

Volume 2

State of New Jersey

Construction Services Disparity Study

STATE AGENCIES, AUTHORITIES, AND
COMMISSIONS

October 2005

Submitted to:
The Disparity Study Commission

Submitted by:
Mason Tillman Associates, Ltd.



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ACKNOWLEDGMENT

In 2003, the State of New Jersey commissioned a Discrimination in State Employment and Contracting Disparity Study to update the State's original disparity study and findings, which are set forth in the Study on Discrimination in Public Works, Procurement and Construction Contracts, dated February 22, 1993. Mason Tillman Associates, Ltd., of Oakland, California was selected by the Disparity Study Commission to perform the construction services portion of the Study.

The purpose of the Disparity Study is to determine whether there is a disparity between the number of qualified minority and women-owned businesses ready, willing and able to perform construction and construction-related services and the number of contractors/vendors actually engaged to perform such services. The study period covered July 1, 2000 to June 30, 2002.

Management Interventions, Inc, a Trenton-based female-minority-owned firm, assisted Mason Tillman in the performance of the Study. Management Interventions, Inc performed data collection activities and outreach to the business community.

The Study could not have been conducted without the cooperation of the local chambers of commerce and business organizations, and the many State of New Jersey business owners who demonstrated their commitment to the Study by participating in interviews and public hearings. In addition, the State Agencies, Authorities, and Commissions, and Colleges, and Universities' staff played a critical role in assisting with the data collection by making available State personnel, contract records, and documents needed to perform the Study. This Study could not have been completed without their extraordinary effort.

Regena L. Thomas, Secretary of State along with Assistant Secretary of State, Kathleen Kisko, the Chairman of the Disparity Study Commission, Peter M. Suzuki, Esq. and the Disparity Study Commissioners provided overall guidance and direction for the Study.

Jeanne M. Victor and Sharon B. Hartley, Directors of the Disparity Study Commission managed the completion of the Study. Their leadership and guidance helped keep the Study process focused and on target.

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New Jersey Construction Services Disparity Study*

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STATE AGENCIES, AUTHORITIES, AND COMMISSIONS PRIME CONTRACTOR UTILIZATION ANALYSIS

I. INTRODUCTION

As set forth in *Croson* and its progeny, a disparity study must document minority contracting in the jurisdiction under review. The first step in a disparity analysis is the statistical review of prime contracts. The objective of this statistical analysis is to determine the level of minority and woman-owned business enterprise (M/WBE) prime contractor utilization compared to non-M/WBE prime contractor utilization on contracts awarded between July 1, 2000 and June 30, 2002. The definition of prime contractors for the Study is all firms to which the State Agencies, Authorities, and Commissions awarded contracts during the study period.

The prime utilization analysis included construction and construction-related contracts awarded by State Agencies, Authorities, and Commissions. Only those agencies, authorities, and commissions that awarded construction and construction-related contracts to for-profit businesses were included in the Study. State Colleges and Universities were analyzed separately from the State Agencies, Authorities, and Commissions. These findings are reported in Volume 3, Chapter 1: Prime Contractor Utilization Analysis.

Construction services included new construction and renovations, except routine building maintenance. All residential and non-residential building construction; heavy construction, such as streets, roads, and bridges; and special trade construction, such as fencing, HVAC, paving, and electrical were included.

Construction-related contracts included design services, such as architectural, engineering, and construction management services, that are performed as part of a construction project.

This chapter will discuss the State Agencies, Authorities, and Commissions' utilization of prime contractors in the two industries.

II. STATE AGENCIES, AUTHORITIES, AND COMMISSIONS PRIME CONTRACT DATA SOURCES

Data Sources

The State Agencies, Authorities, and Commissions prime contract data were collected primarily from the agencies in addition to several centralized sources of electronic records. The centralized sources were the Purchase Bureau, the Treasury Department's Division of Property Management and Construction, and Office of Management and Budget. The provided electronic data were extracted from these sources' three database systems:

- Purchase Bureau's Management Acquisition Control System Enhanced (MACS-E)
- Division of Property Management and Construction's Project Management Information System (DPMC)
- Office of Management and Budget's New Jersey Comprehensive Financial System (NJCFS)

These three centralized databases were the source of prime contract records for the following State Agencies and Authorities:

State Departments:

- Agriculture
- Corrections
- Education
- Environmental Protection, including Bureau of Coastal Engineering
- Health & Senior Services
- Human Services
- Labor
- Law and Public Safety
- Treasury

Authorities:

- New Jersey Building Authority
- New Jersey Public Broadcasting

Prime contracts for two departments were only obtained in part from the centralized sources. Listed below are the Agencies for which part of the data were obtained through

the centralized sources and the balance of the information was provided by the particular Agency.

- **Department of Military and Veterans Affairs** provided all of their construction and construction-related contract records. Small contracts for construction repairs were obtained from MACS-E.
- **Department of Transportation** provided all of the construction and construction-related contracts related to the transportation industry. Records for all other construction and construction-related contracts were provided by Treasury's DPMC.

Data for the remaining 13 State Agencies, Authorities, and Commissions were provided by each State Agency, Authority, and Commission. Each State Agency, Authority, and Commission compiled their records of prime contracts awarded during the study period and submitted an electronic file. Some State Agencies, Authorities, and Commissions also provided bidder lists and pre-qualification lists.

Agencies providing all prime contract data from their own sources are listed below:

Commissions:

- New Jersey Meadowlands Commission
- North Jersey District Water Supply Commission
- Passaic Valley Sewage Commission
- Pinelands Commission

Authorities:

- Casino Reinvestment Development Authority
- New Jersey Economic Development Authority*/Schools Construction Corporation
- New Jersey Highway Authority/New Jersey Turnpike Authority
- Garden State Parkway
- South Jersey Transportation Authority
- New Jersey Sports & Exposition Authority
- New Jersey Water Supply Authority
- New Jersey Transit Corporation
- New Jersey Housing and Mortgage Finance Authority

* None of the New Jersey Economic Development Authority contracts were within the study period. Schools Construction Corporation (SCC) contracts were provided directly from SCC

The following data were used as additional sources of information to assess the comprehensiveness of the data the Agencies provided:

- Treasury’s Division of Contract Compliance

Treasury’s Division of Contract Compliance provided a list of construction contracts awarded by State Agencies, Authorities, and Commissions for which the prime contractor had filed EEO forms. The database also included the names of subcontractors on some of the contracts. This information was cross-referenced with the data provided by the Agencies to insure accuracy and completeness of the data included in the Study. All discrepancies found between the sources of data were resolved with State Agency, Authority, and Commission staff.

- Department of Labor (DOL) business registration database

DOL provided a database listing contractors that had registered since the beginning of the study period. This database was used as a source of addresses and contact information for prime and subcontractors.

III. STATE AGENCIES, AUTHORITIES, AND COMMISSIONS PRIME CONTRACTOR UTILIZATION THRESHOLDS

State Agencies, Authorities, and Commissions prime contracts within each industry classification were grouped into three size categories. One category included all the contract records without regard to size of the award. The other two categories were defined by the industry’s informal and formal procurement standards. Informal contracts were small purchases that had a maximum size threshold and did not require advertising. Although many agencies had different formal and informal levels, the size categories chosen for the analysis reflect the policies governing procurement of most State Agencies, Authorities, and Commissions. Table 1.01 details the informal thresholds by industry.

Formal contracts were advertised solicitations above the informal threshold. Formal contracts have no maximum size threshold. However, the analysis of formal contracts was capped at \$500,000 for both industries because there was demonstrated capacity within the pool of willing M/WBEs to perform contracts at this level.

Table 1.01 Prime Contract Thresholds

State Agencies, Authorities, and Commissions	Informal
Construction	\$41,100 and under
Construction-Related	\$25,000 and under

Prime contract awards have been grouped, by amount, into these three categories and are presented in the tables and charts that follow. The three categories of contracts are all contracts, contracts under \$500,000, and contracts under \$41,100 for construction or contracts under \$25,000 for construction-related. The number of contracts and dollar amounts are presented within each of the three categories.

IV. STATE AGENCIES, AUTHORITIES, AND COMMISSIONS PRIME CONTRACTOR UTILIZATION

As depicted in Table 1.02 below, the State Agencies, Authorities, and Commissions issued 3,812 construction and construction-related prime contracts during the July 1, 2000 to June 30, 2002 study period. These included 2,885 for construction contracts and 927 for construction-related contracts.

Also, during the study period, the State Agencies, Authorities, and Commissions expended \$2,337,654,468 for construction and construction-related contracts with \$1,979,628,693 for construction contracts and \$358,025,775 for construction-related contracts.

Table 1.02 Total Construction and Construction-Related Prime Contracts and Dollars Expended between July 1, 2000 and June 30, 2002

State Agencies, Authorities, and Commissions	Total Number of Contracts	Total Dollars Expended
Construction	2,885	\$1,979,628,693
Construction-Related	927	\$358,025,775
Total	3,812	\$2,337,654,468

A. All State Agencies, Authorities, and Commissions Prime Contracts by Industry

1. Construction Prime Contractor Utilization: All Contracts

Table 1.03 summarizes all contract dollars expended by the State Agencies, Authorities, and Commissions on construction prime contracts. Minority Business Enterprises received 7.04 percent of the construction prime contract dollars; Women Business Enterprises received 6.98 percent; and Caucasian Male Business Enterprises received 85.98 percent.

African American Businesses received 7 or 0.24 percent of the construction contracts during the study period, representing \$943,313 or 0.05 percent of the contract dollars.

Asian American Businesses received 19 or 0.66 percent of the construction contracts during the study period, representing \$28,647,097 or 1.45 percent of the contract dollars.

Hispanic American Businesses received 84 or 2.91 percent of the construction contracts during the study period, representing \$108,888,559 or 5.5 percent of the contract dollars.

Native American Businesses received 1 or 0.03 percent of the construction contracts during the study period, representing \$851,908 or 0.04 percent of the contract dollars.

Minority Business Enterprises received 111 or 3.85 percent of the construction contracts during the study period, representing \$139,330,877 or 7.04 percent of the contract dollars.

Women Business Enterprises received 210 or 7.28 percent of the construction contracts during the study period, representing \$138,219,026 or 6.98 percent of the contract dollars.

Minority and Women Business Enterprises received 321 or 11.13 percent of the construction contracts during the study period, representing \$277,549,903 or 14.02 percent of the contract dollars.

Caucasian Male Business Enterprises received 2,564 or 88.87 percent of the construction contracts during the study period, representing \$1,702,078,789 or 85.98 percent of the contract dollars.

**Table 1.03 Construction Prime Contractor Utilization: All
Contracts, July 1, 2000 to June 30, 2002**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	7	0.24%	\$943,313	0.05%
Asian Americans	19	0.66%	\$28,647,097	1.45%
Hispanic Americans	84	2.91%	\$108,888,559	5.50%
Native Americans	1	0.03%	\$851,908	0.04%
Caucasian Females	210	7.28%	\$138,219,026	6.98%
Caucasian Males	2,564	88.87%	\$1,702,078,789	85.98%
TOTAL	2,885	100.00%	\$1,979,628,693	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	7	0.24%	\$943,313	0.05%
Asian American Females	2	0.07%	\$49,410	0.00%
Asian American Males	17	0.59%	\$28,597,687	1.44%
Hispanic American Females	47	1.63%	\$9,607,894	0.49%
Hispanic American Males	37	1.28%	\$99,280,666	5.02%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	1	0.03%	\$851,908	0.04%
Caucasian Females	210	7.28%	\$138,219,026	6.98%
Caucasian Males	2,564	88.87%	\$1,702,078,789	85.98%
TOTAL	2,885	100.00%	\$1,979,628,693	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	49	1.70%	\$9,657,304	0.49%
Minority Males	62	2.15%	\$129,673,574	6.55%
Caucasian Females	210	7.28%	\$138,219,026	6.98%
Caucasian Males	2,564	88.87%	\$1,702,078,789	85.98%
TOTAL	2,885	100.00%	\$1,979,628,693	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	111	3.85%	\$139,330,877	7.04%
Women Business Enterprises	210	7.28%	\$138,219,026	6.98%
Minority and Women Business Enterprises	321	11.13%	\$277,549,903	14.02%
Caucasian Male Business Enterprises	2,564	88.87%	\$1,702,078,789	85.98%
TOTAL	2,885	100.00%	\$1,979,628,693	100.00%

2. Construction-Related Prime Contractor Utilization: All Contracts

Table 1.04 summarizes all contract dollars expended by the State Agencies, Authorities, and Commissions on construction-related prime contracts. Minority Business Enterprises received 9.94 percent of the construction-related prime contract dollars; Women Business Enterprises received 1.17 percent; and Caucasian Male Business Enterprises received 88.9 percent.

African American Businesses received 13 or 1.4 percent of the construction-related contracts during the study period, representing \$5,678,515 or 1.59 percent of the contract dollars.

Asian American Businesses received 30 or 3.24 percent of the construction-related contracts during the study period, representing \$21,626,212 or 6.04 percent of the contract dollars.

Hispanic American Businesses received 12 or 1.29 percent of the construction-related contracts during the study period, representing \$5,249,673 or 1.47 percent of the contract dollars.

Native American Businesses received 21 or 2.27% of the construction-related contracts during the study period, representing \$3,021,624 or 0.84 percent of the contract dollars.

Minority Business Enterprises received 76 or 8.20 percent of the construction-related contracts during the study period, representing \$35,576,024 or 9.94 percent of the contract dollars.

Women Business Enterprises received 36 or 3.88 percent of the construction-related contracts during the study period, representing \$4,178,736 or 1.17 percent of the contract dollars.

Minority and Women Business Enterprises received 112 or 12.08 percent of the construction-related contracts during the study period, representing \$39,754,761 or 11.1 percent of the contract dollars.

Caucasian Males Business Enterprises received 815 or 87.92 percent of the construction-related contracts during the study period, representing \$318,271,014 or 88.9 percent of the contract dollars.

**Table 1.04 Construction-Related Prime Contractor
Utilization: All Contracts, July 1, 2000 to June 30, 2002**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	13	1.40%	\$5,678,515	1.59%
Asian Americans	30	3.24%	\$21,626,212	6.04%
Hispanic Americans	12	1.29%	\$5,249,673	1.47%
Native Americans	21	2.27%	\$3,021,624	0.84%
Caucasian Females	36	3.88%	\$4,178,736	1.17%
Caucasian Males	815	87.92%	\$318,271,014	88.90%
TOTAL	927	100.00%	\$358,025,775	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	13	1.40%	\$5,678,515	1.59%
Asian American Females	7	0.76%	\$2,106,809	0.59%
Asian American Males	23	2.48%	\$19,519,402	5.45%
Hispanic American Females	1	0.11%	\$11,150	0.00%
Hispanic American Males	11	1.19%	\$5,238,523	1.46%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	21	2.27%	\$3,021,624	0.84%
Caucasian Females	36	3.88%	\$4,178,736	1.17%
Caucasian Males	815	87.92%	\$318,271,014	88.90%
TOTAL	927	100.00%	\$358,025,775	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	8	0.86%	\$2,117,959	0.59%
Minority Males	68	7.34%	\$33,458,065	9.35%
Caucasian Females	36	3.88%	\$4,178,736	1.17%
Caucasian Males	815	87.92%	\$318,271,014	88.90%
TOTAL	927	100.00%	\$358,025,775	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	76	8.20%	\$35,576,024	9.94%
Women Business Enterprises	36	3.88%	\$4,178,736	1.17%
Minority and Women Business Enterprises	112	12.08%	\$39,754,761	11.10%
Caucasian Male Business Enterprises	815	87.92%	\$318,271,014	88.90%
TOTAL	927	100.00%	\$358,025,775	100.00%

B. All State Agencies, Authorities, and Commissions Prime Contracts under \$500,000, by Industry

1. Construction Prime Contractor Utilization: Contracts Under \$500,000

Table 1.05 summarizes all contract dollars expended by the State Agencies, Authorities, and Commissions on construction prime contracts under \$500,000. Minority Business Enterprises received 8.81 percent of the prime contract dollars; Women Business Enterprises received 11.65 percent; and Caucasian Male Business Enterprises received 79.53 percent.

African American Businesses received 6 or 0.25 percent of the construction contracts under \$500,000 during the study period, representing \$143,413 or 0.15 percent of the contract dollars.

Asian American Businesses received 14 or 0.57 percent of the construction contracts under \$500,000 during the study period, representing \$3,372,281 or 3.49 percent of the contract dollars.

Hispanic American Businesses received 65 or 2.66 percent of the construction contracts under \$500,000 during the study period, representing \$4,997,198 or 5.17 percent of the contract dollars.

Native American Businesses received none of the construction contracts under \$500,000 during the study period.

Minority Business Enterprises received 85 or 3.48 percent of the construction contracts under \$500,000 during the study period, representing \$8,512,892 or 8.81 percent of the contract dollars.

Women Business Enterprises received 149 or 6.1 percent of the construction contracts under \$500,000 during the study period, representing \$11,257,122 or 11.65 percent of the contract dollars.

Minority and Women Business Enterprises received 234 or 9.59 percent of the construction contracts under \$500,000 during the study period, representing \$19,770,014 or 20.47 percent of the contract dollars.

Caucasian Male Business Enterprises received 2,207 or 90.41 percent of the construction contracts under \$500,000 during the study period, representing \$76,826,571 or 79.53 percent of the contract dollars.

**Table 1.05 Construction Prime Contractor Utilization:
Contracts under \$500,000, July 1, 2000 to June 30, 2002**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	6	0.25%	\$143,413	0.15%
Asian Americans	14	0.57%	\$3,372,281	3.49%
Hispanic Americans	65	2.66%	\$4,997,198	5.17%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	149	6.10%	\$11,257,122	11.65%
Caucasian Males	2,207	90.41%	\$76,826,571	79.53%
TOTAL	2,441	100.00%	\$96,596,585	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	6	0.25%	\$143,413	0.15%
Asian American Females	2	0.08%	\$49,410	0.05%
Asian American Males	12	0.49%	\$3,322,871	3.44%
Hispanic American Females	43	1.76%	\$2,199,134	2.28%
Hispanic American Males	22	0.90%	\$2,798,064	2.90%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	149	6.10%	\$11,257,122	11.65%
Caucasian Males	2,207	90.41%	\$76,826,571	79.53%
TOTAL	2,441	100.00%	\$96,596,585	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	45	1.84%	\$2,248,544	2.33%
Minority Males	40	1.64%	\$6,264,349	6.49%
Caucasian Females	149	6.10%	\$11,257,122	11.65%
Caucasian Males	2,207	90.41%	\$76,826,571	79.53%
TOTAL	2,441	100.00%	\$96,596,585	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	85	3.48%	\$8,512,892	8.81%
Women Business Enterprises	149	6.10%	\$11,257,122	11.65%
Minority and Women Business Enterprises	234	9.59%	\$19,770,014	20.47%
Caucasian Male Business Enterprises	2,207	90.41%	\$76,826,571	79.53%
TOTAL	2,441	100.00%	\$96,596,585	100.00%

2. Construction-Related Prime Contractor Utilization: Contracts under \$500,000

Table 1.06 summarizes all contract dollars expended by the State Agencies, Authorities, and Commissions on construction-related prime contracts under \$500,000. Minority Business Enterprises received 10.99 percent of the prime contract dollars; Women Business Enterprises received 4.39 percent; and Caucasian Male Business Enterprises received 84.62 percent.

African American Businesses received 9 or 1.19 percent of the construction-related contracts under \$500,000 during the study period, representing \$239,082 or 0.31 percent of the contract dollars.

Asian American Businesses received 17 or 2.25 percent of the construction-related contracts under \$500,000 during the study period, representing \$3,764,542 or 4.84 percent of the contract dollars.

Hispanic American Businesses received 9 or 1.19 percent of the construction-related contracts under \$500,000 during the study period, representing \$1,528,150 or 1.96 percent of the contract dollars.

Native American Businesses received 21 or 2.78 percent of the construction-related contracts under \$500,000 during the study period, representing \$3,021,624 or 3.88 percent of the contract dollars.

Minority Business Enterprises received 56 or 7.42 percent of the construction-related contracts under \$500,000 during the study period, representing \$8,553,399 or 10.99 percent of the contract dollars.

Women Business Enterprises received 35 or 4.64 percent of the construction-related contracts under \$500,000 during the study period, representing \$3,417,424 or 4.39 percent of the contract dollars.

Minority and Women Business Enterprises received 91 or 12.05 percent of the construction-related contracts under \$500,000 during the study period, representing \$11,970,823 or 15.38 percent of the contract dollars.

Caucasian Male Business Enterprises received 664 or 87.95 percent of the construction-related contracts under \$500,000 during the study period, representing \$65,865,125 or 84.62 percent of the contract dollars.

