

**MWBE Local Business
Disparity Study for the
City of Evanston**

Final

submitted by

D.J. Miller & Associates, Inc.

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Table of Contents

Page No.

Acknowledgments

Executive Summary

Chapter I	Legal Issues Arising From Race Conscious and Race Neutral Programs	
	<i>Introduction</i>	I-1
	<i>Race Conscious Programs</i>	I-2
	<i>Race and Gender Neutral Local Preference Programs</i>	I-16
	<i>Conclusion</i>	I-21
Chapter II	Historical Review	
	<i>Introduction</i>	II-1
	<i>Birth of the City of Evanston</i>	II-1
	<i>Historical Overview from World War II and Beyond</i>	II-2
	<i>Conclusion</i>	II-27
Chapter III	Economic Market Analysis	
	<i>Introduction</i>	III-1
	<i>Economic And Demographic Profile of the Evanston Area</i>	III-2
	<i>Overview of Discriminatory Effects</i>	III-8
	<i>Gross Market Utilization for MWBEs in Construction, Wholesale Trade, and Services</i>	III-11
	<i>Conclusion</i>	III-18
Chapter IV	Procurement Policies and Practices and Their Impact	
	<i>Introduction</i>	IV-1
	<i>Overview of the Purchasing Policy</i>	IV-1
	<i>Analysis of the City's Procurement Practices</i>	IV-3
	<i>Personal or Professional Services Contracts</i>	IV-5
	<i>Non Competitive Bid Items</i>	IV-8
	<i>Tracking Procurement Activity</i>	IV-9
	<i>M/W/EBE Programs</i>	IV-10
	<i>M/W/EBE Program Structure</i>	IV-12
	<i>Certification Process</i>	IV-13
	<i>Notification to M/W/EBES</i>	IV-13
	<i>Monitoring Efforts</i>	IV-14
	<i>Outreach Programs</i>	IV-15

	<i>Management and Technical Assistance</i>	IV-15
	<i>Impact of Procurement Policies and Practices on M/W/EBE Participation</i>	IV-15
	<i>Conclusion</i>	IV-20
Chapter V	Qualitative Evidence of Marketplace Discrimination	
	<i>Introduction</i>	V-1
	<i>Methodology</i>	V-2
	<i>Summary of Anecdotal Interviews</i>	V-3
	<i>Discrimination and Other Adverse Market Conditions</i>	V-4
	<i>Market Survey Analysis</i>	V-23
	<i>Conclusion</i>	V-46
Chapter VI	Statistical Analysis of the Availability and Utilization of MWBEs and EBEs	
	<i>Introduction</i>	VI-1
	<i>Data Collection</i>	VI-1
	<i>Relevant Market</i>	VI-5
	<i>Utilization Analysis</i>	VI-8
	<i>Missing Values Analysis</i>	VI-12
	<i>Utilization Analysis (by Procurement Category)</i>	VI-14
	<i>Availability Analysis</i>	VI-26
	<i>Disparity Analysis on the Dollar Amounts Received by MWBEs</i>	VI-36
	<i>Disparity Analysis (by Procurement Category)</i>	VI-37
	<i>Program and Post-Program Analysis of Utilization and Disparity</i>	VI-50
	<i>Program and Post-Program Analysis of Subcontracting of Minority Firms by Majority Primes</i>	VI-51
	<i>Impact of Cessation of City of Evanston's MWBE Program</i>	VI-54
	<i>Conclusions</i>	VI-54
Chapter VII	Alternatives to Race and Gender Conscious Programs	
	<i>Introduction</i>	VII-1
	<i>State and Local Small Business Programs</i>	VII-3
	<i>Federal and Race Neutral Programs</i>	VII-6
	<i>U.S. Department of Housing and Urban Development</i>	VII-9
	<i>Conclusion</i>	VII-10
Chapter VIII	Conclusions and Recommendations	
	<i>Introduction</i>	VIII-1
	<i>Conclusions</i>	VIII-1

<i>Recommendations</i>	VIII-2
<i>Procurement Procedures and Practices</i>	VIII-5
<i>M/W/EBE Program Recommendations</i>	VIII-11
<i>Course of Action</i>	VIII-15
<i>Summary</i>	VIII-17

Bibliography

Appendix	<i>Public Hearing Transcript</i>
	<i>Survey Instruments</i>

INTRODUCTION

The seminal United States Supreme Court case, *City of Richmond v. J.A. Croson* caused state and municipal governments to carefully consider the justification for and design of race conscious programs. In *Croson*, the Court established a two-pronged test to determine the constitutionality of a race conscious program: (1) whether there is a compelling governmental interest justifying the use of race-conscious measures; and, (2) if so, are those race conscious measures narrowly tailored to remedy identified discrimination.

In accordance with the *Croson* ruling, D.J. Miller & Associates, Inc. (DJMA) was commissioned by the City of Evanston to conduct a study of the utilization of minority and women business enterprises (MWBEs) and to identify specific instances of discrimination, if any, in the City's purchasing process. DJMA was also to analyze participation in Evanston's Local Business Program. In conducting this study, DJMA collected and analyzed data regarding the nature and extent of discrimination against MWBEs, and the utilization of MWBEs and Evanston Based Businesses (EBE) in the City's relevant market area.

DJMA spent 12 months researching the history of MWBE business development in Evanston, the economic factors that impact MWBE business creation and growth, and the experiences of businesses attempting to do business with the City of Evanston and operating in the Evanston business market. DJMA also developed specific information pertaining to the procurement of MWBEs and local Evanston businesses and the operation of the City's MWBE and EBE programs by reviewing City of Evanston contract data and analyzing the procurement system.

Our findings are presented in eight chapters: Chapter I—Legal Issues Arising From Race Conscious and Race Neutral Programs; Chapter II—Historical Review; Chapter III—Economic Market Analysis; Chapter IV—The Impact of Procurement Policies and Practices on MWBEs and EBEs; Chapter V—Summary of Qualitative Evidence of Marketplace Discrimination; Chapter VI—Statistical Analysis of the Availability and Utilization of MWBEs and EBEs; Chapter VII—Alternatives to Race and Gender Conscious Programs; and Chapter VIII—Conclusions and Recommendations. The following is a synopsis of the chapters contained in this report.

Chapter I—Legal Issues Arising From Race Conscious and Race Neutral Programs—is an analysis of the relevant constitutional case law that enumerates the standard by which MWBE and locally-based business programs must be designed to withstand constitutional scrutiny by the courts. In considering these

programs, the courts apply different standards of scrutiny depending on the factors considered when enacting legislation or initiating its action. The courts utilize the strict scrutiny test to review race conscious programs. Strict scrutiny is the most rigorous standard applied by the courts. If the court is assessing the permissibility of a WBE program or gender conscious government action, the courts apply the "intermediate scrutiny" test. This test requires the government to show that there is an important governmental interest and the action taken is substantially related to the interest.

In reviewing the constitutionality of a race and gender neutral program that seeks to give a preference to, or set-aside work for, businesses that are located within a municipality's jurisdiction, the courts apply a "rational relations" test. This test allows the courts to be extremely deferential to the local governments, requiring only that the government action not be arbitrary and capricious. However, local business programs that interfere with interstate commerce or deny citizens of one state the same rights and privileges afforded citizens in the jurisdiction of the state or municipality imposing the program are subject to the Commerce Clause and the Privileges and Immunities Clause of the U.S. Constitution. The courts have developed complicated legal analyses to test the permissibility of actions that interfere with these original Constitutional canons. Through a detailed review and analysis of these legal principles as they relate to implementation of MWBE and local business programs by municipalities, DJMA has provided the legal research from which the City may determine the permissibility of its own Local Business Program.

Chapter II—Historical Review—documents historical developments and accounts of discrimination impacting minority and women business development in the City of Evanston. DJMA's research of the history of this community revealed a perception held by many residents and non residents that Evanston is a racially progressive town. Historically, however, there exists a pattern of recognized tension between racial groups in Evanston. This is evidenced in part by out-of-court settlements made by the City of Evanston dealing with actual cases of discrimination. Although many African Americans report incidents of discrimination, Evanston's White residents describe a more pessimistic picture of race relations than do African Americans. Many minorities are subjected to other subtle barriers of discrimination. This chapter delves into various incidents and occurrences in Evanston history that have had a discriminatory impact on minorities and women.

Chapter III—Economic Market Analysis—examines select factors affecting the growth and development of MWBEs in the historical context elaborated in Chapter II. A study of market factors indicates that minorities are at an economic disadvantage compared to Whites. African Americans and Hispanics experience the greatest inequalities.

The chapter examines the numbers and types of minority and women owned businesses in the Chicago Primary Metropolitan Statistical Area (PMSA) and shows that availability of firms owned by African Americans, Hispanics, and women is generally lower than representation of these groups within the population. This finding is consistent with findings of limited access of minorities and women to financial capital and constraints on human capital improvement. For each industry group examined, African American owned, Hispanic owned and woman owned firm availability was lower than the representation of the respective groups within the population.

Several factors contribute to the relatively low availability of minority owned businesses in the Chicago PMSA. Discrimination in the workforce has contributed to inequalities in income levels, differences in employment patterns across industries, and differences in occupational attainment. Public education and access to job training by minorities and women has been limited by pervasive race and gender bias in the Chicago region. Entrepreneurial activity is positively related to relevant occupational and industrial experience. Yet, minorities and women, in the construction industry in particular, face major obstacles gaining equitable access to training and apprenticeship opportunities.

The chapter also compares the availability of minority and women owned businesses in the Chicago PMSA to their utilization in the overall marketplace. These comparisons ratios are presented in four categories: the market as a whole, construction, professional services, and wholesale trade. DJMA found market disparities for minorities in all categories, and for women in all categories except construction.

Chapter IV—Procurement Policies And Practices And Their Impact On MWBE and EBE Participation—discusses the procurement policies and practices of the City and their impact on the utilization and potential growth of MWBEs and EBEs. DJMA found a largely decentralized procurement system, characterized by instances of inconsistent procurement actions in user departments. Records management also was problematic as evidenced by missing contract files, and irreconcilable project and contract files, and filing members. DJMA also found the Minority Coordinator was unable to effectively track utilization of M/W/EBEs. Further, monitoring contractor compliance with agreed upon M/W/EBE goals could not be easily performed and was rarely conducted. The Minority Coordinator is not included in many of the initial or ongoing discussions with City staff regarding procurement needs or bids unless the project funding source requires some level of MWBE participation. Furthermore, neither the Minority Coordinator nor Purchasing implemented significant outreach efforts to inform M/W/EBE subcontractors and prime contractors of opportunities with the City.

The City does not have a comprehensive directory listing available M/W/EBE vendors. Many City staff members indicated a preference for contracting with those firms with which they have developed relationships, or that have performed work for the City in the past. Thus, many MWBEs and some EBEs that have not had previous opportunities to do business with the City are effectively excluded from procurement opportunities. Additionally, the City has not completed comprehensive listings of M/W/EBEs nor achieved adequate dissemination of the incomplete directory. Many City procurement staff members and prime contractors are not aware of the availability of M/W/EBEs, thus depriving these firms of bid notifications and opportunities.

There are essentially three good faith effort procurement programs designed to increase utilization of MWBEs and local businesses. First is the construction program for projects valued at \$50,000 or more, that require prime contractors to subcontract at least 15 to 25 percent of contract dollars to M/W/EBEs. There is also the EBE program for goods, supplies, and construction projects. It is designed to award a local business a contract if the local contractor's bid is within the lesser of \$1,000 or three percent of the lowest bid. Finally, the professional and personal service preference program provides five points additional credit for a professional/personal service consultant, if the firm is or utilizes an MWBE, and five points if a firm is a local business or utilizes a local business.

One drawback to these programs is that they provide an opportunity for prime contractors to circumvent the use of MWBEs while meeting the requirements of all three programs. Preference points are awarded in the professional and personal service program regardless of the level of involvement or amount of dollars allocated to the MWBE subcontractor. Although the EBE program was designed to create an incentive for businesses to open in Evanston and contribute to the development of local business, the \$1,000 bid preference is very small and becomes trivial on large projects. Thus, the incentive for EBEs essentially disappears and becomes the same as that for non local bidders—the lowest qualified bidder wins the bid. The construction and personal and professional service programs do not encourage contractors to utilize MWBEs. It does, however, provide majority contractors with a competitive advantage if they include even nominal MWBE or EBE participation in the bidding process.

Chapter V—Summary Of Qualitative Evidence Of Marketplace Discrimination— represents the experiences of minority, majority and women owned businesses doing business in this market and with the City of Evanston. These results are reflected in summaries of one-on-one interviews with contractors in the Evanston area and a market survey mailed to contractors in the area. The City of Evanston also held a public hearing in an effort to capture as much qualitative data as possible for this analysis.

The qualitative data indicates that minorities feel they are subjected to discrimination or the vestiges of past discrimination. Many of the concerns relate to apparent inequities in MWBE ability to acquire bonding or financing or break into the "good ole boys club." Another concern raised by these firms is the perception of apathy on the part of City officials towards the MWBE or EBE programs. Many found the City to be unresponsive to their concerns. Business owners familiar with the MWBE and EBE programs indicated a concern about the Minority Coordinator's lack of authority to enforce the program. Survey respondents raised similar concerns.

Chapter VI—Statistical Analysis of the Availability and Utilization of MWBEs and EBEs—is a statistical analysis of availability and utilization of MWBEs and EBEs in the relevant market area. By comparing availability to utilization, DJMA determines if disparity in treatment of MWBEs and EBEs exists in the City of Evanston.

DJMA's analysis of MWBE utilization by the City for the study period, 1986 to 1993, revealed that the City of Evanston awarded a total of 928 prime contracts—84 (9.1 percent of total contracts as primes) going to MWBEs. There were 72 subcontracts awarded to MWBEs (15.4 percent of total subcontracting awards). This utilization represents 4.2 percent of prime contract dollars and 55.5 percent of the total subcontracting dollars going to MWBEs. Total utilization of MWBEs (prime and subcontracting dollars) accounted for \$7.7 million dollars (5.1 percent of the total dollars). MBEs received 4.3 percent, while WBEs received 0.9 percent of total dollars.

To show MWBE availability during the study period, analysis of census data showed that MWBEs owned 12.8 percent of all construction firms, 22.2 percent of all firms in professional services including Architectural & Engineering (A&E) and 21.7 percent of all Goods & Services (G&S) firms in the Chicago PMSA. However, counts from the contract database showed that MWBE firms represented 10.3 percent of the construction firms, 9.7 percent of the A/E firms, 4.1 percent of the G&S firms and less than 1 percent of the other professional services firms.

The Census-based availability estimate and the availability measure based on bidder and subcontractor counts suggest disparity in the disbursement of construction dollars by the City of Evanston for MWBEs. From the data collected, it can also be deduced that there is significant disparity in A&E and G&S procurement for MWBEs for some of the years during the study period (when utilizing the Census availability estimates), whereas the availability measure based on bidders and subcontractor counts yields a conclusion of no disparity in G&S contract procurement.

The results of the EBE utilization analysis indicate, except in 1989, a significant disparity in G&S dollars disbursed by the City of Evanston to EBEs. There was no utilization of MWBEs in the other professional services category, which indicates significant disparity in other professional services dollar disbursements (except in 1987 and 1990). Some of the differences between the actual amount of construction dollars received and the expected amount based on availability were found to be significant in A&E dollars disbursed by the City of Evanston to EBEs.

There is evidence of a sharp drop in the utilization of MWBE construction contractors at the end of the program period. The highest rates of MWBE construction contractor utilization by the City of Evanston is observed in the program years, 1986 to 1988. Average MWBE utilization was 20.7 percent compared to post-program utilization of 3.0 percent.

A substantial increase is noted in MWBE utilization in the A&E category between the program period, when there was no MWBE utilization, and the post-program period, when average MWBE utilization rose to 3.3 percent.

Total utilization of MWBEs in Goods and Services contracting does not vary substantially between the program period and the post program period. In the program period, the average rate of MWBE utilization was found to be 3.9 percent (ranging from 3.1 to 5.5 percent) compared to the average post-program utilization of 4.5 percent (ranging from 3.3 to 6.1 percent).

Total utilization of MWBEs for Other Professional Services did not change between the program years and the post-program years. The City of Evanston did not utilize MWBE Other Professional Services contractors either during the program years or after.

MWBE construction subcontractor utilization varied substantially between the periods 1986 to 1988 and 1989 to 1993. In the program years 1986 to 1988, the overall rate of MWBE subcontractor utilization was 2.4 percent (measured by total dollar value of construction subcontracts awarded) compared to post-program utilization of 0.7 percent. There is a substantial increase in MWBE A&E subcontractor utilization by majority primes from the program years to the post-program years. However, this increase was solely an artifact of zero MWBE utilization in the program period. Since subcontracting is more important in Construction and A/E procurement, this analysis of the impact of the MWBE subcontractor program was limited to Construction and A/E.

Chapter VII—Alternatives to Race and Gender Conscious Programs—is a discussion of available race neutral programs designed to foster the growth and development of small businesses, in general. The objective of this chapter is to provide a descriptive summary of federal, state, and local race neutral programs available in the City of Evanston and determine whether these programs are

sufficient to increase minority participation in city contracting. DJMA was unable to obtain statistical information from program operators regarding minority participation in race neutral programs in the Evanston area.

The City of Evanston has a wealth of race neutral management, financial and technical assistance programs to increase the accessibility of city contracting opportunities to small entrepreneurs. The Illinois Department of Commerce and Community Affairs (DCCA) offers a variety of race neutral business development programs, including the Development Corporation Grant Program, Development Corporation Loan Program, Certified Lender Program, Small Business Development Loan Program, Illinois Export Finance Partnership, Business Development Public Infrastructure Program, Community Services Block Grant Loan Program, Enterprise Zone Program, High Impact Business Program, Business Expansion, Retention and Location Assistance, Export Assistance, Small Business Advocacy Program, Evanston Business Investment Corporation, and Microloan Program. DCCA also supports numerous management and technical assistance organizations such as the Evanston Business and Technology Center, the Illinois Small Business Development Center Network, and the Chicagoland Enterprise Center.

The City of Evanston has several federal race neutral programs administered at the local level including those established by the Small Business Administration (SBA) and the Department of Housing and Urban Development: the SBA 7(a) Loan Program, SBA 504 Loan Program, SBA Surety Bond Guarantee Program, SBA Greenline Program, Service Corps of Retired Executives, and Community Development Block Grant (CDBG) Entitlement Program.

Race neutral programs and legislation were in place prior to the establishment of a race conscious program, yet MWBE participation in the City of Evanston's public procurement contracts has, generally, remained low. Given the statistical evidence of disparity presented in this report, it can be inferred that the impact of these programs has contributed little to the overall utilization of minority businesses in city contracting.

Chapter VIII—Conclusions and Recommendations—provides the City of Evanston with a conclusion of DJMA findings and recommendations regarding the M/W/EBE participation in the City of Evanston's procurement activity.

In summary, the evidence found in this disparity study leads DJMA to the following conclusions: (1) there are systemic barriers in the procurement process that may be creating a disparate impact on minority and women owned businesses (2) there is an overall disparity between the utilization of MWBEs and majority contractors, though not a statistically significant disparity (3) there is disparity between the utilization of EBEs and nonEBE contractors, though not statistically significant (4) the cessation of the City of Evanston's MWBE program

resulted in a decline in the utilization of MWBEs which was particularly significant among MWBE subcontractors and (5) there is underutilization of minority and women owned businesses in the Chicago PMSA marketplace in general. Based on these findings, DJMA recommends that the City pursue the remedial actions suggested in the recommendations section of this chapter.

RECOMMENDATIONS

Procurement Procedures And Practices

Although there are a traditional number of factors which inhibit the survival and development of MWBEs, the City is limited in its efforts to remove these barriers. The City's procurement process, however, is well within its control, and its operation can have a tremendous affect on MWBEs and local Evanston businesses. The elimination of identified procurement barriers to MWBE or EBE participation is no panacea, but it will provide equal access to opportunities and convey policy makers' and top management's support of equitable participation in procurement opportunities. As such, DJMA offers recommendations to remove the barriers identified in two general areas: procurement and current MWBE and EBE program operation.

The City's procurement practices are inconsistent with stated policy. The procurement policy states that the process was developed to centralize procurement. Given the relatively small volume of procurement and the adequate number of City staff, a centralized purchasing process would be an improvement over the current arrangement for the City. However, as noted in Chapter IV, the City has not sufficiently centralized its procurement process to ensure that procurement opportunities for MWBEs and EBEs utilization are enhanced. To effect the City's goals, the City should implement several new procedures:

Centralized Procurement Processes

- The City should ensure that all procurement activities are carefully and completely documented and tracked by purchasing. A centralized file numbering or naming convention should be used by all departments. Purchasing's procurement files should be maintained for at least seven years, or in accordance with state law or the requirements of the projects funding source. At least one set of files should be centrally stored.
- Purchasing should disaggregate data for each minority group when collecting data, i.e., create separate categories by race, ethnicity, and gender. Additionally, this information should be tracked on the user departments' supplier lists and purchasing vendor or bidders list. Data

entry personnel should also include the ethnicity and gender of the vendor in the automated vendor file and vendor check history file. Relevant City staff should be able to access the following information:

- Past procurement activity by commodity and contract type
 - Projected procurement opportunity by commodity type
 - MWBE participation rates by dollar volume by: awardee name; awards; final payment; specific commodity area; contract type— construction, professional services, architectural engineering and procurement of goods and services, prime and subcontractor; and, race/ethnicity/gender.
- The City should track prime contractors and subcontractors consistently in the central procurement files.

Contracting for Goods and Supplies

- The City should establish a citywide monitoring system for specifications and product requirements. *Require MWBE and EBE solicitations by buyers and user departments for small purchases (i.e., purchase less than \$5,000).*
- Purchasing should develop a tracking mechanism to record the number of M/W/EBEs (by locality and ethnicity and gender) contacted monthly for quotes. This data should be collected by commodity category in addition to procurement type.
- The City should include MWBEs and EBEs in the vendor rotating system. This could be accomplished by establishing a set number of MWBEs and EBEs to be contacted for each purchase.

Outreach and Bid Notifications

- The City should establish telephone notification of bid opportunities to M/W/EBEs. When the City directory of M/W/EBEs grows, the City should send a notice (perhaps on brightly colored paper), mailed well in advance of bid due dates, announcing upcoming bid opportunities. Additionally, notices of bid opportunities should be placed in local trade and professional association newsletters. The City should require City procurement staff to include relevant M/W/EBEs on the list of vendors who will receive a direct mailing of bid specifications or RFPs as part of its bid notification process.
- The Minority Coordinator should engage in frequent communication with various MWBE and EBE trade and professional organizations, attend association meetings, and establish specific times to meet with MWBEs and local business owners to discuss the City's procurement process and opportunities for work.

Buyer Reviews

- To ensure that the procurement system is functioning properly, personnel involved in the buying cycle should receive semi-annual performance reviews. To perform these evaluations, buyers should have previously established goals for a diverse portfolio that include targets at the prime and subcontractor levels. Buyers must thoroughly document bidders contacted and awards made—a practice that is especially critical for informal contracts, where buyers have the most decision making discretion. Without some level of documentation of a buyer's activity, purchasing agents have no accurate measure of buyer performance. Purchasing agents should establish bonus/penalty systems for diversity of procurement portfolios. To assist buyers in contacting MWBEs, all agencies should create their own MWBE Business Directories, especially on commodities that are unique purchases by a particular agency.
- The City should conduct annual or semi-annual in-house training for City staff involved in the procurement process to ensure full awareness of the M/W/EBE procurement policies and staff's obligation to support and comply with these procedures.

Bonding Assistance

It is well known that many MWBEs lack the large financial reserves and credit history sufficient to secure adequate bonding. Moreover, sureties are uncomfortable approving large loans in bonding. That is, a firm that can secure \$300,000 bonds will probably not be approved for \$1 million bonds. This is a barrier to MBEs transitioning to prime contractor status.

Surety underwriting is a very conservative market. As a result of heavy losses in the mid-1980s, most major sureties raised their underwriting standards or applied existing standards more rigorously. However, several major sureties are now eager to bond small contractors. The current advisory rates used by major sureties generate higher premiums for small bonds. Five major sureties participate in the SBA's Preferred Surety Bond (PSB) program: Fidelity and Deposit Company of Maryland (F&D of Maryland); SafeCO, U.S. Fidelity and Guaranty (USF&G); Aetna Casualty & Surety (Aetna); and, Continental Insurance Company (Continental). The PSB permits sureties to preapprove contractors under SBA standards and eliminates the necessity of obtaining approval for each bonding occurrence.

- There are several recommended approaches to providing effective assistance to MWBE:

- Bond guarantees. A local bond guarantee program can be supported by funds from the City, e.g., \$20,000 can leverage \$1 million in treasury listed bonds, subject to actual confirmation. Such a guarantee program would reinsure commercially rated surety companies participating in the program. This approach has been applied with some success by the New York State Economic Development Bank, the Florida Black Business Investment Board, and the New Jersey Casino Program. The SBA also guarantees between 70 and 90 percent of a maximum \$1.25 million surety bond.
- Some programs provide collateral to MWBEs seeking bonds.
 - Direct bonding. Certain states, such as Maryland, provide bonding for small and minority contractors.
 - Bond waiver program. The City of Tallahassee, for example, issue bond waivers for MWBE participants for projects up to \$250 million. However, bond waivers do not facilitate MWBE growth and development because surety agencies classify work completed under a bond waiver as "unbonded" work.
 - In cases where bond waivers apply, DJMA recommends that the City of Evanston limit bond requirements to state law thresholds; on professional services contracts, waive performance bond requirements or require performance bond equivalent; and, on goods and services contracts, eliminate bond requirements—allow contractors to bill up front for insurance and bonding, instead of across 12 months.
- The Los Angeles Transportation Commission developed a local agency approach to bonding. Funds are generated by a Los Angeles County tax on gasoline, a portion of which is devoted to mass transit. The City of Los Angeles and the Los Angeles County Transportation Commission have each deposited \$7.5 million from these funds in two commercial banks. Private contractors refer subcontractors that are unable to obtain bonding from private surety companies to the Transit Bond Guarantee Program. The program determines that the MWBE is competent to perform the subcontracting work, has accurately estimated the job, has the management and technical capacity to perform, and is otherwise eligible for bond assistance. If these, and other, criteria are satisfied, the bond guarantee program will obtain bonding for the subcontractor from one of four participating surety companies. One of the two banks then issues an irrevocable letter of credit to the surety company in an amount identified by that surety company as necessary to secure its bond. The program also provides bonding assistance to MWBE prime contractors who are bidding on contracts under \$1 million. Although the program has been underutilized, it offers one innovative, but

relatively low risk, model for increasing the involvement of MWBEs more fully in the economic mainstream.

- DJMA recommends an aggressive approach by the City of Evanston to coordinate its bonding requirements with the appropriate surety companies to support small contractors in their quest to qualify for bonds.

Small Contractors Assistance Program

Construction is an area of procurement where management and technical assistance needs are the greatest. Consequently, many cities have established programs targeting small and disadvantaged contractors. These programs typically encompass the following services:

- Serve as a clearinghouse for city, county, state, and federal contracting opportunities;
- Assist contractors in bid estimation and bid development;
- Provide a plan room and blueprint availability;
- Offer seminars to contractors that result in tangible benefits for contractors (seminars that do not have strong incentives integrated into the seminar itself, are generally poorly attended by contractors. For example, a seminar on bonding assistance could be offered as a prerequisite to securing a bond from a bonding company that has an understanding with the City and its certified contractors.);
- Foster mentor-protégé relationships with majority contractors, utilize the SBA SCORE (Service Corps of Retired Executives) program where retired general contractors provide assistance to MWBE contractors;
- Attend pre-bid conferences; and,
- Encourage majority contractors to joint venture with or utilize MWBE business owners on majority contracts at the project management level.

Financial Assistance Programs

As in many parts of the country, adequate contract financing is an issue in the City of Evanston. A typical problem for MWBEs is the inability to perform the contract because banks do not accept contracts as collateral to secure financing required to complete a contract. The following programs would be valuable in the City of Evanston to address these problems:

- **Bank Consortia.** Revisions to the Community Reinvestment Act (CRA) provide the City of Evanston with an important opportunity to

address this gap in M/W/EBE financing. As a result of the CRA, numerous financial institutions are forming consortia to facilitate lending to CRA-targeted businesses. An example is the Entrepreneurial Development Loan Fund (EDLF) in Atlanta, organized by the Atlanta Chamber of Commerce in conjunction with several major Atlanta banks. The EDLF is administered by GRASP, an Atlanta economic development organization.

- **Working Capital Loan Program.** The City of Evanston takes bids from local financial institutions to lend up to 5 percent of the contract amount to a M/W/EBE holding a City contract or subcontract. The bank reviews and approves/disapproves each application, and, if approved, monitors proper application of installment payments to the M/W/EBE as the work progresses. Bids received from the banks would be evaluated by a City committee on the basis of the lowest interest rate which will be offered to the M/W/EBE firms; the credit criteria utilized by the bank; and, the percentage of risk that the bank will assume. The City would guarantee the bank's receipt of the remaining portion of the loan.
- **Contract Financing.** A vehicle that provides working capital, contract financing is also a financial approach that banks find expensive to administer. Publicly subsidized contract financing provides a low cost alternative to costly factoring services which is often the only alternative small companies have for obtaining working capital.
- **Public Venture Capital Funds.** Some cities have collaborated with states to create semi-public venture capital funds. BIDCO in Detroit, Michigan provides preferred stock and/or long-term debt to promising firms.

M/W/EBE PROGRAM RECOMMENDATIONS

Minority Coordinator

- The Minority Coordinator must be given the authority and information to effectively track M/W/EBE participation; develop opportunities with purchasing and the relevant user departments for MWBE and EBE participation; and, monitor the City's and prime contractor's compliance with the M/W/EBE program. During the course of this study, the City moved the minority coordinator position to the purchasing department. As a new development, it is difficult to determine the effect of this change on the minority coordinator's effectiveness and the utilization of M/W/EBEs. However, with centralized procurement practices, the minority coordinator may be ideally positioned to access necessary documentation and user

department personnel to effectuate the M/W/EBE goals. To be truly effective, the minority coordinator must be diligent in his/her pursuit of program goals, and attentive to and innovative in addressing the needs of M/W/EBEs. Additionally, the coordinator must have the commitment and support of senior staff, purchasing, the City Manager's office, and the City Council.

- The minority coordinator should be included in all Review Committee sessions regarding the development of RFPs or bid specifications and should participate in the vendor selection process.
- Currently, the minority coordinator operates with a staff of one. Given the volume of procurement activity and the size of the City, there is no need indicated to hire additional staff. Where additional resources are needed, the coordinator should be authorized to use user department and purchasing staff to monitor compliance. If resources do not permit monitoring 100 percent of the projects, the City could develop a sampling procedure to monitor a certain percentage of projects within certain dollar ranges. This should also help to create a database foundation for cross referencing subcontractor and contractor data. As the program is more widely used and participation increases, the coordinator's staffing needs may need to be reevaluated.
- MWBE advisory committee should be charged with evaluating the M/W/EBE programs on no less than an annual basis. The advisory committee should also submit an annual review of the performance of the minority coordinator. These evaluations will afford the City's business community with an opportunity to participate in and concentrate towards the successful implementation of program objectives.

Certification

- The City should equalize the certification burdens on MWBEs and EBEs by creating a City certification process for both. While the process should not overwhelm businesses, it should be sufficient to ensure that M/W/EBEs are benefiting from the program. The certification process should be designed in conjunction with a strong monitoring process. Additionally, the City should institute a certification renewal process.

M/W/EBE Directory

- The City should routinely update and distribute its M/W/EBE directory. The City should obtain the certification lists and MWBE directories of neighboring municipalities and the state to create a comprehensive listing of available MWBEs interested in procuring

public sector work. To obtain a comprehensive listing of local businesses, the City should conduct a mass mailing to all identified local businesses, submit an ad to the local paper and relevant industry journals, and distribute notices to trade and professional organizations and local churches to inform the public of the program and request applications for certification. Upon receiving certification, the respondents' names should be added to the directory. The directory should be readily available in hard copy and on diskette to contractors and City staff. The directory should have a MWBE section and an EBE section. The MWBE section should include the ethnicity and gender of ownership, address, whether the business is an EBE, and a description of the business by SIC code or procurement type. The EBE section should include the address and description of each business by SIC code or procurement type.

Professional and Personal Service Projects

- The City should implement procedures to ensure that M/W/EBEs are always included in the list of vendors to which the City mails an early copy of the RFP or bid specifications.
- The City could also establish a proposal review process that informs unsuccessful M/W/EBE bidders about the weaknesses and strengths of their bids.

Monitoring Procedures

- The City should establish monitoring procedures to ensure that contractors and City procurement staff are complying with M/W/EBE program goals. The City generally practices some contract compliance monitoring. However, more particularized monitoring efforts should be created to monitor the M/W/EBE program, specifically. Among the procedures the City should include are:
 - Announced and unannounced site visits to verify M/W/EBE presence on the job site;
 - Affidavits or other contractual forms that evidence the prime contractor's agreement to utilize a specific M/W/EBE for a project; and,
 - Implementation of a phone audit procedure to verify that payments to M/W/EBE subcontractors (as reported by the primes) correspond with the subcontractors reports—a sampling procedure can be implemented.

Project Sizing

- A major constraint for many MWBEs and small EBEs, especially in construction, is large project size. Capacity, bonding, and insurance issues tend to exclude MWBEs and small EBEs from many bid opportunities. As such, the City, with the minority coordinator, should ensure that projects are appropriately sized to maximize opportunities for MWBE and small EBE participation.

Preference Programs

- The significant underutilization of MWBE firms relative to their availability suggests that consideration of MWBE goals is appropriate.
- With respect to the professional and personal service program, DJMA recommends that the number of preference points awarded to contractors be a factor of the amount of MWBE and EBE participation on the job. To discourage contractors from using the program with only nominal MWBE participation, contractors must show that the M/W/EBE is performing a commercially viable portion of the contract before awarding preference points to the contractor.
- The EBE program's three percent or \$1,000, (whichever is less) preference, should be tailored to create a real benefit to the bottom line of the City's local businesses. If the City is seeking to reduce the flight of local businesses to neighboring cities, increase business development in the City, and create a means to "give back" to its taxpaying business community, DJMA recommends the following:
 - Remove the \$1,000 limitation on the program. A local business seeking to bid on a goods, supplies, or construction project need only submit a bid within three percent of the lowest bid to qualify to win the contract. On small dollar projects valued less than \$33,000, the local bidder will need to submit a quote of less than \$1,000 over the lowest bid to prevail. On larger dollar projects, a three percent cap provides a true incentive for businesses to locate within the City and for local businesses to remain and seek opportunities with the City. What the City may pay in additional costs is offset by the good will developed in the business community, increased tax revenues, and more competitive bidding on City contracts. Increasing competitive bidding reduces the inflated price the City sometimes pays when too few contractors bid on City projects. Additionally, the cost to the City in the long term should be reduced by a growing base resulting from increasing the number and revenue of local businesses. The City may need to consider limiting the three percent preference to projects under a certain size (e.g., \$5 million) to control costs to the City.

- The City will need to develop a more stringent certification process for EBEs to ensure that program objectives and the City's long-term goals are being achieved. In addition to current requirements, the City should require EBEs to be duly licensed businesses with the City and subject to its taxes. Businesses seeking to purchase, redevelop, or renovate property in Evanston should be advised of the EBE program, the certification requirements and tax incentive programs offered by the City to encourage such activity in certain areas. A package could be developed for new local businesses with important contact names and telephone numbers of City staff; names of assisting agencies; information about the City's procurement programs, tax incentive programs, a licensing application, and other information as a value added service for the City's business community.
- M/W/EBEs should receive early and direct notification of bid opportunities to maximize participation in the preference program.
- Many minority owned business owners, in particular, have complained that majority businesses will work with them only when required on a public sector project with a MWBE program. As a result, many majority companies will not use MWBEs on private sector contracts. To overcome this barrier, the City could create a preference program which gives contractors that have used or are using MBEs and WBEs in private sector work credit toward their overall bid score during the City vendor selection process.
- Because the availability of MWBE firms changes periodically, participation goals must also change. Participation goals should be established each year based on projections of availability, forecasts of coming projects, and the anticipated amount of federal, state, and city spending.
- With respect to MWBEs, the City should pursue and implement other race neutral initiatives. Alone, race-neutral alternatives appear inadequate to correct the underutilization of MWBEs. However, such programs serve to complement MWBE program goals when implemented as parallel initiatives.

CONCLUSION

The issues analyzed in this report should provide the information necessary to determine the existence of disparity in contract awards within the City of Evanston. The legal and historical background documents prior discrimination which may still have an effect on the status of MWBEs. DJMA's economic

analysis of the City of Evanston's relevant market area determines the existence of discrimination against MWBEs and EBEs by the local economy, which may have included passive City participation. Interviews and surveys of members of the business community can detect individual instances of discrimination. An examination of city policies and practices determines the existence of disparity in the utilization of MWBEs. The actual availability and use of MWBEs in governmental contracting is statistically analyzed to determine if disparity exists. Race neutral programs are examined to determine if they have any influence on the ability of MWBEs to participate in the economy.

The report contains the findings of our investigation, an analysis of those findings and recommendations based on these analyses. This report presents a portrait of the evidence DJMA discovered regarding the issue of discrimination in the City of Evanston and the economic environment in which minority, women and local business enterprises operate.

DJMA's objective in providing this report is to offer the necessary information to establish the public policy needed to remedy discrimination against MWBEs and improve the utilization of MWBEs and EBEs to policy makers in the City of Evanston. The chapters of this report are interdependent. For this study to be used effectively, the policy makers for the City should review it carefully and in its entirety.

Chapter I *Legal Issues Arising from Race Conscious and Race Neutral Programs*

INTRODUCTION

This chapter provides the legal framework and rationale for conducting this disparity study, discusses the legal standard of scrutiny to which MWBE programs and race and gender neutral local preference programs are subject, and the burden of proof imposed upon local agencies intent on establishing such programs. Subsequent chapters, particularly Chapter VI, *Statistical Analysis of MWBE Availability and Utilization*, further illuminate the legal context for the material in each chapter.

