparities, the regression findings document racial and gender private sector discrimination in business ownership rates, business earnings, and business loan denial rates. Such discrimination creates economic conditions in the private sector that could disadvantage M/WBEs, lower their formation rates, depress their earnings, and impede their access to business capital.

¹² Based on the dataset, Other minority race (Other race) males and females are defined as individuals of some other race alone (non-Caucasian) and individuals who identified as having two or more race groups.

VIII. RACE AND GENDER-CONSCIOUS REMEDIES

Mason Tillman recommends several race and gender-conscious remedies designed to address the findings of statistically significant M/WBE disparity.

A. Prime Contract Remedies

1. Incentive Credits

Incentive credits should be incorporated in the evaluation process for the award of professional services prime contracts. A disparity was found for African American, Native American, and Women Business Enterprise professional services prime contractors on contracts under \$500,000. Disparity was found for Asian American and Native American professional services prime contractors at the informal contract level.

2. Bid Discounts

Bid discounts could be incorporated into the evaluation process for the award of prime contracts when low bid is a criterion. A ten percent bid discount should be given to the underutilized groups and applied in determining the lowest bidder.

3. Small Contracts Rotation Program

A Small Contracts Rotation Program could be established for prime contracts valued at less than \$25,000. Contracts under \$25,000 can be awarded without the Commissioners Court's approval. A rotational program for prime contracts would limit competition to businesses for whom a statistically significant disparity was found. This Program would allow small businesses and M/WBEs to build capacity for their businesses as prime contractors.

4. Weighted M/WBE Goals

To increase the participation of M/WBEs on the County's contracts, weighted M/WBE goals should be considered for evaluating Requests for Proposal and Requests for Bid. The weighted goals would be limited to African American and Hispanic American construction prime contractors for contracts under \$500,000; African American and Women construction prime contractors at the informal contract level; African American, Native American, and Women professional services prime contractors on contracts under \$500,000; Asian American and Native American professional services prime contractors at the informal contract level; African American, Hispanic American, and Women goods and other services prime contractors for contracts under \$500,000 and informal contracts.



B. Subcontract Remedies

1. Set M/WBE Subcontracting Goals

A disparity was found for Hispanic American subcontractors in the construction industry and African American subcontractors in the professional services industry. The subcontracting targeted goals should reflect the availability of African Americans and Hispanic Americans. The goals should apply to all contracts regardless of the estimated prime contract amount.

2. Quantify Good Faith Effort Criteria

The County suspended the good faith effort requirements of its SMWBE Program pending the results of the Study. Given the fact that the Study findings document a significant disparity for two ethnic groups, the good faith requirements should be reinstated as a waiver provision if MBE targeted goals are set.

For example, a prime contractor would earn five points for advertising at least twice in the general circulation media, minority focused media, or trade-related publications, ten days prior to submission.

Good Faith Effort provisions should also be used to monitor prime contractors' efforts to utilize available SMWBEs that the Study found were not used at the level of their availability. The good faith effort provisions are discussed in the Race and Gender-Neutral Recommendations section.

Table 9 summarizes the race and gender-conscious remedies for prime contracts and subcontracts.

Table 9: Race and Gender-Conscious Remedies

RACE AND GENDER-CONSCIOUS REMEDIES			
PRIME CONTRACTOR			
Industry	Ethnicity	Gender	Threshold
Incentive Credits			
Professional Services	African American	Female	Under \$500,000
	Asian American	Male/Female	Under \$25,000
	Native American	Male/Female	Under \$500,000
	Caucasian	Female	Under \$500,000
Bid Discounts			
Construction	African American	Male	\$10,000 or Greater
	Hispanic American	Male	\$10,000 or Greater
	Caucasian	Female	\$10,000 or Greater

RACE AND GENDER-CONSCIOUS REMEDIES			
Goods and Other Services	African American	Male/Female	Under \$500,000
	Hispanic American	Male/Female	Under \$500,000
	Caucasian	Female	Under \$500,000
Small Contracts Rotation Program			
Construction	African American	Male	Under \$25,000
	Hispanic American	Male	Under \$25,000
	Caucasian	Female	Under \$25,000
Professional Services	African American	Female	Under \$25,000
	Asian American	Male/Female	Under \$25,000
	Native American	Male/Female	Under \$25,000
	Caucasian	Female	Under \$25,000
Goods and Other Services	African American	Male/Female	Under \$25,000
	Hispanic American	Male/Female	Under \$25,000
	Caucasian	Female	Under \$25,000
Weighted M/WBE Goals			
Construction	African American	Male	Under \$25,000
	Hispanic American	Male	Under \$25,000
	Caucasian	Female	Under \$25,000
Professional Services	African American	Female	Under \$500,000
	Asian American	Male/Female	Under \$25,000
	Native American	Male/Female	Under \$500,000
	Caucasian	Female	Under \$500,000
Goods and Other Services	African American	Male/Female	Under \$500,000
	Hispanic American	Male/Female	Under \$500,000
	Caucasian	Female	Under \$500,000
SUBCONTRACTOR			
Industry	Ethnicity	Gender	
M/WBE Subcontracting Goals			
Construction	Hispanic American	Male/Female	
Professional Services	African American	Male/Female	



IX. RACE AND GENDER-NEUTRAL RECOMMENDATIONS

The race and gender-neutral recommendations apply to all of the County's prime contracts in all three industries.

A. Pre-Award Recommendations

1. Expand Unbundling Policy

The County unbundles large contracts into smaller ones to provide additional opportunities for SMWBEs. While the County has implemented measures to unbundle its contracts, 13 of its 2,240 vendors received \$145,278,287 or 50 percent of the prime contract dollars. There is a more diverse pool of ready, willing and able firms to compete on smaller, unbundled projects. Large construction, landscaping, fencing, and traffic control projects could be let to a more diverse group of contractors.