**Table 1.06 Construction-Related Prime Contractor
Utilization: Contracts under \$500,000, July 1, 2000 to June 30,
2002**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	9	1.19%	\$239,082	0.31%
Asian Americans	17	2.25%	\$3,764,542	4.84%
Hispanic Americans	9	1.19%	\$1,528,150	1.96%
Native Americans	21	2.78%	\$3,021,624	3.88%
Caucasian Females	35	4.64%	\$3,417,424	4.39%
Caucasian Males	664	87.95%	\$65,865,125	84.62%
TOTAL	755	100.00%	\$77,835,947	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	9	1.19%	\$239,082	0.31%
Asian American Females	6	0.79%	\$1,506,809	1.94%
Asian American Males	11	1.46%	\$2,257,733	2.90%
Hispanic American Females	1	0.13%	\$11,150	0.01%
Hispanic American Males	8	1.06%	\$1,517,000	1.95%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	21	2.78%	\$3,021,624	3.88%
Caucasian Females	35	4.64%	\$3,417,424	4.39%
Caucasian Males	664	87.95%	\$65,865,125	84.62%
TOTAL	755	100.00%	\$77,835,947	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	7	0.93%	\$1,517,959	1.95%
Minority Males	49	6.49%	\$7,035,440	9.04%
Caucasian Females	35	4.64%	\$3,417,424	4.39%
Caucasian Males	664	87.95%	\$65,865,125	84.62%
TOTAL	755	100.00%	\$77,835,947	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	56	7.42%	\$8,553,399	10.99%
Women Business Enterprises	35	4.64%	\$3,417,424	4.39%
Minority and Women Business Enterprises	91	12.05%	\$11,970,823	15.38%
Caucasian Male Business Enterprises	664	87.95%	\$65,865,125	84.62%
TOTAL	755	100.00%	\$77,835,947	100.00%

C. All State Agencies, Authorities, and Commissions Prime Contracts under \$41,100 or \$25,000, by Industry

1. Construction Prime Contractor Utilization: Contracts Under \$41,100

Table 1.07 summarizes all contract dollars expended by the State Agencies, Authorities, and Commissions on construction prime contracts under \$41,100. Minority Business Enterprises received 3.01 percent of the prime contract dollars; Women Business Enterprises received 7.48 percent; and Caucasian Male Business Enterprises received 89.51 percent.

African American Businesses received 5 or 0.24 percent of the construction contracts under \$41,100 during the study period, representing \$80,613 or 0.5 percent of the contract dollars.

Asian American Businesses received 4 or 0.2 percent of the construction contracts under \$41,100 during the study period, representing \$56,106 or 0.35 percent of the contract dollars.

Hispanic American Businesses received 42 or 2.05 percent of the construction contracts under \$41,100 during the study period, representing \$348,228 or 2.16 percent of the contract dollars.

Native American Businesses received none of the construction contracts under \$41,100 during the study period.

Minority Business Enterprises received 51 or 2.49 percent of the construction contracts under \$41,100 during the study period, representing \$484,947 or 3.01 percent of the contract dollars.

Women Business Enterprises received 100 or 4.88 percent of the construction contracts under \$41,100 during the study period, representing \$1,203,488 or 7.48 percent of the contract dollars.

Minority and Women Business Enterprises received 151 or 7.37 percent of the construction contracts under \$41,100 during the study period, representing \$1,688,435 or 10.49 percent of the contract dollars.

Caucasian Male Business Enterprises received 1,898 or 92.63 percent of the construction contracts under \$41,100 during the study period, representing \$14,403,373 or 89.51 percent of the contract dollars.

**Table 1.07 Construction Prime Contractor Utilization:
Contracts under \$41,100, July 1, 2000 to June 30, 2002**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	5	0.24%	\$80,613	0.50%
Asian Americans	4	0.20%	\$56,106	0.35%
Hispanic Americans	42	2.05%	\$348,228	2.16%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	100	4.88%	\$1,203,488	7.48%
Caucasian Males	1,898	92.63%	\$14,403,373	89.51%
TOTAL	2,049	100.00%	\$16,091,808	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	5	0.24%	\$80,613	0.50%
Asian American Females	2	0.10%	\$49,410	0.31%
Asian American Males	2	0.10%	\$6,696	0.04%
Hispanic American Females	33	1.61%	\$146,550	0.91%
Hispanic American Males	9	0.44%	\$201,678	1.25%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	100	4.88%	\$1,203,488	7.48%
Caucasian Males	1,898	92.63%	\$14,403,373	89.51%
TOTAL	2,049	100.00%	\$16,091,808	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	35	1.71%	\$195,960	1.22%
Minority Males	16	0.78%	\$288,987	1.80%
Caucasian Females	100	4.88%	\$1,203,488	7.48%
Caucasian Males	1,898	92.63%	\$14,403,373	89.51%
TOTAL	2,049	100.00%	\$16,091,808	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	51	2.49%	\$484,947	3.01%
Women Business Enterprises	100	4.88%	\$1,203,488	7.48%
Minority and Women Business Enterprises	151	7.37%	\$1,688,435	10.49%
Caucasian Male Business Enterprises	1,898	92.63%	\$14,403,373	89.51%
TOTAL	2,049	100.00%	\$16,091,808	100.00%

2. Construction-Related Prime Contractor Utilization: Contracts under \$25,000

Table 1.08 summarizes all contract dollars expended by the State Agencies, Authorities, and Commissions on construction-related prime contracts under \$25,000. Minority Business Enterprises received 2.65 percent of the prime contract dollars; Women Business Enterprises received 2.22 percent; and Caucasian Male Business Enterprises received 95.13 percent.

African American Businesses received 8 or 2.4 percent of the construction-related contracts under \$25,000 during the study period, representing \$13,701 or 0.49 percent of the contract dollars.

Asian American Businesses received none of the construction-related contracts under \$25,000 during the study period.

Hispanic American Businesses received 1 or 0.3 percent of the construction-related contracts under \$25,000 during the study period, representing \$11,150 or 0.4 percent of the contract dollars.

Native American Businesses received 2 or 0.6 percent of the construction-related contracts under \$25,000 during the study period, representing \$50,000 or 1.77 percent of the contract dollars.

Minority Business Enterprises received 11 or 3.3 percent of the construction-related contracts under \$25,000 during the study period, representing \$74,851 or 2.65 percent of the contract dollars.

Women Business Enterprises received 12 or 3.6 percent of the construction-related contracts under \$25,000 during the study period, representing \$62,639 or 2.22 percent of the contract dollars.

Minority and Women Business Enterprises received 23 or 6.91 percent of the construction-related contracts under \$25,000 during the study period, representing \$137,490 or 4.87 percent of the contract dollars.

Caucasian Male Business Enterprises received 310 or 93.09 percent of the construction-related contracts under \$25,000 during the study period, representing \$2,683,132 or 95.13 percent of the contract dollars.

**Table 1.08 Construction-Related Prime Contractor
Utilization: Contracts under \$25,000, July 1, 2000 to June 30,
2002**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	8	2.40%	\$13,701	0.49%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	1	0.30%	\$11,150	0.40%
Native Americans	2	0.60%	\$50,000	1.77%
Caucasian Females	12	3.60%	\$62,639	2.22%
Caucasian Males	310	93.09%	\$2,683,132	95.13%
TOTAL	333	100.00%	\$2,820,622	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	8	2.40%	\$13,701	0.49%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	1	0.30%	\$11,150	0.40%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	2	0.60%	\$50,000	1.77%
Caucasian Females	12	3.60%	\$62,639	2.22%
Caucasian Males	310	93.09%	\$2,683,132	95.13%
TOTAL	333	100.00%	\$2,820,622	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1	0.30%	\$11,150	0.40%
Minority Males	10	3.00%	\$63,701	2.26%
Caucasian Females	12	3.60%	\$62,639	2.22%
Caucasian Males	310	93.09%	\$2,683,132	95.13%
TOTAL	333	100.00%	\$2,820,622	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	11	3.30%	\$74,851	2.65%
Women Business Enterprises	12	3.60%	\$62,639	2.22%
Minority and Women Business Enterprises	23	6.91%	\$137,490	4.87%
Caucasian Male Business Enterprises	310	93.09%	\$2,683,132	95.13%
TOTAL	333	100.00%	\$2,820,622	100.00%



2

SUBCONTRACTOR UTILIZATION ANALYSIS

I. INTRODUCTION

The objective of the subcontractor utilization analysis of construction and construction-related services contracts is to determine the level of minority and woman-owned business enterprise (M/WBE) subcontractor utilization compared to non-M/WBE subcontractor utilization. The subcontractor utilization analysis presents the choices made by prime contractors in their selection of M/WBE and non-M/WBE subcontractors on State prime contracts.

The subcontractor utilization analysis includes construction and construction-related contracts awarded by State Agencies, Authorities, and Commissions between July 1, 2000 and June 30, 2002. State Colleges and Universities contracts were analyzed separately from the State Agencies, Authorities, and Commissions.

II. SUBCONTRACTOR UTILIZATION DATA SOURCES

The first step in compiling subcontractor data was the determination of the size of the prime contracts to be researched. The research identifying subcontractor utilization was limited to prime contracts \$50,000 and greater. Once the threshold was defined, the State Agencies, Authorities, and Commissions were surveyed to determine if they had subcontractor records on file for prime contracts \$50,000 and greater.

It was determined that there was no centralized source for the State Agencies, Authorities, and Commissions' construction and construction-related subcontracts. While none of the State Agencies, Authorities, and Commissions maintained comprehensive subcontractor records, several could provide subcontractor award records for some of their prime

contracts. In collecting the data needed for all subcontractors, a number of strategies were employed.

Nine State Agencies, Authorities, and Commissions have compiled available subcontracting data that could be provided in an electronic format. The nine State Agencies, Authorities, and Commissions which provided such records are listed below:

State Departments:

- Transportation

Authorities:

- Garden State Parkway
- New Jersey Economic Development Authority*/Schools Construction Corporation
- New Jersey Highway/Turnpike Authority
- New Jersey Sports & Exposition Authority
- South Jersey Transit Authority

* None of the New Jersey Economic Development Authority contracts were within the study period. Schools Construction Corporation (SCC) contracts were provided directly from SCC

Commissions:

- New Jersey Meadowlands Commission
- Passaic Valley Sewage Commission

After reviewing the electronic files provided, it was determined that additional research should be performed at one State Agency, Authority, and Commission. Hard copy records were copied on site at nine State Agencies, Authorities, and Commissions, and the relevant information was entered into an electronic file. State Agencies, Authorities, and Commissions where hard copy subcontractor records were reviewed are listed below:

State Departments:

- Treasury
- Military and Veterans Affairs

Authorities:

- Casino Reinvestment Development Authority
- New Jersey Highway/Turnpike Authority
- New Jersey Housing and Mortgage Finance Authority
- New Jersey Transit Corporation
- New Jersey Water Supply Authority

Commissions:

- North Jersey District Water Supply Commission
- Pinelands Commission

The Treasurer's Director of Contract Compliance maintained records of subcontractors, which had been submitted by prime contractors in response to the requirement to file Equal Employment Opportunity forms (AA 301/AA 302). There were only a limited number of these records which included the project award date, contract title, and subcontractors.

Subcontractor records were also collected from the Treasury's Department of Property Management and Construction (DPMC) and the School Construction Corporation's project management firms. The Treasury's DPMC manages construction contracts funded by various State Agencies, Authorities, and Commissions and is therefore the repository for project files which contained major subcontractor information. Several project management firms manage school construction contracts. Their files contain information on subcontractors engaged by the school construction prime contractors.

Once the electronic and hard copy subcontractor records were compiled, the prime contractors were surveyed to collect payment data for the identified subcontracts and secure information on any utilized subcontractors which had not been identified through documentary research.

Identified subcontractors were contacted to verify their subcontract dollars. As a result of this intensive effort to collect subcontracting data, a total of 3,864 subcontracts were identified in the two industries, construction and construction-related.

III. STATE AGENCIES, AUTHORITIES, AND COMMISSIONS SUBCONTRACTOR UTILIZATION ANALYSIS: ALL SUBCONTRACTS

As depicted in Table 2.01 below, the State Agencies, Authorities, and Commissions prime contractors issued 3,864 construction and construction-related subcontracts during the July 1, 2000 to June 30, 2002 study period. These included 2,770 for construction contracts and 1,094 for construction-related contracts.

Also, the State Agencies, Authorities, and Commissions prime contractors expended \$555,475,122 construction and construction-related subcontract dollars during the study period, with \$488,347,293 for construction contracts and \$67,127,829 for construction-related contracts.

Table 2.01 Total Construction and Construction-Related Subcontracts and Dollars Expended between July 1, 2000 and June 30, 2002

State Agencies, Authorities, and Commissions	Total Number of Subcontracts	Total Dollars Expended
Construction	2,770	\$488,347,293
Construction-Related	1,094	\$67,127,829
Total	3,864	\$555,475,122

State Agencies, Authorities, and Commissions Subcontractor Utilization

1. State Agencies, Authorities, and Commissions Construction Subcontract Utilization: All Subcontracts

Table 2.02 depicts construction subcontracts awarded by prime contractors. Minority business enterprises received 13.5 percent of the construction subcontract dollars; Women Business Enterprises received 20.18 percent; and Caucasian Male Business Enterprises received 66.31 percent.

African American Businesses received 79 or 2.85 percent of the construction subcontracts during the study period, representing \$12,414,801 or 2.54 percent of the subcontract dollars.

Asian American Businesses received 41 or 1.48 percent of the construction subcontracts during the study period, representing \$4,346,947 or 0.89 percent of the subcontract dollars.

Hispanic American Businesses received 244 or 8.81 percent of the construction subcontracts during the study period, representing \$49,052,375 or 10.04 percent of the subcontract dollars.

Native American Businesses received 4 or 0.14 percent of the construction subcontracts during the study period, representing \$121,500 or 0.02 percent of the subcontract dollars.

Minority Business Enterprises received 368 or 13.29 percent of the construction subcontracts during the study period, representing \$65,935,623 or 13.5 percent of the subcontract dollars.

Women Business Enterprises received 531 or 19.17 percent of the construction subcontracts during the study period, representing \$98,571,229 or 20.18 percent of the subcontract dollars.

Minority and Women Business Enterprises received 899 or 32.45 percent of the construction subcontracts during the study period, representing \$164,506,852 or 33.69 percent of the subcontract dollars.

Caucasian Male Business Enterprises received 1,871 or 67.55 percent of the construction subcontracts during the study period, representing \$323,840,441 or 66.31 percent of the subcontract dollars.

**Table 2.02 Construction Utilization: All Subcontracts, July 1,
2000 to June 30, 2002**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	79	2.85%	\$12,414,801	2.54%
Asian Americans	41	1.48%	\$4,346,947	0.89%
Hispanic Americans	244	8.81%	\$49,052,375	10.04%
Native Americans	4	0.14%	\$121,500	0.02%
Caucasian Females	531	19.17%	\$98,571,229	20.18%
Caucasian Males	1,871	67.55%	\$323,840,441	66.31%
TOTAL	2,770	100.00%	\$488,347,293	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	8	0.29%	\$6,222,648	1.27%
African American Males	71	2.56%	\$6,192,153	1.27%
Asian American Females	9	0.32%	\$1,203,136	0.25%
Asian American Males	32	1.16%	\$3,143,811	0.64%
Hispanic American Females	170	6.14%	\$28,663,352	5.87%
Hispanic American Males	74	2.67%	\$20,389,023	4.18%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	4	0.14%	\$121,500	0.02%
Caucasian Females	531	19.17%	\$98,571,229	20.18%
Caucasian Males	1,871	67.55%	\$323,840,441	66.31%
TOTAL	2,770	100.00%	488,347,293	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	187	6.75%	\$36,089,136	7.39%
Minority Males	181	6.53%	\$29,846,487	6.11%
Caucasian Females	531	19.17%	\$98,571,229	20.18%
Caucasian Males	1,871	67.55%	\$323,840,441	66.31%
TOTAL	2,770	100.00%	\$488,347,293	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	368	13.29%	\$65,935,623	13.50%
Women Business Enterprises	531	19.17%	\$98,571,229	20.18%
Minority and Women Business Enterprises	899	32.45%	\$164,506,852	33.69%
Caucasian Male Business Enterprises	1,871	67.55%	\$323,840,441	66.31%
TOTAL	2,770	100.00%	\$488,347,293	100.00%

2. State Agencies, Authorities, and Commissions Construction-Related Subcontract Utilization: All Subcontracts

Table 2.03 depicts construction-related subcontracts awarded by prime contractors. Minority Business Enterprises received 20.72 percent of the construction-related subcontract dollars; Women Business Enterprises received 12.95 percent; and Caucasian Male Business Enterprises received 66.33 percent.

African American Businesses received 47 or 4.3 percent of the construction-related subcontracts during the study period, representing \$2,018,104 or 3.01 percent of the subcontract dollars.

Asian American Businesses received 124 or 11.33 percent of the construction-related subcontracts during the study period, representing \$7,560,708 or 11.26 percent of the subcontract dollars.

Hispanic American Businesses received 40 or 3.66 percent of the construction-related subcontracts during the study period, representing \$4,328,829 or 6.45 percent of the subcontract dollars.

Native American Businesses received none of the construction-related subcontracts during the study period.

Minority Business Enterprises received 211 or 19.29 percent of the construction-related subcontracts during the study period, representing \$13,907,641 or 20.72 percent of the subcontract dollars.

Women Business Enterprises received 160 or 14.63 percent of the construction-related subcontracts during the study period, representing \$8,694,585 or 12.95 percent of the subcontract dollars.

Minority and Women Business Enterprises received 371 or 33.91 percent of the construction-related subcontracts during the study period, representing \$22,602,226 or 33.67 percent of the subcontract dollars.

Caucasian Male Business Enterprises received 723 or 66.09 percent of construction-related subcontract dollars during the study period, representing \$44,525,603 or 66.33 percent of the subcontract dollars.

**Table 2.03 Construction-Related Utilization: All
Subcontracts, July 1, 2000 to June 30, 2002**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	47	4.30%	\$2,018,104	3.01%
Asian Americans	124	11.33%	\$7,560,708	11.26%
Hispanic Americans	40	3.66%	\$4,328,829	6.45%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	160	14.63%	\$8,694,585	12.95%
Caucasian Males	723	66.09%	\$44,525,603	66.33%
TOTAL	1,094	100.00%	\$67,127,829	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	24	2.19%	\$625,928	0.93%
African American Males	23	2.10%	\$1,392,176	2.07%
Asian American Females	52	4.75%	\$3,185,126	4.74%
Asian American Males	72	6.58%	\$4,375,582	6.52%
Hispanic American Females	19	1.74%	\$2,208,024	3.29%
Hispanic American Males	21	1.92%	\$2,120,805	3.16%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	160	14.63%	\$8,694,585	12.95%
Caucasian Males	723	66.09%	\$44,525,603	66.33%
TOTAL	1,094	100.00%	67,127,829	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	95	8.68%	\$6,019,078	8.97%
Minority Males	116	10.60%	\$7,888,563	11.75%
Caucasian Females	160	14.63%	\$8,694,585	12.95%
Caucasian Males	723	66.09%	\$44,525,603	66.33%
TOTAL	1,094	100.00%	\$67,127,829	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	211	19.29%	\$13,907,641	20.72%
Women Business Enterprises	160	14.63%	\$8,694,585	12.95%
Minority and Women Business Enterprises	371	33.91%	\$22,602,226	33.67%
Caucasian Male Business Enterprises	723	66.09%	\$44,525,603	66.33%
TOTAL	1,094	100.00%	\$67,127,829	100.00%



3

MARKET AREA ANALYSIS

I. MARKET AREA DEFINITION

A. Legal Criteria for Geographic Market Area

The Supreme Court's decision in *Richmond v. Croson*¹ firmly established that programs which set aside a certain percentage of state and local contracts for minority and woman-owned firms must be supported by *evidence of past discrimination in the award of their contracts*.

Prior to the *Croson* decision, many agencies and jurisdictions implementing race-conscious programs had done so without developing a detailed public record to document discrimination in their award of contracts. Instead, they relied upon common knowledge and widely-recognized patterns of discrimination, both local and national.²

Croson established that a local government should not rely on society-wide discrimination as the basis for a race-based program, but should instead identify discrimination within its own jurisdiction.³ In *Croson*, the Court found the City of Richmond's Minority Business Enterprise (MBE) construction program to be unconstitutional due to insufficient evidence of discrimination in the *local construction market*.

Croson was explicit in saying that the *local construction market* was the appropriate geographical framework within which to perform the statistical comparison of business availability and business utilization. Therefore, the identification of the local market area

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

² *United Steelworkers v. Weber*, 433 U.S. 193, 198, n. 1 (1979).

³ *Croson*, 488 U.S. at 497.

is particularly important as it establishes the parameters within which to conduct a disparity study.

B. Application of the Croson Standard

While *Croson* did much to emphasize the importance of local market area, it provided little assistance in defining its parameters. However, it is informative to review the Court's definition of market area in the City of Richmond context. In discussing the scope of the constitutional violation that must be investigated, the Court interchangeably used the terms "relevant market,"⁴ "Richmond construction industry,"⁵ and "city's construction industry"⁶ to define the proper scope of the examination of the existence of discrimination. This substitution of terms lends support to a definition of market area that coincides with the boundaries of a jurisdiction.

In analyzing the cases following *Croson*, a pattern emerges which provides us with additional guidance. The body of cases examining market area support a definition of market area that is reasonable.⁷ In *Cone Corporation v. Hillsborough County*,⁸ the Eleventh Circuit Court of Appeals considered a study in support of Florida's Hillsborough County MBE program, which used minority contractors located in the County as the measure of available firms. The program was found to be constitutional under the compelling governmental interest prong of strict scrutiny.

Hillsborough County's program was based on statistics indicating that specific discrimination existed in the construction contracts awarded by the County, not in the construction industry in general. Hillsborough County had extracted data from within its own jurisdictional boundaries and assessed the percentage of minority businesses available in Hillsborough County. The court stated that the study was properly conducted within the "local construction industry."⁹

Similarly, in *Associated General Contractors v. Coalition for Economic Equity (AGCCII)*,¹⁰ the Ninth Circuit Court of Appeals found the City and County of San Francisco's MBE

⁴ *Croson*, 488 U.S. at 471.

⁵ *Id.* at 500.

⁶ *Id.* at 470.

⁷ See, e.g., *Concrete Works of Colorado v. City of Denver, Colorado*, 36 F.3d 1513, 1528 (10th Cir. 1994).

⁸ *Cone Corp. v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990).