There are three constitutional tests used by the courts when assessing the constitutional permissibility of minority and women business enterprise programs and local business programs under the Equal Protection Clause of the United States Constitution. This chapter also reviews other Constitutional provisions which could have an affect on their constitutional permissibility.

The nature of the governmental program determines which test the court will apply to assess constitutionality. When reviewing a race conscious program or minority business program, the court applies a "strict scrutiny" analysis. This test requires the government to show that there is a compelling governmental interest for the race conscious action and that the action taken was narrowly tailored to meet that interest.

When assessing the permissibility of a WBE program or gender conscious government action, the courts customarily apply the "intermediate scrutiny" test. This test requires the government to show that there is an important governmental interest and the action taken is substantially related to the interest.

In reviewing the constitutionality of a race and gender neutral program seeking to give a preference to or set aside work for businesses that are located within a municipality's jurisdiction, the courts apply a "rational relations" test. This test allows the courts to be extremely deferential to the local governments requiring that the government action not be arbitrary and capricious. However, when local business programs interfere with interstate commerce or deny citizens of one state the same rights and privileges afforded citizens in the jurisdiction of the state or municipality imposing the program are subject to the Commerce Clause and the Privileges and Immunities Clause of the U.S. Constitution. The courts have developed complicated legal analyses to test the permissibility of actions that interfere with these original Constitutional canons. What follows is an in-depth discussion of the legal principals that govern MWBE programs and local business programs and DJMA's analysis of these legal principals.

RACE CONSCIOUS PROGRAMS

The Supreme Court of the United States announced in the *City of Richmond v. J.A. Croson*¹ the standards by which race conscious programs would be deemed constitutionally permissible. Emanating from this case is an entire body of law which defines and fine-tunes the parameters under which such remedial action is permissible.

Background of *Richmond v. Croson*

In 1983, the City of Richmond, Virginia enacted an ordinance which established a minority business enterprise (MBE) utilization plan (MBE plan) requiring non-minority-owned prime contractors to whom the city awarded contracts, to subcontract at least 30 percent of the dollar amount to minority business enterprises. According to the MBE plan, minority business enterprises were defined broadly as companies with at least 51 percent ownership and control by U.S. citizens who were African American, Hispanic [Spanish-speaking], Asian/Pacific Islanders [Asian], Native American [Indian], Eskimo or Aleut. Under this definition, the MBE plan had no geographic boundaries. It was declared remedial for the stated purpose of promoting greater participation by minority businesses in construction contracting. The operation of the MBE plan included a waiver for contractors who demonstrated to the Director of the Department of General Services that the plan's set-aside requirements could not be achieved. There was no direct administrative appeal of the Director's denial of waiver.

The MBE plan was adopted after a public hearing at which no direct evidence was presented that the City had discriminated on the basis of race in letting contracts or that prime contractors had discriminated against minority subcontractors. In the creation of its program, the City Council relied upon a statistical study indicating that in a city where the population was 50 percent African American, less than 1 percent of the contracts had been awarded to minority businesses in recent years.

In 1983, the same year the MBE plan was adopted, J.A. Croson Company lost a contract to install plumbing fixtures in the city jail because of failure to satisfy the 30 percent set-aside requirement. Croson sued the City of Richmond in the United States District Court, alleging that the plan was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment.² The

¹488 U.S. 467, 109 S. Ct. 706 (1989).

²The District Court upheld the plan which was affirmed by the Court of Appeals for the Fourth Circuit in reliance on *Fullilove v. Klutznick*, 448 U.S. 448, 100 S.Ct. 2758 (1980). The United States Supreme Court remanded the case for further consideration in light of the decision in *Wygant v.*

District Court upheld the plan. In 1985, the Fourth Circuit Court of Appeals affirmed the District Court decision.

The Supreme Court, in an opinion in which Justice O'Connor was joined by four other Justices, held that the Equal Protection Clause of the U.S. Constitution was violated by the City of Richmond's set-aside ordinance because: Richmond had failed to demonstrate a compelling governmental interest in apportioning public contracting opportunities on the basis of race and the plan was not narrowly tailored to remedy the effects of prior or present discrimination.³ The Court stated that there was no proof in the record upon which to base a prima facie case of a constitutional or statutory violation by any contractors in the Richmond construction industry. The Court further held that the inclusion of Hispanics [Spanish-speaking persons], Asian/Pacific Islanders [Asians], Native Americans [American Indians], Eskimos, and Aleuts demonstrated that the City's purpose was not, in fact, to remedy past discrimination, as there was absolutely no evidence of past discrimination against such persons. As such, the Court held that the 30 percent set-aside was not narrowly tailored to remedy the past effects of any prior alleged discrimination.

Unfortunately, the Supreme Court has not addressed the validity of a minority set-aside program since *Croson*. In its only other decision on minority set-asides, the Court upheld the right of majority contractors to challenge the validity of such a program in court.⁴

Standard of Scrutiny Analysis

The *Croson* case falls under the auspices of the Equal Protection Clause. The Fourteenth Amendment, which prohibits states from denying any person within its jurisdiction equal protection of the laws, is usually invoked when the state makes distinctions or classifications among individuals. There are three levels of scrutiny under which a state statute, regulation, policy, or practice making such distinctions can be examined: strict scrutiny, intermediate scrutiny, or rational basis. The strict scrutiny standard is used if the classification is suspect; in particular, one based on race, ethnic or alien distinctions, or infringements

Jackson Board of Education, 476 U.S. 267, 106 S.Ct. 1842 (1986) in which it applied the "strict scrutiny test" in invalidating the local school board's layoff policy.

³See *Croson* at 109 S. Ct. at 722.

⁴In *Northeastern Florida Chapter of Associated General Contractors v. City of Jacksonville*, 124 L.Ed.2d at 586 (1993), the United States Supreme Court held that a party challenging a minority set-aside program need only demonstrate that it is able and ready to bid on contracts and that a discriminatory policy prevents it from doing so on an equal basis. The Supreme Court, thus, overruled the standard adopted by the Eleventh Circuit Court of Appeals which had ruled that the AGC did not have standing to sue the City of Jacksonville because it "has not demonstrated that, but for the program, any AGC member would have bid successfully for any of these contracts." The Eleventh Circuit required that the contractor challenging the program show it would have suffered an actual economic injury because of the existence of the MWBE set-aside requirements.

upon fundamental rights. The strict scrutiny test is the most rigorous of the three, requiring the state to show compelling governmental interests for making such classifications. Intermediate scrutiny is applied to gender and age distinctions and requires the state to prove a fair and substantial relationship between the classification and the objective of the legislation.⁵ Economic programs which do not make distinctions on race, ethnic origin or gender are treated under the rational basis test. Under this standard, the plaintiff is required to show that the classification has a rational relationship to a valid state purpose.

Some Justices on the Supreme Court are not completely convinced that the three standards of scrutiny are the best measures of the importance of an equal protection claim. Chief Justice Rehnquist declared in *Craig v. Boren* that:

I would think we have had enough difficulty with the two standards of review which our cases have recognized—the norm of ‘rational basis,’ and the ‘compelling state interest’ required where a ‘suspect classification’ is involved—so as to counsel weightily against the insertion of still another ‘standard’ between those two. How is this court to divine what objectives are important? How is it to determine whether a particular law is ‘substantially’ related to the achievement of such objective, rather than related in some other way to its achievement? Both of the phrases used are so diaphanous and elastic as to invite subjective judicial preferences or prejudices relating to particular types of legislation, masquerading as judgments whether such legislation is directed at ‘important’ objectives or, whether the relationship to those objectives is ‘substantial’ enough.⁶

He continued to support this position by joining in a concurrence with Justice Stevens in *City of Cleburne, Tex. v. Cleburne Living Center*. Justice Stevens stated,

I am inclined to believe that what has become known as the [tiered] analysis of equal protection claims does not describe a completely logical method of deciding cases, but rather is a method the court has employed to explain decisions that actually apply a single standard in a reasonably consistent fashion.⁷

Croson and Strict Scrutiny

⁵Lower courts have not agreed upon the standard to be applied to physical and mental handicaps, however, intermediate and rational basis have both been employed.

⁶*Craig v. Boren*, 429 U.S. 190, 220-221, 97 S.Ct. 451, 469, (1976), Justice Rehnquist.

⁷*City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 105 S.Ct. 3249 (1985) (Justice Stevens, with Chief Justice Rehnquist, concurring).

The Supreme Court, in reviewing the Richmond ordinance, analyzed an affirmative action program which made distinctions based on race. Although the Court was deeply divided, the majority opinion in *Croson* interpreted the Equal Protection Clause as providing to nonminority individuals the same protection against discrimination and unequal treatment as provided to African Americans and other minorities.⁸ The Court reasoned that protection of the individual rights guaranteed by the Equal Protection Clause requires strict judicial scrutiny of the facts and circumstances surrounding the adoption of race based preferences to "smoke out" possible illegitimate motivations such as simple race politics or racial stereotyping.⁹

The *Croson* decision did not itself define the legal standard of strict scrutiny. Justice O'Connor, writing the majority opinion, favored this heightened scrutiny of race conscious programs, basing her opinion on Justice Powell's opinions in *Bakke*¹⁰ and *Wygant*. The use of a heightened scrutiny was necessary, O'Connor reasoned, because the majority African American population in the City of Richmond raised the concern that a political majority will more easily act to the disadvantage of a minority, based on "unwarranted assumptions or incomplete facts..."¹¹ Although Justice O'Connor relied on *Wygant* to define the strict scrutiny standard for *Croson*, it is important to note that her concurring opinion in *Wygant* acknowledges the lack of consensus among the members of the Court regarding the appropriate interpretation of the strict scrutiny standard.¹² Four members of the Court dissented on the standard set forth in the O'Connor opinion. In fact, Justice Marshall, in his dissent, stated,

Today, for the first time, a majority of this Court has adopted strict scrutiny as its standard of Equal Protection Clause review of race conscious remedial measures. This is an unwelcome development. A profound difference separates governmental actions that themselves are racist, and governmental actions that seek to remedy the effects of prior racism or to prevent neutral governmental activity from perpetuating the effects of such racism.¹³

In his concurrence, Justice Stevens maintained the position he espoused in *Cleburne*:

Instead of engaging in a debate over the proper standard of review to apply in affirmative action litigation, I believe it is more

⁸*Croson* at 721..

⁹ *Id.* at 721.

¹⁰ *Univ. of California Regents v. Bakke*, 438 U.S. 265, 98 S.Ct. 2733 (1978).

¹¹ *Croson*, supra n.2, at 722.

¹² See *Wygant*, supra n.1, at 1852.

¹³ *Croson*, supra n.2, at 752.

constructive to try to identify the characteristics of the advantaged and disadvantaged classes that may justify their disparate treatment.¹⁴

While the majority in *Croson* subjected race based preferences adopted by state and local governments to the most stringent test of constitutionality, the Court apparently did not intend to sound a complete retreat from attempts by state and local governments to remedy racial injustice. The Court stated,

It would seem equally clear, however, that a state or local subdivision (if delegated the authority from the State) has the authority to eradicate the effects of private discrimination within its own legislative jurisdiction. This authority must, of course, be exercised within the constraints of the Fourteenth Amendment.¹⁵

Justice Kennedy went further in his concurring opinion, stating that the City, upon intentionally causing wrongs, has an "absolute duty" to eradicate discrimination.¹⁶

Under this heightened standard of review, race based preference programs enacted by state and local governments are constitutional where: 1) there is a compelling governmental interest justifying the use of race-conscious measures, and 2) the measures employed are "narrowly tailored" to remedy identified discrimination.¹⁷ Based on the facts presented in the *Croson* record, the Court concluded that in the enactment and design of the Plan, the City of Richmond failed both prongs of the strict scrutiny test.

Compelling Governmental Interest

In some instances, public entities do have compelling reasons to remedy past illegal treatment of racial or ethnic groups in which they have been actively involved. This remedy necessarily will involve consciousness of race. In *Croson*, the Court noted that a municipality has a compelling interest in redressing not only discrimination committed by the municipality, but also discrimination committed by private parties within the municipality's legislative jurisdiction, so long as the municipality in some way perpetuated the discrimination to be remedied by the program.¹⁸ The *Croson* Court makes clear that a state or local government may use its legislative authority in procurement to remedy private discrimination, if that discrimination is identified with the "particularity required by the Fourteenth Amendment."

¹⁴*Id.* at 732.

¹⁵*Id.* at 720.

¹⁶*Id.* at 734.

¹⁷*Id.* at 708.

¹⁸*Id.* at 720.

Factual Predicate

Race conscious measures can be adopted when a state establishes, through a factual predicate, identified instances of past discrimination on its part in a particular industry. The identification of discrimination must be particularized in order to provide guidance for the "legislative body to determine the precise scope of the injury it seeks to remedy."¹⁹

The City of Richmond justified its enactment of the Plan based on five factors: 1) the Plan declared its purpose to be "remedial"; 2) at public hearings in connection with enacting the plan, proponents stated that there had been past discrimination in the construction industry locally and throughout the state and the country; 3) minority businesses received .67 percent of prime contracts from the City while minorities constituted 50 percent of Richmond's population; 4) minority contractors were grossly underrepresented in local contractors' associations; and 5) U.S. Congressional studies have concluded that minority participation in the construction industry nationally was stifled by the present effects of past discrimination.

The *Croson* court rejected the foregoing factors as inadequate, either singularly or in concert, to establish a strong basis in evidence to justify Richmond's plan for the following reasons:

- *Remedial Purpose Recitation.* The mere recitation of a "remedial" purpose for a racial classification was entitled to little or no weight, particularly where an examination of the history of the legislation and its legislative scheme suggests that its goal was other than its asserted purpose.
- *Statements Regarding Past Discrimination.* The expression by proponents' of the plan that there had been past discrimination in the construction industry, "in this area and this State, and around the nation," were highly conclusive in nature and of no probative value in establishing past discrimination by anyone in the construction industry in the City of Richmond.
- *Disparity in Contracts Awarded.* Where special qualifications were required, the comparisons to the general population, rather than to the special smaller group of qualified individuals may have little probative value. Thus, the relevant statistical pool for demonstrating discriminatory exclusion was the number of MBEs qualified to undertake the task as opposed to the percentage of minority individuals

¹⁹*Id.* at 723.

in the general population. While the Plan contemplated minority subcontractor participation, the City did not know how many qualified MBEs in the local area were qualified to do the work or the percentage of MBE participation in city projects.

- *Low Participation in Contractors' Associations.* A low percentage of minorities in the local contractors associations was not probative without proof that this low percentage was due to discrimination against, as opposed to the free choice of African Americans to pursue alternate employment or interests.
- *Congressional Findings.* The finding by Congress that past discrimination accounted for the low number of minority contractors in the country had little or no probative value with respect to establishing discrimination in the City of Richmond. A more particularized showing of past discrimination by the City was required, such as a pattern of discrimination in the local industry that the City could act to eradicate or discrimination in which the City was a "passive participant."

The Court concluded that much more specific inquiry and findings than those conducted by the City of Richmond were required to support a constitutionally permissible set aside program. The factual inquiry must be local in nature and the statistical analysis must address a relevant comparison. Justice O'Connor, in *Croson*, relied heavily on her opinion and that of Justice Powell in *Wygant* when specifying the requirement that "judicial, legislative or administrative findings of constitutional or statutory violation" must be found before a government entity has compelling interest in favoring one race over another.²⁰

For example, in *Wygant*, the Supreme Court considered the validity of a collective bargaining agreement which provided special protection for minority teachers in layoffs. The city school board argued in part that the board's interest in providing minority teacher role models for its minority students as an attempt to alleviate societal discrimination was sufficiently important to justify the use of a racial classification embodied in the layoff provision.²¹ The Justices rejected the role model theory and held that it could not be used to support a remedial measure such as a layoff provision. The disparity between teachers and students, according to the Court, had no probative value in demonstrating discrimination in hiring and promotion which necessitated remedial action. Substantially the same conclusion had been reached by the Supreme Court in 1979 in *Bakke*.²²

²⁰*Wygant* at 308-309

²¹See *Wygant*, supra n.2. at 274.

²²In *Bakke*, the Court invalidated a system in which a specific number of seats were reserved for minorities in each class entering the University's medical school. The University wanted to increase the number of minorities in medical school and in the medical profession and to counter

In showing particularized instances of discrimination, the *Croson* Court decided that the factual predicate suffered the same flaws as did *Wygant's*. The factual predicate depended upon generalized assertions which could lead to an attempt to match contract awards to MBEs to the minority population as a whole. In analyzing the *Croson* factual predicate, the Supreme Court did not "provide a set of standards or guidelines describing the kind of MBE plan that would pass constitutional muster. It simply provided a stringent burden of proof for proponents of MBE laws to meet..."²³ The Court also did not give legislatures much guidance on the parameters of a factual predicate that would show evidence of discrimination. There are some indications of the measures the Court will accept: a pattern of discrimination shown through an appropriate disparity analysis can raise an inference of discrimination, thus individualized showings of discrimination may not be necessary, a relevant market in which the public entity conducts business must be established, and some qualitative evidence of discrimination, such as anecdotal testimony, may also be acceptable. The Court, however, leaves room for interpretation in the development of models to satisfy these standards.

Narrowly Tailored

The Court in *Croson* made it clear that the second prong of the "strict scrutiny" test demands that the remedial action be "narrowly tailored" to identify past or present discrimination. At least three characteristics were identified by the Court as indicative of a narrowly tailored remedy: 1) The program should be instituted either after or in conjunction with race neutral means of increasing minority business participation; 2) a governmental entity does not have to enact race neutral means if they are not feasible or conducive to remedying past discrimination, 3) the plan should avoid the use of rigid numerical quotas,²⁴ and 4) the program must be limited in its effective scope to the boundaries of the governmental entity.

Intermediate Scrutiny

The courts examine programs that give preference to women owned businesses under a different standard than racially based programs. A gender conscious program created by a governmental entity is examined under the intermediate scrutiny test rather than the strict scrutiny test employed for racial

societal discrimination. To Justice Powell, the desire to correct societal discrimination involved a concept of injury "too amorphous" to justify a race-based remedy. Moreover, Justice Powell instructed that "judicial, legislative, or administrative findings of constitutional or statutory violation" must be found before the government has a compelling interest in favoring one race over another.

²³*Cone v. Hillsborough*, 905 F.2d 908, 913 (1990).

²⁴488 U.S. at 507-508.

classifications.²⁵ Under intermediate scrutiny review, the actions of the state are valid if they are substantially related to important governmental objectives.²⁶

Most lower courts examining the validity of a sex based preference have applied the intermediate scrutiny standard.²⁷ In the *Coral Construction* case, the Ninth Circuit employed the intermediate scrutiny test to review King County's women business enterprise program. Under that test, the court noted that the gender classification must serve an important governmental objective, and there must be a direct, substantial relationship between the objective and the means chosen to accomplish that objective.²⁸ A governmental entity may use a gender based preference "only if members of the gender benefited by the classification actually suffered a disadvantage related to the classification."²⁹ According to the Court of Appeals, unlike the strict standard of review applied to race based programs, intermediate scrutiny does not require any showing of governmental involvement, active or passive, in the discrimination it seeks to remedy.³⁰ The Court would uphold the ten percent gender preference if the City could establish a sufficient factual predicate for the claim that women owned construction businesses have suffered economic discrimination.

The Court concluded that King County had legitimate and important interests in remedying the many disadvantages that confronted women business owners. Further, the method chosen was substantially related to the objective. The Court observed that an affidavit from a woman business owner showing less than seven percent of her firm's business came from private contracts and most of the business had come from gender based set aside programs was adequate information to show discrimination against women in King County.³¹

²⁵See, e.g., *City of Cleburne*, supra n.6.

²⁶*Id.* at 441.

²⁷See *Coral Construction Co. v. King County*, 941 F.2d 910, 931 (9th Cir. 1971); *Contractors Ass'n. Eastern Pennsylvania, Inc. v. City of Philadelphia*, 6 F.3d 990 (3rd Cir. 1993). (On remanded, the district court permanently enjoined the enforcement of the city MBE ordinance in the award of City construction contracts, Cir. A. No. 89-2737 1995 WL, 119N (E.D. PA.) The Sixth Circuit Court of Appeals employed the intermediate scrutiny review in *Michigan Road Builders Ass'n. v. Milliken*, 834 F.2d 583 (6th Cir. 1987), *aff'd*, 49 U.S. 1061 (1989). However, after *Croson* the Sixth Circuit seemingly applied strict scrutiny tests when considering a gender-based affirmative action program. See *Conlin v. Blanchard*, 890 F.2d 811, 816 (6th Cir. 1989) ("in order for race or sex based remedial measures to withstand scrutiny under the fourteenth amendment there must first be some showing of prior discrimination by a governmental entity involved, and second, the remedy adopted by the state must be tailored narrowly to achieve the goal of righting the prior discrimination.")

²⁸See *Coral Construction Co., Id.* at 921.

²⁹*Id.* at 931.

³⁰*Id.* at 932.

³¹*Id.* at 932-33. In *Construction Ass'n. of Eastern Pennsylvania, Inc. v. City of Philadelphia*, supra n. 26, the Court of Appeals for the Third Circuit also applied the intermediate standard to a gender based preference program.

The Court of Appeals for the Third Circuit in *City of Philadelphia* observed that it is unclear whether statistical evidence as well as anecdotal evidence is required to establish the factual predicate necessary to satisfy intermediate scrutiny. It noted that the Supreme Court gender discrimination cases are inconclusive and the Court has never squarely ruled on the necessity of statistical evidence in gender discrimination cases. However, the Court of Appeals found that logically the City must be able to rely on less evidence in enacting a gender preference than a racial preference because the intermediate scrutiny standard is less stringent than the strict scrutiny test applied in *Croson*.³²

In support of its program, Philadelphia relied only on general statistics and one affidavit from a woman in the catering business. Since there was not a disparity index for women owned construction businesses and given the absence of anecdotal evidence establishing discrimination in the construction industry, the Court of Appeals affirmed the grant of summary judgment invalidating the gender preference for construction contracts.

Although the District Court in Philadelphia applied the intermediate scrutiny test to gender conscious programs,³³ it recognized the anomaly that the Supreme Court has created in establishing different standards of scrutiny for race and gender conscious programs:

The use of intermediate scrutiny to analyze gender based classifications in the affirmative action context produces an anomalous result. In the non affirmative action context the use of a three-tiered analysis for ordinances disadvantaging African Americans, women or non suspect classifications creates the result intended by the Supreme Court—it is most difficult to uphold a classification disadvantaging African Americans, less difficult to uphold a classification disadvantaging women, and easiest to uphold a classification disadvantaging a non suspect class. However, in the affirmative action setting the use of this three-tiered scheme means that laws disadvantaging Whites (MBEs) will be held to a stricter standard than laws disadvantaging men (FBEs). The flip side of this is that under the sliding scale analysis, it becomes easier for a state legislature or a city council to pass an FBE than an MBE, because the former will be held to a lesser standard of scrutiny by the courts.

³²*Id.* at 1010. Another example of this double standard was in *RGW Construction v. San Francisco BART*, Case No. C92-2933 TEH (N.D. CA). In this case an injunction was issued against the race-conscious but not the gender-conscious port, area, section of BART's DBE program for non-federally funded contracts because of the lack of a factual predicate for the program. The injunction was later partially lifted based on evidence in two disparity studies in counties where BART operated.

³³*Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia*, 735 F. Supp. 1274 (E.D. Pa. 1990).

This court questions whether this result was intended. The anomaly lies in the fact that the three-tiered scheme sprung from the judicial determination that, as a class, Blacks have been subjected to the most egregious discrimination over time. This determination is reflected in the choice of higher percentages for minorities in the Philadelphia Ordinance and other similar set-aside programs. The very existence of the Thirteenth and Fifteenth Amendments to the United States Constitution evinces a Congressional intent to give itself the power to redress past discrimination against Blacks.

However, a look at the Supreme Court decisions holding that laws disadvantaging Blacks and Whites should be held to the same strict standard, see *Croson*, supra, and that laws disadvantaging women and men should be held to the same intermediate standard, see *Craig v. Boren*, supra, may explain or justify this anomalous result. Perhaps by determining that discrimination against Whites and discrimination against African Americans is equally abhorrent and that the criteria of race is "more suspect" than gender discrimination, the Supreme Court has accepted the result that it is now more difficult to remedy race discrimination than sex discrimination. Whether it has or not, this court questions the logic of such a result.³⁴

³⁴*Id.* at 1302-1303.

Burden of Proof in Public Contracting Affirmative Action Plans

In affirmative action cases, the plaintiff bears the burden of proof to demonstrate the unconstitutionality of an affirmative action plan. In *Johnson v. Transportation Agency, Santa Clara County*,³⁵ the Supreme Court established that:

Once a plaintiff establishes a prima facie case that race or sex has been taken into account...the burden shifts to the employer to articulate a nondiscriminatory rationale for its decision. The existence of an affirmative action plan provides such a rationale. If such a plan is articulated as the basis for the employer's decision the burden shifts to plaintiff to provide that [this] justification is pretextual and the plan is invalid. As a practical matter, of course, an employer will generally seek to avoid a charge of pretext by presenting evidence in support of its plan. That does not mean, however...that reliance on an affirmative action plan is to be treated as an affirmative defense requiring the employer to carry the burden of proving the validity of the plan. The burden of proving its invalidity remains on the plaintiff.³⁶

Croson seems to apply this standard to public contracting affirmative action programs by suggesting that an appropriate statistical analysis by the public entity showing disparity would lead to an inference of discrimination. It would then be incumbent upon the contractor/plaintiff to show: a "neutral explanation" for the disparity flawed the statistical analysis, not significant or actionable disparities, or contrasting statistical data. A general assertion that there is some reason other than discrimination that could explain the disparity is not enough to overcome the inference of discrimination created by the statistical analysis.³⁷ Indeed, as in Title VII cases,

a party challenging evidence of discrimination must have conducted its own regression analysis to show that the evidence is in fact flawed, and that correcting for any alleged flaws would have resulted in no disparities. . . Concrete Works has criticized portions of Denver's methodology without showing that its alleged flaws would have made a difference in the disparity ratios. It would be unfair to allow disgruntled plaintiffs to drag affirmatively acting municipalities into court on such meager rebuttal evidence.³⁸

³⁵480 U.S. 616, 107 S.Ct. 1442 (1987).

³⁶*Id.* at 1449.

³⁷*See, e.g., City of Philadelphia*, supra n. 27, at 1007.

³⁸ *Concrete Works v. County of Denver*, 823 F. Supp. 821, 839-40 (1993).

The *Croson* burden of proof is distinct because the defendant in *Croson*, the public agency, must meet its burden of production to demonstrate that it committed sufficient discrimination to satisfy the strict scrutiny standard for race-conscious procurement programs. In the absence of such evidence, a MBE program will not survive summary judgment.

In *Contractors Ass'n of Eastern Pennsylvania, Inc. v. Philadelphia*³⁹, the court stated that to establish racial discrimination, the statistical disparity must in some way be linked to additional evidence. Without additional evidence, the statistical disparity cannot conclusively infer discrimination.⁴⁰ Further, the statistical disparity itself must consider the number of minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the local government or the local government's prime contractors.⁴¹ Failure to take these factors into consideration will render the disparity analysis invalid.

The lower district court in the *Contractors Ass'n of Eastern Pennsylvania* found that the City failed to meet its burden of production. In this case, the City of Philadelphia introduced a disparity study into evidence to support its contention that there was a compelling interest for a 15 percent MBE goal for African American contractors on construction projects.⁴² The court found the disparity study flawed and thus not dispositive of an inference of discrimination. The court criticized researchers methodology for determining availability which relied on the 1982 federal census reports of the construction industry, including the Philadelphia construction industry, a directory and one-page summary of MBEs in the Philadelphia area in 1982 prepared by the City, and a report prepared by the City submitted to the United States Congress which provided the total dollar value of City contracts awarded to minorities during the 1979-1981 fiscal years.⁴³ The court considered the studies findings to be a mere head count of African American contractors and not a count of available African American contractors.⁴⁴ According to the Court's analysis, the study should have also considered how many contractors actually sought to participate in City financed construction projects or the number of African American contractors that were prequalified in the City's certification or prequalification process to perform City contracts.⁴⁵

³⁹1995 WL 11900 (E.D. Pa)

⁴⁰1995 WL 11900, at 7 (citing *O'Donnell Constr. Co. v District of Columbia*, 963F.2d 420, 426) (D.C. Cir. 1992).

⁴¹1995 WL 11900, at 10.

⁴²*Id.* at 3.

⁴³*Id.* at 5.

⁴⁴*Id.* at 9.

⁴⁵*Id.*

The court further criticized the study for drawing statistical conclusions relying solely on summary reports provided by the City and failing to independently study and consider the City's bidding and prequalification procedures for public works contracts.⁴⁶ Another failing of the study was its lack of data on MBE subcontractors and MBE participation in City projects funded with federal money.⁴⁷

Finally, the court found the study did not demonstrate that the city had been a passive participant in the discrimination of MBE contractors.⁴⁸ A mere statement by city officials that racial discrimination exists in the industry is not enough to amount to objective evidence of passive participation in the discrimination of MBEs.⁴⁹ Although the City offered evidence showing a disparity in the number of MBE members in local professional associations, the court found that the City's support of these associations did not provide enough objective evidence of passive discrimination. To make such a casual link, the dearth of MBEs in local associations must be considered in tandem with the number of local MBEs eligible for membership.⁵⁰ The court found that the City did not present any compelling evidence which considered the availability of willing and able MBEs eligible to join these associations along with the associations' prequalification standards.⁵¹ The court stated that the City did not have the necessary information about the firms that sought membership in these organizations and the prequalification standards of the organizations to draw any conclusions as to whether there was a racial disparity.⁵²

These factors represent the increasing burden placed on local governments seeking to remedy discrimination through the use of race-conscious programs. The factual evidence required by the court in *Contractors Ass'n of Eastern Pennsylvania* may be an indication of the type of factual predicate that courts are beginning to require. Although this is a lower district court case affecting only the city of Philadelphia's MBE program, it is important to monitor the trends of the lower courts attempting to balance the need for municipalities to remedy past and present discrimination with the rising discontent of nonminorities who fear that their rights are being infringed. A comprehensive disparity study, along with typically a public hearing, provide the City with the evidence it needs to meet its burden of production. Upon meeting the burden of production, the burden of proof then shifts back to the plaintiff, generally a contractor's association, to demonstrate that evidence presented by the public agency is flawed.

⁴⁶*Id.* at 10-12.

⁴⁷*Id.* at 12.

⁴⁸*Id.* at 19.

⁴⁹*Id.* at 16.

⁵⁰*Id.* at 19

⁵¹*Id.*

⁵²*Id.* at 17-19

Completing The Factual Predicate

A governmental entity examining whether there is a compelling interest for the establishment of a preference program should conduct public hearings to afford interested parties an opportunity to be heard on the issues. Furthermore, interested parties should be given an opportunity to make written submissions prior to the enactment of any ordinance.

RACE AND GENDER NEUTRAL LOCAL PREFERENCE PROGRAMS

Race and gender neutral programs are subject to lower standards of scrutiny from race and gender conscious programs. However, when the element of locality is introduced into these programmatic initiatives, other legal standards, including equal protection, are evoked.

Rationally Related Standard Of Scrutiny

Race-neutral economic development programs and local business programs are typically subject to the rationally related test. That is, a legitimate state interest must exist and the means employed to further the interest must be rationally related to the legislation's purpose. This standard allows the court to defer to the judgment and desires of the acting governmental entity. To overturn a local government action subject to this test, the court must first find that the government's actions are arbitrary and capricious. As such, the rational relation test demands the least amount of scrutiny by the courts.

In *Assoc'n. of Gen. Contractors v. San Francisco*,⁵³ the court held that the City had a legitimate state interest in encouraging businesses to locate and remain in the City. Two factors were used to substantiate the City's interest. First, the court noted the higher administrative costs of doing business in the City: higher rents, taxes and wages incurred by disadvantaged businesses operating in the City. Second, the court noted that the public interest was best served by encouraging businesses to locate in the City. The court also noted that foreign businesses could be locally-owned business enterprises (LBEs) by acquiring offices within the city and paying permit and license fees from a city address.

In *Gary Concrete Products, Inc. v. Riley*,⁵⁴ the court held that an LBE bid preference was constitutional, as the state has a legitimate interest in directing the benefits of its purchases to its citizens. The court concluded that bid preferences for residents encourage local industry, increasing the tax base and

⁵³813 F. 2d 922, 943 (9th Cir 1987)

⁵⁴331 S.E. 2d 335, 359 (S.C. 1985)

helping the state economy. The statute was rationally related, because non-residents could qualify for the preference when they maintained an office and inventory in the state and paid certain taxes.

It is important to distinguish local preference programs based on the residency of individuals or the residency of a firm's employees from programs based on a firm's local or principal place of business. In the former instance, where preference is based on the residency of individuals, the government action is vulnerable to constitutional attack under the Equal Protection Clause as well as The Commerce Clause and the Privileges and Immunities Clause, two long standing constitutional principals of law under Art. IV of the United States Constitution.⁵⁵

Preference programs which impose a period of residency before the resident is eligible to participate in the local preference program has been found to violate the Equal Protection Clause. In *People u rel. Holland v. Bleigh Construction Co.*,⁵⁶ the Illinois Supreme Court considered an Illinois preference law which required every person charged with a public works project or improvement project to employ only Illinois laborers who had resided in Illinois for at least one year immediately preceding employment. The court struck down the one year residency requirement in the statute on the basis that the one-year residency requirement violated the Equal Protection Clause.⁵⁷

Commerce Clause

The Commerce Clause is a complicated provision of the Constitution acting as an implied restraint upon a state's regulatory powers on issues relating to interstate commerce—commercial transactions extending beyond or affecting more than one state. The Commerce Clause expressly provides that only Congress may regulate interstate commerce. The clause is an affirmative grant of power to Congress and an implied restriction on the power of states.⁵⁸ “[The powers of state and local government] must give way before the superior authority of Congress to legislate (or leave unregulated) matters involving interstate commerce.”⁵⁹

⁵⁵*United Building & Construction Trades v. Mayor* 465 U.S. 208 (1983).

⁵⁶61 Ill 2d 258, 335 N. E. 2d 469 (1975)

⁵⁷The court also upheld that the preference statute did not violate the *Privileges and Immunities Clause*. However, in *People Ex. Rel Bernardi v. Leary Construction Co.*, 102 ILL, 2d 295, 466 N.E. 2d 1019, a subsequent case, the same Illinois Supreme Court reconsidered the constitutionality of the ordinance found and that the statute did not violate the *Privileges and Immunities Clause*, 466 N.E. 2d at 1023

⁵⁸Public Works - Resident Preference 36 ALR 4th 941 § 3[b] p. 952.

⁵⁹*Id* at 22

The United States economy is a collection of transactions between states. Any number of regulatory actions by one state may have an effect on interstate commerce.⁶⁰ As a result, determining how and when to apply the Commerce Clause is often problematic.⁶¹ The courts, in their interpretation of the Constitution, have clearly found that a state may not establish a tariff wall protecting its industries or businesses from the competition of industries in other states and foreign countries merely to promote the economic welfare of its own citizens.⁶² A state or municipal law that regulates or has the effect of regulating interstate commerce is subject to strict scrutiny.

To determine if a government entity is subject to strict scrutiny, the court must determine whether the local government was acting as a "market regulator" or a "market participant." As a market participant, the local government is merely engaging in its local market and not controlling any commerce other than commerce issued by the government entity or affecting the government's property or matters within its jurisdictional boundaries and authority.⁶³ A market regulator, however, seeks to control or regulate, not only its own participation in the market place but also the activities of other businesses and industries attempting to transact business.⁶⁴ The end result of such control affects businesses attempting to conduct business from one state to another. If the court determines that the local government is acting as a market regulator, the government action is subject to strict scrutiny.

The U.S. Supreme Court in *White v. Massachusetts Council of Construction Employers, Inc.*⁶⁵ held that a local hiring preference did not trigger strict scrutiny under the Commerce Clause. In *White*, the Mayor of the City of Boston promulgated an executive order requiring that at least 50 percent of all jobs on construction projects funded in whole or in part by City funds be filled by bona fide City residents. The Court held that the City's preference program was immune from scrutiny under the Commerce Clause because Boston was acting as a market participant rather than as a market regulator.⁶⁶ The court deemed the City to be a market participant because it had imposed a local hiring preference on those projects it financed. Such municipal action does not trigger the Strict Scrutiny analysis under the Commerce Clause.⁶⁷

⁶⁰*W.C.M. Window Co., Inc. v. Bernardi*, 730 F.2d 486, 493 (7th Cir. 1984)

⁶¹*Id.*

⁶²*Id.* Citing *Baldwin v. G.A.F. Scelig, Inc.* 294 U.S. 511,522 (1935)

⁶³*United Bldg.*,465 U.S. at 213

⁶⁴*Id.*

⁶⁵460 U.S. 204 (1983).

⁶⁶*United Bldg.*, 465 U.S. at 213.

⁶⁷*See Id.* at 495.

In *W.C.M. Window Co., Inc. v. Bernardi*,⁶⁸ the Seventh Circuit Court of Appeals reviewed an Illinois state law which provided, in relevant part, that a contract or public works or improvement project for the State of Illinois or any political subdivision, municipal corporation or other governmental unit whether a it was a state agency or not shall employ only Illinois laborers on such projects or improvements unless such laborers are unavailable.⁶⁹ In this case, the director of the State Department of Labor brought suit against an Illinois prime contractor that subcontracted a portion of a public school board project to a unincorporated association of Missouri residents.⁷⁰ The court considered whether the statute allowed the state to act as a market participant or as a market regulator.

The court stated that if the State law limited the preference to construction projects financed or administered in whole or in part by the state, the state would clearly be acting as a market participant. However, the court found the State's preference applied to every public construction project in Illinois from local school board projects to projects let by the local dog catcher, *whether or not the State had any involvement or ownership in the project*.⁷¹ As such, the court held that the State local hiring preference law allowed the State to be a market regulator with the effect of regulating business and interstate commerce in which the State had no participation. Therefore, the court ruled that the State law was subject to the strict scrutiny of the Commerce Clause.