2. Adopt the Initiatives in the County's SMWBE Fiscal Year 2010-2012 Strategic Plan

On August 24, 2009, the SMWBE Program Office adopted the SMWBE Program Fiscal Year 2010-2012 Strategic Plan (FY 2010-2012 Strategic Plan). This Plan was to provide economic development for SMWBEs. The County should implement the Plan initiatives which include:

- Revise the 2004 SMWBE Policy 8.0 SECTION 8 regarding informal contracts to document SMWBE availability of commodities, equipment, maintenance, construction, services, professional services, and personal services from \$25,000 and under to \$50,000 and under
- Revise the 2004 SMWBE Policy 8.0 SECTION 9 regarding formal contracts to document SMWBE availability of commodities, equipment, maintenance, construction, services, professional services, and personal services from \$25,000 and over to \$50,000 and over
- Increase vendor participation on BidNet via aggressive outreach and strengthening relationships with partner agencies and organizations
- Establish a Procurement Guideline manual profiling the Annual Small, Minority, Women and Veterans Business Owners Conference entitled, "*How to Get in the Game & Stay in the Game.*" The County should expand its partnerships with other local, state, federal, and private sector contracting entities to promote the conference. The conference attendees should be monitored and tracked to determine their success as well as evaluate the value received by the conference :

exhibitors and sponsors. The County could maintain communication with the attendees via a link on its website with a *Frequently Asked Page* responding to inquiries, updates regarding SMWBE Program changes affecting prospective bidders, and upcoming contracting opportunities with the County.

- Implement the Technology Program which will be comprised of information technology professionals dedicated to the implementation and advancement of technology solutions that will improve service capabilities and business operations of SMWBEs.

3. Expand the SMWBE Program Certification Designations

The County should expand its SMWBE program by recognizing businesses certified as an African American Business Enterprise (AABE), Asian American Business Enterprise (ABE), Disabled Individual Business Enterprise (DIBE), Emerging Small Business Enterprise (ESBE), Hispanic American Business Enterprise (HABE), Native American Business Enterprise (NABE), or Veteran Business Enterprise (VBE) through the South Central Texas Regional Certification Agency's (SCTRCA's) new certification designations. The SCTRCA is responsible for the certification process for these entities to ensure that only bona fide firms participate in the program.

4. Establish a Business Enterprise Center

The County desires to support business creation and employment in its market area by providing value-added resources and services to SMWBEs. The Business Enterprise Center would provide business consulting, educational seminars, network access, and funding access seminars.

The Business Enterprise Center should include training and conference room rentals, web services such as internet training, business development programs, and a procurement technology kiosk. Information on certification requirements for SMWBE, Disadvantaged Business Enterprise (DBE), and Historically Underutilized Business (HUB) designations will also be included in the services offered at the Business Enterprise Center. ACCION Texas and the Small Business Administration could have satellite offices to provide start-up loans and financing for SMWBEs.

5. Review Cooperative Agreements

The County should review its cooperative agreements for opportunities to increase the participation of SMWBEs. Standard written procedures setting forth the criteria to be used to identify contracting opportunities for SMWBEs should be implemented by the County.



6. Establish a Direct Purchase Program for Construction Contracts

A Direct Purchase Program would reduce the amount of a construction bid subject to a bond. On procurements where the County is statutorily allowed to purchase material supplies directly from vendors, the prime contractor would bid the material and supplies and itemize the cost in their bid, and the County would purchase them directly from the vendor. The cost of material and supplies would be subtracted from the bid for the purpose of establishing the required bond, thereby reducing the amount of the contractor's bond that would be obligated for the job.

7. Joint Ventures

The County should encourage joint ventures between SMWBEs to create more contracting opportunities at the prime contract level. Joint ventures can benefit SMWBEs by reducing costs, consolidating risks, and obtaining experience working as a prime contractor.

8. Virtual Plan Room

The County should consider purchasing software that would allow bidders to obtain digitized plans and specifications on the County's website. Such software could reduce the need to designate or pay for a space for a plan room and reduce the reproduction cost for contractors.

9. Remove Brand Name Requirements in Solicitations

The County should refrain from specifying brand names in their solicitations in order to avoid restricting competition because the named brands may not be available to SMWBEs or offered at a competitive price.

10. Revise Bonding Requirements

Bonding requirements can be a significant disincentive to bidders and a barrier to SMWBE bidders. Surety premiums are an indirect cost to the County which the prime contractors and subcontractors pass through in their bids. Therefore, the County should consider implementing a Surety Assistance Program for small contracts.

11. Develop an Expedited Payment Program

Expedited payments should be implemented to remove the major barrier to small businesses—late payments from prime contractors. Payments to prime contractors would be made within 15 days of the County receiving an undisputed invoice, and prime contractors would be required to pay their subcontractors within five days of receipt of their invoice payment. The County should also adopt and implement written measures which encourage prime contractors to quickly resolve disputed invoices between a



subcontractor and the prime contractor.

12. Publish Informal Contracts

Informal contract opportunities should be posted on the County's website, and small businesses should be requested to express their interest in performing the small contracts. E-mail notices of contracting opportunities should also be targeted to certified businesses providing the goods or services being solicited.

13. Reinstate Good Faith Effort Requirements

The County suspended its good faith effort requirements pending the results of the Study. Good Faith Effort provisions should be used to monitor prime contractors' efforts to utilize the available SMWBEs that the Study found were not used at the level of their availability. The study findings document that seven ethnic and gender groups in the construction industry and seven groups in the professional services industry were not utilized at the level of their availability. The good faith effort requirements should be concise and detailed to ensure that prime contractors make a bona fide attempt at meeting the County's commitment to increase the participation of SMWBEs on its contracts. Documentation of a good faith effort could include the following:

- Attendance at the pre-bid conference
- Copies of written notification sent to all SMWBEs that perform the type of work to be subcontracted in sufficient time to allow the SMWBEs to participate effectively
- Advisement to SMWBEs of the specific work the prime contractor intends to subcontract, that their interest in the project is being solicited, and how to timely obtain information for the review and inspection of the plans, specifications, and requirements of the bid
- A written statement of economically feasible portions of work selected to be performed by SMWBEs including, where appropriate, segmenting or combining elements of work into economically feasible units
- A concise statement of the efforts made to negotiate with SMWBEs, including the name, address, and telephone number of the SMWBE that was contacted; the date the negotiations took place; and a description of the information provided to the SMWBE regarding the plans, specifications, and requirements for the portions of the work to be performed.