⁹ *Id.* at 915.

¹⁰ *Associated General Contractors v. Coalition for Economic Equity*, 950 F.2d 1401 (9th Cir. 1991).

program to have the factual predicate necessary to survive strict scrutiny. The MBE program was supported by a study that assessed the number of available MBE contractors within the City and County of San Francisco. The court found it appropriate to use the City and County as the relevant market area within which to conduct a disparity study.¹¹

In *Coral Construction v. King County*, the Ninth Circuit Court of Appeals held that, “a set-aside program is valid only if actual, identifiable discrimination has occurred within the local industry affected by the program.”¹² In support of its MBE program, Washington’s King County offered studies compiled by other jurisdictions, including entities completely within the County or coterminous with the boundaries of the County, as well as a separate jurisdiction completely outside of the County. The plaintiffs contended that *Croson* required King County to compile its own data and cited *Croson* to prohibit data sharing.

The court found that data sharing could potentially lead to the improper use of societal discrimination data as the factual basis for a local MBE program and that innocent third parties could be unnecessarily burdened if an MBE program were based on outside data.

However, the court also found that the data from entities within the County and from coterminous jurisdictions to be relevant to discrimination in the County and posed no risk of unfairly burdening innocent third parties. As for data gathered by a neighboring county, the court concluded that this data could not be used to support King County’s MBE program. The court noted, “It is vital that a race-conscious program align itself as closely to the scope of the problem legitimately sought to be rectified by the governmental entity. To prevent overbreadth, the enacting jurisdiction should limit its factual inquiry to the presence of discrimination within its own boundaries.”¹³ However, the court did acknowledge that the “world of contracting does not conform itself neatly to jurisdictional boundaries.”¹⁴

In other situations courts have approved a definition of market area that extends beyond a jurisdiction’s boundaries. In *Concrete Works v. City and County of Denver*,¹⁵ the court directly addressed the issue of whether extra-jurisdictional evidence of discrimination can be used to determine “local market area” for a disparity study. In *Concrete Works*, the defendant relied on evidence of discrimination in the six-county Denver Metropolitan Statistical Area (MSA) to support its MBE program. Relying on *Croson*, plaintiffs argued that the extra jurisdictional evidence should not be considered. The court disagreed, finding

¹¹ *Id.* at 1415.

¹² *Coral Construction v. King County*, 941 F.2d 910, 916 (9th Cir. 1991).

¹³ *Id.* at 917.

¹⁴ *Ibid.*

¹⁵ *Concrete Works of Colorado v. City of Denver, Colorado*, 36 F.3d 1513 , 1528 (10th Cir. 1994).

that *Croson*'s concern was that cities not use vaguely defined societal discrimination as the factual predicate for a disparity study. The court explained that evidence of discrimination should be specific so that race-conscious programs are designed to minimize burdens upon nonculpable third parties.

Critical to the court's acceptance of the Denver MSA as the relevant local market was the finding that more than 80 percent of construction and design contracts awarded by Denver were awarded to contractors within the MSA. Another consideration was that Denver's analysis was based on U.S. Census data, which was available for the Denver MSA, but not for the city itself. There was no undue burden placed on nonculpable parties, as Denver had conducted a majority of its construction contracts within the area defined as the local market. Citing *AGCCII*,¹⁶ the court noted, "that any plan that extends race-conscious remedies beyond territorial boundaries must be based on very specific findings that actions that the city has taken in the past have visited racial discrimination on such individuals."¹⁷

Similarly, New York State conducted a disparity study in which the geographic market consisted of New York State and eight counties in northern New Jersey. The geographic market was defined as the area encompassing the location of businesses which received more than 90 percent of the dollar value of all contracts awarded by the agency.¹⁸

State and local governments must pay special attention to the geographical scope of their disparity studies. *Croson* determined that the statistical analysis should focus on the number of qualified minority individuals or qualified minority business owners in the government's marketplace.¹⁹ The text of *Croson* itself suggests that the geographical boundaries of the government entity comprise an appropriate market area, and other courts have agreed with this finding. In addition, other cases have approved the use of a percentage of the dollars spent by an agency on contracting.

It follows then that an entity may limit consideration of evidence of discrimination within its own jurisdiction. Under certain circumstances, extra-jurisdictional evidence can be used if the percentage of governmental dollars supports such boundaries. Taken collectively, the cases support a definition of market area that is reasonable rather than dictating a specific formula. In other words, since *Croson* and its progeny did not provide a bright line rule for local market area, that determination should be fact-based and case-specific.

¹⁶ *AGCCII*, 950 F.2d at 1401.

¹⁷ *Concrete Works*, 36 F.3d at 1528.

¹⁸ *Opportunity Denied! New York State's Study*, 26 Urban Lawyer No. 3, Summer 1994.

¹⁹ *Croson*, 488 U.S. at 501.

II. STUDY'S MARKET AREA

The clear implication of the market area cases is that in applying the test of reasonableness, one can limit the area to that of the jurisdiction if the facts support it. The following table depicts the overall number of construction and construction-related contracts and the dollar value of contracts awarded by the State Agencies, Authorities, and Commissions between July 1, 2000 and June 30, 2002. As depicted in the table, the State Agencies, Authorities, and Commissions awarded 3,812 prime contracts valued at \$2,337,654,467. Of these contracts, 3,482 or 91.34 percent were awarded to New Jersey-based companies. The dollar value of those contracts was \$2,009,162,186 or 85.95 percent of all dollars. For construction prime contracts, 2,628 or 91.09 percent were awarded to New Jersey-based companies. The dollar value of those contracts was \$1,670,111,081 or 84.36 percent of the total construction dollars. Of the construction-related services prime contracts, 854 or 92.13 percent of the contracts were awarded to New Jersey-based companies. The dollar value of those contracts was \$339,051,104 or 94.7 percent of the total construction-related dollars. Given that geographical distribution, the State of New Jersey is determined to be this study's geographical market area.

**Table 3.01 State Agencies, Authorities, and Commissions
Market Area: July 1, 2000 to June 30, 2002**

Market Area	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Combined Types of Work				
Market Area: State of New Jersey	3,482	91.34%	\$2,009,162,186	85.95%
Outside Market Area	330	8.66%	\$328,492,282	14.05%
Total	3,812	100.00%	\$2,337,654,467	100.00%
Construction				
Market Area: State of New Jersey	2,628	91.09%	\$1,670,111,081	84.36%
Outside Market Area	257	8.91%	\$309,517,611	15.64%
Total	2,885	100.00%	\$1,979,628,693	100.00%
Construction-Related Services				
Market Area: State of New Jersey	854	92.13%	\$339,051,104	94.70%
Outside Market Area	73	7.87%	\$18,974,671	5.30%
Total	927	100.00%	\$358,025,775	100.00%



4

AVAILABILITY ANALYSIS

I. INTRODUCTION

According to *Croson*, availability is defined as businesses in the jurisdiction's market area that are willing and able to provide goods or services the jurisdiction procures.¹ To determine availability, minority and woman-owned business enterprises (M/WBEs) and non-M/WBEs within the jurisdiction's market area that are willing and able to perform its contracts need to be enumerated. When considering sources for determining the number of willing and able M/WBEs and non-M/WBEs, the selection must be based on whether two significant aspects about the population in question can be gauged from the various sources. The source must indicate first the firm's interest in doing business with the local government, as implied by the term "willing," and second, the willing business' capacity to provide goods or services, as implied by the term "able."

The determination of availability must follow from the definition of an entity's market area. The market area analysis presented in Chapter 3 defined the State of New Jersey (State) as the market area for State Agencies, Authorities, and Commissions because the majority of businesses utilized are domiciled within the State's jurisdiction.

The minority, woman, and Caucasian male-owned businesses in the market area providing construction and construction-related services were compiled from State and other sources. Separate availability lists were compiled for prime contractors and subcontractors in those industries.

¹ *Croson*, 488 U.S. at 509.

II. SOURCES OF POTENTIALLY WILLING AND ABLE PRIME CONTRACTORS

A. Pre-Qualified Contractor Sources

The pre-qualified lists were a source of construction and construction-related businesses willing and able to do business with State Agencies, Authorities, and Commissions. New Jersey Statute § 52:35-2 requires all bidders on state public works contracts to be pre-qualified. A prospective bidder is required to submit a statement that fully discloses the financial ability, adequacy of plant and equipment, organization, and other pertinent information in order to pre-qualify. While State officials have the option of promulgating regulations deemed appropriate for controlling the qualifications of prospective bidders, all regulations must ensure that public works contracts are awarded to pre-qualified businesses, according to New Jersey law.

The only exception to the State's pre-qualification requirement applies to State Colleges and Universities. These institutions are exempt from the pre-qualification requirement because they are autonomous, quasi-public entities. However, a survey of 23 State Agencies, Authorities, and Commissions determined that 7 agencies did not require bidders to pre-qualify. The 7 agencies are the Casino Reinvestment Development Authority, New Jersey Water Supply Authority, New Jersey Housing and Mortgage Finance Authority, New Jersey Meadowlands Commission, North Jersey District Water Supply Commission, Passaic Valley Sewage Commission, and the Pinelands Commission.

It is evident from the prevailing practices that pre-qualification lists are just some of many sources used by State Agencies, Authorities, and Commissions to identify businesses with the capacity needed to perform their construction and construction-related contracts. Therefore, the pre-qualified lists are not the sole sources in determining the number of businesses available to perform the public works contracts under analysis in this Study. Other sources used by State Agencies, Authorities, and Commissions to identify businesses available to perform their contracts are listed in Table 4.01 below.

B. Other Prime Contractor Sources

M/WBEs and non-M/WBEs willing and able to do business with the State were identified from various sources. Businesses that demonstrated willingness to contract with the State were identified from State and other agency sources. The willingness of businesses identified from non-governmental sources had to be determined. Table 4.02 lists the sources used. These sources include government and private listings of M/WBEs and non-M/WBEs in the market area.

Table 4.01 Summary of Prime Contractor Availability Data Sources

Source of Record	Type of Information
State of New Jersey and Other Government Records	
State of New Jersey: State Agency, Authority, Commission, College, and University Vendors	M/WBEs and Non-M/WBEs
State of New Jersey: State Agency, Authority, Commission, College, and University Utilized Businesses	M/WBEs and Non-M/WBEs
State of New Jersey: State Agency, Authority, Commission, College, and University Unsuccessful Bidders	M/WBEs and Non-M/WBEs
State of New Jersey: State Agency, Authority, Commission, College, and University Pre-qualification Lists	M/WBEs and Non-M/WBEs
Government Agency Certification Lists	
Department of Commerce Certification List	M/WBEs and Non-M/WBEs
New Jersey Department of Transportation Certification List	M/WBEs and Non-M/WBEs
The Port Authority of New York and New Jersey Certification Database	M/WBEs
United States Small Business Administration PRO-Net Database	M/WBEs and Non-M/WBEs
Business Outreach Events	
State of New Jersey Public Hearings' Attendee Lists	M/WBEs and Non-M/WBEs
State of New Jersey Business Surveys	M/WBEs and Non-M/WBEs
Trade Association Membership Lists	
Associated General Contractors	M/WBEs and Non-M/WBEs
Atlantic Plumbing & Heating	M/WBEs and Non-M/WBEs
Better Business Bureau	M/WBEs and Non-M/WBEs
Builders League of South Jersey	M/WBEs and Non-M/WBEs
Building Construction Association of NJ	M/WBEs and Non-M/WBEs
Maple Shade Progress Business Association	M/WBEs and Non-M/WBEs
New Jersey Association of Women Business Owners	M/WBEs
South Jersey Mechanic Contractors Association	M/WBEs and Non-M/WBEs
Chamber of Commerce Membership and Business Directory Lists	
Asian Indian Chamber of Commerce	M/WBEs
Atlantic County Chamber of Commerce	M/WBEs and Non-M/WBEs

Table 4.01 Summary of Prime Contractor Availability Data Sources

Source of Record	Type of Information
Avalon Chamber of Commerce	M/WBEs and Non-M/WBEs
Bayshore New Jersey	M/WBEs and Non-M/WBEs
Bloomfield Chamber of Commerce	M/WBEs and Non-M/WBEs
Bridgeton Chamber of Commerce	M/WBEs and Non-M/WBEs
Brigantine Chamber of Commerce	M/WBEs and Non-M/WBEs
Cherry Hill Chamber of Commerce	M/WBEs and Non-M/WBEs
Chinese American Chamber of Commerce	M/WBEs
Cranford Chamber of Commerce	M/WBEs and Non-M/WBEs
Dennis Township Chamber of Commerce	M/WBEs and Non-M/WBEs
Denville Chamber of Commerce	M/WBEs and Non-M/WBEs
East Brunswick Regional Chamber of Commerce	M/WBEs and Non-M/WBEs
Eastern Monmouth Chamber of Commerce	M/WBEs and Non-M/WBEs
Elmwood Park Chamber of Commerce	M/WBEs and Non-M/WBEs
Franklin Township Chamber of Commerce	M/WBEs and Non-M/WBEs
Garfield Chamber of Commerce	M/WBEs and Non-M/WBEs
Glassboro Chamber of Commerce	M/WBEs and Non-M/WBEs
Greater Elizabeth Chamber of Commerce	M/WBEs and Non-M/WBEs
Greater Fort Lee Chamber of Commerce	M/WBEs and Non-M/WBEs
Greater Hammonton Chamber of Commerce	M/WBEs and Non-M/WBEs
Greater Mercer County Chamber of Commerce	M/WBEs and Non-M/WBEs
Greater Vineland Chamber of Commerce	M/WBEs and Non-M/WBEs
Highland Park Chamber of Commerce	M/WBEs and Non-M/WBEs
Hope Chamber of Commerce	M/WBEs and Non-M/WBEs
Howell Chamber of Commerce	M/WBEs and Non-M/WBEs
Hudson Chamber of Commerce	M/WBEs and Non-M/WBEs
Irvington Chamber of Commerce	M/WBEs and Non-M/WBEs
Jackson Chamber Member Directory	M/WBEs and Non-M/WBEs
Jefferson Township Chamber of Commerce	M/WBEs and Non-M/WBEs
Lower Township Chamber of Commerce	M/WBEs and Non-M/WBEs
Main Street Hammonton Businesses	M/WBEs and Non-M/WBEs
Matawan Aberdeen Chamber of Commerce	M/WBEs and Non-M/WBEs
Metropolitan Trenton African American Chamber of Commerce	M/WBEs
Metuchen Chamber of Commerce	M/WBEs and Non-M/WBEs
Middlesex County Regional Chamber of Commerce	M/WBEs and Non-M/WBEs
Millburn Chamber of Commerce	M/WBEs and Non-M/WBEs

Table 4.01 Summary of Prime Contractor Availability Data Sources

Source of Record	Type of Information
Montville Chamber of Commerce	M/WBEs and Non-M/WBEs
North Jersey Chamber of Commerce	M/WBEs and Non-M/WBEs
North Essex Chamber of Commerce	M/WBEs and Non-M/WBEs
Ocean Township Chamber of Commerce	M/WBEs and Non-M/WBEs
Paramus Chamber of Commerce	M/WBEs and Non-M/WBEs
Paulsboro Chamber of Commerce	M/WBEs and Non-M/WBEs
Perth Amboy Chamber of Commerce	M/WBEs and Non-M/WBEs
Phillipsburg Chamber of Commerce	M/WBEs and Non-M/WBEs
Piscataway-Middlesex-South Plainfield Chamber of Commerce	M/WBEs and Non-M/WBEs
Point Pleasant Chamber of Commerce	M/WBEs and Non-M/WBEs
Pompton Lakes Chamber of Commerce	M/WBEs and Non-M/WBEs
Regional Business Partnership Directory	M/WBEs and Non-M/WBEs
Ridgewood Chamber of Commerce	M/WBEs and Non-M/WBEs
Ringwood Chamber of Commerce	M/WBEs and Non-M/WBEs
Salem County Chamber of Commerce	M/WBEs and Non-M/WBEs
Sea Isle City Chamber of Commerce	M/WBEs and Non-M/WBEs
Somerset County Business Partnership	M/WBEs and Non-M/WBEs
Southern New Jersey Chamber of Commerce	M/WBEs and Non-M/WBEs
Tom's River Ocean County Chamber of Commerce	M/WBEs and Non-M/WBEs
Westfield Area Chamber of Commerce	M/WBEs and Non-M/WBEs
Westfield Business Directory	M/WBEs and Non-M/WBEs

C. Determination of Willingness

The term “willingness” refers to a firm’s indicated interest in doing government contracting. This term, as it has been used in *Croson* and its progeny, is addressed in detail in the Legal Analysis chapter in Volume 1. Companies secured through the State of New Jersey and other governmental agencies, listed in Table 4.02, have demonstrated their willingness to perform on public contracts. These businesses had either bid on State projects, sought government contracts, secured government certification, or responded to the outreach campaign conducted in conjunction with this Disparity Study and other State outreach programs. It is therefore presumed that companies that sought government contracts are willing to provide the goods and services needed by the State.

Companies from the non-governmental agency membership lists in Table 4.02 were not presumed to be willing, based on the *Croson* criteria. These companies were surveyed to determine their willingness to bid on State contracts. The businesses that indicated a

willingness when surveyed, were added to the database used to create a unique list of willing businesses in the State's market area. The surveyed businesses that indicated an interest in contracting with the State were combined with the businesses from the State and other government lists, certification lists, and outreach lists to compile this unique list of willing businesses.

D. Distribution of Available Prime Contractors by Source, Ethnicity, and Gender

Tables 4.03 through 4.05 represent the distribution of available prime contractors. The sources are ranked, with the highest ranking assigned to the contractors utilized by the State. Each company is *counted only once in the distribution*. For example, a utilized prime contractor is counted once in the prime contractor utilization source and is not counted a second time, even though the company may have been certified or identified as a bidder.

As noted in Table 4.02, 98.24 percent of the prime contractors available in the two industries combined were obtained from public agencies, certification lists, and business outreach events. Companies identified through the willingness survey represented 1.76 percent of the willing firms.

Table 4.02 Distribution of Prime Contractor Availability Data Sources: All Construction and Construction-Related

Sources	M/WBEs Percentage	Non M/WBEs Percentage	Source Percentage
Prime Contractor and Subcontractor Utilization	8.92%	19.25%	16.43%
Pre-Qualified Contractors	32.39%	66.86%	57.47%
Bidders Lists	0.31%	1.82%	1.41%
Certification Lists	54.36%	9.07%	21.41%
US SBA Pro-net	2.09%	0.64%	1.04%
Public Hearing Attendees	0.26%	0.57%	0.48%
Subtotal	98.33%	98.20%	98.24%
Willingness Survey	1.67%	1.80%	1.76%
Grand Total*	100.00%	100.00%	100.00%

*The percentages may not total 100 percent due to rounding

The distribution of available businesses by source was performed for each industry. As noted in Table 4.03, 98.18 percent of the construction prime contractors identified were derived from public agencies, certification lists, and business outreach sources. Companies identified through the willingness survey represented 1.82 percent of the willing firms.

Table 4.03 Distribution of Prime Contractor Availability Sources: Construction

Sources	M/WBEs Percentage	Non M/WBEs Percentage	Source Percentage
Prime Contractor and Subcontractor Utilization	9.93%	21.06%	18.06%
Pre-Qualified Contractor	32.50%	65.00%	56.27%
Bidders Lists	0.43%	2.39%	1.86%
Certification Lists	52.86%	8.74%	20.60%
US SBA Pro-net	2.14%	0.47%	0.92%
Public Hearing Attendees	0.21%	0.55%	0.46%
Subtotal	98.07%	98.21%	98.18%
Willingness Survey	1.93%	1.79%	1.82%
Grand Total*	100.00%	100.00%	100.00%

*The percentages may not total 100 percent due to rounding

Table 4.04 depicts the data sources for construction-related prime contractors. As noted, 98.54 percent of the prime contractors were obtained from public agencies, certification lists, and business outreach sources. Companies identified through the willingness survey represented 1.46 percent of the willing firms.

**Table 4.04 Distribution of Prime Contractor Availability Sources:
Construction-Related**

Sources	M/WBEs Percentage	Non M/WBEs Percentage	Source Percentage
Prime Contractor and Subcontractor Utilization	8.07%	15.68%	13.40%
Pre-Qualified Contractor	35.46%	71.29%	60.55%
Bidders Lists	0%	0.14%	0.10%
Certification Lists	53.61%	9.50%	22.72%
US SBA Pro-net	1.68%	1.08%	1.26%
Public Hearing Attendees	0.34	0.58%	0.50%
Subtotal	99.16%	98.27%	98.54%
Willingness Survey	0.84%	1.73%	1.46%
Grand Total*	100.00%	100.00%	100.00%

*The percentages may not total 100 percent due to rounding

III. CAPACITY

The second component of the availability requirement set forth in *Croson* is a firm's capacity or ability to perform the contracts awarded by an agency.² However, capacity requirements are not delineated in *Croson*. In fact, a standard for capacity has only been addressed in a few subsequent cases. Each case where capacity has been considered has involved large, competitively bid, construction prime contracts. Therefore, in order to assess the capacity of willing market area firms to do business with the State, four approaches have been employed:

- the size of the State's awarded prime contracts is analyzed to determine the capacity needed to perform the average awarded contract
- The largest contracts awarded to M/WBEs were identified to determine demonstrated ability to win large, competitively bid contracts
- the M/WBE certification process was assessed to determine if it meets the standard set in *Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia (Philadelphia)*,³ which found certification to be a measure of capacity
- The disparity analysis has been restricted to an examination of prime contract awards \$500,000 and under to limit the capacity required to perform contracts subjected to the statistical analysis

This methodology was sufficient to assess the capacity of willing market area firms to do business with the State.