Privileges and Immunities Clause

The primary purpose of the Privileges and Immunities Clause is to ensure a citizen of State A who ventures into State B the same privileges and immunities which the citizens of State B enjoy.⁷² A local preference program which benefits or discriminates against a company based on the residence of its individual owners or employees is in jeopardy of violating the Privileges and Immunities Clause and subject to a type of strict scrutiny analysis.⁷³

The application of the Privileges and Immunities Clause entails a three-step analysis. First, is the ordinance or statute sufficiently fundamental to the promotion of interstate harmony so as to fall within the purview of the Clause.⁷⁴ Second, where the discrimination affects interstate harmony is a "substantial reason" for the discrimination, and where the discrimination is deemed substantially reasonable does the degree of discrimination bear a close relation to

⁶⁸See Supra n. 58

⁶⁹730 F. 2d at 489.

⁷⁰*Id.* at 489.

⁷¹*Id.* at 495.

⁷²*United Building*, 465 U.S. at 216; quoting *Toomer v. Witsell*.

⁷³See *Id.* at 210.

⁷⁴*Id.* at 218 (citing *Baldwin v. Montana Fish and Game Comm'n*, 436 U.S. 371, 383, 388 (1978)).

the reasons.⁷⁵ Third, do the nonresidents somehow "constitute a peculiar source of the evil at which the statute is aimed."⁷⁶

In *United Building & Construction Trades v. Mayor*, the Supreme Court considered the constitutionality of a City ordinance requiring at least 40 percent of the employees of contractors and subcontractors working on City construction projects to be Camden residents.⁷⁷ The Court stated that the pursuit of a "common calling" - working - is one of the most fundamental privileges protected under the Privileges and Immunities Clause, thus falling within the purview of the clause.⁷⁸

The Court further stated that ownership of the property referenced in the City ordinance at issue is also a factor (often a *crucial factor*) in the first step of the strict scrutiny analysis.⁷⁹ However, the mere ownership of property does not render the government action outside the purview of the Clause. In this case, the Court determined that the opportunity to seek employment with such private employers is "sufficiently basic to the livelihood of the nation and thus fundamental to the promotion of interstate harmony that a strict scrutiny analysis is required."⁸⁰

The Court next considered the second prong of the test, whether there was a substantial reason for the discriminating action and whether the degree of discrimination bears a close relation to the substantial reason. The City argued that the ordinance was necessary to address spiraling unemployment, decline in population, reduction in number of businesses located in the city, eroding property values and depleting tax base.⁸¹ The resident preference program was designed to increase employment in the City and arrest "middle-class flight". To meet the third prong of the test, the City argued that the nonresidents were benefiting from the City without living in the City and thus, were a source of the evil.⁸²

Due to lack of relevant facts, the Court failed to decide the constitutional issue of whether the ordinance was substantially reasonable. However, in the dicta of the Court's opinion, the Court stated that states should have considerable leeway to

⁷⁵*Id.* ; (quoting *Toomer v. Witsell*, 334 U.S. at 396).

⁷⁶*Id.*;(quoting *Toomer v. Witsell*, 334 U.S. at 398).

⁷⁷*Id.* at 218. Also, Municipalities as well as States are subject to the same scrutiny. In *United Bldg*, the Court determined that whether the discriminating action was the act of the State or a municipality of the State, the result was the same and any violation of the Clause would be subject to scrutiny under the Privileges and Immunities Clause. *Id.* at 217.

⁷⁸*Id.* at 219. However, in Equal Protection cases the court has previously held that there is no fundamental right to government employment.

⁷⁹*Id.* at 221.

⁸⁰*Id.* at 221-2.

⁸¹*Id.* at 222.

⁸²*Id.*

analyze local evils and prescribe appropriate remedies."⁸³ The Court also noted that unlike other statutes that were over-reaching and affecting property, goods and services that were not funded by or under the control of the governmental entity, the City's ordinance was limited in scope to employees working directly on City public works projects. Based on this discussion, it seems clear that the Courts tend to find those programs limited in scope and concern to those matters clearly under the control or ownership of the local government narrowly tailored or substantially reasonable.

CONCLUSION

Based upon the foregoing discussion, certain basic legal conclusions can be reached about the availability and legality of a minority and women local business enterprise program in the City of Evanston. A minority set-aside or gender based program is still permissible after *Croson* where there is a strong factual basis to support a compelling governmental interest and where the program is narrowly tailored. In establishing the necessary factual predicate, an inference of discrimination arises upon a showing of statistical disparity. This evidence should include the appropriate statistical methodology for analysis including the disparity index. Also, local business programs without individual residency requirements are permissible as long as the reasons for establishing the program are not arbitrary and capricious.

⁸³*Id.* at 223 (quoting *Toomer v. Witsell*, *supra*, at 396); see also *W.C.M. Window Co. Inc.*, at 497 (In considering whether the state local hiring law violated the clause, the court stated that although under *United Bldg.*, the state had considerable leeway, the state must offer some evidence of the benefits of a residential - preference law in dealing with a problem created by nonresidents).

INTRODUCTION

The history of relations between racial and/or ethnic groups in Evanston as well as between genders, has been different from cities of larger and more diverse populations. Most issues of discrimination in Evanston focus on the tension between the White and African American populations. This chapter provides a historical backdrop for further analysis of economic, race and gender issues affecting businesses in Evanston and an analysis of the City's utilization of local Evanston businesses and minority and female owned businesses.

BIRTH OF THE CITY OF EVANSTON

The City of Evanston, Illinois was established in 1850—a result of the efforts of “a small group of men, visualiz[ing] a great university, around which would spring a community of desirable citizens.”¹ Evanston, therefore, grew rooted in the vision of higher education at Northwestern University. From the beginning, the City was home to progressive visions.

Evanston is reputed to have been a “stop” on the Underground Railroad during the Civil War; there is a story of one White resident, a university chancellor, saving a young fugitive slave by “bodily interfering with her recapture.”² African Americans began to settle in Evanston in the 1850s, and by the 1870s, an African American community with 43 residents existed in the city. The first known African American residents were female domestics.³ Following this pattern, employment opportunities for African Americans emerged primarily from service industries to White residents.⁴

Evanston's citizenry exhibited some reaction against overt racism. Evanston historian Kevin Leonard credits a history of orderly and moral-tinged paternalism with influencing demographic characteristics and institutional development of the city's African American population.⁵ According to Leonard,

African Americans and Whites interacted according to a code of behavior generally recognizing Whites as the socially, economically,

¹Reeling, Viola Crouch. *Evanston: Its Land and Its People*. Daughters of the American Revolution, Fort Dearborn Chapter, Evanston, 1928. p. 185.

²Evanston Review, “History of Evanston's Blacks: 1850 -1930.”

³*This is Evanston*. League of Women Voters of Evanston, 7th Edition. 1985.

⁴*Id.*

⁵Leonard, Kevin. “Paternalism and the Rise of a Black Community in Evanston, Illinois: 1870 - 1930.” Masters Thesis, June 1982.

and politically dominant group. The pernicious effects of slavery retarded social and intellectual development [of African Americans]. African Americans remained stigmatized by race and, whether aided or pitied by patronizing Whites, a permanent division between the races remained unchallenged.⁶

At the turn of the century, White residents of Evanston, fearing turmoil like the Chicago race riots of 1919, were somewhat responsive to the needs of the City's African American community which, by 1910, numbered over one thousand, Leonard says.

Evanstonians looked at their own African American community and found that African Americans suffered from a dearth of adequate housing, recreational facilities, and health care. Whites responded to these conditions through institutional paternalism contribute[ing] money toward construction of an African American YMCA as well as other segregated institutions, and formed a variety of associations to encourage self-help type programs within the African American community. There were no major challenges to the separation of races...Basically, however, Whites were less concerned about the second-class legal and social status of African Americans than they were about the social consequences of such status: poor housing, delinquency, and crime.⁷

Leonard asserts that this pervasive paternalism helped to give rise to an alternative image of Evanston distinctive from both Southern communities with Jim Crow laws and neglectful urban communities. Evanston, on the contrary, was painted as a racially harmonious city. Beneath the image, however,

African Americans and Whites engaged in a paternalistic system of race relations that shaped African American community organizations as alternatives to African American participation in White institutions. African Americans participated in a segregated community life for self-protection as well as self-definition.⁸

HISTORICAL OVERVIEW FROM WORLD WAR II AND BEYOND

The Chicago job market attracted thousands of African American Southerners during World War II. Many southern families also found their way to Evanston

⁶Leonard, p. 1-2.

⁷Leonard, p. 3.

⁸Leonard, p. 49.

during the "Great Migration" north.⁹ The African American population of Evanston grew from 1,160 in 1910 to 2,522 in 1920, and to 6,000 by 1945. A pattern of informal steering emerged after the first World War as high rents forced these new African American residents into older, crowded buildings on the west side of the city.¹⁰ In 1940, the median value for a White-owned home was \$9,502; for an African American-owned home, it was \$3,836. By 1950, the average value of a single-dwelling home was \$20,297, and in "the Negro neighborhood," the median value was \$11,021.¹¹

The reaction to this migration of African Americans to the City by White Evanston residents paralleled that of their counterparts in other cities. One observer later described the period as one of growing tension:

The old order in Evanston wrote its own epitaph at its inception. It was a White, middle class order, and in ignoring the original heterogeneous make-up of the City it worked only for its own betterment, and eventually, its own demise. A mayoral comment in 1945 that Blacks should not be allowed to increase to greater than ten percent of the total population... "*A too large population in this group would soon mean poorer schools, streets, municipal services. This would not be in the interests of those non-White now here*" showed the insensitivity of the power structure to the racial makeup of this town.¹²

The decision by the World Council of Churches to hold its national conference in Evanston in 1954, acted as a "catalyst for integration" for the city.¹³ The council urged Evanston to "abolish its discriminatory practices" in order to present an image of progressive race relations. This order led almost directly to the 1953 Inventory of Human Relations in Evanston, a city-wide study of the state of education, housing, employment, churches, and recreation. It concluded that,

Ours is a privileged community. Ours is a community in which there has been real progress in race relations. Through this community inventory, we can better see what progress still must be made and in a friendly spirit continue our progress—without recrimination, yet with determination to make ours a privileged community for all.¹⁴

⁹See Lemann, Nicolas (1991). *The Promised Land* New York: Vintage Books; and Grossman, James R. "Blowing the Trumpet: The *Chicago Defender* and Black Migration During World War I." *Illinois Historical Journal*, 1985.

¹⁰*Human Relations in Evanston*, Evanston Interracial Council, October 1953. p. 12.

¹¹*Id.*, p. 13.

¹²North Shore Examiner, June 25, 1970.

¹³*Id.*

¹⁴*Human Relations in Evanston*, 1953, p. 3.

The report had few long-term results, and the goals stated in the report were never truly realized. However, the World Council of Churches Conference in Evanston led to a renewed investigation into race relations by city officials and was later called a "catalyst to integration" for the City¹⁵. In 1964, the newly established Evanston Community Relations Commission (renamed the Evanston Human Relations Commission in 1969) issued the report, "Inventory '64: A Study of Human Relations in Evanston." The report recorded six public meetings on the topics of employment, housing, education, justice, health, and recreation; reports from local schools and housing associations; and, survey and study results of sampled Evanstonians.¹⁶ The City was among the most active in the nation at this time in addressing the concerns of its minority citizens.¹⁷

However, there was growing recognition of a tension behind this progressive image. In 1960, a local race survey indicated that 61 percent of Evanstonians (and over 70 percent in the predominantly minority 5th Ward) felt that race relations were a problem.¹⁸ Equal opportunity for housing and jobs was deemed inadequate by a majority of respondents in the 5th Ward and by nearly half of those surveyed. By 1969, the *Evanston Review* reported:

Black leaders interviewed in recent weeks unanimously charged that many of their race in Evanston are restricted to housing which is abysmally inadequate. That the city's Black community is subjected to vocational, economic, and educational discrimination. That its members are systematically denied the respect and dignity which is the birthright of every man.¹⁹

Despite these lingering issues and concerns, however, Evanston officially clung to its image as a progressive and integrated community. In 1967, the Evanston Chamber of Commerce, for instance, wrote an article entitled, "Evanston on The Move," praising Evanston's racial fairness and cheering the City for its integrationist efforts.²⁰ Members of the NAACP, the Urban League, and several African American churches and social groups were so outraged by the column that they paid for a full-page advertisement in the *Evanston Review* to counter the writer's claims. They wrote:

The November 9, 1967 article entitled "Evanston on the Move" was extreme and ill-advised. Its views were either a direct contradiction of the conclusion that Evanston is a forward moving community or were

¹⁵North Shore Examiner, June 25, 1970.

¹⁶*Inventory '64: A Study of Human Relations in Evanston*. The City of Evanston Community Relations Committee, 1964.

¹⁷*Chicago Tribune*, June 6, 1995, "Evanston High Admits Minority Gap."

¹⁸*Evanston Review*, May 7 1964.

¹⁹*Evanston Review*, May 12, 1969, "The Changing Mood of Local Blacks."

²⁰*Evanston Review*, November 9, 1967 "Evanston on the Move."

the amblings of a group poorly informed about, or in disregard of the development of grievous conditions in the community. These grievances are not new. The Chamber article was equally impressive in its oversimplified answers to extremely complex problems.²¹

Some of the concerns referenced in the document included discrimination in schools and police brutality. The groups urged "the initiation of a meaningful dialogue between all sections of the community" instead of attempts to sweep problems of racism under the rug.

Only in the last two decades have the Hispanic and Asian American populations gained a political voice and been recognized as viable minority populations. Evanston's Asian population, in particular, jumped 76 percent between 1980 and 1990,²² and now numbers in excess of 3,500.²³ Similarly, members of Evanston's Hispanic population, which grew by 56 percent in the 1980s,²⁴ have formed the Evanston Latin American Association and other groups to raise awareness of issues in their community. Of Evanston's 73,233 residents in the 1990 census, 22.9 percent were African American, 4.8 percent Asian, and 3.7 percent Hispanic. Women began taking part in Evanston's political matters through the Women's Christian Temperance Union, and have remained a strong and distinct voice in the City throughout the century. However, they have faced familiar barriers to participation in government and business as have women from other urban areas.

It is difficult to establish a pattern among the tensions between groups in Evanston, due, in part, to a lack of documentation of significant court cases regarding racial discrimination in employment. Moreover, as an African American community activist whose family has resided in Evanston for three generations said,

Why would anyone tell you [about discrimination]? They don't want you to look it up in the law books...It's supposed to be a liberal town. Because one complains or not...doesn't mean that discrimination doesn't exist. It is covert now...It is difficult to find.²⁵

Similarly, according to one report, "Some Whites said they are hesitant to speak openly about racism in the community, saying that, in Evanston, people have learned to watch what they say, where they say it and to whom."²⁶ In fact, officially, Evanston has a remarkable reputation. The *Chicago Tribune*, for instance, called Evanston "the very picture of diversity," and said the town was "legendary for its

²¹*Evanston Review*, November 1967. Advertisement, "An open letter to the community".

²²*Chicago Sun-Times*, February 23, 1992, "Evanston: Racially Mixed—and Divided."

²³*Chicago Sun-Times*, May 24, 1992, "Top 20 in Asian Population."

²⁴*Chicago Sun-Times*, February 23, 1992, "Evanston: Racially Mixed—and Divided."

²⁵Interview, June 1995.

²⁶*Chicago Tribune*, March 16, 1992, "Melting Pot in Evanston Boils, Cools."

capacity to form commissions and panels to examine and attack any identifiable problem and wrestle it to some sort of solution."²⁷

The history of race relations in Evanston, then, emerges from the tension between an official transcript, created in the image of progressive policy, and an unofficial transcript, witnessed in the spoken and unspoken complaints of minority residents, court cases settled out-of-court, and years of broken promises and complacency by city officials. What is offered in this chapter is the historical context of the racial and sexual discrimination in the public and private sectors, with particular attention paid to patterns of formal complaints and legal action surrounding such discrimination.

In the late 1960s, with the advent of several African American-owned businesses, significant numbers of African Americans moved out of primarily menial and service jobs and into professional positions for the first time. These minority businesspersons also began to form their own support networks. The African American Business and Professional Association, organized in 1969, was intended to "enhance the image of Evanston's African American business and professional people and to help unify the city's African American community."²⁸ The Association stressed economic development, self-determination, and encouragement of African American youth to pursue professional careers. African American businessmen also joined to support FOCUS (Federation of Citizens for an Unsegregated Society) and become more visibly active in community affairs, such as issues of school reform.²⁹

The growth of African American professional organizations developed in the context of greater recognition of the civil rights struggle in Evanston as the Southern Christian Leadership Conference opened an office,³⁰ and James Meredith led a march that began in Evanston and ended at the Municipal Building in New York. Evanston was chosen as the starting point to "organize local community improvement associations...[that] would be involved in political activity, clean-up campaigns, and community pressure groups."³¹

The role of professional women earned greater significance in Evanston beginning in the 1960s. However, the professional women's groups at that time were primarily White and limited to specific professions. The Evanston North-Shore Board of Realtors was recognized nationally for its pioneering work with female realtors, who had been on the Board since 1918.³² It was estimated that in 1964, over 41 percent of women over the age of 14 in Evanston were employed, a percentage that is

²⁷*Chicago Tribune*, August 20, 1994. "Attitude Along the Lake; Evanston Not Just Another Suburb."

²⁸*Evanston Review*, February 24, 1969.

²⁹*Evanston Review*, October 20, 1969.

³⁰*Evanston Review*, May 2, 1968.

³¹*Evanston Review*, July 10, 1969.

³²*Evanston Review*, January 31, 1968.

significantly higher than national or state averages.³³ Though the majority of the jobs were concentrated in office support and the service industry, several women held positions of considerable power in private industry.³⁴ Women participated in back-to-work symposiums designed to aid married women in reentering the workforce.³⁵ The City's women "got their week to shine" in the City's celebration of National Business Women's Week,³⁶ and the Women's Committee of the Evanston Chamber of Commerce sponsored various events in which women "listened...and wondered if they could do it [i.e., get a job]," according to the *Evanston Review*.³⁷

There were few cases of charges of discrimination among private businesses in Evanston during this period. Ruby Murray, a full time teacher at the Oakton School, opened the International African American Arts Gallery in 1973.³⁸ She later charged that the Evanston Arts Council Board practiced discrimination by not considering her proposal for museum space in the Noyes School Cultural Arts Center.³⁹ The complaint tested the "cultural diversity" clause of the District 65 School Board lease for Noyes School between the district and the City of Evanston.

Segregation of Public and Private Facilities

In 1927, the Bureau of Colored Work of the Playground and Recreation Association of America studied local conditions for recreational policy. The author of the study asked, bluntly, "Which agencies are reaching these people?"⁴⁰ The study proceeds to detail the segregated institutions that served African Americans at the time: 15 fraternal organizations, a separate YMCA on Emerson Street, the North Side Community House (for working colored women in the city), and African American churches.

Importantly, the report includes no reference to any public institutions that provided services to both White and African American residents. In fact, there was no swimming pool in Evanston Township High School until the late 1950s, and when it was constructed, it was only available to White students.⁴¹ African American students were forced to use the swimming pool at the Emerson YMCA. The first integrated swimming pool in the City was not constructed until the 1960s.

³³*Chicago Tribune*, August 20, 1964.

³⁴*Evanston Review*, January 31, 1963 and October 21, 1968.

³⁵*Evanston Review*, August 21, 1969.

³⁶*Evanston Review*, October 21, 1968.

³⁷*Evanston Review*, October 2, 1969.

³⁸*Evanston Review*, March 15, 1973.

³⁹*Evanston Review*, October 21, 1976.

⁴⁰Attwell, E. T. In "A study of local conditions, with recommendations, affecting the recreational policy for colored citizens of Evanston, IL." Field Director of Bureau of Colored Work, Playground and Recreation Assoc. of America, June 1927.

⁴¹Interview, Mark Burnett, historian, Evanston Historical Society, April 1995.

Health care was also segregated in Evanston. In 1900, it was the policy of local private hospitals "to admit African American patients and African American doctors only in dire emergencies."⁴² Two influential African American residents, Dr. Isabella Garnett Butler and her husband, Dr. Arthur Butler, opened a floor of their house as a sanitarium. In 1928, they opened the Community Hospital of Evanston to work in cooperation with two larger hospitals, St. Francis and Evanston Hospital. It was considered one of the great success stories of the African American community in Evanston. Still, many residents were not happy with the separation of services, and spoke openly about the division. One White Evanston resident, for instance, asked:

Why must we continue to have separate hospital facilities for that part of our population which serves us in so many intimate ways—cooking our meals, driving our cars, caring for our most precious possessions, our children? Our public and parochial schools, our shopping facilities, our theaters, etc., are open to them. Why not our hospitals too? I am sure that the color of skin on the patient next to me in a hospital ward would not affect my recovery.⁴³

Many minority citizens protested the enforced segregation of Evanston's public and private facilities during the 1940s and 1950s. One long-time activist and veteran of the Civil Rights movement, says he and other African American residents began demonstrating against Woolworth's, Cooley's Cupboard (restaurants), and the Varsity and Coronet Theaters (movie/entertainment), as well as First National Bank in the late 1950s, in order to raise awareness and break the segregationist barriers in the city.

Development of MWBE Program

There were very few minority contracts for city jobs prior to the establishment of an affirmative action program in 1973. As a result of lobbying by then-superintendent Coffin, Leon Robinson secured a busing contract with the City in 1965.⁴⁴ The Black Businessmen and Professionals Association urged City banks to function in an affirmative manner with loans to minority residents, but the banks' activity prior to 1973 was short-lived.⁴⁵

In the 1970s, however, Evanston took one step toward developing a minority set-aside program with regard to its purchase and construction contract bidding procedures. The City recognized that minority businesses (defined as 51 percent owned by an African American, an individual with a Spanish surname, a Native American, an Asian, or woman) had been underutilized and disadvantaged by the

⁴²Evanston Historical Society Newsletter, Sept. Oct. 1984.

⁴³*Evanston Review*, July 27, 1950.

⁴⁴Bennett Johnson, Interview, August 1995.

⁴⁵*Id.*

bid structure. Therefore, the City of Evanston passed Resolution 59-R-73 (A Resolution Creating an Affirmative Action Program Directed Toward the Utilization of Minority Business Enterprises).⁴⁶

There were, however, limits to the resolution. The City never established a numerical goal nor did the City establish an office that supported the resolution. Instead, the City asked each department to set aside small contracts for minorities and asked prime contractors to "actively solicit bids from the subcontractors of goods and services from qualified minority businesses." Minority businesses were given insubstantial contracts with the City (grounds and building maintenance, for example), and this pattern persisted for more than a decade in the City of Evanston. The Commercial Division of Evanston's NAACP monitored the City's program and found that the prime contractors were almost never in compliance with the tenets of the resolution. Executive Director John Harris, who helped to draft the affirmative action plan of 1973, said he feels that the intentions of Evanston businesses and city government "were never honorable."⁴⁷ Fellow NAACP member, Bennett Johnson, added that "there was never an active and aggressive plan, it was a case of benign neglect...throw [minority businesses] a bone."

In 1978, Aldermen became uncertain as to whether the reverse discrimination ruling of the *Bakke* case would have an effect on the City's policy to reserve contracts for minority contractors.⁴⁸ They were unprepared for a defense of the set-aside program, but felt that "there should be a national strategy to keep this issue in the courts and push for some clearly defined laws."

In one of the first publicized suits concerning contracting with the City, John Whyte, a minority contractor who operates a snow removal company, wrote letters to the NAACP and Evanston Human Relations Commission suggesting that, under civil rights laws, he and his associates were discriminated against by not being hired during the Blizzard of 1979. The agencies were not given adequate time to investigate before he sued the City for damages and lost wages totaling \$370,000.⁴⁹ The case was dismissed by a U.S. District Court Judge, who cleared the City manager and public works director of all charges, and asserted that the City did not deny a minority contract to Whyte on the basis of racial discrimination.⁵⁰

The first contracts secured by minority firms under the set-aside program were limited almost entirely to landscaping and other small contracts. A report in the local Evanston newspaper showed that the scope of minority contracts continued to be limited, even ten years after the original resolution to create an affirmative action program for minority owned firms. For the proposed 1982-83 set-aside program,

⁴⁶Resolution 59-R-73 establishing Minority Set-Aside Program, 1973.

⁴⁷John Harris, interview, August 1995.

⁴⁸*Evanston Review*, July 6, 1978.

⁴⁹*Evanston Review*, March 22, 1979.

⁵⁰*Evanston Review*, May 8, 1980.

\$59,200 was earmarked for minority firms: \$18,000 for landscaping; \$5,500 for window washing; \$3,700 for extermination; \$9,000 for painting; and, \$23,000 for janitorial services.⁵¹

In 1982 and 1983 \$125,000 was earmarked for housing rehabilitation contracts with minority firms. During the 1981-82 fiscal year, \$98,000 had been earmarked for minority contractors. According to the report from the public works committee, however, less than half of the earmarked dollars was spent with minority firms. The report indicated that the City's failure to expend the amount was due to:

...failure of projects to attract bidders, lower-than-expected costs on some projects, and contracts that were awarded late in the year and were not paid in full when the reporting period ended.⁵²

The article also mentions that the City staff had met with the president of the NAACP to discuss the possibility of developing a local program to assist minority businesses.

One of the key concerns in Evanston's African American community regarding public employment in recent years has been the Northwestern University/Evanston Research Park project. Minority contractors said they organized a group of minority contractors capable of assisting in the work, but found little interest from the City.⁵³ In a public meeting that included aldermen and NAACP members, the developer of the research park, Shaw and Co., asserted that an agreement between the City and the university determined a 20 percent minority contract participation level.⁵⁴ One NAACP member at the meeting supported Shaw & Co., according to the *Evanston Review* article, stating that Shaw & Co. was supportive of minority involvement from the beginning. Others at the meeting showed that prime contractors were already advertising for minority subcontractors in Evanston papers.⁵⁵ Yet, other NAACP members greeted Shaw and Co.'s promises with skepticism. Bennett Johnson, for instance, said:

Northwestern and Evanston have a history of racism. (Their) approach was paternalistic. You need a program to assist subcontractors to be prime contractors. In the final analysis, it is a matter of money. If the minority contractor has access to a line of credit, he can do the job.⁵⁶

⁵¹*Evanston Review*, April 15, 1982.

⁵²*Id.*

⁵³Bennett Johnson, Interview, August 1995.

⁵⁴*Evanston Review*, December 10, 1987.

⁵⁵*Evanston Review*, December 10, 1987.

⁵⁶*Id.*

Recently, the Evanston chapter of the NAACP held public hearings on the issue of minority participation in construction projects.⁵⁷ Minority contractors commented on verbal abuse, constant layoffs, poor job protection, and second-class treatment at city-funded construction projects. The City of Evanston reported that one laborer who was terminated without cause felt that "it was like a clique. Just by virtue of my race, I was not a member of the clique." Another worker, who had completed a training program in tunneling work, said, "They don't want you in it, and want you to have the feeling they don't want you in it."⁵⁸

Critics contend that the City of Evanston's lack of responsiveness has allowed even minimal minority participation of past decades to dwindle.⁵⁹ The executive director of Evanston NAACP's Commercial Division argues that the City of Evanston has "no intention to let minorities be entrepreneurs."⁶⁰ He claims that contractors frequently impose impossibly high standards on minority companies securing contracts to force them off of projects—it may take City engineers six months to develop a cost estimate, while minority contracting engineers may be given only six days to develop the same budget numbers. Moreover, the largest profits for most firms are a result of change orders which come at the end of a constructing job. Harris says, change orders are often not provided for minority firms—if work extends beyond the completion date, a minority contractor must suffer the loss.

Some Evanston activists have brought busloads of people to local sites to observe working conditions and demonstrate against the lack of minority involvement in construction projects.⁶¹

Private Business in Evanston

A handful of renowned African American entrepreneurs in Evanston's early years accounted for the first minority owned businesses. Nathan Branch, a runaway slave from Virginia, began with one wagon and started an express freight service that lasted for a decade. Henry Butler established the first African American livery stables, eventually replacing horses with gas-powered engines, and starting one of the first cab companies in the City.⁶² William Twiggs, who attended elementary and secondary school in Evanston, founded the *Afro-American Budget*, one of the state's first African American periodicals.

In the past, the City has taken some steps to support and promote women's involvement in business. The mayor declared a Business Women's Week in Evanston in 1950, an event sponsored by the Business and Professional Women's

⁵⁷*Evanston Review*, September 23, 1993.

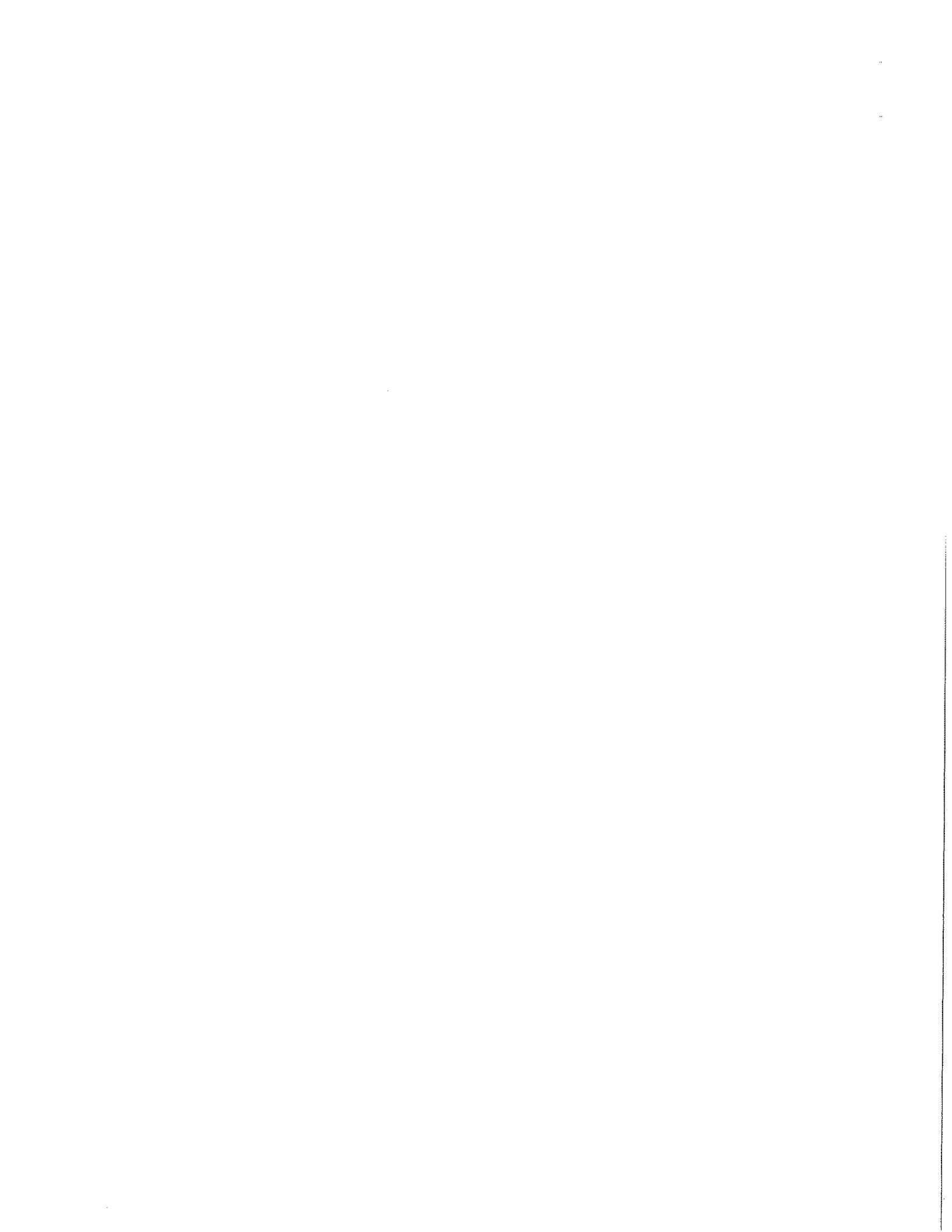
⁵⁸*Evanston Review*, September 30, 1993.

⁵⁹John Harris, interview, August 1995.

⁶⁰*Id.*

⁶¹John Harris, interview, August 1995.

⁶²National Urban League, Jan./Feb. 1945.



Club. The mayor urged all Evanstonians to "rededicate[d] [your]selves to building a strong country and peaceful world through offering full partnership in business and the professions to all citizens."⁶³ Women had already been encouraged to take leadership roles in the field of real estate. The Evanston-North Shore Real Estate Board, in contrast to the Chicago Board, which banned women members until 1950,⁶⁴ elected a female president in 1950.⁶⁵ As one article stated, "One of the principal concerns of realtors is providing housing for families, and that is a specialty that should exactly fit many women."⁶⁶

Past and present activity denote a different attitude toward minority businesses within the Evanston community. Local banks have made little effort to establish community reinvestment projects for the minority community. Bank One added Leon Robinson to its board of directors, as a symbol of commitment to the minority community, and State Bank hired a minority staff person to handle public relations. Yet, few tangible results came from such efforts.

Northwestern University, the largest single employer in Evanston, was the focus of two U.S. Department of Labor investigations stemming from allegations of racial discrimination after the firing of four African American employees who took part in a federal job training program (Comprehensive Employment Training Act, CETA).⁶⁷ The class action suit against Cook County and Northwestern was settled out of court with the representation of the Cook County Legal Assistance Foundation.⁶⁸

By the 1970s, civil rights legislation and federal programs such as Medicare and Medicaid opened hospitals that had been previously closed to African American patients. The Community Hospital, the recognized African American health care institution, received federal funds but finally closed in 1980, perceived by some Evanstonians as "less needed" than before.⁶⁹

Nevertheless, Evanston Hospital has been charged with racial discrimination in hiring and contracting. Four hospital employees, including the director of housekeeping services, filed a complaint with the federal EEOC and state Department of Human Rights which stated that they were unjustly fired after another company took over management of the hospital.⁷⁰ Three additional employees filed complaints in the following weeks.⁷¹ At the request of the former

⁶³*Evanston Review*, November 12, 1950 "Evanston to join observance of business women's week."

⁶⁴*Evanston Review*, March 5, 1950.

⁶⁵*Evanston Review*, May 25, 1950.

⁶⁶*Id.*

⁶⁷*Evanston Review*, January 19, 1978.

⁶⁸*Evanston Review*, April 20, 1978.

⁶⁹*Id.*

⁷⁰*Evanston Review*, July 21, 1983.

⁷¹*Evanston Review*, August 18, 1983.

employees, the U.S. Department of Justice eventually intervened and offered to mediate the dispute.⁷²

Other private companies in Evanston have been charged with discriminatory practices as well. A salesperson for Cablevision, Inc. filed a complaint with the Evanston Human Rights Commission charging that the company hired African American salespersons to sell subscriptions in predominantly African American areas of the city, but then fired the employees when they expressed a desire to sell in the predominantly White areas of Evanston.⁷³

The Evanston YWCA Shelter for Battered Women was challenged with charges of racial discrimination as well. Njoki Kamau, a Kenyan woman who rose from client to director, was dismissed in September 1990, and subsequently asked the Evanston Human Rights Commission to investigate the firing.⁷⁴ The Commission held that there was no discrimination: "nothing our analysis of statistics (on changes and turnover in staff) indicated to us there was a discriminatory nature to the terminations that was part of a pattern we can't go on hearsay." Kamau then filed a complaint with the EEOC, saying that "if the whole commission cannot find elements of racism when in fact the statistics are so clear, then either this commission does not care or it is rigged."

Rotary International, a nationally recognized organization that originated in Evanston, has been accused of gender discrimination. In 1978, the organization expelled a California chapter that broke a 73-year old law and allowed three women into its ranks.⁷⁵ Officers of the Rotary Club as well as Evanston Kiwanis defended their rules, but stressed that "above all, Rotary is alive and not hiding from the question. It faces the issue head on."⁷⁶

An accepted sentiment in the Evanston area is reflected in interviews conducted with owners of small and large businesses in the region. In general, as the *Evanston Review* suggests:

(P)rogress has been made in the overall area of affirmative action, and more minorities are being promoted to upper management jobs than before. (Still) some companies admit that a small percentage of minorities hold professional and official/managerial type posts; a larger percentage tends to hold lower-ranking jobs, working as clerks, lower level skill jobs, and as laborers⁷⁷.

⁷²*Evanston Review*, Sept. 1, 1983.

⁷³*Evanston Review*, June 2, 1983.

⁷⁴*Evanston Review*, April 18, 1991.

⁷⁵*Evanston Review*, March 30, 1978.

⁷⁶*Evanston Review*, August 24, 1978.

⁷⁷*Evanston Review*, May 4, 1989.

Few minorities in Evanston have progressed beyond the ceiling of middle management, and the history of public employment in Evanston does not offer a very different perspective.

Public Employment

Until the 1950s, almost all work for African American residents was either domestic service or menial labor. The American Steel and Tube Company, the largest manufacturing employer in Evanston, had a majority of African American workers in their factory.⁷⁸ In 1938, the national employment census revealed that eight percent of African American workers, compared to only two percent of White workers, were unemployed.⁷⁹ There were few public efforts made to place unemployed African American workers, who tended to be between 25 and 45 years old, according to the article. Twenty years later, minority unemployment problems still lingered. In an effort to increase activity in job placement, the NAACP undertook a survey of available jobs in 1958, and tried to match them to workers with various skills.⁸⁰

At the end of the 1960s, African Americans held 16 percent of the public employee jobs in the City of Evanston.⁸¹ The greater majority of these workers were in the park and streets departments. There were only two African American fire fighters (out of 102) and ten African American police officers (out of 158). Three African American aldermen complemented 15 White aldermen, although no other publicly elected officials were African American. Overall, ten percent of all appointed positions were staffed by African American Evanstonians, most on the Human Relations Committee and an advisory committee on Community Conservation.