There should be penalties for the prime contractors that fail to comply with the good faith effort requirements.

14. Conduct an SMWBE Outreach Campaign

There should be a comprehensive outreach campaign to promote the enhancements from the Study. The Communication and Marketing Program set forth in the County's FY 2010-2012 Strategic Plan should be implemented, including the following initiatives:

- Work with the County Public Information Officer and court offices to disseminate press releases and public service announcements to inform the media and community regarding the SMWBE Program
- Allow the SMWBE Program Office to pursue quarterly interviews with local radio and television stations and partner with local business organizations to discuss opportunities for collaboration that will benefit SMWBEs
- Make available printed and online information on the SMWBE Program
- Draft a business development brochure and manual
- Provide E-notifications for programs and events
- Provide E-flyers with hotlinks to SMWBE Program on the County's website
- Promote cross marketing strategies with other entities
- Develop a quarterly newsletter

15. Pay Mobilization to Subcontractors

When a mobilization payment is made to a prime contractor, the subcontractor should be paid its appropriate share of the mobilization payment when directed to mobilize and prior to commencing work. Subcontractors should receive mobilization payments because project start-up costs can also be difficult for a subcontractor who often has limited access to credit.

B. Post-Award Recommendations

1. Publish SMWBE Utilization Reports

The County should publish quarterly utilization reports. Utilization reports should present payment and award data organized by industry, department, ethnicity, gender, and certification status to measure the effectiveness of the SMWBE Program. Change orders and substitutions should be identified in the reports, and any modifications to the listed subcontractors or the subcontract award amount should be tracked.



2. SMWBE Substitution Requirements

The County should require prime contractors to provide written justification whenever the prime contractor, in performing the contract, does not enter into a subcontract with a listed subcontractor, or substitutes another subcontractor for one already identified in the prime contractor's bidding documents.

3. Payment Verification Program

A web-based payment verification program should be instituted. All prime contractor payments would be posted on the County's website on a weekly basis to inform subcontractors when the prime contractor payment was issued. The posting should be scheduled for the same day and time each weekday to simplify the time required for subcontractors to track their prime contractor's payment.

4. Verify SMWBE Subcontractor Payments

The County's payment verification system should ensure SMWBE subcontractors are paid after the completion of their work. Prime contractors should be discouraged from holding the subcontractor's final payment until after the project has been approved by the County.

5. Provide Debriefing Process in Procurement Solicitations

Debriefing sessions for unsuccessful bidders should be timely held by the project manager or the appropriate County department. The process utilized to debrief unsuccessful bidders should be described in the County's bid and proposal solicitations.

X. ADMINISTRATIVE RECOMMENDATIONS

A. Website Enhancements

The County's website was evaluated with the goal of improving its functionality, informational content, and aesthetic for businesses wishing to contract with the County. The following enhancements are offered to improve accessibility to businesses seeking information and contracting opportunities on County projects.

1. Improve Website Structure by Reorganizing Links and Creating a Contracting Portal for Business Users

The County should reorganize the links on its main homepage in order to facilitate improved access to needed information within the first 30 seconds of being on the site. Reorganization of the site eliminates the need to read through cumbersome links. The County's main homepage includes over 70 hyperlinks directing users to different web



pages, which makes the web browsing experience less appealing and more time consuming.

2. Provide Detailed Contact Information for Purchasing Agents

The County's Purchasing Department webpage lists one purchasing agent and the department's general contact information on the top left column, which is easily viewed by the user. Complete contact information for the Procurement Department and SMWBE Program, including purchasing agents and business/diversity compliance officers, should also be listed.

3. Offer Links to Ethnic/Trade Associations Assisting SMWBE Contractors

The County's website should offer links to its partners that offer SMWBE supportive services. Membership organizations and their services should be listed. There should also be links for ethnic/trade organizations and governmental agency publications for small businesses and minority contractors.

4. Make Compliance Reports Available

The County should post compliance reports on a regular schedule to document its business diversity mission. Making such information public on a regular schedule to businesses not only ensures the integrity of the County's SMWBE Program but allows businesses in the County's market area to readily review the results and effects of the Program.

5. Consider the Needs of Visitors with Disabilities

While the web is still a largely visual medium, it is important to take into consideration those who cannot access it in the usual way. A well-designed site will often be an accessible site. Shorter, more direct text would also improve the experience of visually-impaired users employing screen readers.

6. Update the County's Logo

The County logo on every web page should be made clickable. It is a general web design practice to insert a hotspot on a business/organization's logo and link it to the homepage so that users can easily navigate back to a home page without having to search the hyperlink "Home" while they are browsing through the web pages.

7. Maintain Navigation to the County's Purchasing Department Website

Any domain outside of Bexar County should be loaded in a new window or new tab. Currently, the link to "Bids/Proposals," which directs the user to "Texas Bid System" hosted on gov bids.com is loaded on the parent window of the Purchasing Department



webpage. The link should open a new window or tab to prevent the user to experience loss of navigation from the County's page.

8. Provide the Website in Different Languages

It is recommended to provide the County's website in optional languages that are widely used in the County's market area in order to facilitate access for business owners with limited English language skills who are seeking to do business with the County.

9. Provide Downloadable SMWBE Directory

The County's SMWBE directory should be made available in a downloadable format to allow users to download it and save it for future reference. In addition, the date of when the directory was last updated should be provided in order for users to determine if there were any new updates since they last accessed the directory.

10. Develop a Mobile-Optimized Website

With the current popularity of small handheld devices, it is recommended that a mobile-optimized County website be implemented for a faster and more efficient experience for handheld device users. Although smartphones, such as the iPhone and Google Android devices, can display full web pages, having features with essential information that can be found in a few seconds can make the mobile web-browsing experience more user-friendly.