² *City of Richmond v. J.A. Croson*, 488 U.S. 469 (1989).

³ *Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990 (3d Cir. 1993), on remand, 893 F. Supp. 419 (E.D. Penn. 1995), aff'd, 91 F.3d 586 (3d Cir. 1996).

A. Size of Prime Contracts Analyzed

In *Associated General Contractors of California v. City of Columbus* and *Engineering Contractors Ass'n of South Florida v. Metropolitan Dade County*, the courts were primarily concerned with the capacity analysis of available bidders for large, competitively bid contracts. It should also be noted that the focus in both cases was on the bidding company's size and ability to perform on large, competitively bid construction contracts.⁴

The State's construction and construction-related services contracts were analyzed to determine the capacity required to perform the contracts and the capacity demonstrated by prime contractors regarding ethnic and gender groups. The size distribution illustrates the fact that limited capacity is needed to perform the overwhelming majority of the State Agencies, Authorities, and Commissions' contracts.

1. Construction Prime Contracts, by Size

Table 4.05 depicts the State Agencies, Authorities, and Commissions' construction contracts awarded within dollar ranges. The percentage of contracts valued under \$25,000 was 63.19 percent, the percentage of those under \$100,000 was 75.39 percent, and the percentage of those under \$500,000 was 84.61 percent. A P-value calculation was conducted to determine the probability that the findings comprise a pattern or a chance occurrence.

The P-value of <0.001 denotes a significant difference in the size of construction contract dollars across ethnic/gender groups.

2. Construction-Related Services Prime Contracts, by Size

Table 4.06 depicts the State Agencies, Authorities, and Commissions' construction-related contracts awarded within dollar ranges. The percentage of contracts valued under \$25,000 was 35.49 percent, the percentage of those under \$100,000 was 53.4 percent, and the percentage of those under \$500,000 was 81.45 percent.

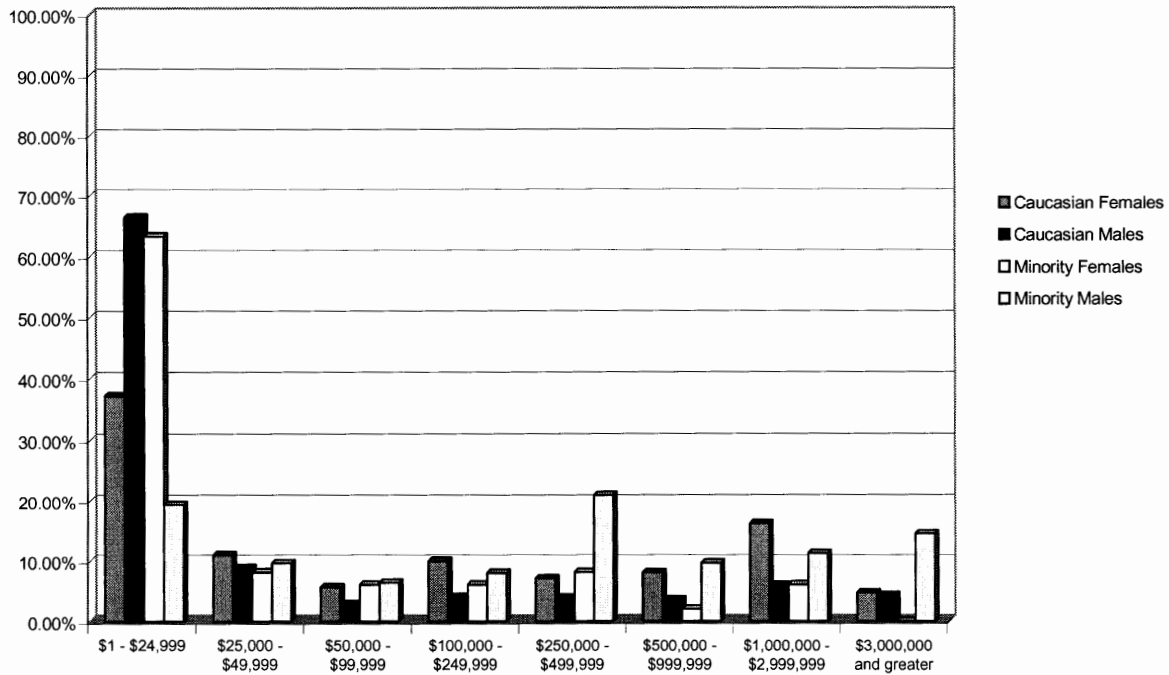
The P-value of <0.001 denotes a significant difference in the size of construction-related contract dollars across ethnic/gender groups.

⁴ *Associated General Contractors of California v. City of Columbus*, 936 F. Supp. 1363 (S.D. Ohio 1996) and *Engineering Contractors Ass'n of South Florida v. Metropolitan Dade County*, 943 F. Supp. 1546 (S.D. Fla. 1996), aff'd 122 F.3d 895 (11th Cir. 1997).

**Table 4.05 Construction Prime Contracts by Size: July 1,
2000 to June 30, 2002**

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males		Total	
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$1 - \$24,999	78	37.14%	1,702	66.38%	31	63.27%	12	19.35%	1,823	63.19%
\$25,000 - \$49,999	23	10.95%	227	8.85%	4	8.16%	6	9.68%	260	9.01%
\$50,000 - \$99,999	12	5.71%	73	2.85%	3	6.12%	4	6.45%	92	3.19%
\$100,000 - \$249,999	21	10.00%	104	4.06%	3	6.12%	5	8.06%	133	4.61%
\$250,000 - \$499,999	15	7.14%	101	3.94%	4	8.16%	13	20.97%	133	4.61%
\$500,000 - \$999,999	17	8.10%	92	3.59%	1	2.04%	6	9.68%	116	4.02%
\$1,000,000 - \$2,999,999	34	16.19%	154	6.01%	3	6.12%	7	11.29%	198	6.86%
\$3,000,000 and greater	10	4.76%	111	4.33%	0	0.00%	9	14.52%	130	4.51%
Total	210	100.00%	2,564	100.00%	49	100.00%	62	100.00%	2,885	100.00%

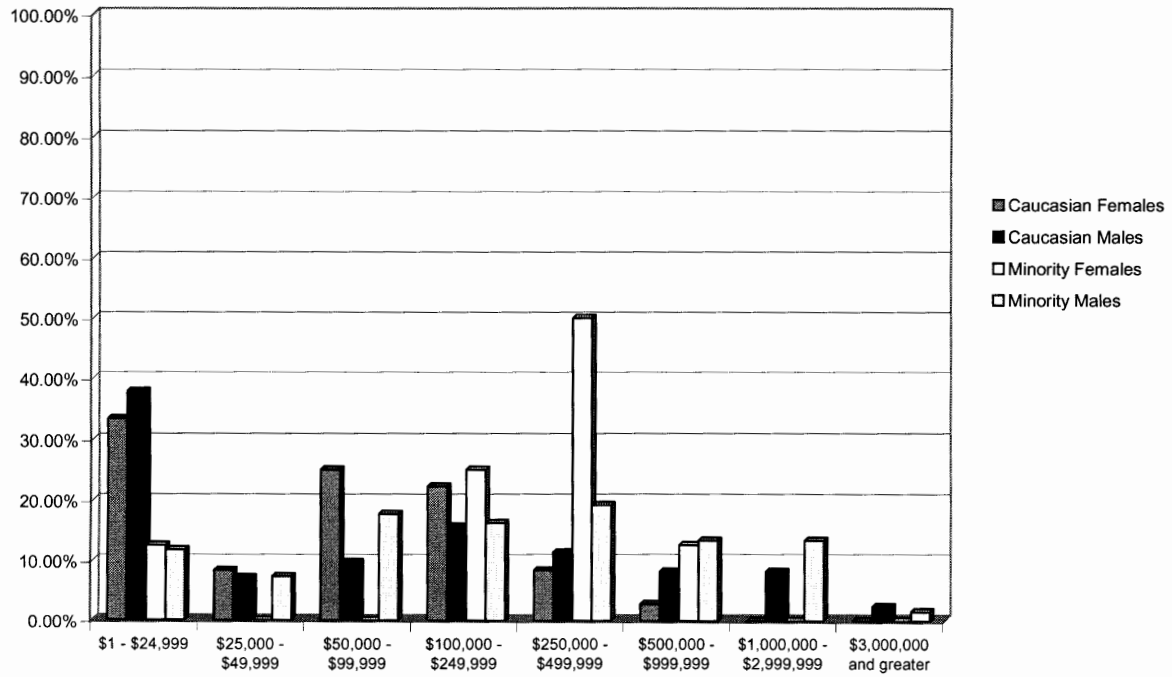
P-Value < 0.001



**Table 4.06 Construction-Related Prime Contracts by Size:
July 1, 2000 to June 30, 2002**

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males		Total	
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$1 - \$24,999	12	33.33%	308	37.79%	1	12.50%	8	11.76%	329	35.49%
\$25,000 - \$49,999	3	8.33%	58	7.12%	0	0.00%	5	7.35%	66	7.12%
\$50,000 - \$99,999	9	25.00%	79	9.69%	0	0.00%	12	17.65%	100	10.79%
\$100,000 - \$249,999	8	22.22%	127	15.58%	2	25.00%	11	16.18%	148	15.97%
\$250,000 - \$499,999	3	8.33%	92	11.29%	4	50.00%	13	19.12%	112	12.08%
\$500,000 - \$999,999	1	2.78%	66	8.10%	1	12.50%	9	13.24%	77	8.31%
\$1,000,000 - \$2,999,999	0	0.00%	66	8.10%	0	0.00%	9	13.24%	75	8.09%
\$3,000,000 and greater	0	0.00%	19	2.33%	0	0.00%	1	1.47%	20	2.16%
Total	36	100.00%	815	100.00%	8	100.00%	68	100.00%	927	100.00%

P-Value < 0.001



B. Largest M/WBE Prime Contract Awards, by Industry

An examination of all contracts awarded during the study period demonstrated that large competitively bid prime contracts were awarded to M/WBEs in construction and construction-related industries by State Agencies, Authorities, Commissions, and the State Colleges and Universities. The distribution of the largest M/WBE prime contracts awarded is depicted in Table 4.07 below. In construction, M/WBEs were awarded very large, competitively bid contracts. The utilization analysis shows that M/WBEs demonstrated the capacity to successfully compete for contracts as large as \$34.4 million in construction and \$3.1 million in construction-related services. WBEs were awarded contracts over \$15 million in construction and more than \$760,000 in construction-related services.

Table 4.07 The Largest M/WBE Prime Contract Awards, by Industry: State Agencies, Authorities, Commissions, and State Colleges and Universities

Ethnicity	Construction	Construction-Related
African Americans	\$799,900	\$2,827,742
Asian Americans	\$10,634,531	\$3,160,061
Hispanic Americans	\$34,438,866	\$2,346,208
Native Americans	\$851,908	\$365,503
Caucasian Females	\$15,004,003	\$761,313

IV. PRIME CONTRACTOR AVAILABILITY ANALYSIS

The contract size analysis in Tables 4.05 and 4.06 demonstrates that the capacity needed to perform on most of the State's Agencies, Authorities, and Commissions' contracts is limited. Furthermore, M/WBE firms in the State's market area do in fact have the capacity to bid on large contracts in each of the industries studied.

The prime contractor availability findings are summarized below.

A. Construction Prime Contractor Availability

The distribution of available construction prime contractors is summarized in Table 4.08.

African American Businesses account for 6.42 percent of the construction firms in the State's market area.

Asian American Businesses account for 3.05 percent of the construction firms in the State's market area.

Hispanic American Businesses account for 5.71 percent of the construction firms in the State's market area.

Native American Businesses account for 0.08 percent of the construction firms in the State's market area.

Minority Business Enterprises account for 15.26 percent of the construction firms in the State's market area.

Women Business Enterprises account for 11.6 percent of the construction firms in the State's market area.

Minority and Women Business Enterprises account for 26.86 percent of the construction firms in the State's market area.

Caucasian Male Business Enterprises account for 73.14 percent of the construction firms in the State's market area.

Table 4.08 Available Construction Prime Contractors

Ethnicity	Percent of Businesses
African Americans	6.42%
Asian Americans	3.05%
Hispanic Americans	5.71%
Native Americans	0.08%
Caucasian Females	11.60%
Caucasian Males	73.14%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	0.90%
African American Males	5.52%
Asian American Females	0.57%
Asian American Males	2.48%
Hispanic American Females	1.35%
Hispanic American Males	4.36%
Native American Females	0.00%
Native American Males	0.08%
Caucasian Females	11.60%
Caucasian Males	73.14%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	2.82%
Minority Males	12.44%
Caucasian Females	11.60%
Caucasian Males	73.14%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	15.26%
Women Business Enterprises	11.60%
Minority and Women Business Enterprises	26.86%
Caucasian Male Business Enterprises	73.14%
TOTAL	100.00%

B. Construction-Related Prime Contractor Availability

The distribution of available construction-related prime contractors is summarized in Table 4.09.

African American Businesses account for 4.94 percent of the construction-related firms in the State's market area.

Asian American Businesses account for 7.93 percent of the construction-related firms in the State's market area.

Hispanic American Businesses account for 4.39 percent of the construction-related firms in the State's market area.

Native American Businesses account for 0.1 percent of the construction-related firms in the State's market area.

Minority Business Enterprises account for 17.36 percent of the construction-related firms in the State's market area.

Women Business Enterprises account for 12.42 percent of the construction-related firms in the State's market area.

Minority and Women Business Enterprises account for 29.78 percent of the construction-related firms in the State's market area.

Caucasian Male Business Enterprises account for 70.22 percent of the construction-related firms in State's market area.

Table 4.09 Available Construction-Related Prime Contractors

Ethnicity	Percent of Businesses
African Americans	4.94%
Asian Americans	7.93%
Hispanic Americans	4.39%
Native Americans	0.10%
Caucasian Females	12.42%
Caucasian Males	70.22%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	1.15%
African American Males	3.79%
Asian American Females	1.35%
Asian American Males	6.58%
Hispanic American Females	1.15%
Hispanic American Males	3.24%
Native American Females	0.05%
Native American Males	0.05%
Caucasian Females	12.42%
Caucasian Males	70.22%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	3.69%
Minority Males	13.67%
Caucasian Females	12.42%
Caucasian Males	70.22%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	17.36%
Women Business Enterprises	12.42%
Minority and Women Business Enterprises	29.78%
Caucasian Male Business Enterprises	70.22%
TOTAL	100.00%

V. SOURCES OF POTENTIALLY WILLING AND ABLE SUBCONTRACTORS AND AVAILABILITY

A. Subcontractor Sources

All available State Agency, Authority, and Commission prime contractors were included in the subcontractor availability. Additional subcontractors were identified using sources in Table 4.10.

Table 4.10 Unique Subcontractor Availability Data Sources

Type of Record	Type of Information
<ul style="list-style-type: none"> • Subcontracting records provided by the State 	<ul style="list-style-type: none"> • M/WBEs and non-M/WBEs
<ul style="list-style-type: none"> • Subcontractors identified by utilized prime contractors through the prime contractor survey 	<ul style="list-style-type: none"> • M/WBEs and non-M/WBEs

B. Determination of Willingness and Capacity

Subcontractor availability was limited to businesses determined to be willing and able to perform as prime contractors and businesses utilized as subcontractors; therefore, the determination of willingness was achieved. *Croson* does not require a measure of subcontractor capacity; therefore, it is not necessary to address capacity issues in the context of subcontractors.

The subcontractor availability findings are summarized below.

C. Construction Subcontractor Availability

The distribution of available construction subcontractors is summarized in Table 4.11.

African American Businesses account for 6.3 percent of the construction firms in the State's market area.

Asian American Businesses account for 4.34 percent of the construction firms in the State's market area.

Hispanic American Businesses account for 5.52 percent of the construction firms in the State's market area.

Native American Businesses account for 0.12 percent of the construction firms in the State's market area.

Minority Business Enterprises account for 16.28 percent of the construction firms in the State's market area.

Women Business Enterprises account for 12.67 percent of the construction firms in the State's market area.

Minority and Women Business Enterprises account for 28.94 percent of the construction firms in the State's market area.

Caucasian Male Business Enterprises account for 71.06 percent of the construction firms in the State's market area.

Table 4.11 Available Construction Subcontractors

Ethnicity	Percent of Businesses
African Americans	6.30%
Asian Americans	4.34%
Hispanic Americans	5.52%
Native Americans	0.12%
Caucasian Females	12.67%
Caucasian Males	71.06%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	0.98%
African American Males	5.32%
Asian American Females	0.85%
Asian American Males	3.49%
Hispanic American Females	1.40%
Hispanic American Males	4.13%
Native American Females	0.00%
Native American Males	0.12%
Caucasian Females	12.67%
Caucasian Males	71.06%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	3.22%
Minority Males	13.05%
Caucasian Females	12.67%
Caucasian Males	71.06%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	16.28%
Women Business Enterprises	12.67%
Minority and Women Business Enterprises	28.94%
Caucasian Male Business Enterprises	71.06%
TOTAL	100.00%

D. Construction-Related Subcontractor Availability

The distribution of available construction-related prime contractors is summarized in Table 4.12.

African American Businesses account for 4.51 percent of the construction-related firms in the State's market area.

Asian American Businesses account for 7.11 percent of the construction-related firms in the State's market area.

Hispanic American Businesses account for 4.09 percent of the construction-related firms in the State's market area.

Native American Businesses account for 0.13 percent of the construction-related firms in the State's market area.

Minority Business Enterprises account for 15.84 percent of the construction-related firms in the State's market area.

Women Business Enterprises account for 12.27 percent of the construction-related firms in the State's market area.

Minority and Women Business Enterprises account for 28.11 percent of the construction-related firms in the State's market area.

Caucasian Male Business Enterprises account for 71.89 percent of the construction-related firms in State's market area.

Table 4.12 Available Construction-Related Subcontractors

Ethnicity	Percent of Businesses
African Americans	4.51%
Asian Americans	7.11%
Hispanic Americans	4.09%
Native Americans	0.13%
Caucasian Females	12.27%
Caucasian Males	71.89%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	0.98%
African American Males	3.53%
Asian American Females	1.19%
Asian American Males	5.92%
Hispanic American Females	1.06%
Hispanic American Males	3.02%
Native American Females	0.09%
Native American Males	0.04%
Caucasian Females	12.27%
Caucasian Males	71.89%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	3.32%
Minority Males	12.52%
Caucasian Females	12.27%
Caucasian Males	71.89%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	15.84%
Women Business Enterprises	12.27%
Minority and Women Business Enterprises	28.11%
Caucasian Male Business Enterprises	71.89%
TOTAL	100.00%



5

PRIME CONTRACTOR DISPARITY ANALYSES

I. INTRODUCTION

The objective of the disparity analysis is to determine the level minority and woman-owned business enterprises (M/WBEs) were utilized on State Agencies, Authorities, and Commissions contracts. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) would be approximate to the proportion of available MBEs¹ and WBEs in the relevant market area. If the available M/WBE businesses are underutilized, a statistical test could determine the probability that the disparity is due to chance. If there is a low probability that the disparity is due to chance,² *Crososon* states that an inference of discrimination can be made. This type of analysis is applied to M/WBEs by both ethnicity and gender.

The first step in conducting a statistical test of disparity is to calculate the contract value that each ethnic/gender group is expected to receive, based on each group's respective availability in the market area. This value shall be referred to as the **expected contract amount**. The next step is to compute the difference between the expected contract amount of a given ethnic/gender group and the **actual contract amount** received by that group.

¹ Availability is defined as willing and able firms. The methodology for determining willing and able firms is detailed in Chapter 4.

² 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.

A disparity ratio less than 0.80 indicates a relevant degree of disparity. This disparity may be detected using a parametric analysis,³ where the number of contracts is sufficiently large and the variation of the contract amount is not too large. When the variation in contract dollar amounts is high, a disparity may not be detectable. Under the condition when the variation in contract dollar amounts is high, a non-parametric analysis⁴ would be employed to analyze the contracts ranked by dollar amount.

In order to assess whether the difference in contract values is attributable to chance, a P-value⁵ is calculated. The P-value takes into account the number of contracts, amount of contract dollars, and variation in contract dollars. If the difference between the actual and expected number of contracts and total contract dollars has a P-value of less than 0.05, the difference is statistically significant.⁶

There are two critical constraints in performing statistical tests of significance. First, the size of the population affects the reliability of the results. In other words, a relatively small population size, whether in terms of the total number of contracts or the total number of available businesses, decreases the reliability of the statistical results. Second, although an inference of discrimination cannot be made if statistical significance is not obtained from the test, one cannot infer from the results that there was no discrimination. Thus, the results of the statistical disparity analysis are necessarily influenced by the size of the population in each industry and ethnic/gender category. Where the results are not statistically significant, the existence of discrimination *cannot* be ruled out. Given these limitations, the anecdotal data has an especially important role in explaining the conditions of discrimination that might exist in the market area.

The analysis of the value of prime contract dollars for each ethnic and gender group incorporates the number of prime contracts awarded. Hence, the disparity analysis for the value of prime contract dollars awarded reflects an analysis of both the number of prime contracts awarded and the value of the prime contract dollars received by each ethnic/gender group.

³ 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.

⁴ 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.

⁵ P-value is a measure of statistical significance.

⁶ The study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.

II. DISPARITY ANALYSES

Prime contractor disparity analysis was performed on construction and construction-related services contracts awarded by the State Agencies, Authorities, and Commissions between July 1, 2000 and June 30, 2002.