Discontent over the lack of advancement of minority public employees came to a head in this period. In 1969, every African American officer on the police force signed a confidential report addressing "racial inequities and low professional standards of recruiting, training, transfer, promotion, and use of force."⁸² The report stated that the history of African Americans in the department, begun in 1920, is "a tragic and sordid indication of racism as it exists 'Evanston-style'. In the past four years we find 'tokenism', attempts of the now very cognizant city fathers to adjust this situation." The report was issued publicly in 1970, in an effort to re-address these issues. Although Chief of Police Giddens, who had prohibited the officers from discussing the issues with the City manager, had resigned in 1969, issues still remained, such as the "pigeon-holing [of] Black officers for purely field duties not planners or administrators." The report admitted that City efforts to recruit police from the African American community "tends to some sort of quota system."

⁷⁸*Evanston Review*, February 17, 1983 "History of Evanston's Blacks: 1850-1930"

⁷⁹*Evanston Index*, May 26, 1938 "Negroes top jobless list in Evanston."

⁸⁰*Evanston Review*, April 3, 1958 "NAACP group to make survey of jobs for Negroes."

⁸¹City of Evanston Interdepartmental Memorandum, January 1 1969.

⁸²*Evanston Review*, November 19, 1970.

This report provided the foundation for a bias suit brought by three Evanston police officers, charging racial bias in Evanston Police Department hiring and promotion policies. In August 1975, the suit was settled by court order to promote two of the three officers to the rank of sergeant.⁸³ However, the City did not obey the court order, and competing charges developed between African American and White officers.⁸⁴ The length of time for which officers would be eligible for promotion proved to be an obstacle; negotiations broke down as White officers refused to compromise on their two years' eligibility and defer to the promotion of African American officers to the rank of lieutenant.⁸⁵

In 1973, six African American candidates for Evanston's fire fighting force brought a \$600,000 class-action suit against the City.⁸⁶ The men alleged that the City racially discriminated in recruiting, examining, and hiring firefighters. Over a three-year period, the suit was consolidated and filed three times, without progress. The suit would not be dismissed until 1978, when U.S. District Court Judge Joel Flaum stated that "though there is a disproportionate impact on African Americans, the plaintiffs have failed to allege such tests were administered intentionally to violate their rights. They neither plead the existence nor offer proof of a discriminatory intent." In May 1980 one firefighter was still awaiting a \$2,400 out-of-court settlement with the City's insurance agency over the 1974 discrimination suit.⁸⁷

The City of Evanston, in an effort to remedy unfair labor standards, enacted a Fair Employment Practices Ordinance in 1974, guaranteeing equal opportunity to secure employment regardless of race, color, religion, national origin, sex, etc. in all Evanston businesses.⁸⁸ This original proposal, introduced by the council's human services committee, pertained to all employers, regardless of size, doing business in Evanston. However, after a deadlocked city council vote, which was broken by then-mayor Edgar Vanneman, Jr., the ordinance was confined to only employers doing business with the Evanston city government. It calls for "filing of charges with the City manager by persons who feel themselves the victims of discrimination by city hall or businesses contracted to the City. If the City manager feels there is no merit to a complaint, the complainant can appeal to the city's human relations commission".⁸⁹

Opponents to the original proposal argued that the ordinance was "overkill"—it would not apply to all businesses equally, and would discourage business growth due to expensive vulnerability to "sour grapes employees." Mayor Vanneman

⁸³*Evanston Review*, August 19, 1976.

⁸⁴*Evanston Review*, November 4, 1976.

⁸⁵*Evanston Review*, December 2, 1976.

⁸⁶*Evanston Review*, March 23, 1978; May 25, 1978.

⁸⁷*Evanston Review*, May 8, 1980.

⁸⁸Ord. 15-0-74, April 1, 1974.

⁸⁹*Evanston Review*, April 4, 1974.

stated that his parents owned a "ma and pa grocery store" and, that he, himself, ran a one-employee business, both of which would be held liable if they chose a secretary or clerk "which wasn't part of a minority group." Proponents insisted that such ordinances existed in other Illinois communities without onslaught of suits against employers, and that the Mayor's ordinance would wipe out the ability to monitor larger businesses which may discriminate.⁹⁰

In 1975, the City of Evanston responded to EEO guidelines and developed a program of equal employment opportunity which took "affirmative action to correct underutilization of minorities and women throughout the organization".⁹¹ The program, which set hiring goals for 22 city departments, called for the hiring and promotion of 152 people, 111 of whom were to be female employees. Over five years, the City planned to hire 31 female firefighters, 20 female police officers, as well as hiring or promoting 11 minority police officers and 17 minority firefighters. The plan included promoting minorities to "one lieutenant or captain post and three to sergeant positions."⁹² As the City manager stated, "[W]hen you take into account the inequities wrought by history, a neutral policy has a disproportionate impact on particular categories of people. This has been a very active and successful program, but we must develop a formalized method to accomplish our goals and document our achievements, a method that traces our activities and identifies areas of need. That method is affirmative action. We will have problems."⁹³

Evanston was cautious in the implementation of its Fair Employment Practices Ordinance. Following the tumultuous process of passing the ordinance and the Supreme Court's *Bakke* decision, there was considerable anxiety in Evanston's African American community about charges of "reverse discrimination."

In letters to the Justice Department, Civil Rights Commission, and Treasury Department, the Evanston branch of the NAACP requested a federal probe of a "clear pattern of racial discrimination" in the hiring policy of the City of Evanston.⁹⁴ Although some African American city employees stated that the charges were overblown, Frank Morris, education director of the chapter, disagreed. He alleged discrimination in the following instances: police brutality to African Americans; police departmental discrimination in hiring and promoting African Americans; Evanston Township High School's suspension of a disproportionate number of African American students; and, the Evanston Arts Council's resistance to a new African American arts display in an unused school building (see Ruby Murray, above). Moreover, activists say, it often took threats of union action in the fire, police, and sanitation departments by local community organizers to pressure the

⁹⁰*Id.*

⁹¹City of Evanston Interdepartmental Memorandum, August 22, 1975.

⁹²*Evanston Review*, October 2, 1975.

⁹³*Id.*

⁹⁴Chicago News, March 10, 1977.

City into addressing complaints of discrimination.⁹⁵ When she was president of the Evanston-North Shore Chapter of the NAACP, Alderman Summers, said:

I don't think we have moved far enough. Evanston has an affirmative action program, but outside of the fire and police departments there's only a minimum amount of training for employees. It is one thing to say the City promotes from within but without adequate training there's little opportunity for advancement.⁹⁶

In 1976, Clifton Sayles and the Cook County Legal Assistance Foundation again charged the City with discriminatory employment services. Sayles was dismissed from his post with the Evanston Department of Parks, Recreation and Forestry. His suit alleged that the majority of temporary, part-time employees are African American, and that denying them civil service status violates their 14th Amendment civil rights.⁹⁷ The City attorney asserted that civil service status was reserved for full-time personnel.

Thomas Fuller, the commissioner of the Metropolitan Sanitary District (MSD) at that time, called the MSD's hiring practices discriminatory against Blacks, Hispanics, and women.⁹⁸ In 1980, only 5 of 166 workers were Black or Hispanic, and no women worked in the MSD. Fuller called for a resolution that 25 percent of the agency's work force be made up of minorities and women, and if the resolution did not pass, he would file an EEOC complaint. The written examination, according to Fuller, has more restrictive rules than the state has for itself.

We believe the restrictions are illegal in light of recent Supreme Court rulings governing the civil service system. We are forced to hire according to the exam, but not according to competence.

The affirmative action plan which the City of Evanston presented in 1975 did little to deter the charges of discrimination in the fire and police departments. Five African American firefighters (one of whom was one of the original six firefighters who filed suit in 1973) filed complaints with the U.S. EEOC in September 1979, charging that the City's written examination for promotion to captain discriminates against African Americans.⁹⁹ An EEOC commission concluded that "the subjectivity of promotional evaluations is questionable [and] it is likely that no African Americans will be promoted in the foreseeable future." Another letter from the commission found that "there is reasonable cause to believe that the [alleged discrimination]

⁹⁵John Harris, interview, August 1995.

⁹⁶*Evanston Review*, July 6, 1978.

⁹⁷*Evanston Review*, August 5 and 19, 1976.

⁹⁸*Evanston Review*, July 10, 1980. DJMA notes that the Metropolitan Sanitary District is a separate agency from the City of Evanston.

⁹⁹*Suburban Tribune*, April 16, 1980.

charges are true.”¹⁰⁰ A special city council committee called for a “Blacks-only” promotion exam, which the plaintiffs rejected and, in turn, filed suit against the City in July of 1980.¹⁰¹ Their request for an immediate freeze on the promotion of a White firefighter was denied within days of the filing.

Two firefighters, one White and one Japanese American, filed complaints with the EEOC months later, citing the City council’s proposed “Blacks-only” examination as discriminatory to non African American firefighters.¹⁰² The situation in the department deteriorated again when Fire Chief Glen Ayers refused to comply with the Blacks-only promotion exam and asked to be fired by City Manager Edward Martin.¹⁰³ Assistant Fire Chief Sander Hicks complied, and three African American firefighters (including two plaintiffs in the pending suit) were promoted. Local newspapers wrote of the “widening racial gap” and tensions on the fire force; one columnist in Evanston spoke highly of Ayers and stated that “[i]t’s not that Evanston is biased for or against African Americans, it’s just that the federal government [and the EEOC] are sticking [their noses] in the city’s business.”¹⁰⁴ In June 1982, a U.S. District Court judge dismissed the racial bias suit of July 1980.¹⁰⁵

The examination for hiring to the fire department again came under criticism when a female applicant filed a complaint with the EEOC on the grounds that the physical agility test was discriminatory against women.¹⁰⁶ A class action suit on behalf of 33 women emerged from this complaint, and the City was approached to settle out-of-court.¹⁰⁷ At the time (1987), there were no women working as firefighters in Evanston. The plaintiffs charged that the City has no “justifiable reasoning” in adopting a passing time score for the agility test, and that there was no “direct evidence” of a job analysis before drawing up the test itself.¹⁰⁸

Promotional examinations again became a topic of discussion in the early 1980s, as a federal judge barred the City from using an examination administered to African American and White sergeants seeking promotion to lieutenant.¹⁰⁹ The test had not been validated by the EEOC, violating a court approved agreement the City made in 1977; this agreement emerged from the 1974 lawsuit in which African American officers charged the City with system-wide discrimination against African Americans in promotions and job assignments. The City corporation counsel Jack Siegel responded to the EEOC challenge, calling it “full of prunes gobbledy-

¹⁰⁰Suburban Tribune, July 16, 1980.

¹⁰¹*Id.*

¹⁰²*Evanston Review*, October 30, 1980.

¹⁰³*Evanston Review*, December 4, 1980.

¹⁰⁴*Evanston Review*, December 31, 1980.

¹⁰⁵*Evanston Review*, June 3, 1982.

¹⁰⁶*Evanston Review*, May 5, 1984.

¹⁰⁷*Evanston Review*, June 18, 1987.

¹⁰⁸*Evanston Review*, April 14, 1988.

¹⁰⁹*Evanston Review*, December 9, 1982.

gook."¹¹⁰ Within a year, a federal judge had set quotas for the future promotion of African American police officers in Chicago, and Evanston responded by offering an out-of-court settlement of the racial discrimination suit that prevented the City from filling lieutenant vacancies since 1982.¹¹¹ The EEOC favored ranking groups of candidates, rather than individuals, which would favor African American candidates under the more "just" administration of William Logan, Evanston's first African American police chief.

Within a few months of the first challenge, the EEOC was investigating charges that the City excluded African American women from police jobs through discriminatory charges.¹¹² At the time, there were no African American female police officers on the Evanston force, and only four White female officers. The personnel director for the City acknowledged the trouble "we've been having recruiting women in general," and said that Evanston had made a strong attempt to recruit minority applicants, posting signs all over town, sending letters to community groups, and airing announcements on African American radio stations.¹¹³ Candice Howell, who filed the EEOC complaint, eventually initiated a class action suit to hire a set proportion of women as police officers, and Carol Linden, in the same week, filed suit against the City for sex discrimination.¹¹⁴ Linden, a White applicant, was told she could not serve as an officer because "she might become too emotionally involved in certain cases."

The Evanston chapter of the National Organization for Women (NOW) declared the number of female police officers appalling. Evanston is a city that prides itself on being progressive. It is clear to us, however, that affirmative action for women is a joke to this City administration. Although the City takes charges of racial discrimination seriously, women's rights continue to be put on the back burner. It is time for this city to take the concerns of women of all colors as seriously as those of African American men."¹¹⁵ Linden contended that the City retaliated in response to her 1979 complaint to the EEOC, in which she charged the police department with sexual discrimination in hiring.

The attention to hiring women for police department positions drew the attention of concerned Evanston aldermen, who requested meetings with the Civil Service Commission.¹¹⁶ In the midst of the lawsuit from women firefighters and two from women police officers, one alderman added that he didn't see "very many African American males, African American females, Hispanic males, Hispanic females (in managerial positions)." The City responded slowly, hiring its first African American

¹¹⁰*Evanston Review*, April 28, 1983.

¹¹¹*Evanston Review*, April 26, 1984.

¹¹²*Evanston Review*, June 23, 1983.

¹¹³*Id.*

¹¹⁴*Evanston Review*, November 24, 1983.

¹¹⁵*Id.*

¹¹⁶*Evanston Review*, May 10, 1984.

female police officer in May of 1984,¹¹⁷ and settling an out-of-court agreement with the women who sued the City over use of the physical agility test in 1980.¹¹⁸ Evanston agreed to call back 100 women and offer them another hiring exam. The City, however, balked at providing these women back pay.¹¹⁹ By spring of 1985, only 7 of 118 police officers were female.

Recently, the Evanston branch of the U.S. Postal Service was the target of charges of discrimination.¹²⁰ Sixteen complaints, ranging from unjustified suspensions and firings, to refusal to allow pregnant workers to go to the bathroom, were given at a public meeting held by the NAACP. Some workers had already filed grievances with the EEOC. The postmaster defended his record of hiring and promoting African Americans and women, offering that 11 of 15 supervisors were minorities, and over 50 percent of the employees hired during his term were African American.

In 1982, the president of the Evanston NAACP, Coleman Miller, filed a complaint with the Illinois Department of Human Rights, asserting that it was illegal for the City of Evanston to fund the Evanston Latin-American Association (ELA), which serves only Latin Americans.¹²¹ Miller doubted that the Evanston Human Relations Commission could undertake an impartial investigation. The Human Relations Commission, however, did investigate the case,¹²² and the director of health and human services called the charges "unfounded," stating that "we do not have in Evanston any agency which is totally open. The agency with a specific statement like that doesn't exist."¹²³ Miller insisted that the funding of ELA was "ineffective in terms of racial harmony and use of energy."

The pattern which emerges from discrimination cases in both the public and private sectors is that cases are settled out of court, or they dissolve because the suits carry on for long periods of time, overextending a plaintiffs' resources. Many African American Evanstonians feel that this fits a pattern of Evanston trying to keep complaints and problems in the minority community quiet to preserve a progressive image.¹²⁴

¹¹⁷*Evanston Review*, May 31, 1984.

¹¹⁸*Evanston Review*, August 23, 1984.

¹¹⁹*Evanston Review*, March 21, 1985.

¹²⁰*Evanston Review*, April 18, 1991.

¹²¹*Evanston Review*, February 4, 1982.

¹²²*Evanston Review*, January 28, 1982.

¹²³*Evanston Review*, March 4, 1982.

¹²⁴Pioneer Press, August 20, 1992.

Public Education

Prior to the 1960s, though never officially segregated,¹²⁵ the vast majority of Evanston's African American children and very few White children attended Foster Elementary School. According to a 1945 Urban League report:

Much controversy has arisen from conditions and problems at this school. Prior to the fall of 1942 only one colored teacher had been employed in the City of Evanston. He was in physical education at Foster and left to join the armed forces. In the fall of 1942 other colored teachers were added. These appointments came after a citizens' committee threatened to sue the Board of Education. Now, there are six colored teachers at Foster. The principal of this school states that conditions have been markedly improved as a result of the contribution made by these colored teachers. However, there are many minor matters which have continued to cause misunderstanding in the community as a result of activities at this school.¹²⁶

Moreover, Harris says the building itself was a nightmare of poor construction. He had made several detailed reports to the Evanston Board of Education of all of the safety improvements the building required to meet state fire and safety codes, however, the board was not responsive. A fire ultimately destroyed most of the building in the 1960s.¹²⁷

In 1967, Evanston became the first municipality in the United States to desegregate its schools without a court order. The plan received national acclaim and was used as a model in Pontiac, MI and Berkeley, CA. Foster School was shut down, and African American children were bused throughout the town with none of the highly publicized violence or mass protest that accompanied desegregation in Chicago and other cities. Yet, this policy emerged only after prolonged battles between city officials and dedicated activists. "People think it was easy, that they just integrated the schools out of their own kindness," says activist John Harris. "It took a lot of kicking butt and hard work to get even the smallest thing."¹²⁸

Desegregation certainly lacked widespread support among non minority residents in Evanston. District superintendent Gregory C. Coffin suggested that the plan would never have succeeded had the issue been put to a public vote, "I think that if there had been a referendum, we would have been clobbered...I'd estimate that 85 percent of the voters would have opposed the plan."¹²⁹ In fact, when the plan was

¹²⁵Leonard, 1982.

¹²⁶National Urban League, "Economic and Cultural problems in Evanston IL as they relate to the colored population: A study conducted for the Evanston Council of Social Agencies." Jan/Feb 1945.

¹²⁷Interview, August 1995.

¹²⁸John Harris, interview, August 1995.

¹²⁹*Evanston Review*, December 4, 1975 "It All Started Dec. 14, 1964."

formally announced in 1966, 450 Evanston residents packed the school board meeting room to protest the move.¹³⁰

White enrollment figures declined following the 1967 desegregation policy, and the 1973 U.S. Civil Rights Commission report suggested, "(S)everal school officials view the decline as White flight from newly desegregated schools."¹³¹ Moreover, with a voter turnout doubling that of past years, Evanston residents opposed to school desegregation voted Coffin and his supporters out of office in 1970. In response, African American parents and students staged a two-day boycott of District 65 schools and established a "freedom school" in a local church basement. One African American father, explaining why he pulled his daughter from school, said, "If they can get that many bigots and racists out to vote, God knows what they may do to my daughter."¹³²

White parents showed resistance to the possibility of busing their children into schools in predominantly African American areas. The original 1966 commission proposed the integration of Foster School's kindergarten on a voluntary basis—the suggestion was met with little enthusiasm. According to Foster principal Joseph Hill, "We sent out applications to all Evanston parents who would be sending their children to kindergarten that fall. There were only 24 families who said they would bus their children voluntarily. The commission said 'no way.'" Later, however, the kindergarten was made into a "progressive lab school" and "people were beating the doors down to get their children enrolled," Hill said.¹³³ The racially mixed program became somewhat of a precursor to the modern "magnet school" programs, where accelerated or specialized curriculums are used to attract White students to formerly segregated schools.

Still the vast majority of students bused in order to desegregate Evanston's schools were minorities. Eventually many African American residents began to question why nearly all of the students bused were African American.¹³⁴ In 1975, Superintendent Joseph Hill said:

Blacks today feel, yes, integration and desegregation are good, but it has to be a two-way street. The burden of making it work should be shouldered equally by Blacks and Whites. It was only Blacks that were bused (under the 1967 plan).¹³⁵

¹³⁰*Id.*

¹³¹U.S. Civil Rights Commission 1973 "The Diminishing Barrier."

¹³²*Id.*

¹³³*Evanston Review*, December 4, 1975.

¹³⁴*Evanston Review*, February 1, 1973 "Report Credits Coffin Efforts."

¹³⁵*Evanston Review*, December 4, 1975 "The Protagonists Look Back."

In the mid-1980s, the school board adopted a plan that would allow no more than 60 percent of any one minority group to make up the population of any school.¹³⁶ This goal has been difficult to enforce, however. In fact, for much of the 1990s, three schools were consistently in violation of this policy.¹³⁷ Several racial balancing proposals have been considered over the last two decades. In 1986, Superintendent Eugene Mulcahy attempted to address racial imbalance through magnet school program that would redesign three elementary schools in Evanston. Some board members expected the magnet schools, located in central and north Evanston, would stem the growth of minority student populations in west Evanston.¹³⁸ Yet, relatively little direct action was taken to address the growing racial segregation in the 1980s and early 1990s.

Furthermore, many critics argued that despite "body mixing" in the schools, minority student education continued to be inferior to that of non minority students.¹³⁹ According to a U.S. Civil Rights Commission report following Evanston's desegregation efforts, "Black children increased their level of achievement, but did not reach national norms. There was also a decline in 'positive self-concept.'"¹⁴⁰

Tensions over desegregation efforts even led to charges of institutional discrimination in employment at Evanston Township High School (ETHS). One of the first visible African American school administrators, Jean Emmons, left his job of eight years as assistant superintendent of ETHS in 1979, due to what he perceived as a lack of authority under his White supervisors.¹⁴¹ In 1982, an organization known as Concerned African Americans for School and Community Improvement met with superintendent Nathaniel Ober to express concern over the lack of decision-making authority among African American school employees.¹⁴² One administrator called the practice "institutional racism." A year later, the organization recommended the hiring of a African American principal for ETHS.¹⁴³

Evanston schools have frequently made the news for race-related disagreements. Two veteran ETHS teachers were disciplined by the school board after making racist remarks about African American students in 1992.¹⁴⁴ A group of White parents have also called for the removal of middle school principal Brenda Heffner, an African American, on the grounds that her management style is too divisive. There

¹³⁶District 65 Long Range Plan

¹³⁷*Chicago Tribune*, January 13, 1995 "Racial-Balancing Policy Brings Busing—and Protest from All Sides."

¹³⁸*Evanston Review*, December 18, 1986.

¹³⁹*Chicago Tribune*, February 15, 1991 "Evanston Schools Failing Us, Blacks Say"

¹⁴⁰U.S. Civil Rights Commission, 1973 "The Diminishing Barrier: A Report on School Desegregation in Nine Communities."

¹⁴¹*Evanston Review*, January 8, 1976. Veritas Negri opinion column.

¹⁴²*Evanston Review*, January 2, 1982.

¹⁴³*Evanston Review*, February 13, 1983.

¹⁴⁴*Chicago Tribune*, March 16, 1992, "Melting Pot in Evanston Boils, Cools."

is even one case of reaction against movement towards affirmative action in the Evanston schools. In 1989, a White school psychologist settled her suit against the school board in which she claimed reverse discrimination after being denied tenure¹⁴⁵. The staff member contends that ETHS was experiencing a "period of great racial unrest" amid charges of racism by a African American assistant principal. School officials promised to "step up efforts to increase the ratio of African Americans during decisions on retention and hiring..." Subsequently, the psychologist charged, she was denied tenure in this climate of threatened boycotts and demonstrations.

Nonetheless, the most prolonged and divisive issue concerning race and Evanston's schools has been how to correct the growing de facto racial segregation. According to a *Chicago Tribune* columnist, "Watching this effort over the years has been like reading Charles Dickens' "Bleak House," the story of the probate dispute that never seems to end.¹⁴⁶ After four years of deliberation, the 1995 Evanston-Skokie District 65 school board seemed to reach back thirty years to find an agreeable plan for achieving an elusive racial balance in the City's schools. Like the 1967 plan, the new policy involves the busing of primarily minority students to predominantly White high schools in the north side of Evanston. Of the 6,700 students in District 65 in 1995, 42 percent are African American, 47 percent are White, and 11 percent are Hispanic. Yet, nearly three times as many minority students will be bused under the new desegregation plan. The policy calls for the busing of 648 minority students and 234 non minority students to different schools beginning in 1996.

The board's three African American members opposed the plan, but were out-voted by four White board members.¹⁴⁷ After the vote, board member Kenneth Whitney called the decision "reminiscent of the 1967 plan" and said it "didn't give me any comfort."¹⁴⁸ Minority parents have discussed filing a lawsuit to stop the busing policy and rumors persist of a student boycott to oppose the busing of primarily minority students. "We will boycott until we get what we want, which is fairness," Evanston resident Bennett Johnson said. "The African American members of this community have borne the burden long enough."¹⁴⁹ According to the *Chicago Tribune*, "The intensity of the negative response in the African American community caught some Whites by surprise."¹⁵⁰

Recent reports reveal more disturbing findings regarding academic performance of African American students. A 1991 study found that whereas White eighth graders in Evanston score in the 88th percentile on standardized math tests, African American students score in the 39th percentile. The 1995 "ETHS Report on Minority

¹⁴⁵*Evanston Review*, September 21, 1989.

¹⁴⁶*Chicago Tribune*, August 20, 1994. "Attitude Along the Lake; Evanston Not Just Another Suburb."

¹⁴⁷*Chicago Tribune*, January 11, 1995 "Evanston-Skokie Schools Approve Busing."

¹⁴⁸*Chicago Tribune* January 11, 1995.

¹⁴⁹*Id.*

¹⁵⁰*Chicago Tribune*, January 13, 1995 "Racial-Balancing Policy Brings Busing—and Protest from All Side."

Student Achievement" similarly showed that minority high school students' scores on standardized tests trailed those of White students by wide margins. In reaction to the report, School District Superintendent Allan Alson used words like 'slow,' 'unsatisfactory' and 'dismal' to describe gains he said have amounted to only about 10 percent in the past decade, the *Chicago Tribune* reported.¹⁵¹

According to Eddie Stevens, District 202's dean of students, "The problem is that Evanston has the same problem that others have. We track students. In that type of system, the rich get richer."¹⁵² The 1995 ETHS report similarly concludes that "the students most in need of improvement at ETHS are held to the lowest expectations by teachers and required to complete the least amount of work."¹⁵³ African American students are disproportionately excluded from honors courses and tracked into remedial reading and math programs, and segregation still occurs within many Evanston school buildings. Chicago State University professor James Nichols says Evanston integration plans have been more about appearance than substance—White school reformers "always have to have a hidden trump card that gives them an advantage, and they don't want to have that upset. Once they find out (a desegregation plan) is not going to be detrimental to the education of their children, only then are they receptive to it."¹⁵⁴

Residential Housing Patterns

In the 1990s Evanston remains a relatively segregated community. According to Alderman Ann Rainey, "The central city to the south end of town is pretty mixed, the west side is pretty African American, (and) the north end and the northeast side of town are virtually all-White."¹⁵⁵ Though "self-steering" certainly accounts for some of this pattern, several community activists point to housing discrimination and redlining.¹⁵⁶ A group of Evanston aldermen organized to protest various financial institutions they said refused to service the needs of the City's African American community.¹⁵⁷

In the early 1970s, Evanston began enforcing a fair housing ordinance, which was strengthened in 1972 after a human relations commission study revealed that White families were discouraged from buying homes in certain areas and that African American families were steered away from northwest Evanston.¹⁵⁸ Yet, after several discrimination cases were resolved by the fair housing review board, Evanston area

¹⁵¹*Chicago Tribune*, June 6, 1995. "Evanston High Admits Minority Gap."

¹⁵²*Id.*

¹⁵³*Chicago Tribune*, June 6, 1995. "Evanston High Admits Minority Gap."

¹⁵⁴*Id.*

¹⁵⁵*Chicago Sun-Times*, February 23, 1992, "Evanston: Racially Mixed—and Divided."

¹⁵⁶*Chicago Tribune*, February 27, 1991, "City Segregation Moves to Suburbs; Blacks Frozen Out of Some Areas."

¹⁵⁷Interview with community activist, June 1995.

¹⁵⁸*Evanston Review*, August 16, 1979.

real estate firms filed suit against the City in 1975. The suit questioned the City's right to license real estate firms—the City's most effective weapon in enforcing the fair housing ordinance. In 1977, the Illinois Supreme Court ruled in favor of the real estate firms. Only the state can issue real estate licenses, according to the State Court, and an appeal by Evanston's corporation counsel failed in the U.S. Supreme Court. The ruling greatly weakened the enforcement powers of the review board. Complaints of discrimination now take considerable "time and money, two things poor people do not have."¹⁵⁹

By using "more sophisticated means," realtors continue to engage in racial steering throughout Evanston, according to Owen Thomas, the executive director of Evanston's Human Relations Commission since 1978.¹⁶⁰ In a study conducted by the Interfaith Housing Center of the Northern Suburbs, African American and White volunteers visited real estate offices three times or more giving almost identical personal information, but received completely different treatment. Frequently, minority renters and home buyers will be told that a property has been taken off the market, or will be asked to put their names on a waiting list and will never hear from the realtor again. While looking at one house, three African American volunteers were even stopped by a police officer responding to a call of "three African American prowlers in the area."¹⁶¹ Whites, on the other hand, were discouraged to buy property in predominantly minority areas. Realtors refer to the homes as "tacky" or "run-down" when White home buyers ask about them, but do not give the same advice to African Americans with the same income levels. Whites and African Americans were only shown the same properties 12 percent of the time during the study.¹⁶²

Several real estate firms in Evanston have been charged with discriminatory housing practices as a result of the investigation. The biggest case has been against Baird and Warner, who settled out of court for \$450,000. According to John Lukeheart, assistant director of the Leadership Council of Metropolitan Open Communities, this represents "the largest such settlement in a steering case."¹⁶³ Century 21 Shoreline, also charged with many serious violations in the sting, similarly settled their suit out of court for \$200,000 in 1990.¹⁶⁴

Utilizing data collected by the Woodstock Institute, a group that monitors neighborhood lending issues, *Crain's Chicago Business* concluded that "[T]he picture of home mortgage lending in the suburbs is as plain as Black and White."

¹⁵⁹*Id.*

¹⁶⁰*Chicago Tribune*, March 27, 1985, "Evanston Cites Realty Steering."

¹⁶¹*Id.*

¹⁶²*Chicago Tribune*, February 10, 1992, "\$450,000 Settlement Expected in Evanston House Bias Suit."

¹⁶³*Chicago Tribune*, September 22, 1992, "Realty Firm Due to Pay Record Settlement in Housing Bias Case."

¹⁶⁴*Chicago Tribune*, September 22, 1992, "Realty Firm Due to Pay Record Settlement in Housing Bias Case."

According to the data, African Americans and Hispanics in Chicago's suburbs are denied home mortgage loans at two to three times the rate of Whites, regardless of household income levels. The study found that Evanston ranked 183rd out of 261 Chicago suburbs in the number of loans received by residents annually, while much smaller—but predominantly White—suburbs received far higher numbers of loans.¹⁶⁵

Minorities face other obstacles in home buying that also discourage integration of Evanston's all-White neighborhoods. Edna Summers, an alderman and then-president of the Evanston-North Shore Chapter of the NAACP, rallied for African American representation on the zoning and planning boards "because they control the life and destiny of African American people here." She also headed an effort to alert the Illinois state legislature of a 'color tax.' A study conducted by University of Illinois at Chicago graduate students revealed that homes in Evanston's African American neighborhoods were taxed at a higher rate than those in White communities.¹⁶⁶

Moreover, "self-steering" to already majority-African American communities is also frequently a decision aided by fear and intimidation, according to some sources. James Shannon, the director of the Leadership Council's Housing Center says, "There's a perception (of anger) by African American families (in Chicago suburbs) because of the violence of the past. It's a mind-set as to 'where I can live.'"¹⁶⁷

Finally, there have been charges that city construction projects have been used to push African American residents from their homes. Several residents interviewed mentioned that the Northwestern University/Evanston Research Park project has been insensitive to Evanston's minority community. The home and business location of Henry Butler, one of the leading African American entrepreneurs in Evanston's history, was demolished to make room for the park. Possibly built by the Tuskegee Artisans, many considered the home to be of historical importance, yet community activists joined the battle too late to prevent the destruction of the building. The Research Park has yet to be constructed, and plans for completion are undefined.

CONCLUSION

The image of a racially progressive town continues into the 1990s, despite a pattern of recognized tension and out-of-court settlements to deal with cases of discrimination. Evanstonians paint a sometimes contradictory picture of race relations, as evidenced in a recent survey conducted by Northwestern University

¹⁶⁵Crain's Chicago Business, December 16, 1991, "Suburban Lending Gulch; Minorities Miss Share of Home Loans."

¹⁶⁶North Shore Examiner, Aug. 10, 1979; *Evanston Review*, April 26, 1979

¹⁶⁷*Chicago Tribune*, November 21, 1993, "Houses Divided."

and the Pioneer Press.¹⁶⁸ The survey report emphasized that Whites were considerably more pessimistic about race relations than African Americans, although more than 65 percent said that government officials are less likely to respond to African Americans than Whites, and one-third said they had witnessed or been involved in an incident of racial discrimination. Reverend Michael James, founder of HOPE (Helping Oppressed People Emerge) and FOCUS (Fathers Opposed to Cities' Unwanted Streetgangs) found that the community ignored issues of race: "Shhh. We're doing fine out here. We and the African Americans get along fine. There's no problem out here. What they're really saying is this: They don't bother us, so we don't bother them. This town is quiet because people stay to themselves. It's not an image of tranquillity we're just avoiding each other." While acknowledging that the City has a history of being a "community divided by racial boundaries" and that "concerns are evident," the report asserts:

Most of those surveyed paint Evanston as a progressive bastion of multiculturalism, with an open-door policy that promotes racial harmony. African American residents express an optimism about future race relations here that even exceeds those surveyed among White residents.¹⁶⁹

Most recently, the Evanston Human Relations Commission worked on a thirty-year update of its 1964 report on race relations, "Inventory '94."¹⁷⁰ The report addresses race relations in education, housing, and socialization. Although the report will take more than a year to complete, the chairman of the Human Relations Commission felt that the City was learning that there has "been a big improvement on [racial equality] here in Evanston."

Theoretically, "the blend of people from different ethnic backgrounds and socioeconomic status has long been one of Evanston's chief drawing cards."¹⁷¹ Yet, as the *Chicago Sun-Times* suggests in the article "Evanston: Racially Mixed—and Divided," Evanston's "reality often has failed to live up to the image." Patterns of paternalism and segregation can clearly be found in the history of Evanston's education system, private and public sectors, and housing patterns, despite the City's history of keeping a lid on racial antagonism and settling major discrimination cases outside of court as quietly as possible. Though the City has made significant legislative strides to correct racial injustices, many of these laws are only "in the books" and are difficult to enforce.

The perception of many Evanston and non Evanston residents is that Evanston is a racially progressive town. However, historically there exists a pattern of recognized

¹⁶⁸Pioneer Press, August 20, 1992.

¹⁶⁹*Id.*

¹⁷⁰Pioneer Press, August 25, 1994.

¹⁷¹*Chicago Tribune*, August 4, 1993, "Culture, Business, Diversity Give City its Flavor; Evanston Home to NU, Much More."

tension and out-of-court settlements to deal with actual cases of discrimination. Even though many African American's report incidences of discrimination, Evanstonian White residence tend to paint a more pessimistic picture of race relations than African Americans. Although, this may be due in large part to the failure of minorities to consistently voice their concerns. Segregated housing patterns and schools suggest that Evanston has not yet achieved status of a multicultural utopia. There are still other subtle barriers of discrimination to which many minorities are subjected. Nevertheless, based on the interviews and research DJMA conducted for this study, it is undeniable that both minorities and nonminorities espouse the view that Evanston is a more progressively diverse community than most other cities. Yet, as the *Chicago Sun-Times* suggests in the article "Evanston: Racially Mixed—and Divided," the reality of Evanston's racial diversity and progressive reputation often fails to live up to its image.

INTRODUCTION

Socioeconomic factors affect the growth and development of businesses in important ways, particularly those owned by minorities and women. For this study, DJMA utilized data from the U.S. Census and other sources to examine and analyze the factors that affect the rate of business formation, stability, sizes, and, ultimately, the diversity of businesses within the Evanston community. Our analysis focuses on factors that contribute to differences in self-employment levels and business formation rates across racial, ethnic, and gender lines.

This chapter has two key objectives: first, to identify the relative impact of factors that affect business formation and growth, as previously mentioned; secondly, and more importantly, identify the current consequences of past discrimination against minorities and women in areas that can reasonably be expected to impinge on the decision to start a business and that would affect the survival of new businesses.

Meeting the standards of evidence required by the Supreme Court in the *Croson* decision implies an investigative burden on the current analysis. The Supreme Court established two criteria to test the appropriateness of race conscious initiatives to redress continuing economic disparities. First, discriminatory injuries must be specifically identified in local industries. Second, the local government must have been an active or passive participant in the discrimination. Local governments influence general economic conditions in private markets and passively discriminate by:

- Awarding contracts to prime contractors that have actively discriminated against minority and women owned business enterprises;
- Conducting business with organizations and institutions that are known to have discriminated against minorities and women; and,
- Conducting business in a manner that indirectly facilitates or continues a practice that effectively excludes minority and women owned business enterprises (MWBES) from the marketplace.

In marshaling arguments in this study that address both requirements under *Croson*, most of this chapter is devoted to identifying factors that differentially affect business formation rates by race, ethnicity, and gender in the Evanston

area.¹ Thus, much of the discussion is tied to meeting the first requirement under *Croson* (discriminatory injuries identified in local industries). The sections of this chapter are organized as follows: a summary of background information on the demographic and economic profile of the Evanston area (including the metropolitan statistical area in which it is located); the racial and ethnic distribution of the City of Evanston and surrounding metropolitan area, utilizing U.S. Census data; and, a brief description of the industrial and occupational composition of the local economy.

The next section provides a review of available research that addresses how business formation rates differ by race/ethnicity. A fundamental constraint, however, is the scarcity of economic and historical research that is sufficiently localized to allow meeting the first *Croson* standard.

The general assessment of economic and historical factors is followed by a comparison of market availability and utilization of MWBEs in three industry divisions in the Evanston area that, in DJMA's opinion, are most parallel to government contracting activities: construction, wholesale trade (procurement), and professional and related services. To formalize this comparison, we calculate a ratio of availability (A), relative firm numbers, and utilization (U), relative magnitude of sales/receipts. The resulting market disparity ratios indicate whether minority and women owned businesses are being fully utilized relative to nonminority firms in the local area. The last section of this chapter is devoted to a discussion of the chapter's findings and conclusions.

The measures of market disparity also provide data to be compared with disparity ratios that are calculated in Chapter VII, *Statistical Analysis*. Findings from this latter comparison are relevant to the second part of the Supreme Court test (active or passive government participation in discrimination). This comparison provides evidence that reflects the extent to which local government has over- or underutilized minority and women owned businesses, and how government practices contribute to disparity and possible discrimination in the local business community.