11. Set Up a Twitter Feed or Blog

The County's website should incorporate a Twitter feed or blog and place it on the County's main homepage, as well as the Procurement Department and SMWBE Program webpages. A Twitter feed and blog can be an informative tool providing hints and tips for responding to County solicitations. The objective is to have rotating, pertinent information for the site's target user.

B. Data Management Enhancements

1. Compliance, Monitoring, and Reporting

Currently, the County utilizes a monitoring and tracking system that tracks its subcontract and bidder data. However, the County set forth compliance, monitoring, and reporting initiatives in its FY 2010-2012 Strategic Plan that need to be implemented. Specifically, the initiatives include:

- Develop a set of regularly produced reports from the Advantage Financial System/Contract and Diversity Management System to track the utilization of SMWBEs

- SMWBE Program staff should collaborate with the Purchasing Department to develop a standardized method, timeline, and strategy to track bidder and award data in a field format that allows for automated extraction
- Perform automated updates regarding certified SMWBE vendor data in the Advantage Financial System from the Contract and Diversity Management System database on a quarterly basis

2. Develop Department-Wide SMWBE Manager and Staff Training

A department-wide SMWBE training manual should be developed. This manual would provide background on the SMWBE Program, any state or federal regulations which govern the program, and the County's SMWBE policy and objectives and discuss standard methods employed by the County to increase SMWBE participation and administer the Program in accordance with the County, State, and federal regulations. Managers and departmental staff would be responsible for attending annual training seminars to ensure they are abreast of current changes in the law to the County's SMWBE Program.





MASON TILLMAN
ASSOCIATES, LTD

www.mtaltd.com



City of Fort Wayne Indiana

EXECUTIVE SUMMARY

Phase I
Draft Final Report
October 2013

MASON TILLMAN
ASSOCIATES, LTD

ACKNOWLEDGEMENT

Mason Tillman Associates, Ltd., headquartered in Oakland, California, is a national expert in the performance of disparity studies. Mason Tillman has provided public policy research, affirmative action consulting, and social marketing professional services for 35 years to public agencies and corporations to improve their equity programs, including contracting with Minority, Woman-owned, and Disadvantaged Business Enterprises (M/W/DBE). Mason Tillman's experts provide solution-driven professional services in the areas of disparity studies, workforce assessments, regulatory compliance, data management, social marketing, and community relations.

Phase I of the City of Ft. Wayne's Availability and Utilization Study evaluates the City's procurement practices as they relate to Small, Minority and Women-owned businesses. The successful completion of Phase I was made possible by the exceptional cooperation of the City of Ft. Wayne staff, under the direction of Mr. Steve Gillette, Director of Purchasing Services, who was the Project Manager for this Study. In addition, the Study would not have been possible without the support and services provided by the local subconsultant team of IT Business Corporation and its president, Mr. Tony Buford.

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EXECUTIVE SUMMARY

I. STUDY OVERVIEW

A. Study Purpose

The purpose of the Disparity Study was to determine whether or not a statistically significant disparity existed in the award of contracts to ready, willing, and able Minority and Women Business Enterprises (M/WBEs) by the City of Fort Wayne (City). Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to Minority and Women Business Enterprises (M/WBEs) should be relatively close to the corresponding proportion of available M/WBEs¹ in the relevant market area. If the available M/WBE prime contractors are underutilized, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event which is less probable. *City of Richmond v. J.A. Croson Co.*² (*Croson*) states that an inference of discrimination can be made *prima facie* if the disparity is statistically significant. This analysis was applied to M/WBEs within the four industries studied.

B. Study Structure

The Study is performed in two phases. Phase I of the Study will analyze the statistical significance of any underutilization of willing and able M/WBEs by the City or its prime contractors. Any race or gender groups that are determined to be underutilized at a statistically significant level will be further evaluated in Phase II.

1. Phase I

The Disparity Study findings for Phase I are presented in six chapters. The contents of each chapter are briefly described below:

Chapter 1: Legal Analysis presents the case law applicable to business affirmative action programs and the methodology based on those cases required for the Study.

¹ "Availability" is defined as the number of ready, willing, and able firms. The methodology for determining willing and able firms is detailed in Chapter 4.

² *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

Chapter 2: Contracting and Procurement Policies Analysis presents the City's contracting and procurement practices.

Chapter 3: Prime Contractor Utilization Analysis presents the distribution of prime contracts by industry, ethnicity, and gender.

Chapter 4: Subcontractor Utilization Analysis presents the distribution of subcontracts by industry, ethnicity, and gender.

Chapter 5: Market Area Analysis presents the legal basis for geographical market area determination and defines the City's market area.

Chapter 6: Prime Contractor and Subcontractor Availability Analysis presents the distribution of available businesses in the City's market area.

Chapter 7: Disparity Ratio Findings presents the contractor utilization as compared to contractor availability by industry and M/WBE status. This analysis determined the difference between each ethnic and gender group's expected number of contract dollars and the actual number of contract dollars.

2. Phase II

Phase II of the Study will determine the reasons for underutilization. This research will consist of an analysis of statistically significant disparity of the underutilized groups and anecdotal interviews with businesses, interviews with community leaders, and professional organizations representatives, and a regression analysis.

C. Study Team

Mason Tillman Associates, Ltd., a public policy consulting firm based in Oakland, California, was selected to perform the Disparity Study. Mason Tillman subcontracted with two local businesses, Brilljent and I.T. Business Corporation, to assist with contract data collection and outreach.

Mr. Steve Gillette, Director of Purchasing, was the manager of the Study. Mr. Gillette made it possible for Mason Tillman to receive the City of Fort Wayne's contract data that was needed to perform the Study. Through Mr. Gillette's management, Mason Tillman was able to secure the cooperation from the City of Fort Wayne's staff.

D. Industries and Study Period

The Disparity Study reviewed the prime contracts and subcontracts awarded during the study period of January 1, 2010 to December 31, 2012. The contracts examined at the prime level were in the following industries: construction, architecture and engineering,

professional services, and goods and other services. At the subcontract level, construction, architecture and engineering, and professional services were analyzed.