As demonstrated in Chapter 4: Availability Analysis, the majority of the State Agencies, Authorities, and Commissions contracts are small with 83.84 percent under \$500,000 and 56.45 percent \$25,000 and under. The fact that the majority of the State Agencies, Authorities, and Commissions contracts are small suggests that the capacity needed to perform most of the contracts awarded during the study period was minimal. Furthermore, there is evidence that the willing firms had the capacity to perform contracts in excess of \$500,000. A threshold of \$500,000 was set for the prime contract disparity analysis to ensure that willing firms had the capacity to perform contracts included in the analysis. The prime contract disparity findings in the industries under consideration are summarized in the sections below.

A. State Agencies, Authorities, and Commissions Disparity Analysis: Construction Prime Contracts, under \$500,000

The disparity analysis of all construction prime contract dollars under \$500,000 is depicted in Table 5.01 and Chart 5.01.

African American Businesses represent 6.42 percent of the available construction firms and received 0.15 percent of the construction prime contract dollars under \$500,000. This underutilization is statistically significant.

Asian American Businesses represent 3.05 percent of the available construction firms and received 3.49 percent of the construction prime contract dollars under \$500,000. This overutilization is not statistically significant.

Hispanic American Businesses represent 5.71 percent of the available construction firms and received 5.17 percent of the construction prime contract dollars under \$500,000. This underutilization is not statistically significant.

Native American Businesses represent 0.08 percent of the available construction firms and received none of the construction prime contract dollars under \$500,000. The records were not sufficient to determine statistical significance.

Minority Business Enterprises represent 15.26 percent of the available construction firms and received 8.81 percent of the construction prime contract dollars under \$500,000. This underutilization is statistically significant.

Women Business Enterprises represent 11.6 percent of the available construction firms and received 11.65 percent of the construction prime contract dollars under \$500,000. This overutilization is not statistically significant.

Minority and Women Business Enterprises represent 26.86 percent of the available construction firms and received 20.47 percent of the construction prime contract dollars under \$500,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 73.14 percent of the available construction firms and received 79.53 percent of the construction prime contract dollars under \$500,000. This overutilization is statistically significant.

Table 5.01 State Agencies, Authorities, and Commissions Disparity Analysis: Construction Prime Contracts under \$500,000, July 1, 2000 to June 30, 2002

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$143,413	0.15%	6.42%	\$6,200,581	-\$6,057,168	0.02	< .05 *
Asian Americans	\$3,372,281	3.49%	3.05%	\$2,943,896	\$428,385	1.15	**
Hispanic Americans	\$4,997,198	5.17%	5.71%	\$5,519,805	-\$522,607	0.91	not significant
Native Americans	\$0	0.00%	0.08%	\$73,597	-\$73,597	0.00	----
Caucasian Females	\$11,257,122	11.65%	11.60%	\$11,205,204	\$51,918	1.00	**
Caucasian Males	\$76,826,571	79.53%	73.14%	\$70,653,502	\$6,173,069	1.09	< .05 †
TOTAL	\$96,596,585	100.00%	100.00%	\$96,596,585			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	0.90%	\$864,769	-\$864,769	0.00	----
African American Males	\$143,413	0.15%	5.52%	\$5,335,811	-\$5,192,398	0.03	< .05 *
Asian American Females	\$49,410	0.05%	0.57%	\$551,980	-\$502,570	0.09	----
Asian American Males	\$3,322,871	3.44%	2.48%	\$2,391,915	\$930,956	1.39	**
Hispanic American Females	\$2,199,134	2.28%	1.35%	\$1,306,354	\$892,780	1.68	**
Hispanic American Males	\$2,798,064	2.90%	4.36%	\$4,213,451	-\$1,415,387	0.66	< .05 *
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.08%	\$73,597	-\$73,597	0.00	----
Caucasian Females	\$11,257,122	11.65%	11.60%	\$11,205,204	\$51,918	1.00	**
Caucasian Males	\$76,826,571	79.53%	73.14%	\$70,653,502	\$6,173,069	1.09	< .05 †
TOTAL	\$96,596,585	100.00%	100.00%	\$96,596,585			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$2,248,544	2.33%	2.82%	\$2,723,104	-\$474,560	0.83	not significant
Minority Males	\$6,264,349	6.49%	12.44%	\$12,014,775	-\$5,750,427	0.52	< .05 *
Caucasian Females	\$11,257,122	11.65%	11.60%	\$11,205,204	\$51,918	1.00	**
Caucasian Males	\$76,826,571	79.53%	73.14%	\$70,653,502	\$6,173,069	1.09	< .05 †
TOTAL	\$96,596,585	100.00%	100.00%	\$96,596,585			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$8,512,892	8.81%	15.26%	\$14,737,879	-\$6,224,987	0.58	< .05 *
Women Business Enterprises	\$11,257,122	11.65%	11.60%	\$11,205,204	\$51,918	1.00	**
Minority and Women Business Enterprises	\$19,770,014	20.47%	26.86%	\$25,943,083	-\$6,173,069	0.76	< .05 *
Caucasian Male Business Enterprises	\$76,826,571	79.53%	73.14%	\$70,653,502	\$6,173,069	1.09	< .05 †

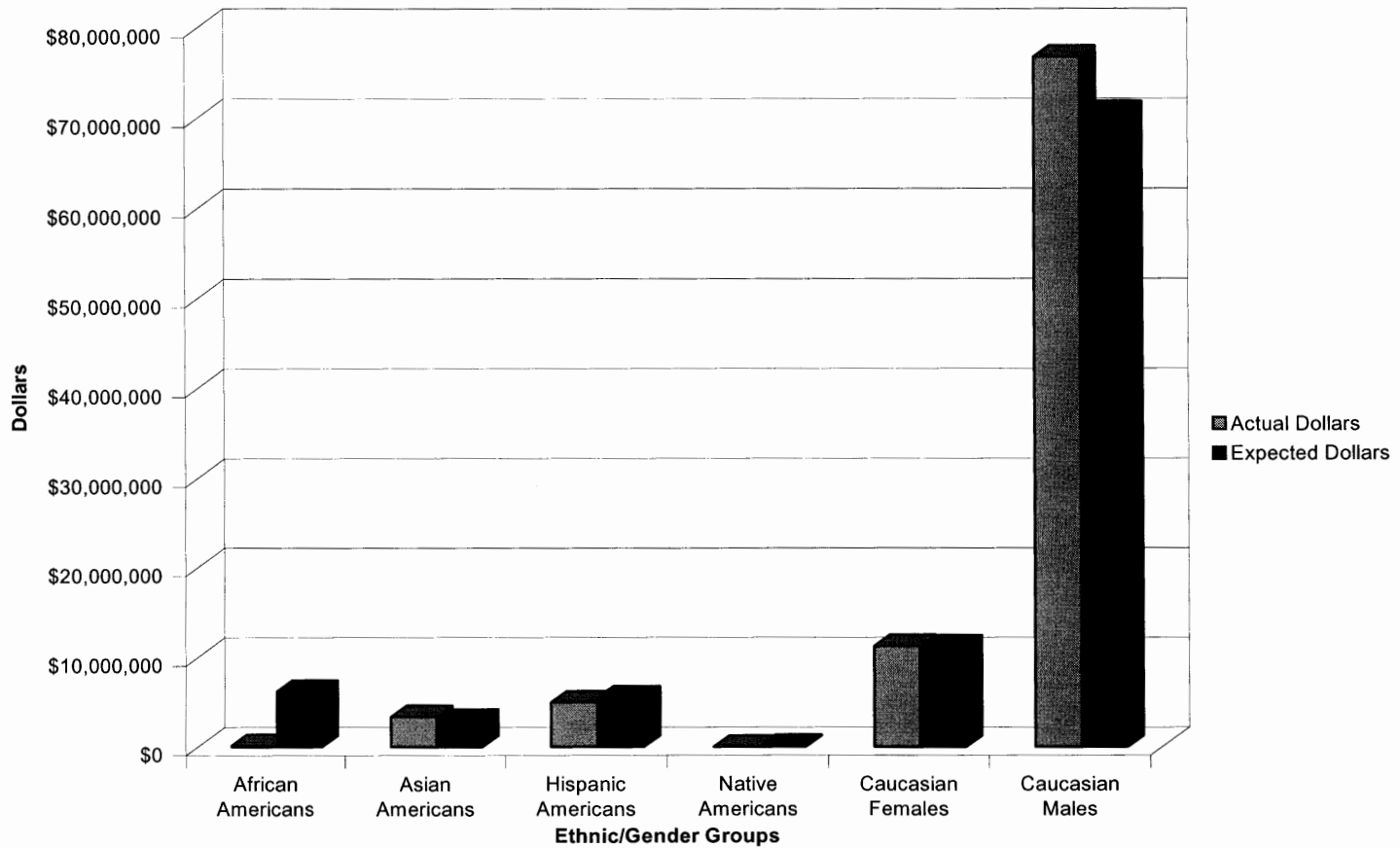
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian Males.

(----) denotes an underutilized group with too few contracts to test statistical significance.

**Chart 5.01 State Agencies, Authorities, and Commissions Disparity Analysis: Construction
Prime Contracts under \$500,000, July 1, 2000 to June 30, 2002**



B. State Agencies, Authorities, and Commissions Disparity Analysis: Construction-Related Prime Contracts, under \$500,000

The disparity analysis of all construction-related prime contract dollars under \$500,000 is depicted in Table 5.02 and Chart 5.02.

African American Businesses represent 4.94 percent of the available construction-related firms and received 0.31 percent of the construction-related prime contract dollars under \$500,000. This underutilization is statistically significant.

Asian American Businesses represent 7.93 percent of the available construction-related firms and received 4.84 percent of the construction-related prime contract dollars under \$500,000. This underutilization is statistically significant.

Hispanic American Businesses represent 4.39 percent of the available construction-related firms and received 1.96 percent of the construction-related prime contract dollars under \$500,000. This underutilization is statistically significant.

Native American Businesses represent 0.1 percent of the available construction-related firms and received 3.88 percent of the construction-related prime contract dollars under \$500,000. The records were not sufficient to determine statistical significance.

Minority Business Enterprises represent 17.36 percent of the available construction-related firms and received 10.99 percent of the construction-related prime contract dollars under \$500,000. This underutilization is statistically significant.

Women Business Enterprises represent 12.42 percent of the available construction-related firms and received 4.39 percent of the construction-related prime contract dollars under \$500,000. This underutilization is statistically significant.

Minority and Women Business Enterprises represent 29.78 percent of the available construction-related firms and received 15.38 percent of the construction-related prime contract dollars under \$500,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 70.22 percent of the available construction-related firms and received 84.62 percent of the construction-related prime contract dollars under \$500,000. This overutilization is statistically significant.

Table 5.02 State Agencies, Authorities, and Commissions Disparity Analysis: Construction-Related Prime Contracts under \$500,000, July 1, 2000 to June 30, 2002

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$239,082	0.31%	4.94%	\$3,843,271	-\$3,604,189	0.06	< .05 *
Asian Americans	\$3,764,542	4.84%	7.93%	\$6,172,526	-\$2,407,985	0.61	< .05 *
Hispanic Americans	\$1,528,150	1.96%	4.39%	\$3,416,241	-\$1,888,091	0.45	< .05 *
Native Americans	\$3,021,624	3.88%	0.10%	\$77,642	\$2,943,983	38.92	**
Caucasian Females	\$3,417,424	4.39%	12.42%	\$9,666,409	-\$6,248,986	0.35	< .05 *
Caucasian Males	\$65,865,125	84.62%	70.22%	\$54,659,857	\$11,205,267	1.20	< .05 †
TOTAL	\$77,835,947	100.00%	100.00%	\$77,835,947			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	1.15%	\$892,881	-\$892,881	0.00	< .05 *
African American Males	\$239,082	0.31%	3.79%	\$2,950,390	-\$2,711,308	0.08	< .05 *
Asian American Females	\$1,506,809	1.94%	1.35%	\$1,048,165	\$458,644	1.44	**
Asian American Males	\$2,257,733	2.90%	6.58%	\$5,124,362	-\$2,866,629	0.44	< .05 *
Hispanic American Females	\$11,150	0.01%	1.15%	\$892,881	-\$881,731	0.01	< .05 *
Hispanic American Males	\$1,517,000	1.95%	3.24%	\$2,523,360	-\$1,006,360	0.60	< .05 *
Native American Females	\$0	0.00%	0.05%	\$38,821	-\$38,821	0.00	----
Native American Males	\$3,021,624	3.88%	0.05%	\$38,821	\$2,982,804	77.83	**
Caucasian Females	\$3,417,424	4.39%	12.42%	\$9,666,409	-\$6,248,986	0.35	< .05 *
Caucasian Males	\$65,865,125	84.62%	70.22%	\$54,659,857	\$11,205,267	1.20	< .05 †
TOTAL	\$77,835,947	100.00%	100.00%	\$77,835,947			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$1,517,959	1.95%	3.69%	\$2,872,748	-\$1,354,789	0.53	< .05 *
Minority Males	\$7,035,440	9.04%	13.67%	\$10,636,932	-\$3,601,493	0.66	< .05 *
Caucasian Females	\$3,417,424	4.39%	12.42%	\$9,666,409	-\$6,248,986	0.35	< .05 *
Caucasian Males	\$65,865,125	84.62%	70.22%	\$54,659,857	\$11,205,267	1.20	< .05 †
TOTAL	\$77,835,947	100.00%	100.00%	\$77,835,947			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$8,553,399	10.99%	17.36%	\$13,509,681	-\$4,956,282	0.63	< .05 *
Women Business Enterprises	\$3,417,424	4.39%	12.42%	\$9,666,409	-\$6,248,986	0.35	< .05 *
Minority and Women Business Enterprises	\$11,970,823	15.38%	29.78%	\$23,176,090	-\$11,205,267	0.52	< .05 *
Caucasian Male Business Enterprises	\$65,865,125	84.62%	70.22%	\$54,659,857	\$11,205,267	1.20	< .05 †

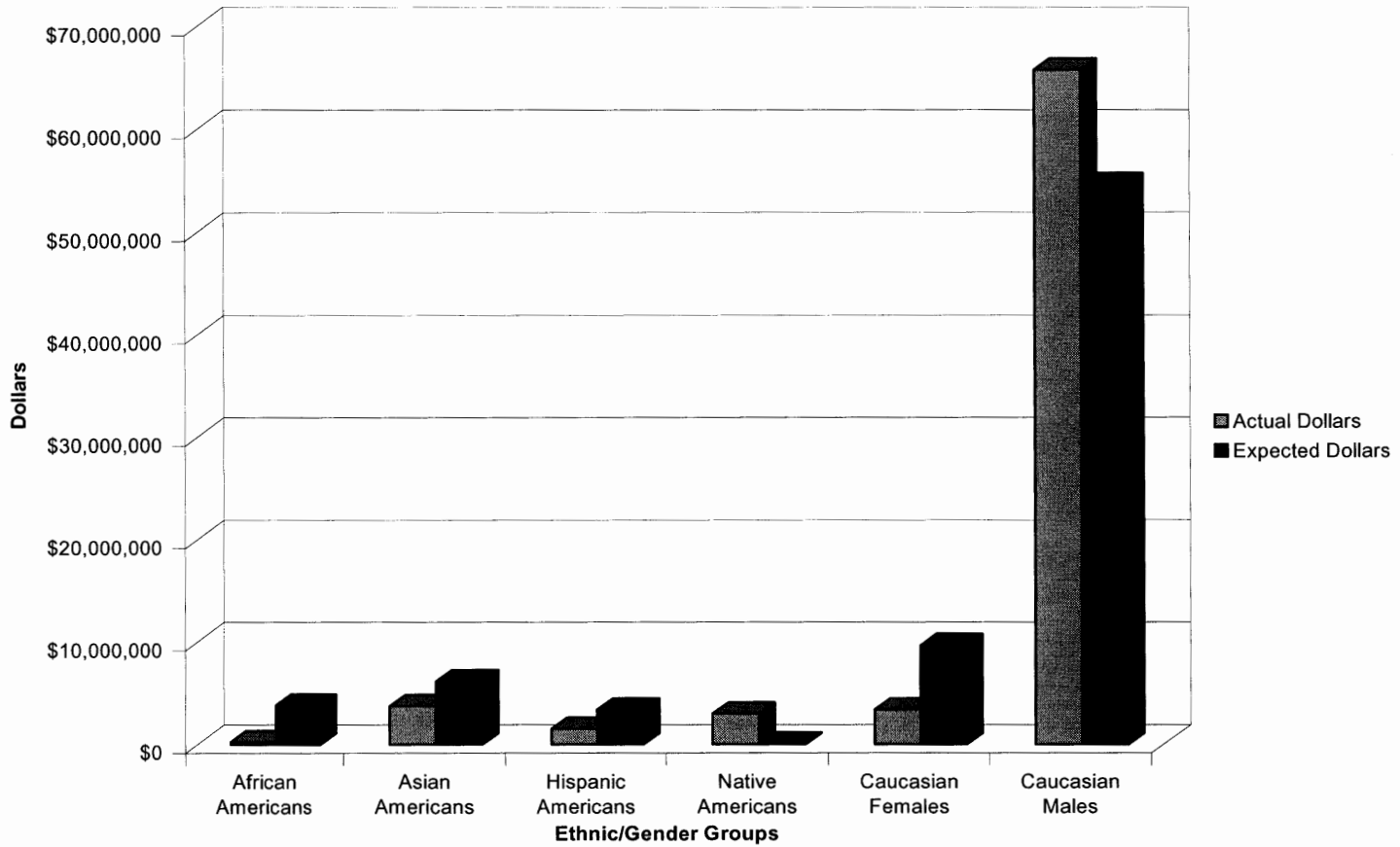
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian Males.

(----) denotes an underutilized group with too few contracts to test statistical significance.

Chart 5.02 State Agencies, Authorities, and Commissions Disparity Analysis: Construction-Related Prime Contracts under \$500,000, July 1, 2000 to June 30, 2002



C. State Agencies, Authorities, and Commissions Disparity Analysis: Construction Prime Contracts, under \$41,100

The disparity analysis of construction prime contract dollars under \$41,100 is depicted in Table 5.03 and Chart 5.03.

African American Businesses represent 6.42 percent of the available construction firms and received 0.5 percent of the construction prime contract dollars under \$41,100. This underutilization is statistically significant.

Asian American Businesses represent 3.05 percent of the available construction firms and received 0.35 percent of the construction prime contract dollars under \$41,100. This underutilization is statistically significant.

Hispanic American Businesses represent 5.71 percent of the available construction firms and received 2.16 percent of the construction prime contract dollars under \$41,100. This underutilization is statistically significant.

Native American Businesses represent 0.08 percent of the available construction firms and received none of the construction prime contract dollars under \$41,100. The records were not sufficient to determine statistical significance.

Minority Business Enterprises represent 15.26 percent of the available construction firms and received 3.01 percent of the construction prime contract dollars under \$41,100. This underutilization is statistically significant.

Women Business Enterprises represent 11.6 percent of the available construction firms and received 7.48 percent of the construction prime contract dollars under \$41,100. This underutilization is statistically significant.

Minority and Women Business Enterprises represent 26.86 percent of the available construction firms and received 10.49 percent of the construction prime contract dollars under \$41,100. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 73.14 percent of the available construction firms and received 89.51 percent of the construction prime contract dollars under \$41,100. This overutilization is statistically significant.