ECONOMIC AND DEMOGRAPHIC PROFILE OF THE EVANSTON AREA

The demographic structure of the local area may explain some differences in the market availability and utilization of MWBEs since business owners are a subset of the general population. Understanding the broad contours of Evanston's population is necessary to identify instances in which discrimination may have inhibited MWBE development.

¹This includes but, according to *Croson*, must not be limited to factors that can be included under the rubric of "societal discrimination."

In 1990, there were 6,069,974 people in the Chicago Primary Metropolitan Statistical Area (PMSA). The PMSA covers a three-county area including Cook (the most populous), DuPage, and McHenry counties. The population was 67.5 percent White in 1990, 22.0 percent African American, and 12.1 percent Hispanic at (Table 3.1).² Asian/Pacific Islanders accounted for 3.8 percent, while Native Americans represented approximately 0.2 percent of the metropolitan population.³ "Other" races comprised 6.5 percent of the metropolitan population.

Table 3.1
Population by Race and Ethnicity
1980 and 1990
Chicago, IL PMSA

Race/Ethnicity	1980		1990	
	Population	Percent of Population	Population	Percent Of Population
White	4,282,300	70.7%	4,098,747	67.5%
African American	1,354,381	22.4%	1,332,919	22.0%
Hispanic*	519,649	8.6%	734,827	12.1%
Asian/Pacific Islander	130,819	2.2%	229,492	3.8%
Native American	8,904	0.2%	11,550	0.2%
Other Races	283,983	4.7%	397,266	6.5%
Total	6,060,387	100.0%	6,069,974	100.0%

Source: 1980 and 1990 Census of Population, Detailed Population Characteristics, Texas; and D.J. Miller & Associates, Inc.
*Hispanic origin may be of any race.

In 1990, the City of Evanston had a population of 73,233. Whites accounted for 70.6 percent of the City's population, while African Americans comprised 22.9 percent. Persons of Hispanic origin were 3.7 percent of Evanston's population. Asian/Pacific Islanders were 1.8 percent of the total. Native Americans comprised the same percentage of Evanston's population as they did of the metropolitan count—0.2 percent, while "other" races represented 1.6 percent of the total (Table 3.2).

²Total population is the sum of all racial groups, however, persons of Hispanic origin may be of any race.

³Population census data for 1980 was reported for the Chicago Standard Metropolitan Statistical Area (SMSA), a six-county region that also included Kane, Lake and Will counties. To make the 1980 population figures for the Chicago PMSA comparable with 1990 figures, 1980 totals for the three PMSA Chicago counties were added together to provide counts of total population by race and Hispanic origin. The Chicago metropolitan area is now defined as a Consolidated Metropolitan Statistical Area (CMSA), composed of the Chicago; Aurora-Elgin, IL; Joliet, IL; Lake County, IL; Gary-Hammond, IN; and Kenosha, WI PMSAs.

Table 3.2
Population by Race and Ethnicity
1980 and 1990
City of Evanston

Race/Ethnicity	1980		1990	
	Population	Percent of Population	Population	Percent Of Population
White	54,926	74.5%	51,684	70.6%
African American	15,801	21.4%	16,749	22.9%
Hispanic*	1,715	2.3%	2,689	3.7%
Asian/Pacific Islander	2,004	2.7%	3,535	4.8%
Native American	105	0.1%	131	0.2%
Other Races	870	1.2%	1,134	1.6%
Total	73,706	100.0%	73,233	100.0%

Source: 1980 and 1990 Census of Population, Detailed Population Characteristics, Texas; and D.J. Miller & Associates, Inc.
 *Hispanic origin may be of any race.

Between 1980 and 1990, the population in the PMSA experienced virtually no change (Table 3.3). During this period, there was, however, a significant change in the racial/ethnic composition of the PMSA and the City of Evanston—the White population was the most rapidly declining group in the overall metropolitan population, followed by African Americans. The absolute declines in the White and African American population counts were offset by significant population growth in the other racial categories—especially Asian/Pacific Islanders and Hispanics.

Table 3.3
Growth Rates Of The Population by Race and Ethnicity
1980-1990
Chicago, IL PMSA and City Of Evanston

	Total	White	African American	Hispanic	Asian/ Pacific Islander	Native American	Other
PMSA	0.2%	-4.3%	-1.6%	41.4%	75.4%	29.7%	39.9%
City of Evanston	-0.6%	-5.9%	6.0%	56.8%	76.4%	24.8%	30.3%

Source: 1980 and 1990 Census of Population, Detailed Population Characteristics, Texas; and D.J. Miller & Associates, Inc.

Similarly, there was a substantial increase in the minority share of the total population for the City of Evanston. Population growth was especially strong among Asian/Pacific Islanders and Hispanics. Despite relatively high rates of growth, Native Americans and Other races remained very small proportions of the City's total population. African Americans, Hispanics and Asian/Pacific Islanders represented the most significant growth of the minority groups in Evanston.

Three industry groups accounted for two of every three jobs in the City of Evanston in 1990. Employment distribution of the Evanston economy, by industry, is dominated by professional services; finance, insurance and real estate; and, retail trade. Table 3.4 shows the number of employees and percentage of the workforce for all industry groups in the City of Evanston.

Table 3.4
Employment by Major Industry Division, 1990
City of Evanston

Industry	Number of Employees	Percent of Total Workforce
Construction	830	2.1%
Durable Manufacturing	1,843	4.6%
Non durable Manufacturing	2,548	6.3%
Transportation, Communications, and Public Utilities	1,678	4.2%
Wholesale Trade	1,161	2.9%
Retail Trade	4,289	10.7%
Fire, Insurance, and Real Estate (F.I.R.E.)	4,555	11.3%
Business Services	2,202	5.5%
Personal Services	1,205	3.0%
Entertainment	885	2.2%
Professional Services*	18,003	44.8%
Public Administration	969	2.4%
Total	40,189	100.0%

*Source: 1990 Census of Population and Housing Summary Tape File 3C, and D.J. Miller & Associates, Inc.
Includes Health and Educational Services.

The pattern of employment by major occupational group indicates a local economy that is service-oriented. Table 3.5 presents the absolute and percentage employment levels in the City of Evanston, for each occupation group. Professionals make up over 30 percent of total employment. Executives and administrators comprise another 17.9 percent. The existence of Northwestern University explains much of the relatively large percentage of white collar employment. Northwestern University is the single largest employer in the City of Evanston. Other large local employees are Evanston Hospital, St. Francis Hospital, and Washington National Insurance.

Table 3.5
Employment by Major Occupation Group, 1990
City of Evanston

Occupation Group	Number of Employees	Percent of Total
Executive/Administrative/Manager	7,221	17.9%
Professional	12,257	30.5%
Technical	1,627	4.0%
Sales	4,439	11.0%
Administrative Clerical	7,108	17.7%
Private Household Services	372	0.9%
Protective Services	448	1.1%
Other Services	3,220	8.0%
Precision Crafts	1,501	3.7%
Machine, Assembly	912	2.3%
Transport	561	1.4%
Laborers	576	1.4%
Total	40,242	100.0%

Source: 1990 Census of Population and Housing Summary Tape File 3C, and D.J. Miller & Associates, Inc.

Aspects of Private Sector Discrimination in Evanston's Commercial Area

This section discusses the market barriers that affect the self-employment decision and development of MWBEs, in particular, and the flow of income and changes in the stocks of wealth for minorities and women, in general. The role of race, ethnicity, and gender bias in education, employment, and access to financing will also be discussed. The impact on business in these specific areas will be summarized, and their correlation to the growth and development of MWBEs in construction, professional services, and general procurement (goods and nonprofessional services) will be examined.

The individual effects of education, employment, and financing on business ownership and development patterns is as complex as the interrelationship of each of these factors. For example, access to training affects employment opportunities and earning potential. Income and employment affect business formation, access to financing, and current and future wealth holdings. This, in turn, impacts business expansion and employment opportunities.

An additional complication flows from the *Crosby* criterion for determining the appropriateness of race conscious initiatives to redress continuing economic disparities between majority owned firms and MWBEs: discriminatory injuries must be specifically identified in local industries (i.e., in the relevant market). Available evidence must hurdle the threshold of "societal discrimination." Injuries, if identified, must be spatially and temporally specific for a given

population of MWBEs. At the same time, however, one must start with the clear recognition that societal discrimination is a starting point for establishing the case of local injury to MWBEs.

As a general proposition, *de jure* segregation in the South provided, ironically, an umbrella under which minority businesses could function. In contrast, outside of the South minority businesses were faced with competition from majority-owned businesses for space and other requisites of business success.⁴ Before the mass migration of African Americans which began during World War I, Chicago's African American business community served an interracial clientele, offering primarily personal services. However, the influx of rural African Americans after the War, along with the immigration of European ethnic groups, increased the competition between African American and White communities. In Chicago "... for black businesspersons, competition from white counterparts on home turf was very real. Unlike Durham and Tulsa [with long-standing enclave economies], white and African American business enterprises in Chicago were located in the same general area, with the former having better locations."⁵

The Chicago metropolitan economy exhibits substantial economic racial disparity. The region as a whole contains the most segregated housing market in the country as well as an equally segregated system of public education (including vocational training). In general, this system of *de facto* segregation is a key correlate in the "extraordinary racial disparities in economic well-being in the Chicago area economy."⁶ For this reason, there is an important spatial dimension to racial disparity in the Chicago metropolitan area.

Much of the literature on private sector bias against MWBEs in the Chicago metropolitan area documents discrimination in the construction industry.⁷

⁴Some recent attempts to place minority business development in historical context draw on an "enclave" theory. The key feature of minority enclaves is the interdependency that exists among MBEs. The greater the interdependency among a minority community's industries, the greater the impact of buying from any single industry, through multiplier effects. One application of enclave theory is John Sibley Butler and Kenneth L. Wilson, "Entrepreneurial Enclaves in the African American Experience," (Washington, DC: Neighborhood Policy Institute, 1990). See also John Sibley Butler, Entrepreneurship and Self Help Among Black Americans: A Reconstruction of Race and Economics, (Albany, NY: State University of New York Press, 1991), and, by the same author, The Sociology of Entrepreneurship: The Reconstruction of Race, Ethnicity and Economics, forthcoming.

⁵John Sibley Butler and Kenneth L. Wilson, "Entrepreneurial Enclaves in the African American Experience," (Washington, DC: Neighborhood Policy Institute, 1990), p. 33.

⁶Nikolas C. Theodore and D. Garth Taylor, The Geography of Opportunity: The Status of African Americans in the Chicago Area Economy," Chicago Urban League, March, 1991, p. 2.

⁷See, for example, Sanford Kanter, "Blacks and the Chicago Construction Industry: Which Way Now?," Chicago: Chicago Urban League, Spring, 1985; Nikolas C. Theodore, "Discriminatory Barriers to the Development of Minority and Women Prime Contractors in Cook County," Chicago: Chicago Urban League, January, 1993; Joseph S. Moag, Susan E. Nicol, and Nikolas C. Theodore,

There is little research available that specifically examines the experiences of professional services or general procurement enterprises run by minorities or women. Nevertheless, much of the discussion of bias in the construction industry does apply to MWBEs in professional and general procurement areas.⁸

OVERVIEW OF DISCRIMINATORY EFFECTS

Financial institutions restrict the amount of debt capital available to MWBEs; engage in redlining of minority areas; and, discriminate in mortgage application approvals. Majority-owned contractors restrict the number of subcontracting opportunities available to MWBEs. Suppliers offer difficult credit terms and higher prices to MWBEs. Unions restrict the number of training and job slots available to minority and women workers. In general, the affects of these discriminatory acts is to depress the rate of formation, the rate of growth, and the rate of survival of MWBEs in the marketplace. Discriminatory acts of omission or commission by public jurisdictions compound the injury to MWBEs.

Education and Training

As with the provision of public schooling, access to job training by minorities and women is hampered by race and gender bias. Racial disparities in public education in the Chicago metropolitan area have already been extensively documented and will not be reexamined in this report.⁹ Of more direct relevance to business start-up and survival is the link between employment and occupational training. This link is particularly important in the construction industry, especially in Chicago, with its highly unionized environment.

From a recent survey of small Chicago construction contractors, the Chicago Urban League concluded that, "[f]or minority workers interested in advancing in

"Illinois Minority and Women Business Enterprises: Struggling to Succeed in a Discriminatory Environment," Chicago: Chicago Urban League, February, 1994; and Earl L. Neal & Associates, and Vedder, Price, Kaufman & Kammholz, "Report on Recommendations for New Chicago Park District Minority and Women Owned Business Enterprise Program," February 28, 1991.

⁸Surveys of M/WBEs by the Chicago Urban League document similar barriers facing businesses providing professional services, and general procurement. See, for example, Moag et. al, "Illinois Minority and Women Business Enterprises," and Nikolas C. Theodore, "Discriminatory Barriers to the Development of Minority and Women Prime Contractors in Cook County."

⁹See for example, James H. Lewis, "Chicago's Two Public School Systems: Standardized Test Results Compared by Racial/Ethnic Group," Chicago: Chicago Urban League, 1990; Rafael Heller, "What Affirmative Action? Where are the Minority Educators in the Metropolitan Chicago Schools?," Chicago: Chicago Urban League, 1992; and Jessica Clarke, "Dispelling Myths: A Comparison of Spending for Public Education in Chicago and its Suburbs," Chicago Urban League, 1993.

Also, see *Chicago Tribune*, February 15, 1991, "Evanston Schools Failing Us, Blacks Say," and *Chicago Tribune*, June 6, 1995, "Evanston High Admits Minority Gap."

the construction industry from an unskilled or semi-skilled laborer to skilled tradesperson and possibly on to being a business owner, there is no substitute for union membership."¹⁰ The Urban League concluded that discrimination in union membership against minority workers has created "exceedingly difficult" barriers to workers' advancement, with the most obvious barriers in apprenticeship training.

As recently as the 1980s, new enrollments of African Americans in apprenticeship programs were significantly below the percentage of African Americans in the apprenticeship age pool (typically ages 17 through 23). Moreover, graduation rates for the years 1980 through 1987 showed that the rate of graduation for African Americans was lower and the rate of termination was higher than for Whites.¹¹ There remain serious racial disparities in access to apprenticeship training. Ongoing underrepresentation of minorities is viewed as a limitation to future job opportunities in construction (as well as the development of future minority owned construction companies) because "job seekers will be blocked from gaining the necessary training, experience, and contacts that typically are required for employment in the industry."¹²

Racial disparity in federally supported job training has also been documented in the Chicago area. A 1988 study by the Urban League showed that, under the Job Training Partnership Act (JTPA), which provides the only major source of free employment training for jobless and poor Illinois residents, there were "important racial differences in access to types of training, entry level employment, entry wages, and occupational placement...While blacks make up the majority of training participants in the metropolitan region, it is unclear to what degree their employment prospects have been improved as result of JTPA training."¹³

For the metropolitan region as a whole, disproportionate numbers of African American JTPA participants were placed in youth competency programs (with little vocational or basic skills training), and underrepresented in on-the-job training (OJT) programs. Even controlling for training type, African Americans typically had the lowest job placement rates. African Americans, apparently, were victims of discrimination as employers consistently elected to hire Whites and Hispanics who were no better trained nor more qualified.¹⁴

¹⁰Joseph S. Moag and Nikolas C. Theodore, "The Employment Capacity of Small Construction Contractors," Chicago: Chicago Urban League, June, 1994, p. 10.

¹¹Ibid., p. 12.

¹²Ibid.

¹³Helene Slessarev, "Racial Inequalities in Metropolitan Chicago Job Programs," Chicago: Chicago Urban League, October, 1988, p. 31.

¹⁴Ibid., p. 24. Because program data was not routinely provided with sufficiently defined race and ethnic detail, ". . . administrators had mainly anecdotal knowledge of cases of employment discrimination. One [northern Cook County] administrator . . . said that the [service delivery area]

Relevant Prior Employment

Occupational experience is a clear correlate to subsequent business development and expansion. Numerous surveys have shown that a majority of business owners have had extensive prior experience in the field before establishing or taking over a business enterprise. The importance of prior occupational experience also is emphasized by national data which shows that minority owned construction companies, for instance, are more likely than nonminority-owned companies to employ workers that are primarily minority. The Urban League survey of small construction contractors in the Chicago area has confirmed that notion.¹⁵

Increasing the supply of qualified minority workers has long-term effects on the rate of business formation. The experience of Roddy Drywall, an African American owned construction company involved in the construction of Chicago's 911 Communications Center is instructive. A Chicago Tribune series of newspaper articles analyzing African American employment in the local construction industry noted that Roddy, working on a million dollar contract at the 911 Center, had a work crew that was only 25 percent African American. The owner of the company blamed poor education and the lack of carpentry contractors in the community who might sponsor young African Americans for jobs and apprenticeships.¹⁶

Access to Financing

Existing and aspiring minority entrepreneurs find that access to financing for business start-up and expansion is restricted. The restrictions, while common to virtually all small business owners, are particularly onerous for MWBEs. Discrimination in commercial lending, mortgage lending, and access to surety bonding, are the three basic obstacles disproportionately affecting MWBEs.

Commercial Lending

A 1994 telephone survey of Illinois MWBEs conducted by the Chicago Urban League documented discrimination in lending. Among other problems noted, 34 percent of the firms responding indicated that they had experienced discrimination from a lending institution. Another 12 percent indicated that discrimination was a barrier to their increasing their bonding and insurance

has had cases of employers calling them and specifically requesting only whites. . . . In Lake County, an employer requested non-English speaking Hispanics. In DuPage, an employer had requested only Cambodians." See p. 26.

¹⁵Moag and Theodore, "The Employment Capacity of Small Construction Contractors," pp. 6-8.

¹⁶Chicago Tribune, September 6, 1994, "Detouring Away From Discrimination: Public Projects, Some Unions and Firms Lead Way."

capacities.¹⁷ According to the Urban League, lending discrimination is linked to undercapitalized firms and compound competitive disadvantages that emanate from the exclusion from business networks.

Discrimination in Mortgage Finance

Access to mortgage funds for home buying, business and other uses is problematic for minorities. While there is substantial anecdotal evidence of discrimination in mortgage markets, statistical studies of discrimination have been less conclusive, depending on the quality, detail and geographical extent of the data set used. Much early research looked at redlining—lender refusal to approve mortgage loans in certain geographical areas (often areas heavily populated by minorities), irrespective of the creditworthiness of the loan applicants. Recent redlining research, while methodologically superior to the earlier studies, has not always confirmed the existence of mortgage redlining in specific areas. Furthermore, the effects of lender discrimination are difficult to identify. This is generally due to a set of complex actions taken by a number of lenders.¹⁸

GROSS MARKET UTILIZATION FOR MWBEs IN CONSTRUCTION, WHOLESALE TRADE, AND SERVICES

DJMA examined some of the basic characteristics of minority and women owned firms in the Chicago PMSA. In this analysis, only data for firms that are proprietorships, partnerships, and Subchapter S corporations have been considered. The relative number of firms was used as an indicator of the "availability" of MWBEs, while the numbers of MWBEs with paid employees provided a measure of their relative size, and possibly competitive ability.

Table 3.6 shows that MBEs accounted for 12.3 percent of all firms in the Chicago PMSA and women owned firms were nearly 31 percent of the total. Minority women owned 13.5 percent of women owned firms.¹⁹ The Census data also suggest that MWBEs are smaller than nonminority firms since they control a smaller percentage of firms with paid employees. This difference is particularly

¹⁷Moag et. al., "Illinois Minority and Women Business Enterprises," pp. 2-3.

¹⁸"Lending Discrimination in Metropolitan Chicago: Continuing Connections Between Racial Change and Mortgage Credit" William Peterman and Qi Sanshi, in Credit by Color: Mortgage Market Discrimination in Chicagoland (A Report from the Chicago Area Fair Housing Alliance), (January 1991). The determination of discriminating practices can be more aptly confirmed upon a review and comparison of the lending activity of several communities in a specific area. In this study, commissioned by the Chicago Area Fair Housing Alliance, the Alliance concluded that an indication of intentional discriminating practices could be inferred based on the number of government guaranteed or subsidized loans issued in one community, relative to another community.

¹⁹Minority women are also counted in the MBE category, as well as the detailed race and Hispanic categories.

evident for women owned firms, which accounted for only 19 percent of firms with paid employees.

Table 3.6
Distribution of Firms by Race/Ethnicity, 1987
Chicago, IL PMSA

	All Firms		Firms with Employees	
	Number	Percent of Total	Number	Percent of Total
MBE*	35,587	12.3%	6,693	10.0%
Asian and Other	12,593	4.4%	3,078	4.6%
African American	15,374	5.3%	2,344	3.5%
Hispanic	7,848	2.7%	1,308	2.0%
Women Owned**	89,424	31.0%	12,701	19.0%
Total Firms	288,352	100.0%	66,810	100.0%

Sources: 1987 Survey of Minority-Owned Business Enterprises, Survey of Women-Owned Businesses; and D.J. Miller & Associates, Inc.
*Sum of Asian, African American and Hispanic yields a slightly higher total than MBE figure shown. However, difference is approximately 0.5 percent.
**Includes minority women.

An examination of firm sales and receipts for different groups shows the relative market utilization of MWBEs in general, and also within specific industry divisions. Table 3.7 compares the receipts of MWBEs in the Chicago PMSA as a percentage of total receipts of all firms (i.e., by market share). Compared to the fraction of all firms (and firms with paid employees) owned by MWBEs, their total share of business receipts is much lower than expected given their numerical presence in the market. Less than four percent of total receipts were earned by MBEs. Women owned firms generated 14 percent of total receipts. African American owned firms generated 1.4 percent of total receipts, despite the fact that they represented 5.3 percent of all firms (compare with Table 3.6).

Table 3.7
Receipts of Firms by Race/Ethnicity, 1987
Chicago, IL PMSA

	All Firms		Firms with Employees	
	Dollars in Thousands	Percent of Total	Dollars in Thousands	Percent of Total
MBE*	2,604,316	4.0%	1,882,451	3.2%
Asian & Other	1,210,835	1.8%	875,751	1.5%
African American	908,500	1.4%	664,857	1.1%
Hispanic	506,393	0.8%	357,929	0.6%
Women Owned**	9,195,448	14.0%	7,819,084	13.3%
Total Firms	65,735,032	100.0%	58,701,038	100.0%

Sources: 1987 Survey of Minority-Owned Business Enterprises, Survey of Women-Owned Businesses; and D.J. Miller & Associates, Inc.
*Sum of Asian, African American and Hispanic yields a slightly higher total than MBE figure shown. However, difference is approximately 0.6 percent.
**Includes minority women.

To measure the difference between the availability of minority and women owned enterprises and their utilization, market disparity ratios were calculated and are presented in Table 3.8. Market disparity ratios are calculated by dividing the utilization percentage for a specific MWBE category by the corresponding availability percentage. The percentage utilization is measured by the percentage of industry receipts accounted for by firms owned by members of an MWBE category. Percentage availability is similarly measured by the percentage of firms owned by members of the corresponding MWBE category.

Therefore, to calculate a market disparity ratio for Hispanics in the Chicago PMSA, the percentage of receipts—0.8 percent—earned by all firms owned by Hispanics (Table 3.7) is divided by the corresponding availability percentage—2.7 percent (Table 3.6) resulting in a ratio of 0.3.

Ratio values that are less than 1.0 indicate underutilization of a firm group within the local economy—the percentage of market receipts is less than the percentage of firms owned by the race/ethnic group in question. Conversely, disparity ratios that exceed 1.0 indicate overutilization. The aggregate disparity ratio calculated for MBEs (0.32) shows underutilization of MBEs. The extent of underutilization is the same for MBEs with paid employees.

African American owned firms had the lowest disparity ratio—0.26. This means that the market utilization of African American owned firms was only 26 percent as large as the market availability of African American owned firms in the PMSA. The market utilization of firms with paid employees was 32 percent as large as market availability. Disparity measures for Hispanic owned firms were of about equal severity. Women owned firms with paid employees were underutilized to a somewhat lesser extent with a disparity ratio of 0.70. For MWBEs as a whole, the overall impression is one of clear underutilization in the market.

Table 3.8
Market Disparity Ratios for MWBE Firms, 1987
Chicago, IL PMSA

	All Firms	Firms with Employees
MBE	0.32	0.32
Asian and Other	0.42	0.32
African American	0.26	0.32
Hispanic	0.28	0.31
Women Owned*	0.45	0.70

Source: D.J. Miller & Associates, Inc.
**includes minority women.*

Market Disparities in Construction, Wholesale Trade, and Professional Services

A key objective of this report is to identify MWBE disparities in the City of Evanston procurement and contracting. DJMA examined MWBE activity in the construction, wholesale trade, and professional services sectors—three industry divisions that parallel the City of Evanston procurement areas analyzed in Chapter IV. Measurement of market disparities below allows a comparison of what is occurring in the Chicago PMSA with the specific experience in the City of Evanston.

The pattern of firm ownership in the construction industry was quite different from ownership distribution for all other industries. Table 3.9 shows women owned firms as a much smaller percentage of construction firms. MBEs also were a much smaller percentage of total construction firms. MBEs held an even smaller share of firms with paid employees. However, women owned firms were a larger percentage of firms with paid employees. Hispanic owned firms accounted for a very small share of total firms with paid employees.

Table 3.9
Distribution of Construction Firms by Race/Ethnicity, 1987
Chicago, IL PMSA

	All Firms		Firms with Paid Employees	
	Number	Percent of Total	Number	Percent of Total
MBE*	1,650	6.4%	400	4.8%
Asian & Other	219	0.9%	60	0.7%
African American	802	3.1%	217	2.6%
Hispanic	629	2.4%	123	1.5%
Women Owned**	1,610	6.3%	765	9.2%
Total Firms	25,760	100.0%	8,299	100.0%

Sources: 1987 Survey of Minority-Owned Business Enterprises, Survey of Women Owned Businesses; and D.J. Miller & Associates, Inc.
 *Summation of Asian, African American, and Hispanic.
 **Includes minority women.

Women owned firms accounted for 10.7 percent of total industry receipts and 11.6 percent for firms with paid employees (Table 3.10). MBEs in the aggregate generated 1.7 percent of receipts, and 1.4 of receipts for firms with paid employees. Firms with paid employees accounted for over 85 percent of gross industry receipts.²⁰

²⁰For disparity studies, "firms with paid employees" is generally regarded as a more accurate measure of availability than "all firms." Particularly with respect to construction, firms without paid employees are less likely to be able to respond to potential increases in demand. Moreover, the ranges of sizes of construction contracts let by public jurisdictions is likely beyond the reach of most, if not all, firms without paid employees.

Table 3.10
Receipts of Construction Firms by Race/Ethnicity, 1987
Chicago, IL PMSA

	All Firms		Firms with Employees	
	Dollars in Thousands	Percent of Total	Dollars in Thousands	Percent of Total
MBE*	103,108	1.7%	71,948	1.4%
Asian and Other	26,551	0.4%	16,958	0.3%
African American	47,449	0.8%	35,790	0.7%
Hispanic	29,008	0.5%	19,200	0.4%
Women Owned**	657,896	10.7%	605,886	11.6%
Total Firms	6,142,505	100.0%	5,224,261	100.0%

Sources: 1987 Survey of Minority-Owned Business Enterprises, Survey of Women Owned Businesses; and D.J. Miller & Associates, Inc.

*Summation of Asian, African American, and Hispanic.

**Includes minority women.

Disparity measures in Table 3.11 show that minority owned enterprises in the construction industry were underutilized, however, the rate of underutilization was more pronounced for Hispanics and African Americans than for Asians. The market share for women owned firms actually exceeded their percentage availability. Asian construction firms experienced a shortfall of market share compared to their percentage availability.

Table 3.11
Market Disparity Ratios for Construction, 1987
Chicago, IL PMSA

	All Firms	Firms with Paid Employees
MBE	0.26	0.29
Asian and Other	0.51	0.45
African American	0.25	0.26
Hispanic	0.19	0.25
Women Owned*	1.71	1.26

Source: DJMA.

*Includes minority women.

In Table 3.12 business ownership in the wholesale trade division (general procurement) again differed substantially from the general industry ownership pattern. MBEs comprised 6.9 percent (6.1 percent) of all firms (firms with paid employees). The availability of women owned firms amounted to 19.9 percent of all firms and 18 percent of firms with paid employees. African American owned firms accounted for only 2.1 percent of all wholesale firms (1.4 percent of those with paid employees). Asians and Other minorities comprised 3.2 percent of all firms (3.4 percent of firms with paid employees).

Table 3.12
Distribution of Wholesale Trade Firms by Race/Ethnicity, 1987
Chicago, IL PMSA

	All Firms		Firms with Employees	
	Number	Percent of Total	Number	Percent of Total
MBE*	832	6.9%	229	6.1%
Asian and Other	388	3.2%	128	3.4%
African American	248	2.1%	50	1.3%
Hispanic	196	1.6%	51	1.4%
Women Owned**	2,380	19.9%	676	18.1%
Total Firms	11,983	100.0%	3,745	100.0%

Sources: 1987 Survey of Minority-Owned Business Enterprises, Survey of Women-Owned Businesses; and D.J. Miller & Associates, Inc.
 *Summation of Asian, African American, and Hispanic.
 **Includes minority women.

Table 3.13 shows that MBEs accounted for three percent of gross industry receipts in 1987. Women owned firms generated 14.1 percent of total receipts. Asians and other minorities generated the bulk of receipts accruing to MBEs. Firms owned by African Americans and Hispanics made up the small remainder.

Table 3.13
Receipts of Wholesale Trade Firms by Race/Ethnicity, 1987
Chicago, IL PMSA

	All Firms		Firms with Employees	
	Dollars In Thousands	Percent of Total	Dollars In Thousands	Percent of Total
MBE*	355,104	3.0%	305,745	2.7%
Asian and Other	251,724	2.1%	221,082	2.0%
African American	45,036	0.4%	34,986	0.3%
Hispanic	58,344	0.5%	49,677	0.5%
Women Owned**	1,658,173	14.1%	1,573,740	14.1%
Total Firms	11,736,769	100.0%	11,147,953	100.0%

Sources: 1987 Survey of Minority-Owned Business Enterprises, Survey of Women-Owned Businesses; and D.J. Miller & Associates, Inc.
 *Summation of Asian, African American, and Hispanic.
 **Includes minority women.

Disparity ratios for wholesale trade are shown in Table 3.14. MWBEs across the board are underutilized, with African Americans the most seriously affected. For African Americans, market utilization is only 19 percent of market availability (24 percent for firms with paid employees). Hispanic firms also showed substantial underutilization. Firms owned by Asians and Other Minorities, and by women showed a lesser amount of underutilization.

Table 3.14
Market Disparity Ratios for Wholesale Trade, 1987
Chicago, IL PMSA

	All Firms	Firms with Employees
MBE	0.44	0.45
Asian & Other	0.66	0.58
African American	0.19	0.24
Hispanic	0.30	0.33
Women Owned*	0.71	0.78

Sources: 1987 Survey of Minority Owned Business Enterprises, Survey of Women Owned Businesses; and D.J. Miller & Associates, Inc.
 *includes minority women.

Selected Services

Table 3.15 suggests that MWBEs have a higher rate of self-employment in the selected services industry division than in construction and wholesale trade. This, in turn, suggests that there might be fewer barriers to entry and/or more opportunities for minorities and women in this industry division. Nonetheless, the availability of African American owned firms (5.4 percent of the total) was still less than one might expect, given that African Americans comprised 22 percent of the metropolitan population. For other minorities, the rate of business ownership was relatively higher in relation to their shares of the area's population. In addition, for firms with paid employees, minority ownership rates dropped slightly from 12.5 percent to 11 percent. For women owned firms there was a larger drop—from 36.9 percent to 21.1 percent.

Table 3.15
Distribution of Professional Services Firms by Race/Ethnicity, 1987
Chicago, IL PMSA

	All Firms		Firms with Employees	
	Number	Percent of Total	Number	Percent of Total
MBE*	17,530	12.5%	2,878	11.0%
Asian & Other	6,402	4.6%	1,314	5.0%
African American	7,562	5.4%	1,012	3.9%
Hispanic	3,566	2.5%	552	2.1%
Women Owned**	51,770	36.9%	5,513	21.1%
Total Firms	140,271	100.0%	26,114	100.0%

Sources: 1987 Survey of Minority Owned Business Enterprises, Survey of Women Owned Businesses; and D.J. Miller & Associates, Inc.

*Summation of Asian, African American, and Hispanic.
 **Includes minority women.

Overall, MWBEs tended to be smaller than nonminority firms within the sector. This difference in firm size is reflected in the relatively small shares of industry receipts generated by MWBEs. MBEs earned only 4.6 percent of gross receipts. This percentage dropped to 3.4 percent for firms with paid employees (see Table

3.16). For women owned firms the comparable figures were 12 percent and 9.5 percent.

Table 3.16
Receipts of Professional Service Firms by Race/Ethnicity, 1987
Chicago, IL PMSA

	All Firms		Firms with Employees	
	Dollars in Thousands	Percent of Total	Dollars in Thousands	Percent of Total
MBE*	726,059	4.6%	450,554	3.4%
Asian and Other	343,601	2.2%	209,286	1.6%
African American	268,912	1.7%	173,101	1.3%
Hispanic	113,546	0.7%	68,167	0.5%
Women Owned**	1,883,539	12.0%	1,260,379	9.5%
Total Firms	15,691,656	100.0%	13,276,159	100.0%

Sources: 1987 Survey of Minority-Owned Business Enterprises, Survey of Women-Owned Businesses; and D.J. Miller & Associates, Inc.

*Summation of Asian, African American, and Hispanic.

**Includes minority women.

Market disparity ratios in the professional and other services sector show that MWBEs were underutilized relative to their availability (see Table 3.17). This underutilization was relatively more serious for minority owned firms. Hispanic owned firms with paid employees were the most seriously underutilized.

Table 3.17
Market Disparity Ratios for Professional Services, 1987
Chicago, IL PMSA

	All Firms	Firms with Employees
MBE	0.37	0.31
Asian and Other	0.48	0.31
African American	0.32	0.34
Hispanic	0.28	0.24
Women Owned*	0.33	0.45

Source: DJMA, 1995.

*includes minority women.

CONCLUSION

Although the minority population of the City of Evanston is approximately 30 percent minority and only slightly larger than the metropolitan Chicago area, MBEs make up only 12 percent of firms in the entire area. Business development, is dependent, however, on several factors. Of considerable importance to the creation, development and survival of a business is the knowledge and educational background of its owners or managers, procurement

opportunities and financing. Traditionally, many MBEs and WBEs have been denied adequate educational and training opportunities which affects the ability of potential minority entrepreneurs from starting their own businesses and qualifying for certain jobs. Also, systematic intentional and unintentional exclusion from job opportunities has substantially hampered the development and growth of MBEs. Finally, the lack of adequate capital to finance costs, pay staff, acquire inventory, bonding, insurance and other resources is a tremendous hurdle detrimentally affecting the availability of MWBEs.

Unlike the common obstacles facing majority small business owners, like capacity, financing, competing with larger businesses and a shrinking or more competitive market place, MBEs and WBEs are stumbling over additional obstacles due to racial and sexist attitudes. As a result, problems which typically affected small businesses generally impact MWBEs more heavily.

This chapter has examined selected factors that affect the growth and development of MWBEs. When considered in the historical context elaborated in Chapter I, it is not surprising that minorities are found to be at a disadvantage compared to Whites, with African Americans and Hispanics experiencing the greatest inequalities.

Several factors contribute to the relatively low availability of minority owned businesses in the Chicago PMSA. Discrimination in the workforce (in hiring, promotion, or pay practices) has likely contributed to inequalities in income levels, differences in employment patterns across industries, and differences in occupational attainment. Public education and access to job training by minorities and women has been limited by pervasive race and gender bias in the Chicago region. Entrepreneurial activity is positively related to relevant occupational and industrial experience. Yet, for construction in particular, serious obstacles to minorities and women remain in getting equitable access to training and apprenticeship opportunities.

Because prior employment in an industry is an important initial condition for business formation within an industry, anything that constrains minority and women employment in an industry tends to retard MWBE development within that sector. Employment patterns do vary by racial/ethnic groups, and it is well-known that minorities have higher rates of unemployment. This is likely to contribute to the low availability levels of MWBEs in the Chicago metropolitan area. Another major constraint on the rate of formation of minority owned firms in the MSA is lower levels of wealth accumulation by minorities, differences in wealth holding patterns, and lower income levels.

The examination of the numbers and types of minority and women owned businesses showed that availability of firms owned by African Americans, Hispanics and women was generally lower than representation of these groups

within the population. This finding is consistent with expectations about the impact of limited access of minorities and women to financial capital and constraints on human capital improvement. For every industry group that we examined, African American owned and Hispanic owned firm availability was lower than the representation of the respective groups within the population. This was generally true for women owned firms as well.

While differences in socioeconomic factors may partially explain the lower availability of minority and women owned firms, they do little to explain why most MWBE groups (except for WBEs in construction) are so clearly underutilized as measured by the market disparity ratios. Capital limitations or discrimination in financing may limit minority business expansion, and thus constrain the firms ability to reach a competitive scale of operation. If MWBEs depend largely upon their own minority communities for patronage, then lower utilization rates (as measured by receipts) may be partially explained by weak demand due to lower income levels among MWBE clientele. However, it is unlikely that these two factors alone explain the low MWBE market shares. We can only conclude that other factors in the market place (especially historical and contemporaneous discrimination) play an important role in limiting MWBE development.

This analysis (along with that in Chapter II, Historical Review) provides an explanation of the historical and economic context shaping the development of the pool of MWBEs in the Chicago metropolitan area. As such, this discussion anticipates and acts as a backdrop for the more detailed analysis of availability and utilization of MWBEs discussed in the Statistical Analysis in Chapter VI.

INTRODUCTION

Procurement systems are frequently considered race neutral. Case law subsequent to *Croson* has not clarified which of the mechanics of a procurement system may constitute active or passive participation in systems of racial exclusion. However, the mechanics of a procurement system may have a disparate impact on small business, although there is nothing overtly racial about this impact except insofar as MWBEs are disproportionately small businesses.