E. Business Groups Studied

The analysis of disparity was disaggregated into eight business groups. The eight groups are listed in Table 01.

Table 01: Business Groups

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

F. Prime Contract Data

The prime contractor records are contract and payment data extracted from the City’s financial system for contracts and utilities. The payments were issued during the study period, and were grouped by unique direct pay or voucher numbers to create unique transactions. In this Study, all unique transactions are referred to as contracts.



Mason Tillman worked closely with the City to classify the contracts into one of the four industries. Cooperative agreements and contracts with non-profits, government agencies, and utilities were excluded from the Study. After the industry classifications were approved by the City, the ethnicity and gender of each prime contractor was verified.

Mason Tillman conducted extensive research to reconstruct the ethnicity and gender for each contract by cross-referencing the prime contractor names with certification lists, chambers of commerce lists, and trade organization membership directories. Websites were also reviewed for ethnicity and gender of the business owner. Prime contractors for which ethnicity and gender could not be verified through published sources were surveyed. Once the contract records were cleaned and the ethnicity and gender verified, the utilization analysis was performed.

G. Subcontractor Data

Construction, architecture and engineering, and professional services subcontracts issued by the City's prime contractors were reconstructed. The subcontract data were compiled by the City in conjunction with Mason Tillman. Project files were examined by City staff for awards, payments, and related documents identifying subcontractors, subconsultants, suppliers, and truckers.

Prime contractors were also surveyed by Mason Tillman to secure their award and payment data to subcontractors, subconsultants, suppliers and truckers on contracts valued at more than \$100,000. All identified subcontractors, subconsultants, suppliers, and truckers were surveyed to verify their payments. Data on ethnicity and gender were compiled from certification lists, membership lists of ethnic and gender organizations, Internet research, and telephone surveys.

H. Contract Thresholds

Contracts within each of the four industries were analyzed at three dollar levels. One category included all contracts regardless of amount. A second category included all contracts under \$500,000. The third category included informal contracts. The informal contract threshold was \$75,000 and under for construction, \$75,000 and under for professional services, and \$100,000 and under for goods and other services. The informal contract threshold was set forth in the City's procurement manual. There is no informal threshold for architecture and engineering.



II. NOTABLE FINDINGS

A. Prime Contractor Utilization Analysis

The City issued 24,733 contracts during the January 1, 2010 to December 31, 2012 study period. The 24,733 contracts included 1,686 for construction, 582 for architecture and engineering, 2,435 for professional services, and 20,030 for goods and other services.

The payments made by the City during the study period totaled \$336,971,795 for all 24,733 contracts. Payments included \$146,496,378 for construction, \$32,103,924 for architecture and engineering, \$26,535,833 for professional services, and \$131,835,660 for goods and other services.

1. Highly Used Prime Contractors

The City's 24,733 construction, architecture and engineering, professional services, and goods and other services prime contracts were received by 2,132 unique vendors. Seventy-four of the 2,132 vendors received \$238,790,634 or 71 percent of the total prime contract dollars. These numbers illustrate that a small group of prime contractors received the majority of dollars the City spent.

An ethnic and gender profile of the 28 most highly used prime contractors was also produced. The 28 most highly used prime contractors represent 50 percent of dollars spent. The 28 most highly used prime contractor expenditures went to Non-Minority Male, Asian American, and Native American businesses. The majority of the highly used construction prime contractor expenditures went to Non-Minority Male businesses. The individual contracts received by these 28 businesses ranged from \$1.05 to \$20,670,305.

2. All Prime Contracts by Industry

- Construction Prime Contractor Utilization: All Contracts

Minority Business Enterprises received 3.06 percent of the construction prime contract dollars; Women Business Enterprises received 1.78 percent; and Non-Minority Male Business Enterprises received 95.17 percent.

- Architecture and Engineering Prime Contractor Utilization: All Contracts

Minority Business Enterprises received 15.88 percent of the architecture and engineering prime contract dollars; Women Business Enterprises received less than 0.01 percent; and Non-Minority Male Business Enterprises received 84.11 percent.



- Professional Services Prime Contractor Utilization: All Contracts

Minority Business Enterprises received 0.51 percent of the professional services prime contract dollars; Women Business Enterprises received 1.9 percent; and Non-Minority Male Business Enterprises received 97.59 percent.

- Goods and Other Services Prime Contractor Utilization: All Contracts

Minority Business Enterprises received 0.25 percent of the goods and other services prime contract dollars; Women Business Enterprises received 1.86 percent; and Non-Minority Male Business Enterprises received 97.9 percent.

3. Prime Contracts Under \$500,000, by Industry

- Construction Prime Contractor Utilization: Contracts under \$500,000

Minority Business Enterprises received 2.87 percent of the prime contract dollars; Women Business Enterprises received 3.23 percent; and Non-Minority Male Business Enterprises received 93.9 percent.

- Architecture and Engineering Prime Contractor Utilization: Contracts under \$500,000

Minority Business Enterprises received 19.73 percent of the prime contract dollars; Women Business Enterprises received 0.01 percent; and Non-Minority Male Business Enterprises received 80.26 percent.

- Professional Services Prime Contractor Utilization: Contracts under \$500,000

Minority Business Enterprises received 0.74 percent of the professional services prime contract dollars; Women Business Enterprises received 2.76 percent; and Non-Minority Male Business Enterprises received 96.5 percent.

- Goods and Other Services Prime Contractor Utilization: Contracts under \$500,000

Minority Business Enterprises received 0.38 percent of the goods and other services prime contract dollars; Women Business Enterprises received 2.87 percent; and Non-Minority Male Business Enterprises received 96.75 percent.



4. Informal Contracts by Industry

- **Construction Prime Contractor Utilization: Contracts \$75,000 and under**

Minority Business Enterprises received 3.05 percent of the construction prime contract dollars; Women Business Enterprises received 2.33 percent; and Non-Minority Male Business Enterprises received 94.62 percent.