Table 5.03 State Agencies, Authorities, and Commissions Disparity Analysis: Construction Prime Contracts under \$41,100, July 1, 2000 to June 30, 2002

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$80,613	0.50%	6.42%	\$1,032,941	-\$952,328	0.08	< .05 *
Asian Americans	\$56,106	0.35%	3.05%	\$490,417	-\$434,311	0.11	< .05 *
Hispanic Americans	\$348,228	2.16%	5.71%	\$919,532	-\$571,304	0.38	< .05 *
Native Americans	\$0	0.00%	0.08%	\$12,260	-\$12,260	0.00	----
Caucasian Females	\$1,203,488	7.48%	11.60%	\$1,866,650	-\$663,162	0.64	< .05 *
Caucasian Males	\$14,403,373	89.51%	73.14%	\$11,770,008	\$2,633,365	1.22	< .05 †
TOTAL	\$16,091,808	100.00%	100.00%	\$16,091,808			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	0.90%	\$144,060	-\$144,060	0.00	----
African American Males	\$80,613	0.50%	5.52%	\$888,881	-\$808,268	0.09	< .05 *
Asian American Females	\$49,410	0.31%	0.57%	\$91,953	-\$42,543	0.54	----
Asian American Males	\$6,696	0.04%	2.48%	\$398,464	-\$391,768	0.02	< .05 *
Hispanic American Females	\$146,550	0.91%	1.35%	\$217,623	-\$71,073	0.67	not significant
Hispanic American Males	\$201,678	1.25%	4.36%	\$701,909	-\$500,231	0.29	< .05 *
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.08%	\$12,260	-\$12,260	0.00	----
Caucasian Females	\$1,203,488	7.48%	11.60%	\$1,866,650	-\$663,162	0.64	< .05 *
Caucasian Males	\$14,403,373	89.51%	73.14%	\$11,770,008	\$2,633,365	1.22	< .05 †
TOTAL	\$16,091,808	100.00%	100.00%	\$16,091,808			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$195,960	1.22%	2.82%	\$453,636	-\$257,676	0.43	< .05 *
Minority Males	\$288,987	1.80%	12.44%	\$2,001,514	-\$1,712,527	0.14	< .05 *
Caucasian Females	\$1,203,488	7.48%	11.60%	\$1,866,650	-\$663,162	0.64	< .05 *
Caucasian Males	\$14,403,373	89.51%	73.14%	\$11,770,008	\$2,633,365	1.22	< .05 †
TOTAL	\$16,091,808	100.00%	100.00%	\$16,091,808			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$484,947	3.01%	15.26%	\$2,455,150	-\$1,970,203	0.20	< .05 *
Women Business Enterprises	\$1,203,488	7.48%	11.60%	\$1,866,650	-\$663,162	0.64	< .05 *
Minority and Women Business Enterprises	\$1,688,435	10.49%	26.86%	\$4,321,800	-\$2,633,365	0.39	< .05 *
Caucasian Male Business Enterprises	\$14,403,373	89.51%	73.14%	\$11,770,008	\$2,633,365	1.22	< .05 †

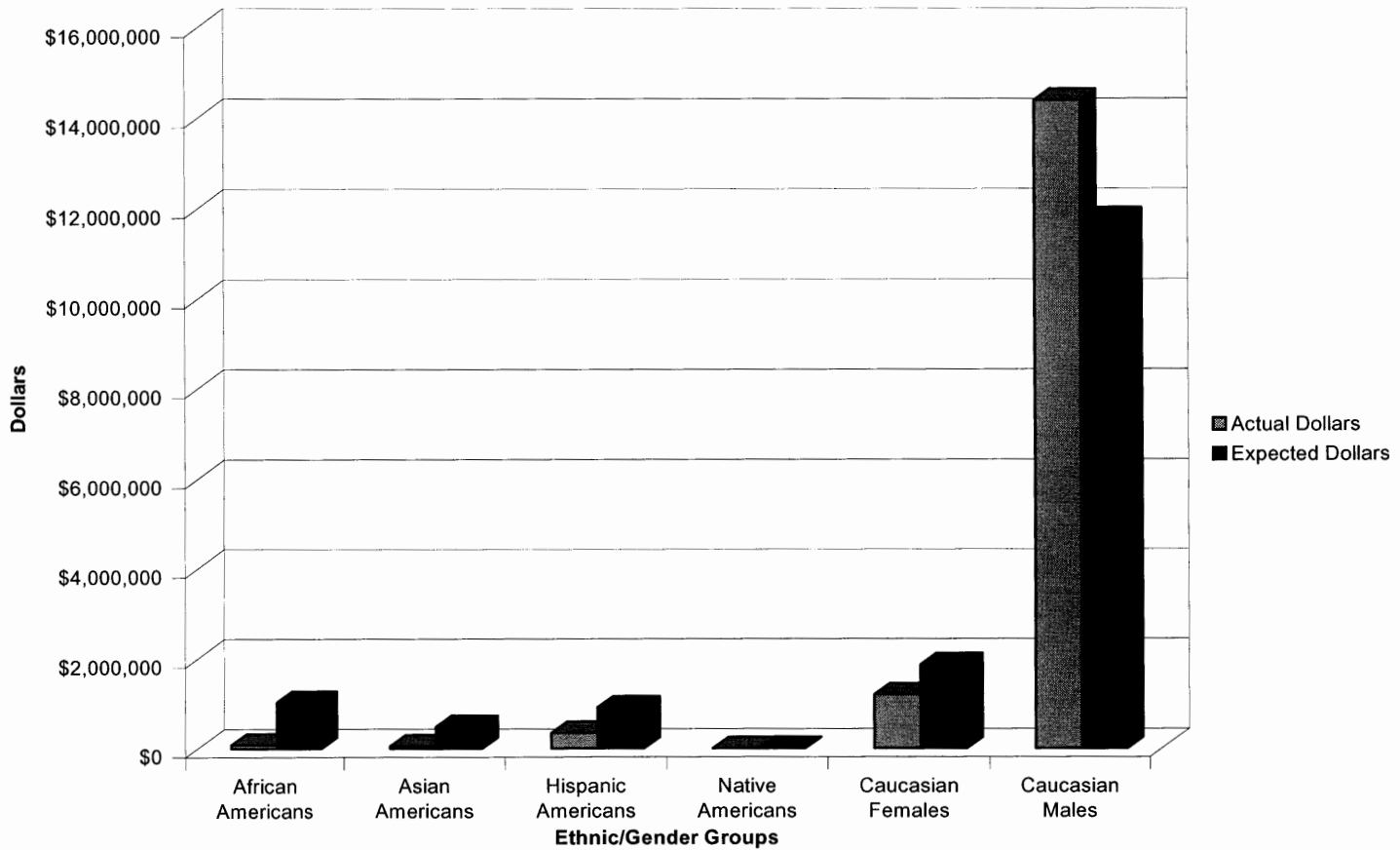
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian Males.

(----) denotes an underutilized group with too few contracts to test statistical significance.

**Chart 5.03 State Agencies, Authorities, and Commissions Disparity Analysis: Construction
Prime Contracts under \$41,100, July 1, 2000 to June 30, 2002**



D. State Agencies, Authorities, and Commissions Disparity Analysis: Construction-Related Prime Contracts, under \$25,000

The disparity analysis of construction-related prime contract dollars under \$25,000 is depicted in Table 5.04 and Chart 5.04.

African American Businesses represent 4.94 percent of the available construction-related firms and received 0.49 percent of the construction-related prime contract dollars under \$25,000. This underutilization is statistically significant.

Asian American Businesses represent 7.93 percent of the available construction-related firms and received none of the construction-related prime contract dollars under \$25,000. This underutilization is statistically significant.

Hispanic American Businesses represent 4.39 percent of the available construction-related firms and received 0.4 percent of the construction-related prime contract dollars under \$25,000. This underutilization is statistically significant.

Native American Businesses represent 0.1 percent of the available construction-related firms and received 1.77 percent of the construction-related prime contract dollars under \$25,000. The records were not sufficient to determine statistical significance.

Minority Business Enterprises represent 17.36 percent of the available construction-related firms and received 2.65 percent of the construction-related prime contract dollars under \$25,000. This underutilization is statistically significant.

Women Business Enterprises represent 12.42 percent of the available construction-related firms and received 2.22 percent of the construction-related prime contract dollars under \$25,000. This underutilization is statistically significant.

Minority and Women Business Enterprises represent 29.78 percent of the available construction-related firms and received 4.87 percent of the construction-related prime contract dollars under \$25,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 70.22 percent of the available construction-related firms and received 95.13 percent of the construction-related prime contract dollars under \$25,000. This overutilization is statistically significant.

Table 5.04 State Agencies, Authorities, and Commissions Disparity Analysis: Construction-Related Prime Contracts under \$25,000, July 1, 2000 to June 30, 2002

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$13,701	0.49%	4.94%	\$139,273	-\$125,572	0.10	< .05 *
Asian Americans	\$0	0.00%	7.93%	\$223,680	-\$223,680	0.00	< .05 *
Hispanic Americans	\$11,150	0.40%	4.39%	\$123,798	-\$112,648	0.09	< .05 *
Native Americans	\$50,000	1.77%	0.10%	\$2,814	\$47,186	17.77	**
Caucasian Females	\$62,639	2.22%	12.42%	\$350,292	-\$287,653	0.18	< .05 *
Caucasian Males	\$2,683,132	95.13%	70.22%	\$1,980,766	\$702,366	1.35	< .05 †
TOTAL	\$2,820,622	100.00%	100.00%	\$2,820,622			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	1.15%	\$32,356	-\$32,356	0.00	< .05 *
African American Males	\$13,701	0.49%	3.79%	\$106,916	-\$93,215	0.13	< .05 *
Asian American Females	\$0	0.00%	1.35%	\$37,983	-\$37,983	0.00	< .05 *
Asian American Males	\$0	0.00%	6.58%	\$185,697	-\$185,697	0.00	< .05 *
Hispanic American Females	\$11,150	0.40%	1.15%	\$32,356	-\$21,206	0.34	not significant
Hispanic American Males	\$0	0.00%	3.24%	\$91,442	-\$91,442	0.00	< .05 *
Native American Females	\$0	0.00%	0.05%	\$1,407	-\$1,407	0.00	----
Native American Males	\$50,000	1.77%	0.05%	\$1,407	\$48,593	35.54	**
Caucasian Females	\$62,639	2.22%	12.42%	\$350,292	-\$287,653	0.18	< .05 *
Caucasian Males	\$2,683,132	95.13%	70.22%	\$1,980,766	\$702,366	1.35	< .05 †
TOTAL	\$2,820,622	100.00%	100.00%	\$2,820,622			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$11,150	0.40%	3.69%	\$104,103	-\$92,953	0.11	< .05 *
Minority Males	\$63,701	2.26%	13.67%	\$385,462	-\$321,761	0.17	< .05 *
Caucasian Females	\$62,639	2.22%	12.42%	\$350,292	-\$287,653	0.18	< .05 *
Caucasian Males	\$2,683,132	95.13%	70.22%	\$1,980,766	\$702,366	1.35	< .05 †
TOTAL	\$2,820,622	100.00%	100.00%	\$2,820,622			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$74,851	2.65%	17.36%	\$489,564	-\$414,713	0.15	< .05 *
Women Business Enterprises	\$62,639	2.22%	12.42%	\$350,292	-\$287,653	0.18	< .05 *
Minority and Women Business Enterprises	\$137,490	4.87%	29.78%	\$839,856	-\$702,366	0.16	< .05 *
Caucasian Male Business Enterprises	\$2,683,132	95.13%	70.22%	\$1,980,766	\$702,366	1.35	< .05 †

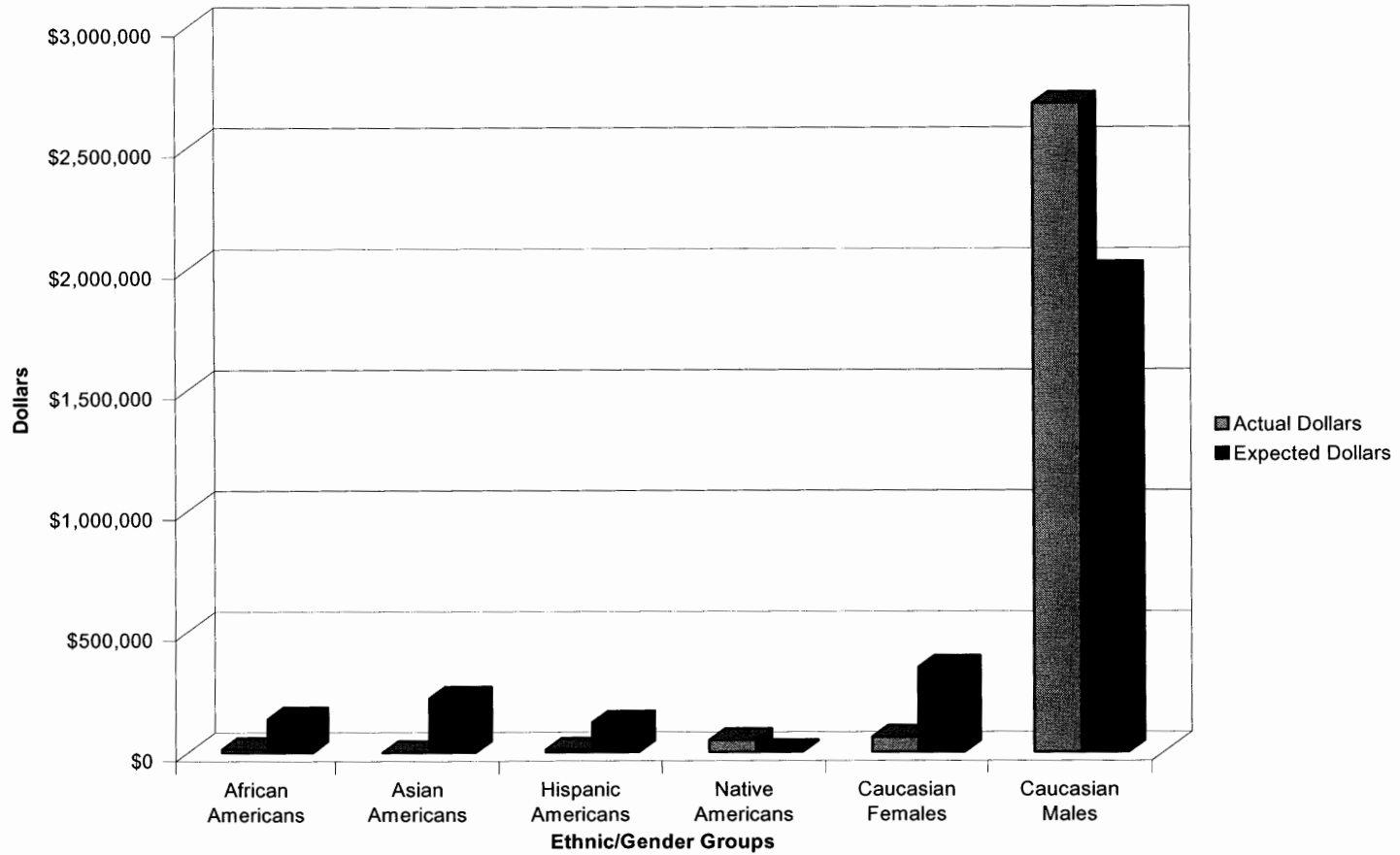
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian Males.

(----) denotes an underutilized group with too few contracts to test statistical significance.

Chart 5.04 State Agencies, Authorities, and Commissions Disparity Analysis: Construction-Related Prime Contracts under \$25,000, July 1, 2000 to June 30, 2002



The disparity findings for State Agencies, Authorities, and Commissions are summarized in the tables below.

1. Construction Prime Contracts

As indicated in Table 5.05, with the exception of Asian American and Hispanic American firms at the formal contract level, minority construction prime contractors were determined to be underutilized at both contract levels. Women Business Enterprises were underutilized at the informal contract level.

Table 5.05 Disparity Summary: Construction Prime Contract Dollars, July 1, 2000 to June 30, 2002

Ethnicity/Gender	Contracts Under \$500,000	Contracts \$41,100 and Under
African Americans	Yes	Yes
Asian Americans	**	Yes
Hispanic Americans	No	Yes
Native Americans	---	---
Minority Business Enterprises	Yes	Yes
Women Business Enterprises	**	Yes
Minority and Woman Business Enterprises	Yes	Yes

Yes = Statistically significant disparity was found
 No = Statistically significant disparity was not found
 --- = There were insufficient records to determine statistical disparity
 ** = The study did not test statistically the overutilization of M/WBEs

2. Construction-Related Prime Contracts

As indicated in Table 5.06 minority construction-related prime contractors were determined to be underutilized at both contract levels. Women Business Enterprises were also underutilized at both contract levels.

Table 5.06 Disparity Summary: Construction-Related Prime Contract Dollars, July 1, 2000 to June 30, 2002

Ethnicity/Gender	Contracts Under \$500,000	Contracts \$25,000 and Under
African Americans	Yes	Yes
Asian Americans	Yes	Yes
Hispanic Americans	Yes	Yes
Native Americans	---	**
Minority Business Enterprises	Yes	Yes
Women Business Enterprises	Yes	Yes
Minority and Woman Business Enterprises	Yes	Yes

Yes = Statistically significant disparity was found
 No = Statistically significant disparity was not found
 --- = There were insufficient records to determine statistical disparity
 ** = The study did not test statistically the overutilization of M/WBEs

In conclusion, there is documented disparity in each of the industries studied. Remedies to address the observed prime contractor disparities are presented in Chapter 7: Recommendations.



6

SUBCONTRACTOR DISPARITY ANALYSIS

I. INTRODUCTION

The objective of this analysis is to determine if minority and woman-owned business enterprise (M/WBE) subcontractors were underutilized at a statistically significant level. A detailed discussion of the statistical procedure for conducting a disparity analysis is set forth in Chapter 5: Prime Contractor Disparity Analysis. The same statistical procedure was used in performing the State Agencies, Authorities, and Commissions subcontractor disparity analysis. In sum, under a fair and equitable system of awarding subcontracts, the proportion of subcontracts and of subcontract dollars awarded to M/WBEs should be approximate to the proportion of M/WBEs in the relevant market area. If the proportions are not approximate, and a disparity exists between these proportions, the probability that the disparity is due to chance can be determined using a statistical test. If there is a low probability that the disparity is due to chance, *Croson* states that an inference of discrimination can be made.¹

II. STATE AGENCIES, AUTHORITIES, AND COMMISSIONS SUBCONTRACTOR DISPARITY ANALYSIS

As detailed in Chapter 2: Subcontractor Utilization Analysis, extensive efforts were undertaken to obtain subcontract records for State Agencies, Authorities, and Commissions

¹ When conducting statistical tests, a level of confidence 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 as 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.

formal construction and construction-related contracts. Subcontractor records were compiled for both industries within the July 1, 2000 to June 30, 2002 study period.

A. State Agencies, Authorities, and Commissions Disparity Analysis: All Formal Construction Subcontracts, July 1, 2000 to June 30, 2002

The disparity analysis of all construction subcontract dollars is depicted in Table 6.01 and Chart 6.01.

African American Businesses represent 6.3 percent of the available construction firms and received 2.54 percent of the construction subcontract dollars. This underutilization is statistically significant.

Asian American Businesses represent 4.34 percent of the available construction firms and received 0.89 percent of the construction subcontract dollars. This underutilization is statistically significant.

Hispanic American Businesses represent 5.52 percent of the available construction firms and received 10.04 percent of the construction subcontract dollars. This study does not test statistically the overutilization of minority groups.

Native American Businesses represent 0.12 percent of the available construction firms and received 0.02 percent of the construction subcontract dollars. The records were not sufficient to determine statistical significance.

Minority Business Enterprises represent 16.28 percent of the available construction firms and received 13.5 percent of the construction subcontract dollars. This underutilization is not statistically significant.

Women Business Enterprises represent 12.67 percent of the available construction firms and received 20.18 percent of the construction subcontract dollars. This study does not test statistically the overutilization of Women Business Enterprises.

Minority and Women Business Enterprises represent 28.94 percent of the available construction firms and received 33.69 percent of the construction subcontract dollars. This study does not test statistically the overutilization of Minority and Women Business Enterprises.

Caucasian Male Business Enterprises represent 71.06 percent of the available construction firms and received 66.31 percent of the construction subcontract dollars. This underutilization is not statistically significant.

Table 6.01 State Agencies, Authorities, and Commissions Disparity Analysis: All Formal Construction Subcontracts, July 1, 2000 to June 30, 2002

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$12,414,801	2.54%	6.30%	\$30,748,330	-\$18,333,528	0.40	< .05 *
Asian Americans	\$4,346,947	0.89%	4.34%	\$21,175,736	-\$16,828,790	0.21	< .05 *
Hispanic Americans	\$49,052,375	10.04%	5.52%	\$26,977,308	\$22,075,067	1.82	**
Native Americans	\$121,500	0.02%	0.12%	\$580,157	-\$458,657	0.21	----
Caucasian Females	\$98,571,229	20.18%	12.67%	\$61,859,258	\$36,711,971	1.59	**
Caucasian Males	\$323,840,441	66.31%	71.06%	\$347,006,504	-\$23,166,063	0.93	**
TOTAL	\$488,347,293	100.00%	100.00%	\$488,347,293			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$6,222,648	1.27%	0.98%	\$4,786,297	\$1,436,352	1.30	**
African American Males	\$6,192,153	1.27%	5.32%	\$25,962,033	-\$19,769,880	0.24	< .05 *
Asian American Females	\$1,203,136	0.25%	0.85%	\$4,133,620	-\$2,930,484	0.29	----
Asian American Males	\$3,143,811	0.64%	3.49%	\$17,042,117	-\$13,898,306	0.18	< .05 *
Hispanic American Females	\$28,663,352	5.87%	1.40%	\$6,816,847	\$21,846,505	4.20	**
Hispanic American Males	\$20,389,023	4.18%	4.13%	\$20,160,461	\$228,562	1.01	**
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$121,500	0.02%	0.12%	\$580,157	-\$458,657	0.21	----
Caucasian Females	\$98,571,229	20.18%	12.67%	\$61,859,258	\$36,711,971	1.59	**
Caucasian Males	\$323,840,441	66.31%	71.06%	\$347,006,504	-\$23,166,063	0.93	**
TOTAL	\$488,347,293	100.00%	100.00%	\$488,347,293			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$36,089,136	7.39%	3.22%	\$15,736,763	\$20,352,373	2.29	**
Minority Males	\$29,846,487	6.11%	13.05%	\$63,744,768	-\$33,898,281	0.47	< .05 *
Caucasian Females	\$98,571,229	20.18%	12.67%	\$61,859,258	\$36,711,971	1.59	**
Caucasian Males	\$323,840,441	66.31%	71.06%	\$347,006,504	-\$23,166,063	0.93	**
TOTAL	\$488,347,293	100.00%	100.00%	\$488,347,293			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$65,935,623	13.50%	16.28%	\$79,481,531	-\$13,545,908	0.83	not significant
Women Business Enterprises	\$98,571,229	20.18%	12.67%	\$61,859,258	\$36,711,971	1.59	**
Minority and Women Business Enterprises	\$164,506,852	33.69%	28.94%	\$141,340,789	\$23,166,063	1.16	**
Caucasian Male Business Enterprises	\$323,840,441	66.31%	71.06%	\$347,006,504	-\$23,166,063	0.93	**

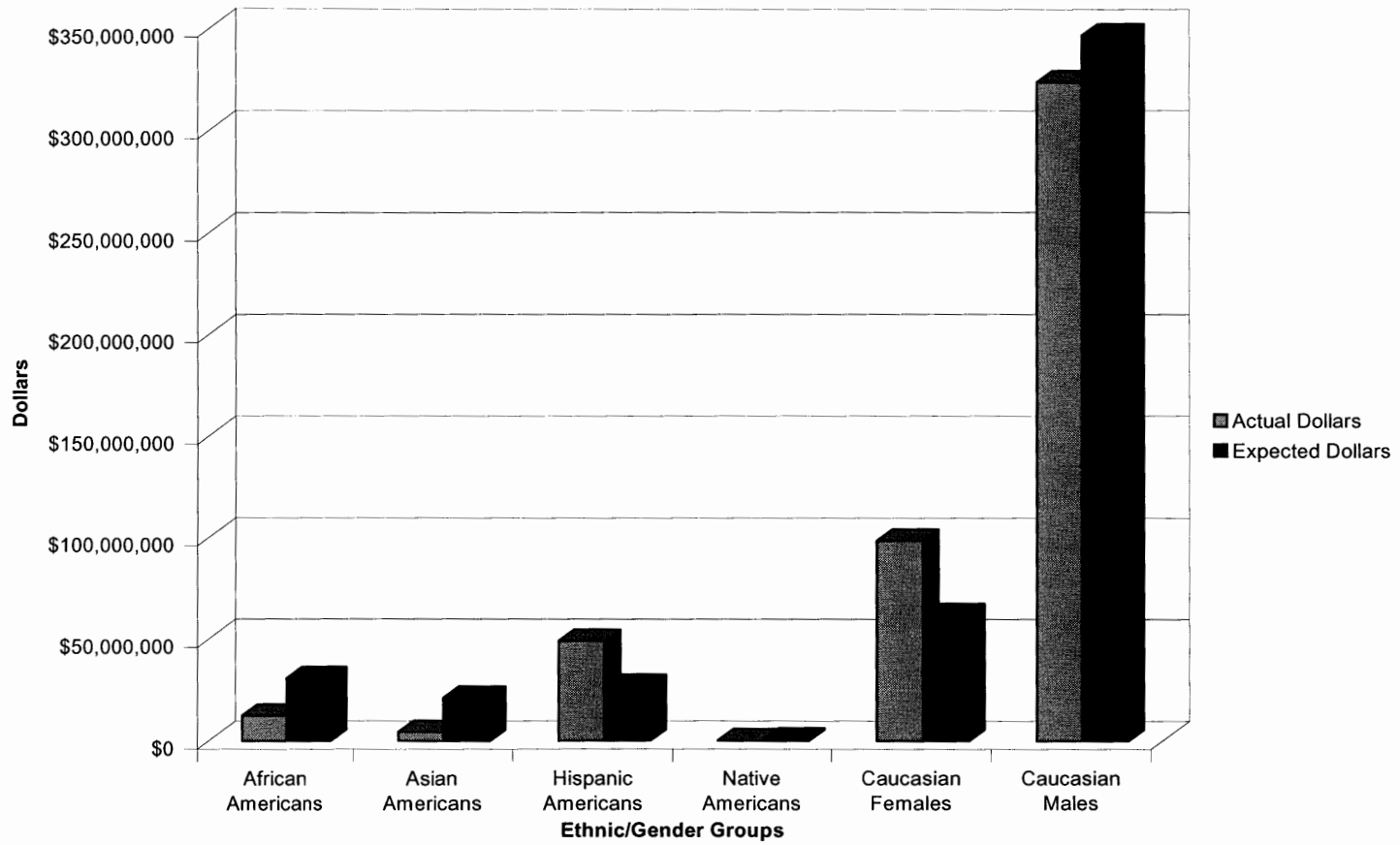
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian Males.