In other instances, procurement practices of a governmental entity's procurement staff are reflective of intentional acts to exclude minorities and women from procurement opportunities. Other studies performed by DJMA reveal that procurement staff justify a refusal or failure to utilize MWBEs based on a myriad of seemingly race neutral reasons: no qualified MWBEs; long-standing relations with another majority firm; and, MWBE suppliers unable to supply brand name products at competitive prices. Prejudices and stereotyping are occasionally the basis for such perceptions. 'Good ole boy' clubs and racist or sexist exclusionary business practices are other barriers to MWBEs seeking to commence relationships with a municipality.

DJMA's review and extensive analysis of procurement systems is typically driven by two key objectives: first, to identify whether there are barriers to minority, female and local business participation in local government procurement; and, second, to provide the framework for the subsequent statistical analysis in later chapters.

OVERVIEW OF THE PURCHASING POLICY

To standardize the City's procurement practices, the purchasing department drafted a manual for all city user departments that details a centralized five-step process of purchasing goods and services for the City of Evanston—requisitioning, pricing, ordering, delivery, and payment. This section of the chapter is a summary of the policies and procedures stated in the policy manual. The preceding sections of this chapter discuss the City's actual practices as it relates to the procurement of goods and services.

Purchasing begins with a requisition for the desired services or goods. Generally, the user department that requires the commodity or service is assigned an

account number from the approved yearly budget. These account numbers are for specific purchases or categories of goods or services. If there is no suitable account number available, the finance department will designate an account number that the user department may assign to the purchase. The account number indicates the budget to be charged for the requested good or service.

Upon receipt of the account number, the user department must provide purchasing with a requisition that contains a clear description of the services or goods and a relevant unit of measure and quantity of goods to be purchased. The department must also submit to purchasing a list of several vendors who could provide the purchase. The choice of vendor is based on a number of factors including price, location, serviceability, product of availability, and past experience.¹ Once the requisition is complete, the user department forwards it to purchasing.

Depending on the estimated dollar value of the services or goods, purchasing obtains quotes or uses a competitive bidding process to solicit and select vendors. Purchasing orders the goods or services from the selected vendor. A purchase order (PO) or contract is required at this phase of the process. POs are used only for procurement of materials and supplies. Contracts are used for procurement of personal, professional, and construction services. POs and contracts document the terms of the engagement agreed to that the City and the vendor. Additionally, POs and contracts are used by the City accounting department for internal accounting purposes and provide a record of the vendor's service to the City.

Typically, the purchasing department is responsible for completing purchase orders and preparing contracts unless purchasing requires additional support from the legal staff. As previously mentioned, user departments or purchasing assign contract numbers or other numerical or alphanumeric codes to the requisitioned good or service. However, during the data collection process, DJMA observed that each user department may assign a different number to the same project.² The numbering system used by one user department is generally unrelated to the numbering system of another department. As a result, DJMA's data collectors encountered significant difficulty in tracking projects from department to department, distinguishing new projects from change orders, or matching hard copy files with computerized records of contracts or POs.³

¹The City policy manual does not define vendor availability. However, interviews with City staff suggest that an available vendor is a vendor who is known by the City user department or purchasing agent and is interested in supplying and capable of supplying the good or service desired.

²According to comments received from the City's purchasing department, there are three different types of contract numbers being used throughout the City.

³For further explanation of the problems DJMA data collectors incurred obtaining and analyzing contract data, see Data Collection Methodology in the Statistical Chapter.

Delivery of the goods or services follows ordering. Upon delivery to the City, the user department is required to inspect deliverables to ensure their acceptability. The user department is required to conduct inspections promptly to verify that goods or services conform to purchase order specifications and to use this opportunity to resolve any problems or discrepancies. A notation of damage or defect should be placed on the receiving copy of the PO and sent to purchasing to be processed for payment. The user department is required to report any problems to the buyer in purchasing.

Purchasing verifies receipt of services or goods. The PO and vendor invoice are submitted to the accounts payable department. Vendors' invoices are reconciled with POs or contracts. Accounts payable batches the invoices and prepares a bi-weekly bills list for the City Council where it is reviewed and approved. Vendor payments are generally issued two to four weeks after Accounts Payable receives the invoices. The payment schedule may vary depending upon council meeting schedules, printing of the bi-weekly bills list, and timely receipt of forms from the vendor and the user department. According to interviews with City staff, under extreme circumstances (i.e., an urgent need of and request by the vendor) the City may issue a check prior to completion of the standard payment process. In such instances, there is close follow-up activity.⁴

ANALYSIS OF THE CITY'S PROCUREMENT PRACTICES

Bidding Process

The City currently uses two bidding processes for the purchase of goods or services. The bidding process is determined by the estimated cost of the goods or services to be purchased:

- Informal bidding process: <\$5,000
 - Three threshold levels of informal bidding:
 - \$999
 - \$1,000 to 2,499
 - \$2,500 to 4,999
- Formal bidding process: >\$5,000

For purchases less than \$5,000, the City uses three types of informal bidding processes.

⁴Such advance payments are rarely made. Additionally, because of past experiences with poor performance by a vendor after an advance payment is made, the City has begun the practice of limiting such payments to vendors with a history of reliability and quality performance.

- *Less than \$1,000*—buyer is required to obtain a minimum of two telephone quotations.
- *\$1,000–\$2,499*—requires three written quotes. If time does not permit, due to an emergency or some other acceptable circumstance, three telephone quotes with written confirmation are acceptable.
- *\$2,500–\$4,999*—written quotations from at least three vendors required. Quotes must be submitted on the vendor's letterhead or stationary, the lowest qualified bidder is selected, and the vendor's bid is submitted to the City Manager for approval.⁵

Informal Bidding Process

The buyer is primarily responsible for informal purchasing decisions including determining the number and selection of vendors to be contacted. Subject only to the purchasing minimums discussed previously, these responsibilities empower the buyer with a considerable amount of discretionary authority in the vendor selection process. As mentioned, the user department will typically furnish the purchasing department with a supplier list—purchasing also maintains its own vendor list. The vendor list, however, does not specify whether the vendor is an MWBE or EBE. The buyer uses the vendor lists to identify those vendors from whom to request quotes. Upon review of all timely and properly submitted bids, the buyer accepts the lowest bid.

Formal Bid Process

Purchases of \$5,000 or greater require a formal competitive bidding process that is managed by the purchasing agent in consultation with the relevant department heads or their designees. To initiate the process, the department head requisitions the good or service needed using the process previously discussed in the procurement policy section of this chapter. The department head drafts bid specifications. Purchasing forwards the bid specifications to a list of potential vendors. The City refers to this phase of the procurement process as the Solicitation of Potential Vendors.

The list of potential vendors is developed from those vendor names submitted by the user department and purchasing's own vendor list. There are no clearly established criteria that the user departments or purchasing uses to determine which vendors to include on the vendors lists. Interviews revealed that the purpose of a mailing to selected vendors is to increase the chance of obtaining bids, create an audience from which could be polled later if no bid responses are submitted, and generate more competition among the bidders.

⁵As a result of the City's local Evanston Business Enterprise program, the City may award to an Evanston based business, if the firm's bid is within 3% or \$1,000 of the lowest bid, whichever is less. There is a further discussion of this program below.

In accordance with Illinois state law, the municipalities must advertise bids for services or goods valued at \$10,000 or greater in the official local paper for a minimum of 10 days, not including Sundays and legal holidays, prior to the bid due date. Thus, after providing the specifications to potential vendors, purchasing forwards a press release to the local paper, the *Evanston Review*, and related industry publications. The scope of advertising or promotion of a City bid depends, in large part, on the size of the project and the need for specialized expertise. The only other factor that affects how purchasing solicits bids is the funding source. The City is obliged to follow the procurement requirements of the funding source, i.e., the state or federal government.

The final step is the public bid opening. At the prearranged date and time, vendors must submit sealed bids for a public bid opening. After the bid opening the purchasing agent or buyer may discuss bids with a representative from the relevant user department. In consultation with the user department, the purchasing agent submits a report—Recommendation of the Purchasing Agent (RPA)—to the City Council for purchases of \$5,000 or more. The City Council reviews the report and approves or disapproves the purchasing agent's recommendation. According to DJMAs interviews with City procurement staff, the City Council approves the majority of the purchasing agent's recommendations.

PERSONAL OR PROFESSIONAL SERVICES CONTRACTS

Personal or professional services or purchases of non traditional items, including technical consulting services, management consulting services, or services requiring a particular expertise or skill, require a different procurement process.⁶

⁶The City procurement policy manual for the selection of professional services and consultants defines the three categories of service providers as follows:

- Technical consulting services are services requiring the mandatory or essential technical skills provided by accredited professionals or quasi professionals in connection with a defined assignment (e.g. architects, engineers, accountants, planners, technologists) which result in the preparation of a report and recommendation of a particular course of action and may include supervision of an activity (such as construction).
- Management consulting services are services provided on the basis of a defined project by individual or organizations, to investigate and identify management problems related to the policy, organizational, operational and administrative aspect of municipal government, to recommend solutions of these problems, and to assist in implementing the solutions, e.g. legal, policy and strategic planning, operational management, management information systems, human resources.
- Qualified consultants are those persons or organizations which possess the above noted skills and have successfully demonstrated proficient application of those skills within their areas of expertise. They should possess current member status/accreditation in their appropriate professional/ discipline body.

The procurement process for the purchase of personal or professional services is initiated when the user department first develops a written scope of services with detailed time frames, service requirements, and a project budget. A Consultant Review Committee is created that includes the purchasing agent, user department head and other relevant City staff.⁷ The Committee must be approved by the purchasing agent. The department head advises the City Manager of the details of the project including budgetary issues, time frames, and service parameters, and the composition and progress of the Committee. The department head then requests the City Manager's approval to proceed with the selection process in accordance with the procurement policy manual.⁸

Personal or Professional Services Contracts valued less than \$5,000

For those purchases less than \$5,000, the Committee reviews consultant files or equivalent professional listings for potential consultants and nominate a minimum of three qualified consultants, where possible.⁹ The Committee shall apply the Selection Criteria discussed below and rank each nominee. The "most appropriate" nominee is selected. At the Committee's sole discretion, it determines whether to interview the most appropriate nominee. A purchase order (PO) is generated to memorialize the terms of the engagement. In some instances a contract may be used in addition to a PO. If the City and the consultant are unable to reach an agreement on the terms of his/her engagement, the Committee approaches the next most appropriate nominee. The Committee must seek final approval from the City Manager.

Personal or Professional Services Contracts Valued at \$5,000 or More

For consulting services valued at \$5,000 or more, the purchasing agent must publish a notice of the need for the service in the local newspaper or other appropriate publications. The notice shall include the date and time when proposals are due, the address of the City Purchasing Department where proposals are to be submitted, the type of services needed, an affirmative action statement, and a Disclosure of Ownership Interest Statement¹⁰. A RFP is

⁷The elected official has participated on Review Committees where the value or cost of the project is extremely high or there is a major impact on the community.

⁸When the consultant completes its assignment, the department heads included are required to write an evaluation of the consultant's performance. Details of the evaluation should reflect the complexity and cost of the project assignment. Currently, the evaluations are not conducted formally nor are they documented for purchasing's file.

⁹According to the policy manual, purchasing maintains a list of consultants. The current listing of professional associations may be included and consultants may be added upon receipt of a written request.

¹⁰In accordance with City Ordinance 15-0-78 a Disclosure of Ownership Interest Statement is required to be completed by interested persons or firm identifying the type of firm (i.e. corporation, partnership, sole proprietorship, etc.) and the names and addresses of the principals of the firm.

prepared and issued by purchasing to all interested parties. The Committee identifies a list of potential consultants, typically from association membership lists, consultant files, professional listings, bidders lists, and firms with long-standing relationships with the City, to whom it forwards copies of the RFP.

The RFP contains, at minimum:

- The type of services required; a description of the work involved; an estimate of when and for how long the services will be required; and the type of contract to be used
- A statement requiring proposals to be in writing and the date when the proposal is due
- A statement that offers may designate those portions of the proposal that contain trade secrets or other proprietary data that may remain confidential
- If the purchasing agent and department head deem it a part of the selection criteria, a statement that a sealed price should be provided separately
- A statement explaining the evaluation criteria
- A statement of the minimum information that the proposal shall contain, including:
 - Information on the firm as required by City ordinance;
 - Abilities, qualifications, and experience of all persons who would be assigned to provide the requested services;
 - A listing of any other contracts similar in scope, size, or discipline to the required services to be performed or undertaken by the vendor;
 - Plan of how and what services the consultant would provide; and,
 - A response to each of the selection criteria.

The selection criteria are applied to timely and properly submitted proposals. Each vendor is ranked and the Committee creates a 'short list' of the top three potential consultants. The Committee interviews the 'short-listed' vendors and reapplies the selection criteria. The most qualified candidate is selected. If the parties are unable to reach an agreement, the Committee approaches the next most qualified candidate.

For those projects valued at \$5,000 or more, the Committee must submit a recommendation to the City Manager that provides information about the consultant selected by the Committee. The City Manager submits the recommendation to the City Council for final approval. Upon City Council approval, the appropriate contracts are prepared and reviewed by the Law Department and signed by the City Clerk and City Manager.

Selection Criteria

The City utilizes selection criteria to select the most appropriate or most qualified consultant to perform personal and professional services. The criteria used are listed below:

Item	Description	Weighting
1	Qualifications or expertise	20
2	Past performance	20
3	Evaluation of proposed project manager	20
4	Completeness of the proposal	10
5	Variety of disciplines in house/in consortium	5
6	Estimated time required for the project	5
7	Knowledge of the City regarding the project	5
8	Price/proposed fees (if included)	5
9	Permanent local office	5
10	Involvement of minorities or women in the project or whether the firm is a MWBE	5

The weight assigned to each criterion may vary depending on project needs. The purchasing agent has final approval of the weight allocated to each criteria. Also, additional or alternate criteria may be added to address the specific needs of a project. However, the maximum number of points available in the process is 100, and weight given to items 9 and 10 may not be adjusted.

NON COMPETITIVE BID ITEMS

Some procurement transactions are not required to be competitively bid, but are obtained by means of sole source contracts:

- Services or goods that can only be provided by one firm or vendor;
- A local or regional vendor that has exclusive rights to offer services or goods in the geographical area of the City;
- Goods that the City procures from a federal, state or local governmental unit made available by operation of law;
- Goods or services that the City purchases through an existing agreement with another city governmental agency, a transaction commonly referred to as "piggy backing on another's bids;" and,
- A standardized package of goods the user department is seeking with certain specifications to standardize City equipment on property.

Those user departments that are seeking sole source items requisition the item through purchasing who then contacts the vendor directly for the purchase, avoiding the bid process entirely.

Emergency Procurements

Emergency purchases are the procurement of those goods or services under emergency conditions which do not allow the user department or purchasing department to utilize the standard procurement process. An emergency condition is not defined by any pre-established parameters but are deemed emergencies at the time of the occasion by the user department or purchasing agent.

Typically, two emergency procurement processes are used:

- *Purchases under \$2,500*—the user department contacts purchasing with the account number, vendor name and approximate dollar amount of the purchase as needed; obtains a PO number from purchasing; a representative from the user department may pick up the equipment; the user department must then confirm the purchase with purchasing. This process is used only in cases where a department representative must purchase the goods or service off-site. For the those items that are to be delivered the normal purchasing process is used.
- *Purchases over \$2,500* —the user department must obtain City Manager approval prior to initiating the purchase.

TRACKING PROCUREMENT ACTIVITY

The purchasing department maintains a book of vendor names containing every vendor that ever received a payment from the City. The records are generally maintained for seven years and then archived. The vendor payment list does not, however, identify the ethnicity of the vendor. Currently, there is no method or procedure in the purchasing department to track minority or female business owners. Apart from the vendor check history files residing in the accounts payable department, there is no automated system that allows purchasing to track vendors. This computerized report tracks, by year, all vendors which have received checks from the City, and contains address and procurement description data. The reporting system has the capability to track vendors by ethnicity and gender of the business owner, although, this field has never been used.

As mentioned above, the hard copy contract files are not centrally located and DJMA was unable to find many of the purchasing files. Some of the user

departments particularly Public Works and Engineering kept extensive records regarding their respective purchases. Many departments use a different filing system and file numbering system. Also, the contents in the files tended to vary from department to department. Additionally, DJMA found that other departments had incomplete files or files with no documentation of any kind inside. Purchasing is required to perform post-project evaluations for professional and personal service contracts. DJMA, did not, however, find any comprehensive reports or records of post-project evaluations during its data collection process.¹¹

M/W/EBE PROGRAM

History of MWBE Program

In 1973, the City of Evanston initiated a set aside program to encourage the development and growth of local minority and female firms. Each year, the purchasing agent requested user department heads to identify projects that could be set aside for local or MWBE participation. At the end of the year, the purchasing agent drafted a report for the City Council which showed participation by project, vendor, and dollars awarded to minority firms. The projects tended to be small in size and value, limited primarily to lawn maintenance, custodial projects, or window washing.

In 1990, after the United States Supreme Court found the City of Richmond's minority set aside program unconstitutional in *City of Richmond v. J.A. Croson*,¹² the City of Evanston voluntarily discontinued its program. Thereafter, various user department heads were under no mandate to use minority firms nor was there a clearly defined City program or policy to utilize or monitor the use of minority businesses. Instead, in 1992, City officials encouraged user departments to use "best efforts" to increase MWBE and local Evanston business participation.

In November 1992, the City hired its first MWBE coordinator to ensure that "good faith efforts" were being made in the utilization of MWBEs in the City's procurement practices. The MWBE coordinator reports to the Assistant City Manager and has no staff.¹³ To achieve the objective of the "good faith effort," the coordinator works with individual department heads on specific projects that are well suited to integrating a participation goal. Some department heads have

¹¹See the Statistical Chapter of this study for a detailed explanation of DJMA's data collection methodology.

¹²See the Legal Chapter of this study for a detailed discussion of this case .

¹³Currently, the MWBE coordinator position is vacant, and the position has been moved within the Purchasing Department. The new coordinator, when this person is hired, will report to the City Purchasing Agent.

made a conscious effort to incorporate the MWBE program into bids and projects. However, many procurement opportunities are not communicated to the MWBE coordinator. The coordinator is seldom a member of the Review Committee which oversees the bidding process for larger projects, and generally does not participate in drafting bid specifications or RFPs.

Inasmuch as there is no mandate by law or other directive to utilize a certain percentage of MWBEs or EBEs on City projects, there is no incentive to incorporate the MWBE goals into projects. As a result, program goals are seen primarily in projects run by department heads who have an interest in utilizing MWBEs and EBEs or in projects funded by sources requiring MWBE participation.

In December 1992, an MWBE Advisory Committee was established to advise the City Manager on issues pertaining to the utilization of MWBE and EBEs. The Committee consists of a diverse group of nine local business owners, and has no authority to set policy, nor does it have a direct reporting relationship to the Mayor or City Council. The Advisory Committee is charged with developing a comprehensive MWBE and EBE directory of vendors. The first directory, developed in 1994, is divided into two sections—the Evanston area section and the Chicago area section. It lists the names, addresses, and telephone numbers of each vendor under a specific procurement type. The Evanston section, however, does not identify the ethnicity of vendors, and the Chicago section, which includes only MWBEs, does not specify whether the firm is a MBE or WBE.

Evanston Business Program

The local business program, instituted soon after the MWBE program, was designed to encourage and support the development of businesses in Evanston. Local business means any business that has an office physically located in Evanston at the time it seeks admittance into the program. The business must maintain a presence in the City at all times during its participation in the program. The business, however, is not required to be principally located in Evanston, and there is no requirement that the individual owners or employees of the business reside in the City of Evanston. For example, a business that opens an Evanston office on Monday is eligible to seek participation in the program on Tuesday and can continue to participate until the Evanston office shuts down.

To verify the existence of a physical office in Evanston, the City checks the stationary, local office telephone number, and talks to other City staff who may have knowledge of the firm. However, there is no formal process to verify or follow-up on EBEs to ensure that they are in compliance with the eligibility requirements.

M/W/EBE PROGRAM STRUCTURE

There are essentially three good faith effort programs applied during the bid selection process: the construction program; the EBE program for good, supply and construction contracts; and, the professional and personal service preference program. Each program is designed to create an incentive to utilize local businesses or MWBEs on certain types of procurement contracts. Although the City has not titled each program as noted, the explanations provided in this report will refer to the programs as indicated above.

Construction Program

The construction program requires that prime contractors to make a good faith effort to subcontract at least 15 to 25 percent of contract dollars on construction projects valued at \$50,000 or more to M/W/EBEs. The goal may be filled by the utilization of any ratio or combination of MBE, WBE or EBE participation. The bid is awarded to the contractor who either meets the minimum goal and is the lowest bidder, or shows that a good faith effort was made to reach the goal and is the lowest bidder. It is important to note that a prime contractor could agree to subcontract 15 percent of a contract to a local nonminority business and the goal would be met. Because some department heads began to notice that construction contracts were being let to prime contractors who were not utilizing any minority or female business participation, the City would ask the contractors to make a good faith effort to allocate 15 of the 25 percent goal to MWBEs on some contracts.¹⁴

EBE Program for Goods, Supplies and Construction Contracts

The EBE program is designed to increase utilization of local businesses on City contracts. The program applies to the procurement of good, supply and construction projects only. On these projects, EBEs bidding as prime contractors (regardless of ownership ethnicity or gender) are awarded contracts if they meet the necessary qualifications and are within the lesser of three percent or \$1,000 of the lowest bid. The program applies to good, supply or construction projects of all sizes or costs.

Professional and Personal Service Preference Program

During the evaluation portion of the selection process of a personal or professional service contract, the review committee establishes a point system that awards a credit of 5 points (or 5 percent) of the total assessed points to prime

¹⁴On those construction projects which are funded with federal dollars, the funding agency may require a minimum level of MBE or WBE or DBE participation. In those instances, the City is obligated to meet the M/W/DBE participation requirements set out by the funding agency.

contractors that are MWBEs or utilize MWBEs. Another 5 points (or 5 percent) is awarded to contractors who have a permanent local office (i.e. are EBEs) or utilize an EBE. Potentially, a prime contractor bidding on a professional or personal service contract could receive 10 points (or 10 percent) credit if it qualified for both credits. There is no goal which is associated with the preference program. Thus, a prime contractor could receive preference points regardless of the percentage of contract dollars the prime plans to allocate to the M/W/EBE subcontractor.

CERTIFICATION PROCESS

The City does not have a certification process. Firms that are certified as MBE or WBEs with any other municipal, state or federal agency (except the Metropolitan Water Reclamation District of Greater Chicago) are eligible to participate in this program, unless the City determines that the certification process of a particular agency is not acceptable. The City requires articles of incorporation to confirm majority female ownership for WBEs seeking to participate in the program. As mentioned previously, EBEs must submit a copy of business letterhead showing a local address or other acceptable form of proof evidencing the existence of a local office.

The MWEBE advisory directory provides the City's Purchasing Department with a list of M/W/EBEs from which it can obtain quotes. The directory also provides purchasing and the minority coordinator with a list of M/W/EBEs who are interested in receiving City contracts, and, therefore, should be among the select group of vendors who receive notification of upcoming projects, bid specifications, or RFPs. The purchasing agent or the coordinator is also required to provide prime contractors with the directory to inform them of available M/W/EBEs. However, both the members of the MWBE Advisory Committee and the minority coordinator agree that the directory is incomplete and not regularly updated. Moreover, many business owners interviewed for this study were not aware of the directory and the purchasing department stated that it relied only on memory and personal knowledge to identify M/W/EBEs.

NOTIFICATION TO M/W/EBES

On construction projects valued over \$100,000, prime contractors must contact 15 MBEs or WBEs or EBEs prior to submitting their bids. The City encourages contractors to seek subcontracting opportunities with local firms and minority and women firms; however, it is not required.

Contractors are required to negotiate the terms of their bid with their subcontractors prior to bid opening. In addition, prime contractors are required

to submit documentation evidencing notification of at least 15 M/W/EBEs and negotiated contract terms with the selected M/W/EBE firms. The documentation must include letters of intent signed by the contractor and M/W/EBE firm, the name, contact person, address and telephone number for M/W/EBE the firm and negotiated terms of M/W/EBEs involvement in the project. Failure to submit this information deems the bid non responsive.

During DJMA's data collection, DJMA found that this information had not been collected consistently. In many of the public works and engineering files, subcontractor information was included, but the ethnicity and gender of many firms were not identified or the percentage of contract dollars awarded and actually paid to the subcontractor was not stated. In other departments there was little, if any, indication that such information was being obtained by the City or prime contractors.

MONITORING EFFORTS

The City requests that contractors negotiate the terms of an M/W/EBE relationship prior to bid opening and submit supporting documentation showing M/W/EBE participation levels. The City also imposes sanctions on those firms that are not in compliance with their contractually agreed upon percentage of M/W/EBE participation. (The prime contractor is subject to post-award compliance reviews.) The City allows a prime contractor to seek a waiver of certain M/W/EBE participation, if for whatever reason, the contractor is unable to identify or continue a subcontracting relationship with the M/W/EBE. There are some minimal monitoring efforts included in the M/W/EBE program. There are certain monthly reports generated by the coordinator that are generally summaries of the status of M/W/EBE participation.¹⁵ Since the MWBE coordinator is a staff of one and unable to make regular site visit checks to ensure compliance, the coordinator is reliant upon the user departments and purchasing to stay informed regarding the status of M/W/EBE utilization on projects.

Usually, the City has its prime contractors obtain lien waivers from subcontractors before the City tenders final payment. The waiver is not used to track or confirm the use of M/W/EBEs.

¹⁵The Coordinator instituted this process during the last six months of his tenure with the City. Since his departure, it is not clear whether such reports continue to be generated.

OUTREACH PROGRAMS

The City does not have a formal outreach program. There also no formal programs to assist M/W/EBEs or small businesses obtain adequate insurance or bonding. With regard to other outreach efforts, occasionally, the City sends flyers or letters about upcoming bid opportunities to M/W/EBEs, including those M/W/EBEs in the City's directory. On projects valued at \$50,000 or more, the City may hold a meeting with potential bidders and interested subcontractors detailing the bid specifications of upcoming bids. The MWBE coordinator is usually present at these meetings to explain the Good Faith Effort Program and encourage M/W/EBE participation. On larger projects, the City may use special advertisements to assist prime contractors identify and obtain minority subcontractors for projects.

MANAGEMENT AND TECHNICAL ASSISTANCE

The City does not offer management and technical assistance to its vendors, but does, however, participate in funding organizations that provide these services and operates a Community Development Block Grant program (CBDG).¹⁶

The City also participated in Evanston Community Development Corporation which provided technical assistance and small business loans to local businesses. The Technical Assistance Program was discontinued. The Loan Program was discontinued due to the high rate of defaults and prohibitive administrative costs. The City continues to service existing loans. In addition to these programs, the City also supports the Northwestern University Research Park which provides management and technical assistance to small businesses.

IMPACT OF PROCUREMENT POLICIES AND PRACTICES ON M/W/EBE PARTICIPATION

Monitoring M/W/EBE Participation

One of the barriers to a more effective monitoring process is the absence of a centralized filing system which tracks all procurement activities. During the data collection phase of the study, DJMA found that there was no clear centralized file

¹⁶CBDG funds are given to local government to administer business development assistance to small business owners, usually through a local office of economic or community development. That is, it is giving a loan to those individuals or businesses who wish to develop communities that are under developed and have been targeted for redevelopment. This is a federally funded program of Housing and Urban Development and therefore, MWBE requirements are regulated by the federal government. See the Race Neutral chapter of this study for a further explanation of the CBDG program.

for its procurement contracts or projects. Also, each user department involved with a particular project may maintain a file, each containing different information and filed under a different filing system. In many instances there is no centralized hard-copy or computerized file with all of the pertinent procurement information on the project or purchase. Furthermore, without a consistent and complete method of documenting procurement opportunities and the delivery and monitoring of services and goods requested, the minority coordinator has no resource to fully identify utilization opportunities for MWBEs or EBEs. Additionally, the minority coordinator is unable to accurately track MWBE or EBE utilization without a consistent centralized record of all procurement activities.

Slow payment or nonpayment of fees by prime contractors can have devastating effects for MWBEs. The City has begun requiring a prime contractor submit a payment bond on large contracts or on those contracts where there are a large number of subcontractors. The bond allows the City to obtain funds from the contractor's surety company to pay subcontractors who have not been properly paid for services rendered. However, some M/W/EBEs interviewed for this study complained that there was no mechanism in place to assist M/W/EBEs who are not being paid timely. Because of the importance of this issue, further efforts should be made to assist M/W/EBEs to collect payments.

Additionally, many MWBEs claim that they are being named in bids by prime contractors but not used on subsequently awarded projects. The minority coordinator's office should be available to M/W/EBEs to hear and assist with complaints such as these. The position must also have the necessary authority to draw on the resources of the City to assist him or her in these endeavors.

Decentralized Procurement Process

The City was without a purchasing agent for nearly a year. The vacancy created problems for the enforcement of a centralized procurement policy. An intern from the City Manager's office provided interim support to purchasing during this period. However, there was no purchasing agent with full responsibility for controlling the uniformity of purchases for the City, informing the minority coordinator of upcoming bid opportunities, and ensuring that M/W/EBEs are being adequately notified about bid opportunities. In a centralized process, procurement opportunities would be funneled through one department which could be monitored and structured to maximize M/W/EBE participation.

Nonintegration of the Minority Coordinator

During the course of this study, the minority coordinator operated outside of purchasing reporting to the Assistant City Manager. The coordinator was perceived to be dependent upon a well-intentioned user department head and

the purchasing agent for information about projects. The lack of information to the minority coordinator from the user department and purchasing agent rendered the minority coordinator ineffective. However, the minority coordinator must also be diligent in his/her efforts to ensure that the City and the City's contractor meet the objectives of the City's M/W/EBE program.

Predisposition to Contractors with Prior History

Many user departments in the City of Evanston seem predisposed to utilizing vendors that have worked with the City in the past. This is a tremendous barrier for MWBEs that have been unable to foster business relationships with the City as user departments are not likely to inform the minority coordinator of MWBE or EBE opportunities unless they are required by an external state or federal spending source to set aside a portion of the contract for MWBEs. For instance, on sole source contracts, many user departments prefer to use vendors that have a history of doing business with the City. According to the data gathered from City staff interviews, many user department representatives and purchasing staff feel more comfortable in these procurement relationships because of convenience, familiarity, history of dependable service, and a clear understanding of the vendor's abilities—this process excludes many businesses from participating in a large portion of the City purchasing opportunities.

Notification to and Utilization of M/W/EBEs in the Informal Bidding Process

The extremely high level of discretionary authority given the buyer in the informal bidding process and the minority coordinator's lack of involvement in low dollar purchases further minimizes M/W/EBE participation. Currently, the buyer is not required and not monitored to ensure that MWBEs or EBEs are contacted for telephone or written quotes for purchases under \$5,000. However, since these procurement opportunities are not advertised, and the user department's inclination is to use vendors they have always used, MWBEs may never learn of these opportunities. Many vendors seeking to become suppliers of low dollar goods and services complained that the City generally does not provide them with adequate specifications or time to respond with a written quote. Many of the EBEs, both majority and minority, were not aware of opportunities to bid and observed apathy on the part of City procurement staff for their concerns.

Incomplete M/W/EBE Directory

Another barrier to increasing MWBE and EBE participation is the absence of a comprehensive directory of MWBEs and EBEs available to purchasing departments and prime contractors. Although the MWBE Advisory Committee has created a M/W/EBE directory, the committee members themselves state that the directory is incomplete. Additionally, the directory does not provide the

ethnicity and gender of the business owner. Of greater significance is the fact that many of the user departments and purchasing staff have never seen or used the existing directory. The suppliers list, bidders list, and vendor checks history files do not identify the ethnicity or gender of the vendor owner. Without a vehicle that allows the buyer, purchasing agent, or prime contractor to identify MWBEs to obtain quotes or send RFPs, MWBEs will continue to be excluded from the City's utilization process.

Abuse of the Public Notification Process

The City engages in a practice of mailing bid specifications or RFPs prior to public notification via the newspaper to a select group of vendors either. The review committee, purchasing, and user departments have complete carte blanche to pick and choose who is selected to receive direct and early notice of upcoming bids. Direct notification is given to a select group of vendors to increase vendor response to bids. Alternatively, those vendors that do not receive direct notification are less likely to learn about the bid opportunity in a timely manner, if at all. As such, there is tremendous room for abuse in this procedure which has a significant impact on M/W/EBEs.

Many of the MWBEs that DJMA interviewed stated that they were unaware of the M/W/EBE directory and that they had never received bid specifications or RFPs, or any literature about bid opportunities from the City via a directory. Many City staff interviewed also stated that they did not use the directory or did not have a comprehensive list of vendors by ethnicity or gender. Therefore, it is extremely unlikely that MWBEs and small EBEs would be directly notified of bids. Additionally, user departments and purchasing could easily select vendors based on favoritism giving those vendors earlier, easier and actual notice of upcoming bids. As previously noted, many City staff expressed a clear preference for doing business with firms who have a long history of doing business with the City. Thus, this is a process that could be used to minimize or even exclude M/W/EBEs from the procurement process.

Added to this is the concern expressed about the inadequacy of the 10-day notification period. Many of the small and minority and female business owners seeking to do business with the City are not given enough lead time to prepare competitive bids. Some complained that the 10-day notification period is simply not enough time to submit a bid or respond to a RFP. MWBEs that DJMA interviewed stated that *The Evanston Review* is neither widely read nor distributed, especially to minority business owners located outside of the Evanston City limits. Many business owners are not aware of the fact that City procurement opportunities are advertised in that publication, and if a business owner stumbles upon the notices, the ads are generally discovered only a few days before the bid date. Many also said that they had never been contacted by the minority coordinator about upcoming bid opportunities. Small businesses

and minority and female businesses frequently do not have the staff, time, nor information available to respond to a City bid under such constraints.

Lack of MWBE Participation or Incentives to Meet Program Goals

There are no percentage goals for M/W/EBE participation in the professional and personal service preference program. A prime contractor could potentially agree to give a nominal percentage of work to a MWBE and EBE and still obtain up to 10 percent credit. The result of this program is to provide majority firms with a competitive advantage over each other. This type of program does not create commercially viable opportunities for M/W/EBEs, in particular MWBEs.

The procurement goals of the M/W/EBE programs can be obtained without any minority or female business participation. As such, companies with a practice or policy of not doing business with MBEs or WBEs can continue to engage in such practices and still receive contracts, preferences, and meet the goals of all three programs.

The EBE program is open to any business with an office in Evanston regardless of size or ethnic or gender ownership. The program is also available in a large number of procurement areas—goods, supplies and construction. However, by imposing a restriction that EBEs whose bids are within three percent or \$1,000, whichever is less, the benefits of the program are rendered irrelevant. This limitation on the program restricts an EBE bidder from bidding over \$1,000 on any project valued in excess of \$33,333. A \$1,000 difference to contractors bidding on larger projects would be considered inconsequential and of little incentive or benefit to the contractor. It is the equivalent of having to submit the lowest bid to win the contract.

Large firms with local offices or that have the ability to quickly set-up a local office can potentially take advantage of all three programs to the exclusion of small local majority firms and local MWBEs. Without a small business focus on the construction and professional services programs, the City is limiting its MWBE and small business utilization opportunities in significant procurement areas.

Unfair Certification Burdens on MWBEs

Although the City does not have an MWBE certification process, it requires MWBEs to submit proof that they are certified with another entity before participating in the City's program. This creates a greater administrative burden for MWBEs. While EBEs need only prove that they are located in Evanston. The additional burden on MWBEs who have neither the resources or time to comply further minimizes the participation of MWBEs in the program, especially if the

MWBEs have not heard about or received information about bid opportunities or MWBE programs.

CONCLUSION

A study of the City's procurement policies and practices has revealed a number of inconsistencies which have the potential to limit or exclude M/W/EBEs from participating on City contracts. The City attempted to develop a centralized procurement process, however, the process in many ways is decentralized. Many of the user departments maintain their own files, and each department uses a different numbering system. Without a centralized filing system for procurement files, tracking utilization of M/W/EBEs is extremely difficult and hinders the effectiveness of the minority coordinator and the M/W/EBE program.

The City's minority coordinator is not included in many of the initial or ongoing discussions with City staff regarding upcoming procurement needs or bid opportunities unless the project funding source requires some level of MWBE participation. Moreover, both the minority coordinator and the purchasing agent were both with the City for short periods of time. The short tenure with the City and the coordinator's limited involvement in many of the procurement activities, resulted in the coordinator's lack of input into the procurement process.

Another hindrance to the stated objectives of the M/W/EBE program is the City staff's preference for contracting with those firms that have developed relationships or that have performed work for the City in the past. Because of this preference, many new firms and firms that have been unable to participate on City contracts, typically MWBEs and small EBEs, are likely to be excluded.

Of particular importance is the inherent barriers imbedded in the M/W/EBE program design. The program does not provide an incentive for contractors or City staff to meet the participation goals established by the City. The current bid selection process allows prime contractors on professional and personal service contracts to be treated preferentially. However, the preference or size of the preference is not contingent upon the amount of M/W/EBE participation. Moreover, the City's programs encourage contractors to utilize MWBEs in any significant fashion. From this analysis and review, it is evident that the City's procurement process has systemic barriers integrated into its process that could result in a disparate impact on those businesses the program seeks to benefit, particularly MWBEs.

INTRODUCTION

Many of the residents and business owners with whom DJMA met, especially Evanston nonminority residents, commonly referred to the City as one of the most liberal and progressive in the country. However, many minority residents and business owners often noted that the vestiges of discrimination were just as prevalent in their small town as in any other town in America. Many cited the segregated communities as one visible example of the derivative effects of race discrimination.

Today's non-minorities play a passive role in the perpetuation of the effects of past discrimination, as they continue to take advantage of the inequities initiated centuries ago and continued through sometimes overt but many times subtle barriers of discrimination.

As part of the disparity study process, DJMA sought to explore the experiences of business owners in the Evanston area in particular and in the Chicago PMSA generally. This Chapter is a categorized summary of anecdotal evidence of contemporary discrimination found in the geographic market area of the Chicago PMSA and the methodology used to collect the evidence.