- **Professional Services Prime Contractor Utilization: Contracts \$75,000 and under**

Minority Business Enterprises received 0.98 percent of the professional services prime contract dollars; Women Business Enterprises received 2.83 percent; and Non-Minority Male Business Enterprises received 96.19 percent.

- **Goods and Other Services Prime Contractor Utilization: Contracts \$100,000 and under**

Minority Business Enterprises received 0.67 percent of the goods and other services prime contract dollars; Women Business Enterprises received 4.06 percent; and Non-Minority Male Business Enterprises received 95.27 percent.

B. Subcontractor Utilization Analysis

A total of 625 subcontracts were analyzed, which included 536 construction subcontracts, 81 subcontracts for architecture and engineering, and eight for professional services for the January 1, 2010 to December 31, 2012 study period.

There were \$35,589,064 total subcontract dollars expended during the January 1, 2010 to December 31, 2012 study period. These included \$32,051,703 for construction subcontracts, \$2,502,728 for architecture and engineering subcontracts, and \$1,034,632 for professional services subcontracts.

1. All Subcontracts by Industry

- **Construction Subcontracts**

Minority Business Enterprises received 1.36 percent of the construction subcontract dollars; Women Business Enterprises received 17.17 percent; and Non-Minority Male Business Enterprises received 81.47 percent.

- **Architecture and Engineering Subcontracts**

Minority Business Enterprises received 5.81 percent of the architecture and engineering subcontract dollars; Women Business Enterprises received 5.22 percent; and Non-Minority Male Business Enterprises received 88.98 percent.



- **Professional Services Subcontracts**

Minority Business Enterprises received none of the professional services subcontract dollars; Women Business Enterprises received 0.02 percent; and Non-Minority Male Business Enterprises received 99.98 percent.

C. Market Area Analysis

The City awarded 24,733 construction, architecture and engineering, professional services, and other goods and services contracts valued at \$131,835,659.97 during the study period. The City awarded 62.55 percent of these contracts and 47.83 percent of these dollars to businesses located in the City of Fort Wayne. Given the City's jurisdiction, the Study's market area is determined to be the geographical boundaries of the City of Fort Wayne.

D. Availability Analysis

1. Contract Size Analysis

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

For the size analysis, the City's contracts were grouped into eight dollar ranges.³ Each industry was analyzed to determine the number and percentage of contracts that fell within the eight size categories. The size distribution of contracts awarded to Non-Minority Males was then compared to the size distribution of contracts awarded to Caucasian Females, Minority Females, and Minority Males.

- **All Industries Contracts by Size**

Contracts valued at less than \$25,000 were 94.15 percent. Those less than \$50,000 were 96.44 percent. Those less than \$100,000 were 98.23 percent and those less than \$500,000 were 99.56 percent.

- **Construction Contracts by Size**

Contracts valued at less than \$25,000 were 76.28 percent. Those less than \$50,000 were 83.57 percent. Those less than \$100,000 were 91.34 percent and those less than \$500,000 were 96.86 percent.

³ The eight dollar ranges are \$1 to \$24,999; \$25,000 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; \$1,000,000 to \$2,999,999; and \$3,000,000 and greater.

- **Architecture and Engineering Contracts by Size**

Contracts valued at less than \$25,000 were 66.84 percent. Those less than \$50,000 were 78.18 percent. Those less than \$100,000 were 88.14 percent and those less than \$500,000 were 97.59 percent.

- **Professional Services Contracts by Size**

Contracts valued at less than \$25,000 were 91.38 percent. Those less than \$50,000 were 96.47 percent. Those less than \$100,000 were 99.14 percent and those less than \$500,000 were 99.67 percent.

- **Goods and Other Services Contracts by Size**

Contracts valued at less than \$25,000 were 96.79 percent. Those less than \$50,000 were 98.05 percent. Those less than \$100,000 were 98.99 percent and those less than \$500,000 were 99.83 percent.

E. Disparity Ratio Analysis

Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs should be relatively close to the corresponding portion of available M/WBEs in the relevant market area. The Phase I Final Report is the preliminary step in determining if available Minority and Woman Business Enterprises were underutilized at a statistically significant level during the two-year study period.

The first step undertaken in Phase I calculated the number of contract dollars that each ethnic and gender group was expected to receive based on the group's availability in the market area. This step shall be referred to as the **expected dollar amount**. The next step was to compute the utilization of each ethnic and gender group by industry. This step shall be referred to as the **actual dollar amount**. The difference between each ethnic and gender group's expected number of contract dollars and the actual number of contract dollars received by the group is the **disparity ratio**. Thus, the disparity ratio is computed by dividing the actual contract amount by the expected contract amount.

$$\text{Disparity Ratio} = \frac{\text{Utilization}}{\text{Availability}}$$

When the disparity ratio is less than one, which is parity, a test of statistical significance is conducted to determine if the observed disparity is due to chance. If the disparity is determined to be statistically significant, the courts have determined that an inference of discrimination can be made *prima facie*. The test of statistical significance will be calculated for prime and subcontracts in Phase I will be made in Phase II.

1. Prime Contractor Disparity Findings

The analysis of prime contracts awarded during the study period documented an underutilization of available Minority and Woman Business Enterprises. The disparity ratio was less than one. The disparity ratios calculated for prime contracts by industry is depicted in the tables below.

Table 02 depicts the disparity ratio for the construction prime contracts. The analysis reveals a disparity ratio of less than 1.0 for African Americans, Asian Americans, Hispanic Americans, and Caucasian Females.