(----) denotes an underutilized group with too few contracts to test statistical significance.

Chart 6.01 State Agencies, Authorities, and Commissions Disparity Analysis: All Formal Construction Subcontracts, July 1, 2000 to June 30, 2002



B. State Agencies, Authorities, and Commissions Disparity Analysis: All Formal Construction-Related Subcontracts, July 1, 2000 to June 30, 2002

The disparity analysis of all construction-related prime contract dollars is depicted in Table 6.02 and Chart 6.02.

African American Businesses represent 4.51 percent of the available construction-related firms and received 3.01 percent of the construction-related subcontract dollars. This underutilization is not statistically significant.

Asian American Businesses represent 7.11 percent of the available construction-related firms and received 11.26 percent of the construction-related subcontract dollars. This study does not test statistically the overutilization of minority groups.

Hispanic American Businesses represent 4.09 percent of the available construction-related firms and received 6.45 percent of the construction-related subcontract dollars. This study does not test statistically the overutilization of minority groups.

Native American Businesses represent 0.13 percent of the available construction-related firms and received none of the construction-related subcontract dollars. The records were not sufficient to determine statistical significance.

Minority Business Enterprises represent 15.84 percent of the available construction-related firms and received 20.72 percent of the construction-related subcontract dollars. This study does not test statistically the overutilization of minority groups.

Women Business Enterprises represent 12.72 percent of the available construction-related firms and received 12.95 percent of the construction-related subcontract dollars. This study does not test statistically the overutilization of Women Business Enterprises.

Minority and Women Business Enterprises represent 28.11 percent of the available construction-related firms and received 33.67 percent of the construction-related subcontract dollars. This study does not test statistically the overutilization of Minority and Women Business Enterprises.

Caucasian Male Business Enterprises represent 71.89 percent of the available construction-related firms and received 66.33 percent of the construction-related subcontract dollars. This underutilization is not statistically significant.

Table 6.02 State Agencies, Authorities, and Commissions Disparity Analysis: All Formal Construction-Related Subcontracts, July 1, 2000 to June 30, 2002

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$2,018,104	3.01%	4.51%	\$3,030,473	-\$1,012,369	0.67	not significant
Asian Americans	\$7,560,708	11.26%	7.11%	\$4,774,424	\$2,786,284	1.58	**
Hispanic Americans	\$4,328,829	6.45%	4.09%	\$2,744,579	\$1,584,250	1.58	**
Native Americans	\$0	0.00%	0.13%	\$85,768	-\$85,768	0.00	----
Caucasian Females	\$8,694,585	12.95%	12.27%	\$8,233,737	\$460,848	1.06	**
Caucasian Males	\$44,525,603	66.33%	71.89%	\$48,258,848	-\$3,733,245	0.92	**
TOTAL	\$67,127,829	100.00%	100.00%	\$67,127,829			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$625,928	0.93%	0.98%	\$657,555	-\$31,628	0.95	----
African American Males	\$1,392,176	2.07%	3.53%	\$2,372,917	-\$980,741	0.59	< .05 *
Asian American Females	\$3,185,126	4.74%	1.19%	\$800,502	\$2,384,624	3.98	**
Asian American Males	\$4,375,582	6.52%	5.92%	\$3,973,922	\$401,661	1.10	**
Hispanic American Females	\$2,208,024	3.29%	1.06%	\$714,734	\$1,493,290	3.09	**
Hispanic American Males	\$2,120,805	3.16%	3.02%	\$2,029,845	\$90,960	1.04	**
Native American Females	\$0	0.00%	0.09%	\$57,179	-\$57,179	0.00	----
Native American Males	\$0	0.00%	0.04%	\$28,589	-\$28,589	0.00	----
Caucasian Females	\$8,694,585	12.95%	12.27%	\$8,233,737	\$460,848	1.06	**
Caucasian Males	\$44,525,603	66.33%	71.89%	\$48,258,848	-\$3,733,245	0.92	**
TOTAL	\$67,127,829	100.00%	100.00%	\$67,127,829			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$6,019,078	8.97%	3.32%	\$2,229,970	\$3,789,107	2.70	**
Minority Males	\$7,888,563	11.75%	12.52%	\$8,405,273	-\$516,710	0.94	not significant
Caucasian Females	\$8,694,585	12.95%	12.27%	\$8,233,737	\$460,848	1.06	**
Caucasian Males	\$44,525,603	66.33%	71.89%	\$48,258,848	-\$3,733,245	0.92	**
TOTAL	\$67,127,829	100.00%	100.00%	\$67,127,829			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$13,907,641	20.72%	15.84%	\$10,635,244	\$3,272,397	1.31	**
Women Business Enterprises	\$8,694,585	12.95%	12.27%	\$8,233,737	\$460,848	1.06	**
Minority and Women Business Enterprises	\$22,602,226	33.67%	28.11%	\$18,868,981	\$3,733,245	1.20	**
Caucasian Male Business Enterprises	\$44,525,603	66.33%	71.89%	\$48,258,848	-\$3,733,245	0.92	**

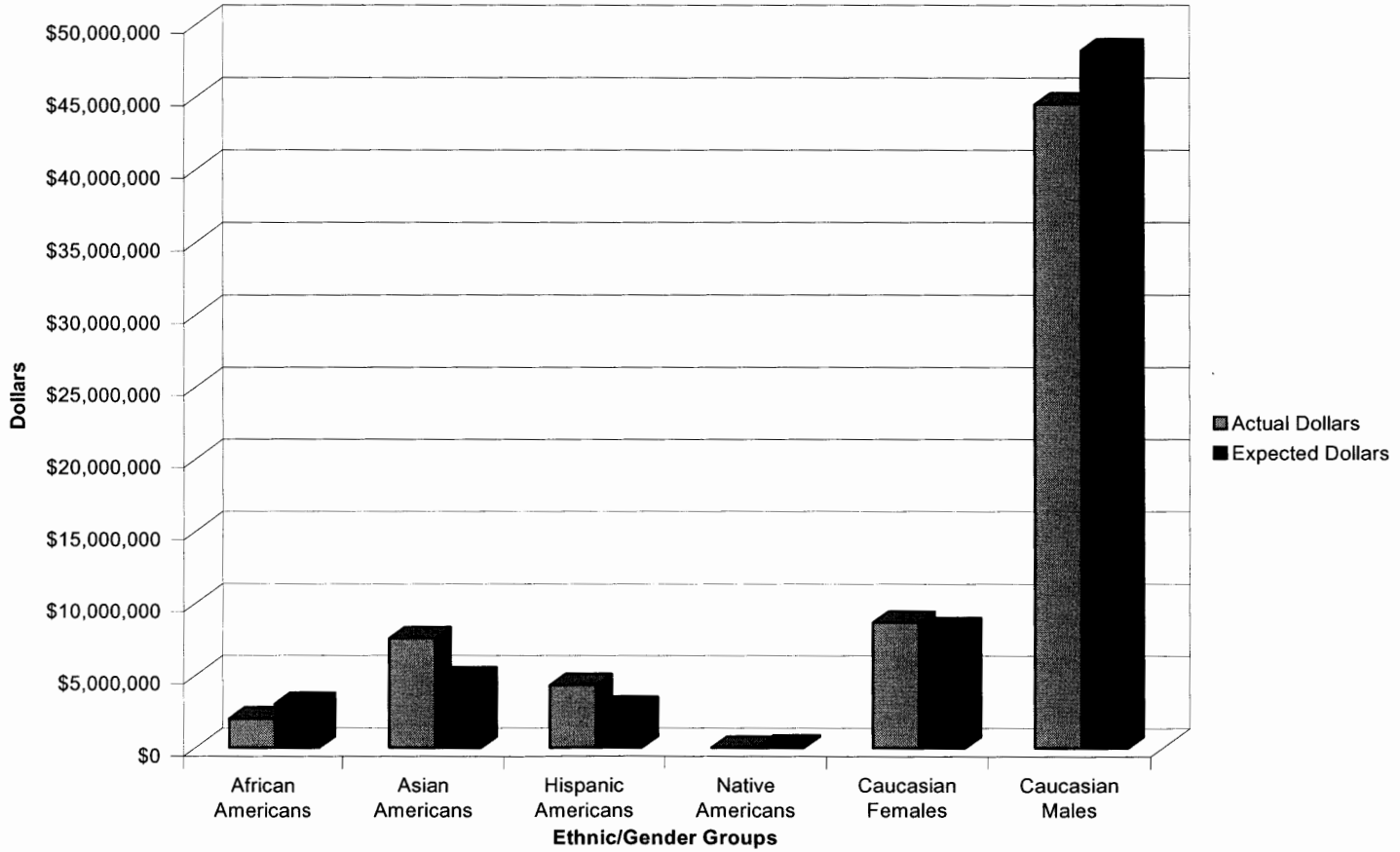
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian Males.

(----) denotes an underutilized group with too few contracts to test statistical significance.

Chart 6.02 State Agencies, Authorities, and Commissions Disparity Analysis: All Formal Construction-Related Subcontracts, July 1, 2000 to June 30, 2002



The State Agencies, Authorities, and Commissions subcontractor disparity findings are summarized in Table 6.03 below. African American and Asian American firms were underutilized only in construction.

**Table 6.03 State Agencies, Authorities, and Commissions
Subcontractor Disparity Summary, July 1, 2000 to June 30, 2002**

Ethnicity/Gender	Construction	Construction-Related
African Americans	Yes	No
Asian Americans	Yes	**
Hispanic Americans	**	**
Native Americans	--	--
Minority Business Enterprises	No	**
Women Business Enterprises	**	**
Minority and Women Business Enterprises	**	**

- Yes = Statistically significant disparity was found
- No = Statistically significant disparity was not found
- = There were insufficient records to determine statistical disparity
- ** = The study did not test statistically the overutilization of M/WBEs



7

DISPARITY STUDY RECOMMENDATIONS

I. INTRODUCTION

Race and gender-conscious and race and gender-neutral recommendations are offered to remedy the statistically significant underutilization of minorities identified in the two industries studied - construction and construction-related. The race and gender-conscious measures include prime contracting and subcontracting remedies for the ethnic and gender groups where disparities were found. The race and gender-neutral recommendations are offered as strategies to increase equity in contracting without regard to race or gender. They are presented as best practices applicable to all units of State government contracting. These same race and gender-conscious and race and gender-neutral recommendations are also found in the State Colleges and Universities Volume 3, Chapter 7.

II. SUMMARY OF STATISTICAL FINDINGS

The statistical analysis is a key research component of the Study. The purpose of the statistical analysis is to identify disparity between the use of M/WBEs and their availability in the marketplace. Disparity is defined as statistically significant underutilization. Statistical significance means that disparity results did not occur by chance.

Tables 7.01 and 7.02 depict the disparity findings. In summary, in the award of prime contracts for construction and construction-related services there was disparity at both the formal and informal contracting levels for State Agencies, Authorities, and Commissions. At the subcontractor level, there was only disparity in construction.

III. RACE AND GENDER-CONSCIOUS RECOMMENDATIONS

Several remedies are proposed to address the statistically significant prime contractor and subcontractor underutilization of minority groups. It is critical that race and gender-conscious remedies are narrowly tailored to correct documented statistically significant underutilization. Therefore, the remedies recommended address the underutilization of those racial groups with a disparity. Since the statistical analysis does not examine the overutilization of M/WBEs, remedies are not applicable. Table 7.01 depicts the ethnic and gender groups which had documented disparity.

Table 7.01 Prime Contract Disparity Findings: State Agencies, Authorities, and Commissions

Ethnicity and Gender	Construction Services	Construction-Related Services
Informal Contracts	Contracts less than \$41,100	Contracts less than \$25,000
African Americans	Yes	Yes
Asian Americans	Yes	Yes
Hispanic Americans	Yes	Yes
Native Americans	---	**
Caucasian Females	Yes	Yes
Formal Contracts	Contracts less than \$500,000	Contracts less than \$500,000
African Americans	Yes	Yes
Asian Americans	**	Yes
Hispanic Americans	No	Yes
Native Americans	---	**
Caucasian Females	**	Yes

- Yes = Statistically significant disparity was found
- No = Statistically significant disparity was not found
- = There were insufficient records to determine statistical disparity
- ** = The study did not test statistically the overutilization of M/WBEs

A. Prime Contractor Remedies

The prime contractor remedies apply to both formal and informal contracts. However, remedies for formal contracts are limited to contracts under \$500,000. Remedies for informal contracts apply to both industries and to groups with a disparity finding since

awards need not be determined by price. The recommendations below apply only to those groups with identified disparity.

1. Formal Prime Contract Remedies: Incentive Credits

a. Incentive Credits

Incentive credits should be given to statistically significant underutilized groups on construction-related contracts since these contracts can be awarded based on qualifications. The incentive credits can counterbalance the competitive disadvantage experienced by these groups. Offsetting the comparative disadvantage could mitigate the disparity in this industry. The credits would be applied to the rating for formally awarded contracts under \$500,000.

b. Evaluation Criteria

Utilization of the groups with a disparity could be a weighted criterion in the evaluation of statements of qualifications and proposals for construction-related contracts.

c. Bid Discounts

Bid discounts could be applied to the construction bids submitted by the groups with identified disparity. The price cost considered in the evaluation of the bid would be the actual less the discount.

d. Joint Venture Incentive Credits

Incentive credits should be given for joint ventures where the statistically significant underutilized groups own at least 51%. The joint venture incentive credits can increase depending on the level of the underutilized groups' participation.

2. Informal Prime Contract Remedies

a. Sheltered Market

A Sheltered Market program should be established for informal contracts. The Sheltered Market would limit competition to firms from the statistically significant underutilized groups and other firms of comparable capacity. A Sheltered Market program would ensure that quotations for informal contracts are solicited from a diverse pool of certified small businesses. Because the Sheltered Market program would award prime contracts, it would be a means for building the capacity of small businesses.

Firms would be required to qualify for the program. In addition, the statistically significant underutilized groups would be presumptive members of the program. The eligibility of any

other groups would be determined through a certification process. The existence of the small contracts rotation process should be widely advertised to the target ethnic and gender groups in each industry.

An approved list of Sheltered Market participants should be developed for each industry, and as needed, specialized lists would be compiled within industries. The businesses would be randomly ranked on each list, and twice a year there would be an open enrollment period. When the open enrollment period closed, the random list of new businesses would be appended to the existing list. The lists of Sheltered Market firms would be posted for public review. Sheltered Market contract awards, like other current State contract awards, should also be posted for public review.

Informally bid contracts, where the State Agencies, Authorities, and Commissions can identify a fixed unit price for the services, should be rotated among all firms that can provide the services. This list should include M/WBE and non-M/WBE firms interested in participating in the rotation. Where M/WBE firms were found to be underutilized at a statistically significant level, every fifth contract should be limited to competition between the underutilized groups. Contracts for which the State Agencies, Authorities, and Commissions cannot identify a fixed unit price should be competitively bid.

Departments should be deterred from issuing change orders on contracts under the informal threshold and instead select a contractor from the Sheltered Market list. Maximum use of Sheltered Market firms should be encouraged.

Financial and technical assistance should also be made available to firms that participate in the Sheltered Market program. Finally, the Sheltered Market program should require that firms graduate after they reach a certain size threshold or participate in the program over a specified time period.

b. State Staff Good Faith Efforts

Staff with informal contract purchasing authority should consistently document a Good Faith Effort to solicit quotes from the statistically significant underutilized groups. Informal contracts do not require public bidding; and therefore, the solicitation and selection are under the discretion of staff. Informal solicitations and awards should be published on each State Agency, Authority, and Commission website. Access to this page should be limited to certified SBEs using a unique password. Monthly reports should be published by each State Agency, Authority, and Commission detailing awards made in order to document compliance. Good Faith Efforts would standardize the solicitation of statistically significant underutilized groups for informal contracts.

One example of Good Faith Effort documentation is a checklist that would require buyers to demonstrate their efforts to solicit quotes from the statistically significant underutilized groups. The checklist would outline Good Faith Effort criteria, detail the level of effort

required, and list the documentation required to demonstrate that effort. Whenever there is an intent to award an informal contract to a business other than one from a statistically significant underutilized group, supervisory review and approval of the Good Faith Effort would be required to award the contract.

B. Subcontractor Remedies

M/WBE remedies are proposed for construction and construction-related contracts for groups with identified statistically significant underutilization. Table 7.02 depicts the groups which had a documented disparity.

Table 7.02 Subcontract Disparity Findings: State Agencies, Authorities, and Commissions

Ethnicity and Gender	Construction Services	Construction-Related Services
Subcontracts	All Formal Contracts	All Formal Contracts
African Americans	Yes	No
Asian Americans	Yes	No
Hispanic Americans	No	No
Native Americans	---	---
Caucasian Females	No	No

Yes = Statistically significant disparity was found

No = Statistically significant disparity was not found

--- = There were insufficient records to determine statistical disparity

1. Overall M/WBE Subcontracting Goals

An overall goal should be established as a target for the participation of the underutilized groups in the State's subcontracts. The goal should reflect the availability of the statistically significant underutilized groups as calculated in the Study. The overall goal should be reviewed periodically. Table 7.03 depicts the construction subcontractor availability of the statistically underutilized groups. Based on the group's availability, the overall construction subcontract goals for State Agencies, Authorities, and Commissions would be 6.30 percent for African Americans and 4.34 percent for Asian Americans.

**Table 7.03 Construction Subcontractor Availability -
State Agencies, Authorities, and Commissions**

Underutilized Group	Percent Availability
African Americans	6.30%
Asian Americans	4.34%

No overall goals can be established for construction-related contracts.

2. Contract-Specific M/WBE Subcontracting Goals

Contract-specific subcontracting goals should be set on all construction contracts for groups with an identified disparity. Goals should reflect the availability at the time each contract is advertised. Setting contract specific goals narrowly tailored to the current availability of the businesses to perform the identified subcontracting opportunities is the most prudent method to remedy the disparity. This contract specific goal setting method also ensures that the goals are reasonably attainable.

Both the items of work in the contract and the availability of M/WBEs to perform the work items must be determined beforehand in order to set a contract-specific goal. To set contract-specific goals, the State Agencies, Authorities, and Commissions will need to maintain a current database with M/WBE and non-M/WBE available firms to perform contracts.

3. Weighted Good Faith Efforts

Good faith effort criteria that define and quantify the minimum behavior required to demonstrate an affirmative effort to meet the subcontracting goal should be developed. A waiver provision is also necessary in order to address the circumstances in which the goals cannot be met. Good Faith Efforts will measure a prime contractor’s endeavor to meet the M/WBE subcontracting goals.