The anecdotal data was gathered through a series of interviews conducted by DJMA and a public hearing held by the City on November 15, 1995. DJMA interviewed leaders of professional organizations and business owners in Evanston and surrounding communities in an effort to capture the experiences, attitudes, issues and perceptions of business owners seeking opportunities with the City and in Evanston generally. In particular, the interviewers sought to learn from these professionals what, if any, racial or gender discrimination experiences each may have encountered as a business owner in this community.

The particularized accounts of marketplace discrimination contained in this volume should be considered in tandem with quantitative evidence regarding marketplace disparities discussed in the Statistics Chapter. The anecdotal information is used to further assess or identify the existence of racially based or gender based marketplace barriers.

The anecdotal information is used in conjunction with the statistical data to further corroborate statistical findings. The methodology employed in gathering the anecdotal data was designed to elicit accounts of business owners' experiences and particularized instances of discrimination. The combination of anecdotal

and quantitative evidence establishes the clearest possible picture of the pervasiveness of identified forms of marketplace discrimination which may be adversely affecting the utilization of minority and women owned firms.

The framework for the collection and analysis of anecdotal evidence for this study has been suggested by the United States Supreme Court in the case, *City of Richmond v. J.A. Croson* 488 U.S. 469 (1989). In that case, the Court held that particularized anecdotal accounts of discrimination could help establish a compelling interest for a local government to institute a race conscious remedy. Moreover, such evidence can provide a local entity with a firm basis for fashioning a program that is narrowly tailored to remedy identified forms of marketplace discrimination and other barriers to minority and women business participation in contract opportunities.

METHODOLOGY

The anecdotal evidence of discrimination contained in this chapter was gathered by conducting confidential, in-depth interviews with business owners and leaders of professional organizations and the MWBE Advisory Committee to the City manager's experience in or knowledge of the workings of the Greater Chicago marketplace. The average interview lasted from one to two hours in length. In general, each interviewee was interviewed by a single representative of DJMA. Thirty interviews were conducted with interviewees that included 8 majority business owners and 22 past and present, minority and women business owners of various ethnicities. The ethnic and gender composition of the interviewees included 12 African American males, 2 African American females, 4 Hispanic males, 1 Asian male, 3 White females, and 8 White males. Comments made by interviewees are not verified. As previously discussed, DJMA informs each interviewee that the interview, and information obtained in the course of the interview, will be used anonymously, thus, comments have not been verified for accuracy. This is to encourage participants to feel comfortable while relating their experiences and issues without fear of repercussion.

Potential interviewees were selected from the City of Evanston Minority and Evanston business directory; MWBE Advisory Committee; and, MWBE certification directories from the City of Chicago, Cook County, Chicago Mass Transit Authority, Water Reclamation District, Suburban Black Contractors Association, and the Evanston Chamber of Commerce. Additionally, introductory contact letters from DJMA were mailed to certified minority and women business enterprises selected from the 1995 Cook County Directory of Minority Business Enterprises, Women Business Enterprises, and Disadvantaged Business Enterprises; the 1995 Directory of Certified Disadvantaged Business Enterprises, Minority Business Enterprises, and Women Business Enterprises for

the City of Chicago; the Protected Class Business Enterprise Vendors List for the Metropolitan Water Reclamation District; and the Disadvantaged Business Enterprise List for the Chicago Transit Authority. The letters invited recipients to schedule interviews to give their comments on perceived barriers to minority and women business participation in the marketplace.

SUMMARY OF ANECDOTAL INTERVIEWS

The results of the interviews and testimony provided during the City public hearing revealed that many of the majority and minority business owners have the perception that discrimination is a major obstacle to MWBEs. However, because of the subtle nature of gender and race discrimination, many of those interviewed noted the difficulty in attributing an MWBE's inability to secure a loan, bonding, or a contract to discrimination. Moreover, many of the concerns, complaints, and comments raised by the interviewees are generally those of small business owners. What tends to distinguish the obstacles confronting MWBEs from those confronting majority business owners is the degree of difficulty the MWBE experiences attempting to overcome these obstacles.

A common complaint of minority firms that we interviewed was the practice of prime contractors submitting an MWBE's name on a bid to win a contract and then never using that MWBE on the project. On many occasions, the prime contractor never contacted the MWBE contractor. Only by accident would the MWBE later learn that his or her name had been used by a majority contractor to take advantage of the M/W/EBE program. Frequency of these complaints by MWBEs is a foreseeable result of an ineffective monitoring process by the City. It is also consistent with DJMA's findings enumerated in this study's procurement chapter which discusses the problems effecting the City's monitoring procedures.

In the opinion of many interviewees, the City could more effectively develop minority businesses by minimizing the effects of the procurement barriers identified in Chapter IV. Others accused the City of apathy, showing little, if any, interest in addressing these issues. Still other interviewees expressed frustration with the City's refusal to assist MWBEs who are being mistreated by a prime contractor working on a City project. The interviewees viewed the City's behavior as condoning the unfair treatment of the MWBE.

MWBEs also suggested that a dedicated minority coordinator with the necessary authority, expertise, and integral involvement in the procurement process is a fundamental prerequisite to the development of an effective M/W/EBE program. Their experiences with the City have left them with the impression that the minority coordinator position does not have the support of senior City officials or City Council nor the authority to enforce the policies of the program.

DJMA also found that many M/W/EBE contractors were not aware of the M/W/EBE program, the existence of a director or bid opportunities with the City. Many MWBEs and majority EBEs alike stated that they never attempted to seek opportunities with the City because of a lack of notification.

MWBEs interviewed found the lack of financing to be a barrier to developing or sustaining a business. Small businesses generally list financing as an obstacle. The difference, however, between the experiences of majority and minority small business owners is the number of loans issued and difficulty of the application and underwriting process. Many of the minority interviewees noted that underwriters occasionally require collateral valued far in excess of the amount of the loan. Additionally, bankers fail to offer information that could assist MWBEs in obtaining loans. Stereotypical assumptions are made that result in probing investigations by the banker who will then use any blemish, no matter how minor, to deny the loan or demand unreasonable collateral requirements. One minority business owner stated that prejudice and discrimination are standard costs of doing business for minority business owners.

Over the course of interviews conducted for the anecdotal analysis, several issues were commented on repeatedly by interviewees. Many cited the "good old boy" network as one of the most difficult barriers to overcome and the network is generally very exclusive. This problem is further exacerbated by those in the City staff's preference for using firms with a long-standing relationship with the City.

Another common complaint is the inability to access financing and bonding. These two resources allow businesses to fund the development of a new business or maintain operation of an existing business. The business owner's inability to obtain credit at one bank tends to increase the difficulty of obtaining a loan at another bank. Many minority business owners stated that their collateral requirements tend to be greater than those of White business owners. Minority business owners tend to be subjected to higher interest rates and confining loan restrictions that do not apply to majority business owners perceived to have similar qualifications. Minority business owners complained of difficulties with unions and unfair pricing of supplies.

The interviewees raised numerous other concerns which are provided in the interviewees' own words below.

DISCRIMINATION AND OTHER ADVERSE MARKET CONDITIONS

The anecdotal comments obtained from interviews conducted for this study identified several types of discrimination that appear to affect the Greater Chicago marketplace. The evidence was sorted into 13 categories. Each form of discrimination and adverse market condition identified poses a significant

obstacle to the full integration of MWBEs into the mainstream of the public and private sectors of the local economy.

Stereotypical Attitudes

- One Hispanic male suggested that minorities that had been hired were fired based on unfounded assumptions that they were irresponsible and dishonest. "They had some down there when they started with research park...in the firing process there were a lot of allusions to the fact that they were—not good workers—there was equipment missing, go back to the last deal, cheat, and stink syndrome. Those were—those things were insinuated."
- A Black male business owner felt that majority firms are unlikely to give minority firms work unless it is a requirement. "Because it was a tollway job—and the tollway is a goal...[It is not a] mandatory type situation, so it's like I say, as long as they don't have to, they won't [hire minority firms]."
- This Black male business owner commented on majority firms' doubts about his firm's qualifications. "We bid some projects and when we bid them we know that our number was the best number because we were told by several different people...And the prime contractor was the one that—yeah, he told us that we couldn't handle the project. Well, the basis of it was that—I don't want to say racism—that probably played a part in it, but he didn't think my company was big enough to handle a project that size. I would assume that it would have to be both the [job and my people, the job] was like a million two. They just made the decision that we could not handle that project. But as it is right now we have a project for the Great Lakes that [is worth] a million seven. The sub that they replaced me with was a White male."
- An Hispanic male business owner complained about the lack of respect shown him by majority business persons. "The way they treat me, the way they speculate about my business, I mean, the idiots who came—White guy by the way—to my office, one of the logic study used to get back to the right certification is that I have a smaller office than my partner. That's stupid...Things that happened to them at that time, they brought it up. And definitely, you know, the guy was [biased]—which is another thing..."
- This Hispanic male business owner then complained about the perceptions of majority business persons. "Well, lack of recognition [is a problem]. The fact that you are minority, the tendency [to think]—wait, they don't know what they're doing."
- A Black male business owner commented on the perception majority business persons have of him when they find out he is a minority. "I've had

the situation where over the phone everybody was extremely nice to me. And when I show up to tell them, okay, here I am—I would say that, typically, it takes the individual about five minutes to recover. But personally I've experienced that one of the biggest problems that I have is—every time I present myself to sell my services—I have to systematically destroy some established idea the client—the prospective client has. Regarding minorities—people, the individuals that work in public environment—and they will tend to associate themselves—award contracts to individuals that they're familiar with. After all, this is the way nature operates. Like a family really."

- An Hispanic male business owner complained of discriminatory treatment on a job site by majority firms. "I'm sure I have been [treated unfairly on a job site by a prime contractor]. But [that] may be the cost of doing business. Meaning that I don't know whether it's an isolated case or whether it's part of doing business with some of these jobs..."
- A Black male business owner commented that attempts have been made to increase minority participation on City projects. "Previously the civil rights organization, the NAACP, did march on a couple of sites. It was not long lived and it was not massive. They were picketing job sites for lack of minority workers on the job sites."
- A White female business owner commented that the City was unresponsive and did not communicate with her in a professional manner. "I had a neighbor who worked for the city who said that the city was desperate for some training and some help related to the computers...she tried to get me connected with somebody and they were just absolutely uninterested...I think I finally got the person who I was supposed to tell that they needed me and that I was good at what I do. I sat outside of somebody's office for a couple of hours one day and they never did see me. No, they saw me for about five minutes and I never heard from them again...I would love to get involved but the only people who want me in the city want me on a volunteer basis. [This was] probably five years, maybe a little more."
- This White female business owner continued, saying that she was not taken seriously by banks when shopping for a small business loan. She said "Not because of being female, well then again how would I know. Certainly because I was new and small...I just didn't receive a word of encouragement. I don't know if it is femaleness or newness. My personal credit rating is the highest that it could be. That is the thing about discrimination, most of the time you don't know."

- A Black male business owner commented on problems with a union. "Well one particular union, which happens to be my own local, we [have had a] little difficulty because every time we put a request in for a minority or female there is a gentleman down there that says that that's [discriminatory], and we say, no, that is a requirement of the U.S. Labor Department and as a matter of fact, we've had to write a letter and bring it up before the U.S. Labor Department and so it's in the process now, I don't know what they're going to do with it but we've had to take the case to the U.S. Labor Department."
- A Black female employee of a Black male owned company commented, "It's who you know. It's politics. We have to study it to death. We have been studied and educated to death, okay?...Well, before any minority gets any contract, we always have to be educated. They have seminars to death. You got to sit in the classroom and they tell us how to do this, how to do that, and whatever, and the other guys got the dollars and they're going to the bank. But we learned. Cause we sitting in the classroom...the other boys are out there working the contract—they're getting paid, they're going to the bank. We call it bait and switch. They bait your butt in there and switch on you...It's based on their past history. Okay. they talk a good game. They walk a good game. But when you look at what they actually do."
- This employee continued, saying "But see they use that tired old excuse, we can't find qualified minority businesses. And I've always asked the question—what is a qualified minority business? I haven't gotten an answer to that so maybe you'll get it. Okay? They teach us...After we take your seminar we still not qualified?...Does the city have a certification program? They do not have a certification program. If you don't have a certification program, how can you determine who is qualified and who is not? Okay? What is the criteria for qualification? Has the city ever had a certification program? No. Only if they're required to do so...You know, white man go out there try to find him a nice little—little black person—nice little minority person to get a bid from them, may or may not use it. But they can't say there's a—see there's—there's always a form. There's a form that you fill out that says I have tried to find a qualified minority. It does not say that you gonna use him. It just says you made the contact. And—most of the contracts require that you make the contact. They don't say you gotta use em. Those are rare."
- A Black female business owner commented on how she was perceived by others in the business community. "...you know it [discrimination] exists. In the private sector or even when I was an employee, being a female is absolutely my biggest problem. When I would go to interviews for jobs on behalf of the firm that I worked for...I am working for a business which gets a quarter of a billion dollars a year, and the first 20 minutes of any interview was how did a nice girl like you get to be in a field like this...My field is very

male dominated. In my particular field, being a woman is more of a problem. Men are the scientists, not women. God forbid minorities can't do science, so if you are a woman and a scientist then oh no! There are way more males in engineering and in the environmental field than females definitely."

Discrimination in Prior Employment

- An Hispanic male said, "About six years ago I tried to apply for the job, purchasing department. That place discriminated against because they couldn't find someone more qualified than me, you know, I had—when I applied for it, five years of being in purchasing take it, 20 years including five with the city of Chicago. And they—they didn't take me."

Unequal Access to Financing for Business Start-Up or Expansion

- A Black female employee of a Black male owned business commented that, "The primary difficulty was funding. You know, insurance. We'd get the insurance but—the funding was a problem. The workmen's comp was a problem. Because all of that is based on financial records. So it's like which came first, the chicken or the egg? You know, in order to get a track record you got to have the job. In order to do that, you know, you gotta have cash. So you—it was like having a—you pay for credit, and you pay for everything in cash—you don't have a good rating. Because you haven't had any credit. So that was the biggest problem we faced in—this business."
- A Black male business owner commented about not being able to develop relationships with financial institutions. "We have not yet arrived at that point [of having a bank as a partner] because we're minorities. Okay. No, [bankers] are very careful to avoid overt discrimination. They're very careful. I mean it's there, if you take a person who is White with the same business, same education, same everything, it's easier for them to obtain a loan than it is for us as Black people. I know several firms that are similar to mine with similar types of assets, equipment, invoices that—you know—accounts receivable out there and everything—that have been able—but are majority—have been able to get better financing..."
- An Hispanic male business owner complained about problems he encounters trying to get adequate financing. "I haven't been able to get any source even with the new company, my bank is very difficult. I am asking for one lousy line of credit—50 percent of the \$5000. In our business that's absolutely nothing...I organized [deleted] four years ago...for a year I put about a million dollars through and...when I went to ask for a little line of credit, I was thinking about \$30,000 to \$40,000—and they told me they weren't interested. Then I moved my account to a bank close to where I am, Chicago, Oakbrook,

went over there with the same story...the first year I made \$280,000 worth of sales, I quadrupled that thing on the second year and I know 1994 is going to be a good year. Three million dollars, \$3,000,800. And they [led] me to believe we'll help you...two weeks ago they told me no. On the line of credit...whether we are minority or not—a small business, have big problems with that they told me that I didn't have enough capital but—from—to back up \$75,000, yes my partners and I—[could have] signed a personal [note]—because between the two of us we have half a million dollars...They still didn't do it..."

- A White male business owner commented on his perception of how difficult it is for minority business owners to get comparable financing. "...usually minorities have always been disadvantaged as far as adequate resources go...financing. That's always what—it would impact those people probably more than any."
- A Black male business owner complained about getting a competitive line of credit. "Whatever you require, plus a 100 percent increase. Whatever is required of anyone else plus a 100 percent...well we really don't like to get into construction because it is so speculative. We want you to sign your house, your car, your child, your wife, and anything else that you have. Small minority owned businesses don't have those types of collateral...I have talked to several of them [majority owned businesses]. Their response was looking at your financial statement anything should give you more than \$20,000 based on your receipts they should be able to give you more than that. They had to go through similar ones because of the requirements of the FDIC and other banks. Their request for collateral is always greater among African Americans and minority/women owned firms."
- A Black male business owner commented on how difficult it is for minority business owners to get financial assistance and loans. "...I didn't have to come up with any more because this was something that was going to be beneficial to the bank also. They usually do have to come up with more collateral...The lines of credit uncollateralized and unsecured don't seem to be as easy to come by as they are in the majority areas. I even know of a [black] church that borrows money and has maybe \$1,000,000 in collateral and they only borrowed, well I don't know how much they borrowed, but when we became involved they only owed \$60,000...With all of the property they owned it was worth \$1,000,000 but they had to tie all of that together for a \$60,000 loan. It is crazy. It doesn't make any difference in a sense because the equity above the \$60,000 was still usable by the church should they need it, but it was still tied to the \$60,000 which should not have been...It is very safe to say that 'we can't lend you this money because you don't meet this criteria or that criteria.' Yet, a part of that criteria is not going to affect the banks ability to sell that loan, but the people who do the underwriting still say well...We just couldn't make the

payment. In our record you will find that we wrote the bank explaining that this was the situation before it happened and that it would only take about 25 days for us to be back in the grace. You can take that kind of information and underwrite it and go ahead and grant the loan based on that because it was explainable. Well, we have a lot of people who will still not look outside that. I see them not giving advice but just going ahead and doing it [for majority business owners]. When it comes to minorities, [they do not]. When the package comes to the underwriter it already has the explanation in it because majority people already know to do that. You would be denied [as a minority applying for a business loan]....When we package and write the explanation then that is because we have a commitment from someone in that organization and so then when we write it, what the banks are now saying is that we will get a second opinion...What we have found in Bank One for example is that it would go to Indianapolis...so it was just wasting time because it still came back denied for the same reason as the people here denied it...one of the reasons that a second opinion was needed is because here you were supposed to be thinking creative and yet it was still denied. I don't know if the city has done anything to help get special financing or lines of credit or that kind of thing for a minority contractor."

- A White male business owner commented on the difficulty of getting a small business loan. "I may have taken out a \$5,000 loan from a local bank for some start-up expenses. We found it more difficult then to obtain small financing—for small firms—they were willing to grant large loans for bigger firms, but—but now small loans for smaller firms. About loans to small business. And it wasn't that I couldn't get one, it was just that it was complicated. They weren't really encourage small owners, and it was complicated, and—would have us—required a personal guarantee. Despite years of successful performance by our firm. And the fact that we've never—had a significant debt in 20 years..."

Unequal Access to Bonding

- A Black male business owner complained about lack of adequate bonding. "Well, one of the problems that is most common is bonding. Because as you bid as a prime contractor you have to have bonding. So...we're limited in that aspect, okay?—because the job has to fall within the range that—you know, of our bonding is, so we can't, really, you know, go after some of the bigger projects even though we would have the capital because our bonding might limit us."
- An Hispanic male business owner complained about the lack of bonding, despite his firm's credentials. "Still I don't have bonding, I guess I am negotiating \$100,000 worth of bonding. Which is nothing in our industry. I know my bonding rate is not similar to that of majority owned companies."

Oh no, it's not. An acceptable bonding [rate] within the industry is 2 to 2.5 percent. My bonding that I just got approved through my insurance company—they are charging almost three percent."

- A Black male business owner complained about the availability of bonding and technical assistance for MBEs. "I think that the city should find a way to create some bonding capacity. I think that the city should be able to provide technical assistance for small firms where technical assistance is required."
- An Hispanic male business owner complained about getting non-competitive rates for bonds and loans. "I don't think [my bonding rate is comparable to those of majority firms], they're probably higher...well as a percentage—probably 25, 30 percent, higher. [My interest rates on the loan are not comparable to interest rates that majority business get, they're substantially higher.]"
- An Hispanic male business owner commented on the practice of some majority prime contractors to require subcontractors to put up a bond for a job. "Well I don't know really what the state law allows, we have the general contractor demanding from his work[ers] anything beyond \$50,000—to have bonding now...I was the HVAC contractor for the kitchen at O'Hare for United Airlines. Million dollar contract without [a] bond. The bonding factor should be part of the general contractor's cost, okay? But they want to save money too because the bonding company says, we have companies that are not bonded there. You're taking a risk."
- This Hispanic male business owner then continued about problems getting bonding. "I do. I have problems getting bonding. I've been denied three times. The same...the same thing as the bank. Despite the fact that I can show contracts, that I have done a couple of libraries with the city of Chicago, [another government contract for] \$250,000...I got now a contract for \$800,000 on the piping. Despite that record, you know, these guys don't—don't budge one inch. I mean, they deny you. Three times."
- A Black male commented that projects can structure so as to minimize the bonding issue, "That's what we talking about breaking them up into smaller units so that the bonding would not be a problem. Bonding is always a problem."

Unequal Access to Supplies and Fair Pricing

- A Black male business owner commented that he was not able to find a lease at a competitive price. "It is probably most of the time almost as though they

are looking for...they probably will tell me that they want a higher amount for the lease than they will tell the white person."

- An Hispanic male business owner commented on dealing with suppliers and their network with majority firms. "Some [suppliers treat me fairly], but basically, no. No. It tends to be a—I don't know whether you're familiar with the term oligopoly. there's a limited number of people that produce the—the product, and so they have their own distribution network. Like a group...you cannot get the same price that in my case a Rierson or a Central Steel, which are the big companies here, would get...because of the established relationship they have."

Refusals to Work by Majority Employees

- A Black male business owner commented on the trouble he had with a majority employee, "He was like saying that he lifted a bucket of concrete all day and his back went out on him—things like that. And they went back to labor, to the board, union hall, and said, you know, we're not paying them because—whatever they want to get paid for that day. And the guy walked off early that day in the morning. Wanted us to pay for the whole day. We really didn't need the union workers, was the general contractors kinds put the lid on it. In order to keep the job... I can't recall how long that job was, but—they weren't being suitable and being reasonable and we gotta cash our checks at your bank or else—that kind of thing. Like they didn't trust us, you know. Well see, when we were doing that hauling that time, we had some union guys up there. It was a different story, they came with that crap, you know, like—I don't respect you basically because of the women. First, and the other thing because we were Black. They hurried up and changed their tune. If you allow them to disrespect you, then they will continue to do that. But if you don't—they'll straighten up. Cause we fired the guy the—you know, he was drinking on the tractor and crap? And acting the fool. Pulled his rump right out of that tractor and fired him. And when a small business is required to hire union personnel, it puts their bid outta whack."

Denials of Opportunities to Bid

- A Black male business owner commented that the City's minority oriented seminars were not helpful. "[The seminars have not been helpful] because nothing was ever produced out of them. They had a seminar for this building here. They were bringing in the minority contractors to meet with O'Neil and—and the general contractors— like a networking—right, yeah, but nothing ever came out of it. O'Neil and them did exactly what they wanted to do."

- An Hispanic male business owner complained about the City's process of getting quotes from suppliers. "... they'll go out and they want an open contract to supply them with 50 different items of steel. And the only people that can supply that would be the billion dollar corporations in steel. So it knocks small companies out of the ballpark, whether they're small or minority. They just can't compete...they have resources of inventory, trucks, they'll service, so I think that it's very difficult to do business with different departments...I think if they broke their packages up into smaller units...and if they were specific as far as their requirements, instead of having open-ended. Right. I've never [obtained any business] with the City of Evanston."

Exclusion from the "Good Old Boy" Network

- A Black male business owner said that he thought there was a social network between city procurement agents and favorite vendors of the City. "What I think is that the business people and the departments of the city government have just 'been in bed together' for years and years. Breaking into that is just a very difficult thing to do....there is no one proponent [advocating for the minority business owner] that I can put my finger on except one alderman that is making headway. I am talking about for business people in particular. There are no proponents that are making headway."
- A Black male complained of the "old boy network." "So it's pretty much still the 'good ole boy' syndrome—you know, they call this guy's friend or some guy that's been associated with them for years. We made some efforts to make some inroads into Cyril, we put together a package and we have not yet received any invitation whatsoever to bid anything for them at all. So it was just a waste of our time and our paperwork. They're not really that much more competitive as it is, naturally it's easier for them to go to the banks and get the working capital that they need because simply that they are White. I mean, I'm just gonna be flat out, that's what it is. And that the fact that—such as my old [white] partner—her brother's helping her—they're electrical contractors too, so they're helping her, so—and they all bank at the same bank so—you know, the banker's really buddy buddy chummy chummy with them so—I mean, they have a tendency to let—their line of credit stretch out a little bit longer than it would be for myself."
- Another Black male business owner commented: "Most of it has gone to some 'good ole boy' friends of whoever is over there in the purchasing or—not necessarily the purchasing I guess, some of the park district—they can call people that they've known for years or—stuff like that, you know. And come in and they can give contracts—just give the contracts without competitive bidding..."

- This Black male business owner continued, complaining about the 'good old boy' network and how it affects minority firms' ability to compete. "Well, one of the things, again—has to do with going back to the good ole boys. There are people who are department heads who are stuck in a rut and they're used to doing business in one way and it's easier for them to pick up a phone and call somebody that they've been dealing with for 20 years rather than try to—you know—change is hard."
- One minority business owner complained, "They're effective at what they're doing "minority hiring" to keep the status quo. It's payoff stuff, keep going back to the same people, and people ask "where is the IN?", but it's not out in the open, it's settled without anyone knowing. The contracts go to who they want. They say that they give the job to the company with the lowest bid one person gets a call, they tell him the lowest bid, he beats it and then receives money to complete the job because he does not have enough. Some people get little cookies from the City (and they're little, because Evanston is not a big player, compared to Chicago)."

Bid Shopping

- A Black male commented, "With this general contractor. He's trying to knock off like, what, \$30,000 off our bid?...because the other person he got a price from was that low. But he used us to get the job. But he used my name in the [bid] package [without using my firm on the project]. I don't buy that. To get the job. Yeah. It's called bait and switch. Primes have a—have a tendency—to ask you for a bid, use your bid, and then don't use you. Okay? So in following up on something that we wanted...the guy who got the bid had done a project for the city before. And he used our bid, then he wanted too buy us out and use somebody else because everybody said (inaud) could probably get it for cheaper. So we're still in a—a negotiating phase. And he might not even get that contract. We're not gonna stand by and let [a prime contractor use our name and our bid and give the contract to another contractor]."
- An Hispanic male business owner complained about being listed in a majority prime contractor's bid, but not being used after contract award. "Once, [my company was] listed as being on the bid as a sub, but then not used after the contract was awarded. I wasn't involved on that and it was when I was out of the company and it was done once. Yeah, [they] used the name, yeah. That was before—now this is difficult. Now, in Chicago, they are monitoring the city and all the agencies—I think they used our name and—and it went to somebody else, they negotiated with somebody else...we give him a number and they used our number going in...and they called somebody else and they would see that they had a lower price. But they used our

number to begin with. And that was a [majority contractor], a big company here."

- An Hispanic male business owner commented on a suit involving a union. "I know that the pipe fitters union I worked with is the biggest one in Chicago. It's 597. They have [supervision] right now because an African American company brought up a discrimination suit against them...so they are being watched right now. They don't give him enough people when they need it...well, part of the problem is that—some of—I mean, has happened to me, you fall behind union dues...and they don't like it."

Unnecessarily Restrictive Contract Specifications and Bidding Procedures

- A Black male was frustrated with what he perceived was the City's unwillingness to actively seek MWBE participation during the bidding process. "Well since we did contact this [one] Evanston company, we're—we're finished, we made our contact. But there's no open bid, nobody to tell you whether you (inaud) percentage of the bid package or what."
- This Black male then commented, "Well I think the person who's the coordinator of that program is nothing but a crook. I don't think he's working in the best interests of minorities. It was brought to him from the floor. He did nothing. That means he's 'in bed' with the guy in purchasing, okay? Somebody's doing something. And—I'm not going to blame the City of Evanston, I blame (inaud). He procrastinates. No, he's a bureaucrat. You know, you've heard of inaction? Bureaucratic inaction? That's him."
- A Black male commented, "Like—we're MBE, WBEs, and if we wanted to go as a prime, you know, then you—you're still penalized if you don't go out and get a MBE, a WBE. Whereas a small business—if you can perform the work—the work force is minority. They're minority owned—so what's the problem?...if you are the successful bidder, but you haven't contacted another minority or you have decided that you can do the job 100 percent and you don't need subcontract any part of it—you're penalized. So that's like a catch 22. But you have to go out and hire somebody else? To do this? So, that's sort of like—limiting your growth."
- An Hispanic male business person complained about the need for centralized certification in the Greater Chicago area. "...[there should be centralized certification]. Forget about it—centralize those things...METRO requires METRO certification and you want to work with the METRO. CTA requires CTA certification if you have to work with them...."

- An Hispanic male business owner complained about the city's bid deposit requirements. "How in the hell do you expect minority companies to come out with a bid deposit. And that bid deposit is not returned—any of it—even if you're unsuccessful it takes about ten days to get it if you are lucky. Otherwise, takes months. That money is not producing any money there, it's dead money."
- A White male business owner commented on the uncertainties he perceived in the City's bid process. "I'm wavering on [whether there has been an instance when the bid process was not fairly implemented] because there was a circumstance on one of these awards where a person—apparently was the lower bidder—but was not one of the three calculated and there were subtractions and additions made. I don't know what that was, but in other situations there were times where people have bid and didn't have the required bid deposit...to put in on the bid. I guess that happens frequently, I don't know how that happens, but it does. And it seems to happen to people that are new."
- A Black male business owner complained that the City's contract compliance performance was not effective. "Contract compliance is crucial. Have some teeth in that contract compliance. If you don't have good contract compliance then you are not going to have an effective program because these guys will get the program and they will do everything possible not to honor these commitments. They certainly won't be as aggressive as they have been in [the past] because they knew they had to be responsive and they did not want to be held non-responsive in the bid. They were quite proactive prior to bid. They are not even as proactive in compliance. The sanctions aren't there. The directions aren't there."
- A Black male business owner complained about the City's bid notification process and its impact on minority businesses. "The basic problem is that the city does not give sufficient notice for those who want [to bid]. Bid these jobs as generals, which is my ultimate objective, then I won't have to worry about being on somebody's economic plantation. They should give a minimum of three weeks notice to the MBE, EBE, DBE's (Disadvantaged Business Enterprise) that they want to participate in the projects. They should have pre-MBE, EBE, SBE (Small Business Enterprise), WBE city professions as we come in as the city of Chicago does. There are separate sessions for the EBEs, WBEs, SBEs. They learn to process how to get more MBEs, DBEs, SBEs involved with these generals. They should have two brief pre-bid sessions. They should have a pre-bid session for the generals and anybody else. They should have a pre-bid session for the disadvantaged, small business, minority, women's businesses so that you can reduce the scope of work to find out what their concerns are. Let them show you what they need to bid these jobs. "

- A White male business owner complained that the City's bid process has not always been implemented in a consistent manner. "There have been occasions where the bid process has not been explicitly identified and the procedures followed in the bid process just did not seem to make sense. As a result the applicant for whatever the position was not aware of where he or she stood in the process until three or four months later. Even though you submitted a proposal for a project, you didn't hear from the city for three or four months. You didn't know where you stood and then all of a sudden you got the news.'
- A White male business owner also expressed concern about not getting work where he thought he had submitted the lowest bid, but was unable to verify this, claiming that the City keeps the bid information confidential. "I am not sure [if I was denied a contract where I was the lowest bidder]. I might have been denied through public works. Some contracts I think we were the low bidder, but I have no proof because their information is kept private. I wasn't able to verify our numbers...their bid openings are not public, at least on the design works. There could be five different other matters but when it comes to architectural design services their bid openings are not public. They are supposed to be, but they are not. I haven't been able to see the opposing parties' proposals. That would be an area worth improving."
- A White male business owner then commented on instances of racial discrimination on the part of the City and its employees, stating, " It is a difficult question. I am not aware of any. I am suspicious of some. I couldn't really prove it, but I am suspicious of a couple of occasions. Again, it has to do with the election process of different groups of architectural engineers. I am not quite clear how their selection process works. It seems to me that it is not advertised in public. How they reach conclusions is sometimes a mystery, which has led to a lot of speculation on my part as to how some of these projects have been brought up. I think the two instances that I am familiar with, the process of bidding was changed mid-way through the bidding period. Some kind of negotiations happened after the bids were submitted. It threw some people out completely of the process of negotiations. That's where the process was not very clear. It was not held to a rigid time frame or to a rigid procedure which I believe left a lot of people unclear as to where does the city stand on some of these matters. It is a tough call [whether there was discrimination]. I tend to think not, but then again I am not sure. I think I can say that I believe that some of the projects went to companies that were not qualified to do them for reasons other than qualifications. I am not sure if the people that are [being hired] actually have the qualifications that the city was asking in the RFP. I believe that in several instances the selection process was based upon one or two individuals that had more play or more power than the selection process and the rest of the

committee. I don't know if I can really say this because I am not 100 percent sure, but I think that there is a bit of a, what I have sensed as a—I don't know if it is ethnicity, I think it is more religion....a lot of pro-Jewish kind of selections."

- A Black female business owner complained about the City's bid process. "It's a problem that we have discussed...how we are going to get the City and other governmental entities within Evanston to [simplify] the purchasing process so that when they want to purchase something like paper or some sort of office supplies, or if they need to have the '90-'95 budget printed or some very small item under \$5,000, historically they have sent requests out to three dozen people for a job that might be under \$5,000. As a small business, and most minority businesses are small, you can't afford to reply to every single request like that especially if you know that you are going to be bidding up against three dozen other people, especially if those other businesses are very large businesses because we don't get the competitive rate. As you well know, your rate from your suppliers are based on your annual volume. The smaller businesses have smaller volumes and therefore cannot compete with dozens and dozens of firms, especially from all over, and they are various sizes. We would try to come up with some things that would automatically discriminate against the smaller businesses and all of the minority and women businesses are small."
- A Black male business owner complained about the City's bid process and its inaction with regard to his protest of a bid outcome. "They didn't redo the bid. The grand total of the bid was supposed to be for \$16,000 or something like that. That was my bid. That bid was \$16,000 total. It was in the range of \$16,000 to \$20,000. That is not the first time that happened. It was more than \$16,000. That was just part of it. The total price of everything was \$53,000...the award went to a [White firm from Chicago]...It was a suburban firm. This is my protest to them. Did they even bother to reply to the protest?"

I wasted my time to bid on something that I don't get fair chance of winning. [I have submitted other bids to the city before]...the previous one before the last bid, the same thing happened. [My firm] was the apparent lowest bidder. They decided to put in some numbers. They decided to give it to somebody else. I don't think that it is references. I am sure that my references checked out. It is not the numbers because what I bid on everything all shaped out on the bid, the pricing- [I was told that] I [was] the lowest bidder, and everything have totaled out.

- A Black male business owner complained about lack of support for the City's policies and programs to ensure M/WBE participation. "Those guys don't care about the program. If they care about the program or they call

themselves civil servants, but if someone protests out there because of something, you are supposed to give a response to the protest. This guy did not do that. He is just like 'screw that guy.' He doesn't care. They didn't do anything about it so it was just a waste of time. If somebody is not fair then it is a waste of time."

- A Black male commented, "Political. It's political. Um—I don't really think they want—minorities except a certain select few. To do large contracts. Because if you look around, all the concrete work, sewer work or whatever is being done by these—payola or something—they do that, they had minorities working up there for the—cleaning contract with the city...as a prime contractor, I don't think minorities in this city going to get a chance. They—might get a chance at being a sub, okay? Because of the conditions of the contract. Say, for instance, the street sweep project, that just come up, it's about supposed to be about ten million dollars, okay? To—for some qualified minorities in this city it woulda been very easy for them to qualify as a prime contractor, depending on [how] the job was structured, okay? They broke it up in two. To break the contract down. Because most of the time we won't be able to get—bonding for a \$10 million project. Your cash flow needs would be—very high. During the period of time. The city pays well. You know, and they pay on time. But. You still have to carry yourself when you're dealing with any municipal or state government—30 to 60 days. But those are restrictions or whatever that are built into the contract. Very few of them separate out [the work] so that small businesses—small Evanston-based businesses can participate. Most of the work is done—in this city—from people outside of the city."
- An Hispanic male commented, "Yeah, but there's one instance I've heard in the bid packaging and ultimately—alternate prices. Besides the base bid? That alternate bid, if they wipe out some of those alternate bids in your package—you're the—say like the lowest bidder—and you know you are—with all the limits and everything. They will go maybe to (inaud) another bidder, take out the alternate, and then they become the lowest. That has happened to us. The rationale is—they don't have the funds. Now I don't know what they have, but that's what they're saying. We don't have the funds. We don't have enough money to buy this but we know the price. We're gonna take it out."
- An Hispanic male commented, "They tell you that they don't give away anything greater than \$5,000, it has to go before city council, but you find out that's not true. Like on these parks. You find out architects who happened to be—friends of a person who awarded these contracts to design the parks. Okay? I know these blueprints and plans cost more than five grand. But it never came up on the bill's listing. Or never came before the committee. It wasn't a bid. It was gimme. Well I ain't gonna say that. Cause I know the

city not dumb. Some departments in the city got two different bank accounts that they pay you out of. That's why when you look at the check—the gray and white check means something and the blue and white check means something. The blue and white check means it's gone through the process. You know, the bills listing, and the gray and white check—just like a—slush fund. And every department in the City got one. If you nosy enough you can find out. Oh yes, there has been some discrimination.”

- An Hispanic male business owner complained that his bids have been used by majority primes to show minority participation, but that his firm was not used after the bid award. “[My company has been solicited to bid a job by a prime who wanted to do public work and needs minority participation and has not used us on a contract.] [This has happened] probably five, six times.”

Double Standards in Evaluating Performance

- A Black male business owner complained about not being able to compete with majority firms on fees for his services. “I know we're not able to be paid the fees that our White counterparts are doing. And I see why, my partner is White. When they think of the company, I'm the person they think about. Unless they have a relationship that predates our business—with my partner. I do believe and I do hope that—in the future, preferably the near future—I'll be able to charge comparable fees. Well, three years ago I went to a project. They needed someone. They needed a minority to oversee the construction of one of their projects. When they asked me what our fee was I already realized that we had to be very competitive. I told'em \$65 an hour. I know the architect was charging for his project manager, \$95. The person that was in charge told me flat out, look \$35 take it or leave it. I'll tell you what, it's a consulting service providing service on a professional degreed individual for \$35 an hour. I could get a job myself for more than that. But we needed it. So I took the job...he did add, 'you already know that I don't like you people.' Let me put it to you this way. I am convinced that if I had been White, people would have listened to what I had to say. And not [only] in believing my opinions, you know what I'm talking about. But giving me the initial credibility. Happens every time over the phone, I show up—difference. You know...”
- An Hispanic male business owner commented on not getting any more jobs with a majority firm after satisfactorily completing a project. “There is a big company here, one of the biggest, Turner construction company—I did the kitchen for United for them. And that was three years ago we finished it. I have never been called again by Turner. And we did a fantastic job on the products...I mean it's something that I cannot understand...”