Table 02: Construction Prime Contract Disparity Ratios

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio
African Americans	\$1,113,700	0.76%	3.48%	\$5,101,864	-\$3,988,164	0.22
Asian Americans	\$0	0.00%	0.50%	\$728,838	-\$728,838	0.00
Hispanic Americans	\$55	0.00%	1.49%	\$2,188,513	-\$2,188,458	0.00
Native Americans	\$3,364,839	2.30%	1.00%	\$1,457,875	\$1,907,163	2.31
Caucasian Females	\$2,604,346	1.78%	6.47%	\$9,474,890	-\$6,870,544	0.27
Non-Minority Males	\$139,413,439	95.17%	87.06%	\$127,546,598	\$11,866,841	1.09
TOTAL	\$146,496,378	100.00%	100.00%	\$146,496,378		

Table 03 depicts the disparity ratio for architectural and engineering prime contracts. The analysis reveals a disparity ratio of less than 1.0 for African Americans and Caucasian Females. There were no available Hispanic American and Native American architecture and engineering businesses in the City of Ft. Wayne (City). The few utilized Hispanic American and Native American businesses were located outside of the City.

Table 03: Architecture and Engineering Prime Contract Disparity Ratios

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio
African Americans	\$149,584	0.47%	4.11%	\$1,319,339	-\$1,169,756	0.11
Asian Americans	\$4,821,060	15.02%	5.48%	\$1,759,119	\$3,061,941	2.74
Hispanic Americans	\$77,128	0.24%	0.00%	\$0	\$77,128	---
Native Americans	\$50,928	0.16%	0.00%	\$0	\$50,928	---
Caucasian Females	\$1,200	0.00%	8.22%	\$2,638,679	-\$2,637,479	0.00
Non-Minority Males	\$27,004,027	84.11%	82.19%	\$26,386,787	\$617,240	1.02
TOTAL	\$32,103,924	100.00%	100.00%	\$32,103,924		

(---) denotes there are no available firms in the market area.

Table 04 depicts the disparity ratio for professional services prime contracts. The analysis reveals a disparity ratio of less than 1.0 for each ethnic group and Caucasian females.

Table 04: Professional Services Prime Contract Disparity Ratios

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio
African Americans	\$118,384	0.45%	3.05%	\$808,198	-\$689,814	0.15
Asian Americans	\$0	0.00%	0.51%	\$134,700	-\$134,700	0.00
Hispanic Americans	\$15,855	0.06%	1.02%	\$269,399	-\$253,545	0.06
Native Americans	\$0	0.00%	0.51%	\$134,700	-\$134,700	0.00
Caucasian Females	\$504,068	1.90%	15.74%	\$4,175,689	-\$3,671,622	0.12
Non-Minority Males	\$25,897,526	97.59%	79.19%	\$21,013,147	\$4,884,379	1.23
TOTAL	\$26,535,833	100.00%	100.00%	\$26,535,833		

Table 05 depicts the disparity ratio for goods and services prime contracts. The table reveals a disparity ratio of less than 1.0 for each ethnic group and Caucasian females.

Table 05: Goods and Services Prime Contract Disparity Ratios

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio
African Americans	\$260,098	0.20%	1.93%	\$2,544,476	-\$2,284,378	0.10
Asian Americans	\$0	0.00%	0.36%	\$477,089	-\$477,089	0.00
Hispanic Americans	\$55,463	0.04%	0.84%	\$1,113,208	-\$1,057,745	0.05
Native Americans	\$8,914	0.01%	0.24%	\$318,059	-\$309,145	0.03
Caucasian Females	\$2,448,563	1.86%	7.00%	\$9,223,725	-\$6,775,162	0.27
Non-Minority Males	\$129,082,621	97.90%	89.63%	\$118,159,102	\$10,903,519	1.09
TOTAL	\$131,835,660	100.00%	100.00%	\$131,835,660		

2. Subcontractor Disparity Findings

The disparity ratio analysis for subcontractors was calculated utilizing the same steps delineated above. Table 06 depicts the disparity ratio for construction subcontracts. The analysis reveals a disparity ratio of less than 1.0 for each ethnic group.

Table 06: Construction Subcontractor Disparity Ratios

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio
African Americans	\$10,770	0.03%	2.83%	\$906,055	-\$895,285	0.01
Asian Americans	\$57,405	0.18%	0.35%	\$113,257	-\$55,852	0.51
Hispanic Americans	\$368,286	1.15%	1.41%	\$453,028	-\$84,741	0.81
Native Americans	\$0	0.00%	1.06%	\$339,771	-\$339,771	0.00
Caucasian Females	\$5,502,471	17.17%	8.48%	\$2,718,166	\$2,784,305	2.02
Non-Minority Males	\$26,112,771	81.47%	85.87%	\$27,521,427	-\$1,408,656	0.95
TOTAL	\$32,051,703	100.00%	100.00%	\$32,051,703		

Table 07 depicts the disparity ratio for architectural and engineering subcontracts. The analysis reveals a disparity ratio of less than 1.0 for African Americans, Asian Americans and Caucasian Females. There were no available Hispanic American and Native American architecture and engineering businesses in City. The few utilized Hispanic American businesses were located outside of the City.

Table 07: Architecture and Engineering Subcontractor Disparity Ratios

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio
African Americans	\$45,752	1.83%	5.88%	\$147,219	-\$101,467	0.31
Asian Americans	\$35,989	1.44%	4.71%	\$117,775	-\$81,786	0.31
Hispanic Americans	\$63,586	2.54%	0.00%	\$0	\$63,586	---
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----
Caucasian Females	\$130,558	5.22%	9.41%	\$235,551	-\$104,993	0.55
Non-Minority Males	\$2,226,843	88.98%	80.00%	\$2,002,183	\$224,660	1.11
TOTAL	\$2,502,728	100.00%	100.00%	\$2,502,728		

(---) denotes there are no available firms in the market area.

Table 08 depicts the disparity ratio for professional services subcontracts. The table reveals a disparity ratio of less than 1.0 for each ethnic group and Caucasian Females.

Table 08: Professional Services Subcontractor Disparity Ratios

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio
African Americans	\$0	0.00%	3.00%	\$31,039	-\$31,039	0.00
Asian Americans	\$0	0.00%	0.50%	\$5,173	-\$5,173	0.00
Hispanic Americans	\$0	0.00%	1.00%	\$10,346	-\$10,346	0.00
Native Americans	\$0	0.00%	0.50%	\$5,173	-\$5,173	0.00
Caucasian Females	\$220	0.02%	15.50%	\$160,368	-\$160,148	0.00
Non-Minority Males	\$1,034,412	99.98%	79.50%	\$822,533	\$211,880	1.26
TOTAL	\$1,034,632	100.00%	100.00%	\$1,034,632		

F. Summary

The City’s prime contractor utilization analysis examined \$336,971,795 expended on prime contracts awarded between January 1, 2010 and December 31, 2012. The City’s subcontractor utilization analysis examined \$35,589,064 expended on subcontracts awarded from January 1, 2010 to December 31, 2012.