There would be a minimum score for the prime contractor to demonstrate a Good Faith Effort. Prime contractors failing to meet the M/WBE subcontractor goal or make a Good Faith Effort to do so would be deemed non-responsive.

C. Disadvantaged Business Enterprise Programs

Federal Disadvantaged Business Enterprise (DBE) subcontracting goals should be utilized whenever the contract is funded by federal dollars. The U.S. Department of Transportation’s Disadvantaged Business Enterprise Program and the U.S. Environmental

Protection Agency's (EPA) Fair Share Program, require subcontracting goals to achieve disadvantaged businesses' participation (which includes M/WBEs). These federal programs, used in combination with State-funded programs, will help to alleviate the identified disparity. These federal programs do not require a factual finding of disparity however, they do require funding recipients to implement measures to ensure equitable contracting. For the DOT, these measures are outlined in 49 CFR Part 26. The EPA is currently developing its draft rules.

Both the DOT and EPA require goal setting based on the relative availability of ready, willing and able DBEs in the relevant market area. Additionally, the DOT rules require a recipient agency to determine each year the apportionment between race-conscious method and race-neutral method to achieve the annual DBE goal. The recipient agency must meet at least some of the DBE goal through race-neutral means. The race-neutral recommendations offered are designed to promote use of M/WBEs in State-funded contracts, but they could also be used to enhance the race-neutral components of the State's DBE programs.

IV. RACE AND GENDER-NEUTRAL RECOMMENDATIONS

Croson case law requires that the State consider (but not exhaust) race and gender-neutral initiatives before resorting to race conscious remedies. The State operated a race-neutral Small Business program from October 1984 to July 10, 2003 in conjunction with a race-conscious M/WBE program. This Disparity Study found disparities, as noted above, during the July 1, 2000 to June 30, 2002 study period. Since July 10, 2003, the race-conscious M/WBE Program was eliminated with only the race-neutral Small Business Program continuing. In meeting this *Croson* requirement, the State should evaluate whether documented M/WBE participation in this Small Business Program, since the elimination of the M/WBE Set-Aside Program, was a sufficient response to the findings of disparity discussed earlier in this document.

Mason Tillman makes specific race and gender-neutral program recommendations for future contracting programs. They incorporate an examination of a number of best management practices of similarly situated jurisdictions. As such, they can serve as a guide for State contracting efforts.

1. Unbundle Large Procurement into Smaller Contracts Where Feasible

Bundling occurs when a procurement consolidates small purchases into one contract, or when goods and services previously purchased individually are grouped together in a single solicitation.

Large contracts should be unbundled to maximize small business participation. During the data collection process for this study, it was found that there were a number of large contracts awarded by the State. Unbundling large procurement will increase the opportunity for small businesses to compete for State contracts.

In determining whether projects should be divided, the following criteria should be reviewed:

- Whether or not the project takes place in more than one location
- Size and complexity of the procurement
- Similarity of the goods and services procured
- Sequencing and delivery of the work
- Public safety issues and convenience
- Procurement segmentation options

The federal government has made contract unbundling a key element of its small business agenda.¹

2. Raise Pre-Qualification Contract Levels

The use of pre-qualification standards should only be considered on large and complex projects above \$10 million. Only contracts above \$10 million that require specialized technical expertise beyond licensing requirements and a demonstration of financial capacity beyond what is needed to acquire bonding should be considered for pre-qualification.

Pre-qualification standards may inhibit the development of small firms by denying capable and experienced entrepreneurs opportunities on public-funded projects. Eliminating pre-qualification standards, except for large and complex projects above \$10 million, will provide otherwise capable firms the opportunity to compete for State contracts.

New Jersey Statute §52:35-2 requires all bidders on state public works to submit a statement that fully develops the financial ability, adequacy of plant and equipment, organization and prior experience of the prospective bidder, and other pertinent information. Pre-qualification standards, as they exist under New Jersey Statute §52:35-2, are not uniformly applied.

State licensing, bond, and insurance requirements and bid and proposal specifications already serve as mechanisms to ensure the capability and capacity of contractors and consultants, rendering many pre-qualification standards redundant. Projects that do not require capability or capacity beyond that demonstrated through licensing, bonding, and bid or proposal specifications, should not be subjected to pre-qualification standards.

¹ United States. The Office of Federal Procurement Policy (OFPP) *Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business*. Washington D.C. Executive Office of the President, October 2002.

3. Use Direct Contracting As a Means to Award Small Contracts

Direct contracting occurs when a public agency directly awards construction support services contracts that normally are included within the general contract. They include construction support services such as trucking, landscaping, demolition, site clearing, surveying, and site security.

Construction support services should be awarded as direct contracts. Many construction support services are distinct tasks often performed by small firms. Direct contracting will increase the opportunities for, and build the capacity of, small firms by allowing them to work as prime contractors.

4. Evaluate Bonding and Insurance Requirements

Bonding and insurance requirements should be evaluated to ensure that smaller contracts do not carry a disproportionately high level of coverage. Prohibitive bonding and insurance requirements can be a disincentive to bidders, constitute a barrier to small business, and increase the costs of goods and services. Revised bonding and insurance requirements will attract more small firms as bidders, thus increasing competition and reducing costs.

The revised bonding and insurance requirements should address bid, performance, and payment bonds; general and professional liability; and errors and omissions insurance. Risk management standards could be developed that are applicable to the industry and associated liability. For example, a \$100,000 air conditioning installation contract would have one set of bonding and insurance requirements, while a \$500,000 overpass construction contract would have another. Both would be based on the project's size, scope, scale, and risk to the State.

5. Phase Bonding and Retainage Requirements

a. Bonding

Prime contractors' bonds should be proportionally released as goods and services are accepted and rolled over into the remaining portion of the contract. Subcontractors' bonds should be released upon completion and acceptance of their portion of work. Phasing bonding requirements will increase a small firm's access to credit, promoting business growth.

b. Retainage

Retainage is the percent of the contract value withheld until the successful completion of a contract.

The subcontractors' portion of the retainage should be released once work has been completed and accepted. Retainage should be eliminated for small subcontracts and reduced for all certified M/WBE contractors. This will reduce the cash flow burden experienced by small construction subcontractors. Increased cash flow will allow these small firms to build capacity.

6. Post Project Forecast on the Internet

A quarterly forecast should be posted on the Internet to provide firms with adequate notice and lead time. There were several anecdotes of firms that could not secure timely information about upcoming contract opportunities. Project forecasting will provide prime contractors and subcontractors more lead time for networking and outreach.

The State should also consider "listing" contract opportunities prior to the issue of contract solicitation. Upcoming contract opportunities could be listed 15 to 30 days prior to the actual release date. The "listing" would consist of the draft project specifications, anticipated release date, and subcontracting goals for the project. The "listings" should be posted the same day each week.

7. Consider Reducing SBE Size Standards

The State should consider reducing SBE size standards to enable M/WBEs to compete with similarly situated businesses. The current SBE size standard is based on firms with no more than 100 full time employees. The number of small businesses in the State and the small size of State construction and construction-related contracts, provide compelling reasons for creating a small business definition individualized to the profile of State businesses and expanding the existing preferences for small business.

According to the 1997 U.S. Census, 93.37 percent of the construction businesses and 88.3 percent of the construction-related businesses with paid employees in the State had fewer than 20 employees, creating a large pool of potentially available firms. For the construction industry, 63.19 percent of the State Agencies, Authorities, and Commissions' contracts were under \$25,000, 72.2 percent were under \$50,000, and more than 75 percent were under \$100,000. For the construction-related industry, 35.49 percent of the State Agencies, Authorities, and Commissions' contracts were under \$25,000, 42.61 percent were under \$50,000, and more than 53 percent were under \$100,000. Therefore, small businesses would have the capacity to provide services on the average State Agencies, Authorities, and Commissions' contract. However, analysis of awarded contracts shows that small businesses are not being utilized on small contracts.

8. Allow Certified M/WBEs to Register Their Interest as Subcontractors for State Projects Via the Internet

For each contract solicitation with subcontracting opportunities, the State could set up a link on its web site that would allow M/WBEs to express interest in subcontracting on a particular project. Many M/WBE companies that are too small to be prime contractors on large projects are available to perform as subcontractors. Prime contractors could use this on-line source list to solicit M/WBEs for subcontracting opportunities.

9. Require Prime Contractors to List All Subcontractors with Their Bids and Proposals

The State should require prime contractors submitting bids and proposals to include a list of their subcontractors' contract amounts and certifications standards. The State would then verify the amounts with the subcontractors prior to awarding the contract. The State will be able to reject non-responsive bids and proposals during the submission review process, avoiding the administrative issues of handling non-compliance after the awarding of the contract.

Currently, the State requires prime contractors to maintain and submit a list of subcontractors after contract award. The requirement is set forth in New Jersey Statute §52:32-44(d). The State could consider requiring prime contractors to secure a "letter of intent" from each subcontractor to be submitted prior to awarding the contract. The letter of intent is a statement from the subcontractor stating its agreement to provide the services listed in the bid or proposal for the amount listed. Prime contractors should be penalized for the unauthorized listing of subcontractors. This additional level of scrutiny can prevent prime contractors from listing subcontractors without their consent.

10. Debrief Unsuccessful Bidders and Proposers

The State should develop an official policy to encourage firms to review unsuccessful bids and proposals. Debriefing helps businesses learn about their areas of strength and weakness and how to create a more successful bid or proposal. Debriefing is a means to increase the quality of bids and proposals received by the State from M/WBEs.

As part of the debriefing process, a firm could schedule an appointment to review the successful submission and also receive specific critiques on its unsuccessful submission. M/WBE bidders who have three successive failed bids or proposals should be strongly encouraged to schedule a debriefing appointment.

11. Establish Uniform Bid and Proposal Protest Procedures

The State should establish uniform bid and proposal protest procedures. Specific bid and proposal protest procedures afford vendors with a due process to challenge what may be a questionable contract award. Uniform bid and proposal protest procedures would minimize the time and resources needed by all parties to respond to a protest.

The State should establish uniform regulations applicable to all State Agencies, Authorities, and Commissions similar to those used by the Department of the Treasury's Division of Property Management and Construction (DPMC), with some modifications. DPMC, under Title 17, Chapter 19, Subchapter 4 of New Jersey's Administrative Code, requires firms wishing to protest a bid decision to submit a written request specifying the grounds on which the award of a contract or the rejection of a bid is challenged. The protest must be received within five calendar days after the opening of bids. An informal hearing is held within fifteen calendar days of the receipt of the request and is overseen by an impartial hearing officer. The hearing officer then prepares a report within ten calendar days of the hearing's conclusion, unless greater time is required. This report is merely advisory and is not binding. All parties to the hearing also receive copies of the hearing officer's report and then have ten calendar days to provide written comments on exceptions. After this ten-day period, the final decision on the matter is issued.

DPMC's bid protest procedures should be revised by shortening the bid protest period, including a bid appeals process by an independent appeals panel, and making the rule applicable to both bid and proposal protests. An informal hearing should be overseen by a hearing officer, but it should be held within five calendar days of the receipt of the request. The hearing officer should make a final decision on the protest within five days of the hearing.

The State should create a bid and proposal protest appeals process by which the business can appeal. The appeals process should be overseen by an independent three person hearing panel. One of the individuals in the appeals panel should be a vendor who would represent the bidders on State contracts. Members of the three member appeals panel should be subject to term limits.

The appeals panel should hold a hearing within ten days of receipt of a written appeal of the hearing officer's determination and it should issue a final decision within five days of the appeals hearing. The decision of the three person panel should be appealable in a court of law.

12. Develop an Expedited Payment Program

An expedited payment program should be developed for M/WBEs. Expedited payments will remove a major barrier to small business participation in public contracting by

improving cash flow. They will also provide additional incentives for businesses to compete for State contracts by establishing the State as a preferred public sector client.

In an expedited payment program, M/WBEs would be paid on an accelerated schedule. Non-certified prime contractors who meet M/WBE participation goals would also be eligible for the expedited payment program. When a participating firm submits an invoice, it would include an identification number that marks it for a 15-day expedited payment. State staff would date stamped invoices immediately upon receipt. If an invoice is not date stamped, the 15-day cycle would begin on the date specified in the invoice.

As an alternative to the 15-day expedited payment, firms participating in the expedited payment program could be permitted to submit invoices for progress payment at two-week intervals. Firms would be paid according to the normal State schedule, but because they would be allowed to invoice more frequently, they would be paid more frequently.

The State should assess an interest penalty for late payments to certified firms. Penalties would be assessed the day after the contractual payment due date. If there is no payment due date stipulated in the contract, penalties would be assessed on the 31st day after receipt of the invoice. The penalty would be a nominal percentage of the invoice amount assessed daily until a check is issued.

13. Provide for Partial Payment of Invoices

The State should be required to notify a firm within five days of receiving an invoice if there are any items in dispute. Project managers should be granted line item approval authority. This would allow undisputed invoice amounts to be paid promptly and disputed items to be resolved in a timely fashion. As a result, small businesses that contract with the State would be able to maintain a positive cash flow while providing goods or services to the State.

14. Assess the Contract Dispute Resolution Process

The State should assess its dispute resolution process to ensure that it does not unduly disadvantage or burden M/WBEs. Small businesses may be deterred from seeking legitimate redress if the process is costly and time consuming. Streamlined dispute resolution procedures can also establish a greater degree of fairness.

15. Avoid Overly Complex or Restrictive Specifications

To encourage M/WBE contractor participation, requiring a base bid with multiple alternatives should be avoided. This type of specification requires a considerable degree of expertise and resources to prepare what ultimately is several bids at once. Simplified specifications can promote accurate bids, minimizing the needs for Requests for Information and change orders.

In addition, unnecessary work hour restrictions can also limit a small contractor's flexibility in meeting demanding construction schedules. Proprietary specifications can be costly as well. When a supplier is granted an artificial monopoly on materials by a public agency owner, the supplier can and often will demand an excessive price. If brand-name material is required in the bid specifications, it should be purchased by the State and not the contractor.

16. Develop Subcontractor Substitution Standards

Formal subcontractor substitution standards should be developed so that subcontractors are not removed from a project without due process. Eliminating a subcontractor from a project or reducing its scope of work can pose a significant hardship on small contractors. Formalizing subcontractor substitution standards ensures that prime contractors are accountable to commitments made to M/WBEs at the time of bid or proposal submission.

A subcontractor should be notified in writing of an intended substitution, and afforded the opportunity to respond. Substitutions should only be allowed after the subcontractor has had a chance to respond, and only with the approval of the State. In addition, any reduction in the scope of work or contract value for a subcontractor should be considered as a substitution. Failure to adhere to the substitution standard should be a breach of contract and the appropriate sanctions applied.

17. Post Prime Contractor Payments to the Internet

Prime contractor payments should be published on the internet. This will allow subcontractors and subconsultants to monitor the progress of their project and to track when the prime contractor receives payment.

18. Conduct Routine Post-Award Contract Compliance

Routine contract compliance monitoring should be conducted to ensure that M/WBE goals are met throughout the duration of a contract. This type of monitoring will verify the prime contractors' commitments both prior to and after the contract award. Consistent contract compliance should minimize the hardships experienced by small firms with limited resources.

The following contract compliance methods are recommended:

- Periodically collect copies of canceled checks to subcontractors to verify payment information
- Penalize prime contractors and subcontractors for non-compliance with program requirements
- Fine prime contractors for unapproved substitutions

- Include a provision for liquidated damages if a contract is breached due to non-compliance with M/WBE requirements

19. Publish M/WBE Utilization Reports

Prime contractor and subcontractor utilization should be reported on a regular basis. Reporting will measure the success of the M/WBE programs' efforts and determine if they require modification. Periodic reporting can also serve as a public relations tool, informing the community of the State's efforts to ensure diversity.

These reports should include verified payment in addition to award data. The verification process should be standardized. The reports should also include change orders and substitutions, be posted to the State's web site, and circulated to local chambers of commerce and trade organizations. The utilization reports should include an assessment of M/WBE program activities and recommendations for improvement on an annual basis.

V. ADMINISTRATIVE RECOMMENDATIONS

A. Organizational Recommendations

1. Establish a Centralized M/WBE Office with Adequate Staff

A centralized M/WBE contract compliance office should assume responsibility for the design, implementation, and operation of the business equity programs. Currently contract compliance is decentralized. Consolidating all of these units into one office will ensure that all business equity programs are uniformly implemented and monitored.

The M/WBE contract compliance office should be under the jurisdiction of the Secretary of State and separate from any agency, authority, and commission with purchasing authority. This will relieve the natural tension between the deliberation required to ensure contract compliance and the need to expediently procure products and services. The contract compliance office will need the authority to approve solicitations, reject bids or proposals, and enforce penalties to contractors and staff for non-compliance with the business equity program requirements. The Secretary of State would be the final arbitrator of the competing interest between contract compliance and procurement.

The centralized contract compliance office should be adequately staffed with experienced professionals capable of fulfilling the new responsibilities. Adequate staffing is necessary to promote the smooth implementation of the State's new business equity programs. Personnel staffing the contract compliance office should have knowledge about procurement procedures, public contracting law, affirmative action programs, and the business community. The personnel should have education or professional experience in

public administration and be knowledgeable about current business trends and the operation of a small business.

2. Recognize Buyers that Utilize M/WBEs

Staff who comply with Program requirements to utilize M/WBEs on informal contract solicitations should be recognized. Such acknowledgment could be in the form of a letter from supervisory staff. Formal recognition will provide State staff an additional incentive to meet M/WBE program requirements and reward those that consistently demonstrate a commitment to diversity.

3. Develop a Statewide M/WBE Program Manual

A Statewide M/WBE Program Manual should be developed. Creating a uniform manual would streamline the contract compliance process and provide one source that is applicable to all State contracting. A uniform M/WBE Program Manual will also provide staff with clear guidance on their responsibilities and State requirements.

The recommendations in this report should be included in drafting the M/WBE Program Manual. Training should be provided when the manual is approved. Staff compliance should be evaluated through both department-level reports of M/WBE utilization and staff performance reviews.

4. Conduct Outreach and Implement Marketing Strategies

The proposed M/WBE program should have an outreach component. The outreach component should include the following three elements:

- Promote new programs
- Solicit firms to pursue certification
- Advertise contract opportunities in order to increase the number of businesses responding to informal and formal solicitations

Effective outreach will also attract more bidders and proposers and inform them of new requirements.

The table below lists the strategies and tactics that can be used to market the programs, inform the business community of new requirements, and attract M/WBE firms to certify with the State, and to bid on State contracts.

Table 7.04 Outreach and Marketing Strategies

Strategy	Tactics
Design tagline and display banner	<ul style="list-style-type: none"> • Develop tagline • Design banner with placement of existing logo and new tagline
Define design standards, layout, and appearance of procurement documents for the organization	<ul style="list-style-type: none"> • Revise all procurement materials to include the program logo and tagline in order to have a uniform appearance
Develop collateral print material for outreach campaign	<ul style="list-style-type: none"> • Revise brochure to reflect program changes • Develop articles and media packets
Launch outreach campaign	<ul style="list-style-type: none"> • Distribute media packets and press releases • Place public service announcements • Pitch campaign to broadcast media
Host semi-annual contractors' open house and other networking events	<ul style="list-style-type: none"> • Plan and coordinate open house events • Send out invitations via mail, fax, and e-mail • Include buyers in outreach events • Make informal contract opportunities available • Distribute contract forecasts and certification forms
Distribute forecasts of contracting opportunities via facsimile and e-mail	<ul style="list-style-type: none"> • Distribute contract forecast • Post to web site • Distribute through fax and e-mail
Partner with agencies and organizations to disseminate program information	<ul style="list-style-type: none"> • Continue current agency partnerships • Develop local business and trade group partners
Conduct an annual program evaluation	<ul style="list-style-type: none"> • Establish measurable outcomes • Conduct surveys • Examine bidding history

B. Data Management Recommendations

1. Track All Subcontract Bidders

All subcontract bidders should be tracked electronically, on a Statewide basis. Setting M/WBE contract goals will require a list of available firms. Electronically recording bidders is a comprehensive means of tracking ready, willing, and able firms.

In order to maintain a list of available subcontractors, the following information should be collected from prime contractors at the time of bid opening:

- Subcontractors' names
- Subcontractors' certification status
- Service to be provided by each subcontractor
- Subcontractors' bid amount

2. Consistently Track All Subcontractor Payments

There should be uniform tracking of all subcontractor payments. Tracking subcontractor payments is a critical element of contract compliance. Tracking subcontractor payments will also identify problematic areas in contract compliance and project management.

Data should be stored electronically in a relational database. Each agency that manages contracts should maintain its own relational database. The databases should be based on the same platform, in order for the data to be easily integrated when needed. In addition, the contract numbering system should be the same across all State Agencies, Authorities, Commissions, and it should match the one used in New Jersey Comprehensive Financial System (NJCFS).

3. Code Contracts by Industry Classification in the New Jersey Comprehensive Financial System (NJCFS)

State Agencies, Authorities, and Commissions contracts should be coded by industry and entered into the NJCFS at the time of the contract award. Coding each record by industry would facilitate compliance reporting and in producing utilization reports.

The numeric code for the type of industry should be based on the federal North American Industrial Classification Standard (NAICS). Then, the existing contract description field in the NJCFS would be used to verify the classification.

4. Consolidate All Payment Tracking into the New Jersey Comprehensive Financial System (NJCFS)

The NJCFS should be used by State Agencies, Authorities, and Commissions to track and monitor payments. Currently, only State Agencies consistently use the NJCFS. A centralized system will streamline payment monitoring and financial reporting for all entities in the State government.