Disparity ratios of less than 1.0 were documented in each industry at the prime and subcontractor level. Given the existence of underutilization for many of the ethnic and gender groups in each industry, a test of statistical significance is warranted to determine if these observations are due to chance, or in fact due to discrimination. In light of the



number of instances where the disparity ratio approaches zero, it is highly likely the statistical test will demonstrate the presence of statistically significant disparity. Furthermore, without the test of statistical significance any inclusion program or policy initiatives to address the identified underutilization would likely not be legally defensible.

III. NEXT STEPS

The next step would be Phase II. Phase II, as proposed, will determine the reasons for underutilization as described above. The utilization analysis in Phase I determined that minority and women business enterprises were underutilized on the City's prime and subcontracts for each of the industries studied.

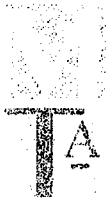
The Disparity Study findings for Phase II will be presented in four chapters. The chapters will include:

Chapter 7: Regression and Private Sector Analysis to present an examination of private sector economic indicators of discrimination in the City's market area which could impact M/WBE formation and development.

Chapter 8: Anecdotal Analysis to present the business community's perceptions of barriers and exemplary practices encountered in contracting or attempting to contract with the City.

Chapter 9: Disparity Analysis to present contractor utilization as compared to contractor availability by industry and M/WBE status and the statistical significance of any underutilization.

Chapter 10: Recommendations to present race and gender-neutral remedies, and if supported by the statistical evidence, race and gender-specific remedies to improve the City's contracting with M/WBEs and other small businesses.





MASON TILLMAN
ASSOCIATES, LTD.

APPENDIX E
DISCLOSURE OF OWNERSHIP INTERESTS
RFP NO. 14-071/LJ

TO: **PALM BEACH COUNTY CHIEF OFFICER,
OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE**

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

BEFORE ME, the undersigned authority, this day personally appeared Eleanor Mason Ramsey, Ph.D., hereinafter referred to as "Affiant," who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant appears herein as:
☐ an individual or
☒ the President of Mason Tillman Associates, LTD.
[position—e.g., sole proprietor, president, partner, etc.] [name & type of entity—e.g., ABC Corp., XYZ Ltd. Partnership, etc.].
The Affiant or the entity the Affiant represents herein seeks to do business with Palm Beach County through its Board of County Commissioners.

2. Affiant's address is: 1999 Harrison Street, Ste. 1440
Oakland CA 94612

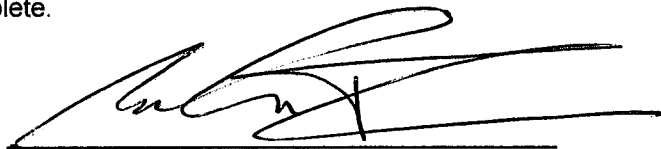
3. Attached hereto as Exhibit "A" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater interest in the Affiant's corporation, partnership, or other principal. Disclosure does not apply to nonprofit corporations, government agencies, or to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County policy, and will be relied upon by Palm Beach County and the Board of County Commissioners. Affiant further acknowledges that he or she is authorized to execute this document on behalf of the entity identified in paragraph one, if any.

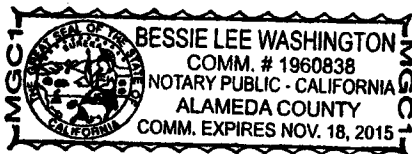
5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct and complete.

FURTHER AFFIANT SAYETH NAUGHT.


Eleanor Mason Ramsey, Ph.D. Affiant
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 30 day of September, 2014, by Eleanor M. Ramsey, [☒] who is personally known to me or [☐] who has produced Drivers Licenses as identification and who did take an oath.



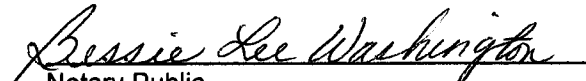

Notary Public
BESSIE LEE Washington
(Print Notary Name)
State of Florida at Large California
My Commission Expires: November 18, 2015

EXHIBIT "A"

DISCLOSURE OF OWNERSHIP INTERESTS IN AFFIANT

Affiant must identify all entities and individuals owning five percent (5%) or more ownership interest in Affiant's corporation, partnership or other principal, if any. Affiant must identify individual owners. For example, if Affiant's principal is wholly or partially owned by another entity, such as a corporation, Affiant must identify the other entity, its address, and the individual owners of the other entity. Disclosure does not apply to any nonprofit corporation, government agency, or to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

Name**Address**

Eleanor M. Ramsey

2955 Avalon Ave Berkeley ca

100%

2015 -

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA

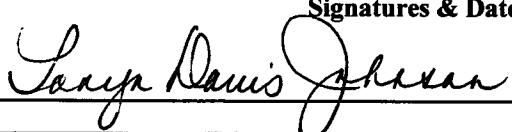
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BUDGET TRANSFER
FUND 0001 General Fund

ACCOUNT NAME AND NUMBER		ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 10/03/2014	REMAINING BALANCE
<u>EXPENDITURES</u>								
760-7613-3401	Other Contractual Services	0	0	749,995	0	749,995	0	749,995
820-9900-9901	Contingency Reserve	20,000,000	20,000,000	0	749,995	19,250,005	0	19,250,005
TOTALS				749,995	749,995			

Administration

INITIATING DEPARTMENT/DIVISION
Administration/Budget Department Approval
OFMB Department - Posted

Signatures & Dates
 10/6/2014

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF
10/21/2014

Deputy Clerk to the
Board of County Commissioners