Slow Payment

- An Hispanic male business owner expressed his frustration over a prime contractor's refusal to pay his company for services rendered, "We have to sue [the prime contractor] because, we don't—can't get all of it."
- A Black male business owner said that the City does not become involved in disputes where primes wrongfully withhold payments from minority subcontractors. "The city doesn't support contractors when they have disputes or difficulties with the general contractors, specifically over non-payment of money, specifically over long protracted delays to pay money, and specifically when it comes to the contractor complying with the good faith effort. [There] doesn't seem to be support from the City when those problems arise. I usually exhaust all remedies with that contractor first. I then will let Marty Payne know. I will call the city manager if I do not get a return call or the assistant city manager, and I never get a return call. I will usually let the public works director know. I will let the engineering firm that is supervising the project know before I go to the City. It can never be said that I did not follow the procedures. Invariably, the [city] council will have gone and voted money out for the general. The general decides when they are going to pay us. We have an example, three instances in the city right now, one of which with [deleted] Contractors. He has finished the work. The City has paid him, and we still have not been paid our money. I notified the city manager. I notified the director of public works and sent them letters. The public works director said that he would look into it. I haven't gotten a return call yet. I had the letter hand delivered. I would think that when a business man has a problem like that and follows all of the necessary channels and procedures that he should be redressed for his grievance or find relief in some way. It hasn't happened. Another instance we did a job for \$120,000 for the contractor. The job is now finished. The work has been tested and accepted. We haven't gotten a dime. It was a private job that the city subsidized by giving away some land to relocate a firm and providing some infrastructure improvements. I am still waiting to be paid \$120,000. We did the work and finished it out in December. There is another job here in Evanston out on [deleted] Street. We are still waiting for our retention of \$40,000 and \$20,000 in extra. We haven't gotten a check from those people since August. Most companies can't survive when they have got \$250,000 in receivables sitting out there on three projects. What do we do as a result of that? We contact our [attorney] and file for a lien and the clock starts ticking because we have to protect our firm and of course we need our money. That is what we do. Really in the City of Chicago we wouldn't have to do that. In the state of Illinois I wouldn't have to do that. I notify them that I am not getting paid and they notify the prime and tell them that they have gotten paid and now they have to pay me on day 'X.' Ten days from now they pay me or else all of the rest of your payments will be held up. We will then start deducting 50

percent of your requests. The City of Chicago would call them and tell them that they will not be paid another dime until you have paid this sub-contractor who is in a minority or woman owned firm because cash flow is a problem. The City Council in Evanston pays promptly so there is never an excuse for a prime not to pay his bills. You get it into city council after the first 45 days...you get paid every 30 days. Council meets twice a month. They put it on the [agenda, the Council votes on it] and you get the check three days later. There is no excuse in Evanston. Council pays there bills twice a month."

- A Black male business owner commented that majority owned firms did not have the same problem. "I am sure anytime...if they contact the city they get paid [if] they are an Evanston based firm but not a minority. I am sure of that. I know of other firms that have told me that they wouldn't tolerate that. If they contact the city they get paid...On the [deleted] job that we are working on right now, I am sure many of those subs contacted the City and they got paid right away."
- A Black male business owner stated that there is no way to get an advance for a City contract. "There is no such apparatus [regarding advances] in this city that is available. That is to the detriment to those emerging black owned and women owned disadvantaged business enterprises."
- An Hispanic male business owner complained about being paid in a timely manner by prime contractors. He says that it is more a factor of the prime contractor not paying timely.

Utilization of MWBE Fronts and False Reporting

- An Hispanic male business owner complained about "fronting" and some ventures formed by and with majority firms. "So I have to wait until one of those guys has the money, bids the job and calls me back or before...but before I have found that—many, many cases—all that ever happens—every time happens—that I don't hear from anybody. Why? Because they have the alliance with me. They take a minority company and they say, okay, we're going to work with you—they do this thing, we negotiate it—we put you for a member and we negotiate that later. That is how they work. And that has to be broken. I do have examples, I mean, I know about a company that made an alliance with a minority company, hundreds of thousands of dollars in the last ten years—and this guy, you know he basically will take more than he can perform, you know, and the company will have to bring their own people and finish jobs and finish jobs and finish jobs. That's stupid. That's stupid. What the city, what they could do is, they could buy their own insurance, they could buy their own bonding to bond jobs in which minorities—they want this thing to work, I mean help, don't do it. That is stupid."

- An Hispanic male commenting about the number of fronts operating in the area stated, "Probably all of em...because I don't think they keep their records, In terms of participation—I think a lot of those numbers are fabricated. You know. There's a lot of double counting. See when you say participation and it's not specific what you mean. If somebody gave a bid—is that counted as participation? If somebody was called on the phone and made a contact, is that participation? You see."

These recitations of specific instances of discrimination and perceptions of unequal treatment are very real inhibitors to business survival and development. Below is a further analysis of the qualitative data gathered from a DJMA mail survey of majority businesses and MWBEs.

MARKET SURVEY ANALYSIS

Summary

The market survey of businesses in the Chicago PMSA conducted by DJMA is an analysis of majority businesses and MWBEs that (1) have sought to do business with the City; (2) that may seek to do business with the City; or (3) have sought to do business with another public entity in the Chicago PMSA. The purpose of this study was to determine whether these businesses are subject to any constraints that may have affected their ability to procure contracts with the City of Evanston or with other public entities in the Chicago PMSA. The survey also seeks to determine whether these firms are faced with any kind of discriminatory barriers that may or may not affect their businesses.

The first section of the chapter studies these issues as they relate to construction firms. The second section studies goods and supplier businesses, and the third section studies professional and non professional service firms. Each section has two parts. The first part is a general discussion of the constraints effecting procurements. The second part focuses on firms with less than \$500,000 in revenues, firms in business for less than five years, and firms with debt equity ratios of less than one.

The Construction Procurement survey consisted of 36 firms comprised of 12 White male owned firms, 4 firms owned by White females, 3 firms owned by minority females, and 15 firms owned by minority males. More than 39 percent of the firms surveyed reported that the constraints imposed on them have no bearing on their ability to procure contracts from the city. Large project size seemed to be the greatest constraining factor, and insurance, and their previous dealings with the City seem to be the least constraining factors in their ability to obtain contracts from the City. Among other factors that hindered their ability to

procure City contracts were the length of notification of bid deadlines, bonding, obtaining working capital, and the local business programs. The most helpful factors in obtaining contracts were previous dealings with the city, their experience, prequalification, and insurance. There was no consensus of opinion with regard to the role of MWBE programs in the city. While the programs were listed as being helpful by nine firms, they were reported to hinder the ability to procure contracts by another eight firms surveyed.

At least 24 of the 36 firms reported to have never been discriminated against on any instance in dealing with the city. The discrimination seemed to affect business owners least when seeking to obtain commercial insurance. However, at least seven firms stated that they faced discrimination in obtaining references, hiring, bidding for work and receiving payments for subcontract work.

The most frequently noted barrier to seeking and obtaining public contracts by those surveyed was the lack of awareness of bid opportunities and the lack of information about the procurement process. While other reasons such as slow payments, insufficient bid notification time periods and MWBE status were also given, fewer firms raised these issues. Finally, of the respondents that are required to use MWBEs as subcontractors in their government projects 41.7 percent reported that they would very rarely (0 to 20 percent of the time) use them otherwise. Only 11 percent of the firms stated that this would not be the case and that they would use the same subcontractors even when it was not a mandatory requirement.

Of the suppliers surveyed, at least 28 percent of the firms that were surveyed reported that the constraints imposed on them had no bearing on their ability to procure contracts from the city. Cost of competing bids seemed to be the biggest constraining factor and credit requirements and their previous dealings with the city seem to be the least constraining factors in their obtaining contract from the city. Among other factors that hindered their ability to procure city contracts were insurance and obtaining working capital. The most helpful factors in their obtaining contracts were listed as their previous dealing with the city and MWBE programs. There was no consensus of opinion with regard to the length of notification of bid deadlines in procuring contracts with the city. While the length of notification of bid deadlines were listed as being helpful by ten firms and were reported to hinder their ability to procure contracts by another nine firms surveyed.

At least 43 of the 79 firms reported that they had never been discriminated against in their dealings with the city. The least discrimination was apparent in bidding for work as a subcontractor and dealing with professional and trade associations, wherein at least 50 firms reported that they were never discriminated against and only six firms reported that they were discriminated against at least once. At least 11 firms stated that they faced discrimination in,

bidding for work as a prime contractor and obtaining requests for proposals or bids. Suppliers also noted that the greatest barriers to their companies are unawareness of bid opportunities, lack of information about the procurement process, and slow payments.

The majority of Professional and Non-Professional firms surveyed noted that obtaining working capital was the biggest constraining factor, and MWBE programs and the Local business programs seem to be the least constraining factors in their obtaining contracts from the city. Among other factors that hindered their ability to procure city contracts were length of notification of bid deadlines and prequalification. The most helpful factor in firms obtaining contracts from the City of Evanston was listed as the MWBE programs. As noted by the goods and supplier businesses and construction businesses, the professional and non professional firms surveyed also stated that the lack of awareness of bid opportunities, the lack of information about the procurement process and their MWBE status were the most significant barriers.

Of significant interest is that, for all of the businesses surveyed in all three procurement types, a majority of the respondents consistently stated that they would not use an MWBE required by an MWBE program in other contracts where MWBE participation was not required.

Introduction

Methodology

The market survey chapter is a study of data collected from a mail survey distributed to majority and minority business owners in the Chicago PMSA. A total of 1,297 surveys were mailed accompanied by a cover letter signed by the Evanston City Manager. The letter explained the study and requested each participant to complete the survey and return to DJMA. Three surveys for three types of firms were developed for this study—construction, goods and supplier, and non professional and professional service.

Sixty-eight percent of the surveys were mailed to MWBEs and 32 percent majority business owners. Of the 1,297 surveys mailed, 351 or 27 percent of the surveys were mailed to professional and nonprofessional firms (98 of these surveys were mailed to architectural and engineering firms), 348 or 27 percent of the surveys were mailed to construction firms and 598 or 46 percent were mailed to goods and supplier companies. The methodology for determining the number of surveys mailed and the distribution to businesses was designed to ensure substantive feedback from a sufficient pool of MWBEs and to mirror the approximate average break-out of the City's procurement activity. At the time the survey methodology was being finalized, the data collected revealed that an estimated 11 percent of contracts were awarded to architectural and engineering

and professional services firms, 35 percent construction and 54 percent goods. The lack of updated or complete addresses and limited access to the identity of many MWBEs and majority firms during this portion of the data collection process, affected our ability to precisely mirror the City's procurement activity.

The surveys were mailed on June 12, 1995. Survey participants were given until July 12, 1995 to return their completed surveys. On July 21, DJMA stopped collecting surveys to begin the long process of tabulating survey results. DJMA received a total of 170 completed surveys—a return rate of approximately 13 percent. The highest return rate was from professional and nonprofessional firms and the lowest return rate from construction firms. The following is a detailed discussion of the survey findings.

Construction Procurement

The City of Evanston Construction Procurement Survey included 36 respondent firms. Respondents to the survey included 26 owners, three officers, six managers and one firm of unknown status. Thirty-three of the firms surveyed (91.7 percent) were incorporated and the remainder were sole proprietorships. Of the 36 firms, 12 were majority owned by African Americans, four by Hispanics, two by Asian/Pacific Islanders, one by an Asian Indian and one by an American Indian. Twelve of the firms were majority owned by White males and four by White females. Seven of the firms had majority female ownership.

The primary business of 11 of the respondents was building construction. Seven worked in heavy construction and 14 in special trade construction. Four firms did not report the nature of their business.

A majority of the firms, 66.7 percent, have been in business for more than ten years. Only one African American male owned firm has been in business for less than five years. All the female owned firms have been in the business for at least five years and two of the minority female owned firms have been in business for more than ten years.

Three of the surveyed firms employ more than 50 full time employees; all were owned by White males. Other responses are summarized in Table 5.1.

Table 5.1
Full-Time, Full-Year Employees By Ethnicity & Gender
Construction

Number of Full-Time, Full-Year Employees	Females		Males						Total
	White	Minority	White	Black	Hispanic	Asian Pacific	Asian Indian	Amrcn Indian	
1 to 10	2	1	5	4	1	0	1	0	14
11 to 20	1	1	2	1	1	1	0	0	7
21 to 50	1	1	2	2	2	1	0	0	9
Over 50	0	0	3	0	0	0	0	0	3
No Response	0	0	0	1	0	0	0	0	1

Source: DJMA Survey
 * Two respondents failed to state their ethnicity and are not included in this table

At least 23 firms reported that they employ 1 to 10 White females and 15 of the firms reported to employ one to ten White males. While only one firm employed between 11 and 20 White females, six firms reported that they employed between 11 and 20 White males. Moreover, six other firms reported that their employee composition would include 21 to 50 White employees.

Eighteen firms reported that they employ between one to ten minority females and 21 firms report that they employ at least one to ten minority males. In contrast, while 5 firms employ between 11 and 20 minority males, and 4 firms hire anywhere between 21 and 50 minority males, none of the firms surveyed reported hiring over 10 minority females. Eighteen firms did not respond to this question.

A majority of the firms—53 percent—had annual gross revenues greater than \$3 million but less than \$50 million. None of the firms surveyed had annual gross revenues over \$50 million. A little more than a third of the firms (36.1 percent) had debt equity ratios of greater than one, while 27.8 percent had debt equity ratios less than one. The remaining firms in the sample did not respond to this question.

Of the 36 firms in the construction procurement business that were surveyed, 24 reported that they had attempted to secure a contract with the City of Evanston within the past six years. Results to this question are summarized in Table 5.2.

Table 5.2
Attempts to Secure a Contract from the City Within the Last Six Years
Construction

Number of Attempts	Females		Males						Total
	White	Minority	White	Black	Hispanic	Asian Pacific	Asian Indian	Amrcn Indian	
1 to 10	3	1	9	2	1	1	1	0	18
11 to 20	0	1	0	0	0	1	0	0	2
21 to 30	0	0	1	1	0	0	0	0	2
Over 30	0	0	0	0	0	0	0	0	0
Never	1	1	2	4	3	0	0	0	11
No Response	0	0	0	1	0	0	0	0	1

Source: DJMA Survey
 * Two respondents failed to state their ethnicity and are not included in this table.

Impact of Factors Constraining Procurement

Of the 36 construction firms that responded to this survey, most were not constrained in their ability to do business with the City of Evanston because of inhibiting factors. Those factors that had the greatest impact were bonding requirements, large project size, cost of completing bids, obtaining working capital, length of notification of bid deadlines and interestingly, the MWBE and EBE programs. These factors are illustrated in Table 5.3 below.

Table 5.3
Factors Effect on Firms Ability to Procure Contracts from City of Evanston Construction

Factor	Helpful	Hindrance	No Effect
Credit requirements	2	4	19
Bonding requirements	5	8	15
Insurance requirements	6	1	23
Large project size	3	12	14
Costs of completing bids	1	7	21
Obtaining working capital	5	8	17
Length of notification of bid deadlines	2	9	21
Prequalification	7	3	21
Requirements (experience)	8	2	21
Previous dealings with the City of Evanston	8	1	17
MWBE programs	9	8	12
Local business programs	2	7	16

Source: DJMA Survey

* Several firms did not respond to the question or responded that the question was not applicable to their firm. These firms are not included in the table.

Survey results further indicated that minority contractors accounted for a significant portion of those hindered by procurement factors, as shown in Table 5.4. This finding is consistent except for the MWBE and EBE program. Here, non minorities noted a greater impact on their ability to do business with the City.

Table 5.4
Analysis of Factors That Hinder the Ability to Procure Contracts from City of
Evanston by Minority Status
Construction

Factor	Total	Minority	Non-Minority	Uniden
Credit requirements	4	3	0	1
Bonding requirements	8	5	0	3
Insurance requirements	1	1	0	0
Large project size	12	8	2	2
Costs of completing bids	7	4	3	0
Obtaining working capital	8	6	0	2
Length of notification of bid deadlines	9	5	3	1
Prequalification	3	1	1	1
Requirements (experience)	2	1	1	0
Previous dealings with the City of Evanston	1	1	0	0
MWBE programs	8	0	7	1
Local business programs	7	2	5	0

Source: DJMA Survey

Discrimination in Construction Procurement

A majority of firms responded to having never been discriminated against in those activities that would affect their ability to do business with the City. The majority of those that felt discriminated against were minority firms. Responses to questions concerning discrimination in construction procurement are summarized below in Table 5.5.

Table 5.5
Frequency of Being Discriminated Against
Construction

Activity	Discriminated Against	Never Discriminated Against	No Response
Applying for Commercial Loan	3	26	7
Applying for Bid Bonds	3	25	8
Applying for Commercial Insurance	1	29	6
Obtaining placement on vendor lists	4	25	7
Obtaining requests for proposals/bids	4	25	7
Obtaining quotes from suppliers	2	27	7
Dealing with prof/trade associations	2	27	7
Hiring qualified employees	1	28	7
Obtaining references	0	28	8
Bidding or working on contracts	7	21	8
Bidding or working on subcontracts	4	24	8
Receiving payments for contract work	5	24	7
Receiving payments for subcontract work	7	22	7

Source: DJMA Survey

Level of Business in Public and Private Sector

Thirty-two of the 36 firms had experience working with a public entity. Thirty of the respondents had also worked with private companies. A majority of the firms stated that there were two important problems in working with public entities as well as private companies—unawareness of bid opportunities and lack of information about the procurement process. Almost 20 percent of the respondents stated that slow payments, insufficient of time for bid preparation, and MWBE status were barriers.

Almost one third, 30.6 percent, reported that over 80 percent of their business came from the public sector. About 44 percent of the firms had between 20 and 80 percent of their business from the public sector. In contrast only a small percentage of firms, 16.7 percent, reported 80 percent of their total business from the private sector. About 47 percent of firms had between 20 and 80 percent of their business there, while 30.6 percent of the respondents had less than 20 percent of their business from the private sector.

Contractors that are required to use MWBEs as subcontractors are noted to very rarely (0 to 20 percent of the times) use them otherwise (i.e., when requirements are not mandatory). While 41.7 percent of the respondents were in consensus with this result, 27.8 percent reported that this was not applicable to them. About 11 percent of firms (four of 36) stated that they were often (more than 60 percent) used as subcontractors even when it was required of the prime contractors.

Construction Firms with Annual Revenues Less Than \$500,000

A more detailed analysis of the Construction Procurement Survey revealed that five firms have less than \$500,000 in gross revenues, one minority male owned firm was in business for less than five years. The five firms with less than \$500,000 in gross revenues include two White male owned firms, two White female owned firms and one firm owned by minority males. Ten firms have debt equity ratios of less than or equal to one. These firms were comprised of three White male firms, one White female firm, one firm owned by minority females and five firms owned by minority males.

Among the firms with less than \$500,000 in business, only the minority male owned firm has been in business for less than five years. Two of the firms with debt to equity ratios less than one have been in business between 5 to 6 years, another 2 between 7 to 10 years and 5 for more than 20 years.

One White male owned firm with a debt equity ratio less than one has at least 50 full time full year employees. Three firms with similar debt equity ratios have between 20 and 50 employees and two firms have between 11 and 20 employees and 4 firms between 4 and 10 employees. Two White male owned businesses,

two White female owned businesses and one minority male owned businesses with less than \$500,000 in revenues employ less than ten employees.

Among the firms with revenues less than \$500,000, two White females firms reported that they employ one to ten non minority females and two White females firm and one White male firm reported to employ one to ten non minority males. Further, for businesses with debt equity ratios of less than or equal to one, six of them reported to employ between one and ten White females, while four of these firms reported that their employees include between one and ten White males. Among firms with similar capital structures, 2 reported to employ between 11 and 20 White male employees, and 2 reported between 21 to 50 White male employees.

In surveying firms with revenues less than \$500,000, three firms (one White male owned, one White female owned and one minority male owned) report that they employ between one and ten minority males and one firm reports to employ between one and ten minority females. Among businesses with debt ratios not greater than one, five firms employ one to ten minority females, while five firms with similar capital structures did not respond to this inquiry. In contrast, for firms with debt ratios less than or equal to one, five firms hire at least one to ten minority males, three firms employ between 11 and 20 minority males, and one firm hires anywhere between 21 and 50 minority males.

One White male and female owned firm attempted to secure a contract with the City of Evanston at least once, while the remaining three firms never made an attempt.

Suppliers Procurement

This section is a survey of suppliers working with the City of Evanston. The purpose is to examine whether suppliers face any constraints or discrimination in dealing with the City. Seventy-nine firms responded to the survey: 21 White male owned, 22 White female owned, 14 minority female owned, and 20 minority male owned. The respondents included 58 owners, 9 officers and 5 managers. Of those firms surveyed, 91.1 percent were incorporated, 7.6 percent were sole proprietorships and one firm was a partnership. Eighteen firms were majority owned by African Americans. Similarly, ten of the 79 firms had majority Hispanic ownership, four Asian Pacific, one Asian Indian and two Native American. Forty-five of the firms had no significant ethnic group dominating the ownership structure while 36 firms had majority female ownership. Just over 21 percent of the firms had annual gross revenues greater than \$3 million but less than \$50 million. Only three of the firms surveyed had annual gross revenues over 50 million. A little more than a third of the firms (38 percent) had debt equity ratios of less than one, while 16.5 percent had debt equity ratios greater than one. A majority of the firms—68.4 percent have been

in business for more than ten years. Nine firms have been in business for less than five years: one White male owned firm, one White female owned firm, two minority female owned firms, four African American male owned firms and one Hispanic male owned firm.

Seven respondent firms employed over 50 employees. Other responses are summarized in Table 5.6.

Table 5.6
Full-Time, Full-Year Employees By Ethnicity & Gender Suppliers

Number of Full-Time, Full-Year Employees	Females		Males						Total
	White	Minority	White	Black	Hispanic	Asian Pacific	Asian Indian	African Indian	
1 to 10	15	9	7	9	4	1	0	0	45
11 to 20	5	3	3	0	1	0	0	0	12
21 to 50	2	1	7	0	0	1	0	1	12
Over 50	0	1	4	1	1	0	0	0	7
No Response	0	0	0	1	0	0	0	0	1

Source: DJMA Survey

* Two respondents failed to state their ethnicity and are not included in this table.

Forty-six firms reported that they employ one to ten non minority females while 34 reported that they employ one to ten non minority males. Further, while only three firms employed between 11 and 20 non minority females, eight firms reported that their employees include between 11 and 20 non minority males.

Only two firms have more than ten minority females as employees, while thirty seven firms report that they employ between one to ten minority females. Another 37 firms did not respond to this inquiry. In contrast, 42 firms hire at least one to ten minority males, one firm employs between 11 and 20 minority males and six firms hire anywhere between 21 and 50 minority males. Twenty eight firms did not respond to this question.

Of the 79 suppliers surveyed in the City of Evanston, 43 firms attempted to secure a contract with the City of Evanston in the last six years. Respondents to the survey were asked how often they had attempted to secure a contract from the City; results are listed below in Table 5.7.

Table 5.7
Attempts to Secure a Contract from the City Within the Last 6 Years
Suppliers

Number of Attempts	Females		Males						Total
	White	Minority	White	Black	Hispanic	Asian Pacific	Asian Indian	American Indian	
1 to 10	7	4	13	3	0	0	0	1	28
11 to 20	1	1	3	2	0	0	0	0	7
21 to 30	0	0	0	0	0	0	0	0	0
Over 30	0	0	5	0	0	0	0	0	5
Never	13	9	0	6	6	2	0	0	36
No Response	1	0	0	0	0	0	0	0	1

Source: DJMA Survey

* Two respondents failed to state their ethnicity and are not included in this table.

Impact Of Constraints On Procurement

Of the 79 supplier firms that responded to this survey, most showed no effect in their ability to do business with the City of Evanston because of inhibiting factors. Those factors which had the greatest impact were cost of completing bids, obtaining and working capital. These factors are illustrated in Table 5.8 below.

Table 5.8
Factors Effect on Firms Ability to Procure Contracts from City of Evanston
Suppliers

Factor	Helpful	Hindrance	No Effect
Credit requirements	3	3	36
Insurance requirements	4	7	34
Large volume	8	6	26
Costs of completing bids	0	13	36
Obtaining working capital	1	9	35
Length of notification of bid deadlines	10	9	28
Previous dealings with the City of Evanston	17	5	22
MWBE programs	13	6	25
Local business programs	5	6	27

Source: DJMA Survey

* Several firms did not respond to the question or responded that the question was not applicable to their firm. These firms are not included in the table.

Closer scrutiny reveals that more non-minorities experienced difficulty with the costs of completing bids than did minorities. On the other hand, minorities accounted for all firms experiencing difficulty obtaining working capital. As to those factors that were helpful to firms attempting to do business with the City, Previous dealings with the City of Evanston and the MWBE proved most helpful. Of the 17 firms which found previous dealings particularly helpful, 10 were non-minority males and two were non-minority females. Of the 13 firms

that found the MWBE program helpful, nine were women owned firms (six non-minority women and 3 minority women).

Discrimination in Suppliers Procurement

Forty seven firms reported that they had never been discriminated against in applying for commercial loans or other bank credit. Responses to questions concerning discrimination in supplier procurement are summarized below in Table 5.9.

**Table 5.9
Frequency of Being Discriminated Against Suppliers**

Activity	Discriminated Against	Never Discriminated Against	No Response
Applying for Commercial Loan	10	47	22
Obtaining distribution rights and licenses	9	47	23
Applying for Commercial Insurance	8	48	23
Obtaining placement on vendor lists	14	43	22
Obtaining volume discounts	11	46	22
Obtaining quotes from suppliers	8	51	20
Dealing with pro/trade associations	6	50	23
Obtaining requests for qualifications	9	48	22
Obtaining references	6	50	23
Obtaining requests for proposals/bids	12	45	22
Bidding for work as a prime contractor	11	47	21
Bidding for work as a subcontractor	6	51	22
Receiving payments for contract work	10	46	23

Source: DJMA Survey

While 22 of these 79 (28 percent) respondents did not answer this question, five firms reported that they were discriminated against at least once in receiving volume discounts to suppliers and manufacturers. Two other firms claim that they were discriminated against at least four times and four other firms claim to have been discriminated against more than 25 times in receiving volume discounts from suppliers or manufacturers.

In obtaining distribution rights or licenses, four firms were discriminated against at least once, four firms at least four times and one firm at least 16 times according to the respondents to the survey. Of the 79 firms total, 47 (59 percent) claim to have never been discriminated against in obtaining distributorship rights or licenses. Among these, four were African American male owned, three were Hispanic male owned, two were Asian Pacific male owned, one American

Indian male owned, 18 were White male owned, nine were White female owned and nine were minority female owned firms.

In dealing with professional/trade associations, at least 50 firms (63.3 percent) reported not to be faced with any discrimination. Only six to nine firms reported discrimination in these areas. Similarly, a large percentage, 60.8 percent of firms, reported that they were faced with no discrimination in obtaining requests for qualifications. In obtaining requests for proposals/bids, 45 of the 79 firms surveyed reported to have never been discriminated against. Eleven firms claimed to have been discriminated against: two African American male owned firms, one Hispanic male owned firm, one White male owned firm and four minority female owned firm. At least 58.2 percent of the respondents were never discriminated against in receiving payments for work performed, while 12.7 percent responded to have been discriminated against in receiving payment for work performed. In bidding or working on City of Evanston contracts, 14 percent reported being discriminated against one or more times, while 59.5 percent reported otherwise. However, bidding or working for City of Evanston subcontracting appeared to have less discrimination (7.7 percent) with 64.6 percent of the firms reporting no discrimination.

Level of Business in Public and Private Sectors

Sixty-nine of the 79 firms had experience working with a public entity, while 73 of the respondents had also worked with private companies. A majority of the firms stated that there were three important problems in working with public entities as well as private companies: unawareness of bid opportunities, lack of information about the procurement process and slow payments. While other reasons such as insufficiency of time for bidding, insufficient project monitoring, and proprietary specifications were also provided, these were faced only by a few firms (less than 20 percent).

Almost 18 percent of the firms surveyed reported that more than 80 percent of their business came from the public sector. About 43 percent of the firms had between 20 to 80 percent of their business arising from the public sector. Similarly, only a small percentage of firms, 24.1 percent, were involved largely (greater than 80 percent of their total business) in the private sector. About 44.4 percent of the firms had 20 to 80 percent of their business in the private sector, while about 16.5 percent of the respondents had less than 20 percent of their business in there.

Contractors that are required to use MWBEs as subcontractors in their government projects stated that they would only rarely use MWBEs as subcontractors when not required to do so by the government (0 to 20 percent of the time). While 45.6 percent of the respondents were in consensus with this result, 26.6 percent reported that this was not applicable to them. Three of the 79

firms stated that they would use the minority contractors they used under stipulation when it was not required that they do so as prime contractor.

Suppliers with Revenue of Less Than \$500,000

This section of the survey includes a more detailed analysis of the suppliers that deal with the City of Evanston. Of the 79 suppliers surveyed, 25 have less than \$500,000 in gross revenues. These twenty five firms include three White male owned firms, two White female owned firms, seven firms minority female owned firms and 13 minority males owned firms. The 79 firms also include nine firms that were in business for less than five years and 30 firms with debt equity ratios of less than or equal to one. These latter 30 firms include five White male firms, eight White female firms, eight minority female firms and nine minority male firms.

Thirteen of the 25 firms with revenues less than \$500,000 and nine of 13 firms with less than five years in business were majority owned by African Americans. Nine of thirty firms with debt ratios no greater than one were majority owned by African Americans. Among majority Hispanic owned firms, five had businesses with less than \$500,000 in revenues, two had spent less than five years in business, and four had a debt equity ratio no greater than one. Five firms with revenue less than \$500,000, and 13 with debt equity ratios no greater than one, had no significant ethnic group dominating the ownership structure. Nine of the twenty five firms with less than \$500,000 in revenues had majority female ownership. There were 16 female owned firms with debt equity ratios less than one, and three that had spent less than five years in business.

Seven of the firms with revenues less than \$500,000 reported that they employ one to ten non-minority females: two White male owned firms, two White female owned firms, two minority female owned firms and one minority male owned firm. Further, five of the firms with revenues less than \$500,000 reported that they employ one to ten non minority males: two White male owned, one White female owned and two minority female owned firms. Seventeen firms with debt to equity ratios no greater than one employ between one and ten non minority females. Thirteen of these firms reported that their employees include between one and ten non minority males. Three firms with similar capital structures reported to employ between 21 and 50 non minority females.

Among the White male and female owned firms, with revenues less than \$500,000, three had attempted to secure a contract with the City of Evanston at least once, while one firm tried between 11 and 20 times. One White female owned firm never attempted to secure a contract. The 79 firms also include nine that were in business for less than five years, six of which never attempted to secure a contract with the City of Evanston. Thirty had debt to equity ratios no greater than one; eight of which had tried more than once but less than ten times

to secure a contract from the City of Evanston. Three had tried between ten and 20 times while 18 had never tried.

Impact of Constraints on Suppliers Procurement

Some of the factors impacting procurement opportunities with the City of Evanston appear to have a greater negative impact on smaller businesses or are less useful to smaller businesses. Those factors are obtaining working capital, previous dealings with the City, the MWBE program and the EBE program.

Discrimination in Suppliers Procurement

Eleven of the twenty five (44 percent) businesses with less than \$500,000 in revenues responded to have never been discriminated against in applying for commercial loans or other bank credit, while one firm claims to have been discriminated against more than 25 times.

In obtaining placement on vendor based lists, 36 percent of businesses and in obtaining quotes from suppliers, 48 percent of business with revenues less than \$500,000 reported that they were never discriminated against.

Eighty-four percent of the firms with less than \$500,000 in revenues had experience working with a public entity, while 88 percent of the respondents in this category have worked with private companies. For firms with less than five years in business, 66 percent had worked with public entities and all had worked with private companies. Of firms with debt ratios not exceeding one, 26 of 30 (86.7 percent) of the firms had worked with public and 27 of 30 (90 percent) with private companies.

A majority of the firms that have revenues less than \$500,000 and debt ratios not greater than one stated that there were four important problems in working with public entities as well as private companies: unawareness of bid opportunities, lack of information about the procurement process, slow payment and unresponsiveness to MWBE firms. While other reasons such as insufficiency of time for bidding and MWBE status were also provided, these were faced only by a few firms.

Sixty percent of the firms with less than \$500,000 in revenues, 44.4 percent of firms with less than five years in business and 50 percent of firms with debt ratios no greater than one reported that over 40 percent of their business came from the public sector. Twenty percent of the firms with revenues less than \$500,000, 15 percent of the firms with less than five years experience and 16.7 percent of firms with debt equity ratios no greater than one report over 80 percent of their business coming from the public sector. Twelve of the 25 firms with revenues not exceeding \$500,000 and 15 of 30 firms with debt ratios not

exceeding one had more than 40 percent of their business come from the private sector. Eight firms with debt ratios less than or equal to one had 20-40 percent of their business arising from private sector.

Contractors that are required to use MWBEs as subcontractors in their government projects stated that they have used MWBEs only 20 percent of the time in contracts where MWBE participation is not required. Forty-eight percent of those with less than \$500,000 in revenue, 46.7 percent of those with debt equity ratios no greater than one and 33.3 percent of those with less than five years in business were in consensus with this result.

Professional And Non Professional Service Procurement

The City of Evanston Professional and Non Professional Services Survey included 55 firms: eight White male firms, 16 White female firms, 11 minority female firms and 19 minority male owned firms. The respondents include 48 owners, three officers and two managers. Among those firms surveyed, 76.4 percent were incorporated, 20 percent were sole proprietorships and 3.6 percent were partnerships. Seventeen firms were majority owned by African Americans. Only one of the 55 firms had majority Hispanic ownership, while seven had Asian Pacific, five had Asian Indian and one had Native American ownership. Twenty-five of the firms had no significant ethnic group dominating the ownership structure. Twenty-seven firms had majority female ownership.

Only 21.8 percent of the firms had annual gross revenues between \$3 and \$10 million. None of the firms surveyed had annual gross revenues over \$10 million. About 69.1 percent of firms surveyed had less than \$500,000 in gross revenues for 1994. A little less than half of the firms (49.1 percent) had debt equity ratios of less than or equal to one, while 18.2 percent had debt equity ratios greater than one. The remaining firms in the sample did not respond to this question.

Fourteen respondents provide business services, while 31 were in professional services such as engineering, architecture, research, management etc. The 14 firms providing business services did not include any minority female owned firms. Yet the 31 firms providing professional services were approximately evenly distributed across ethnic and gender groups. Five firms provided finance, insurance and real estate services, two provided health services, one educational services, and one general services. One firm did not respond to this question.

About one-fourth of the firms surveyed, 27.2 percent, have been in business for more than ten years, while only two firms, one White male owned firm and one minority male owned firm, report that they have been in business for over 20 years. About 47.2 percent of the firms reported that they had been in business seven to 20 years. Among the other firms in the sample, nine had been in

business for five to six years and 18 had been in business for less than five years. These 18 firms were evenly distributed across the various ethnic and gender groups.

Only one minority male owned firm reported more than 50 full-time, full-year employees. Other responses are summarized in Table 5.10.

Table 5.10
Full-Time, Full-Year Employees By Ethnicity & Gender
Professional & Non-Professional Services

Number of Full-Time, Full-Year Employees	Females		Males						Total
	White	Minority	White	Black	Hispanic	Asian Pacific	Asian Indian	American Indian	
1 to 10	13	10	6	8	1	3	1	0	42
11 to 20	1	0	0	1	0	0	0	0	2
21 to 50	1	0	2	0	0	3	2	0	8
Over 50	0	1	0	0	0	0	0	0	1
No Response	1	0	0	0	0	0	1	0	2

Source: DJMA Survey

* One respondent failed to state their ethnicity and is not included in this table.

At least 29 firms reported that they employ one to ten White females and 23 reported that they employ one to ten White males. Further, while only two firms employed between 11 and 20 White females, five firms reported that their employees include between 11 and 20 White males. Yet another three firms reported that their employees include 21 to 50 White male employees. However, none of the firms reported employing over 20 White females. Twenty-four firms in the sample did not respond to this question.

Thirty firms report that they employ between one and ten minority females and one firm between 11-20 minority females. Twenty-four firms did not respond to this inquiry. While 27 firms hire at least one to ten minority males and two firms employ between 11 and 20 minority males, none of the 55 firms reported to have hired more than 20 minorities - male or female. Twenty-six firms did not respond to this inquiry.

Of the 55 businesses surveyed, 25 firms attempted to secure a contract with the City of Evanston within the past six years. Results are summarized below in Table 5.11.

**Table 5.11
Attempts to Secure a Contract from the City Within the Last 6 Years
Professional and Non-Professional Services**

Number of Attempts	Females		Males					Total	
	White	Minority	White	Black	Hispanic	Asian Pacific	Asian Indian		American Indian
1 to 10	3	4	8	3	1	1	3	0	23
11 to 20	0	1	0	0	0	0	0	0	1
21 to 30	0	0	0	0	0	0	0	0	0
Over 30	0	0	0	1	0	0	0	0	1
Never	13	6	0	4	0	5	1	0	29
No Response	0	0	0	1	0	0	0	0	1

Source: DJMA Survey

* One respondent failed to state their ethnicity and is not included in this table.

Among the 19 minority male firms surveyed, nine were African American owned, one was Hispanic owned, six were Asian Pacific owned and four were Asian Indian owned. Seven of the firms attempted between one and ten times to secure a contract while ten firms never tried. One of the remaining firms tried more than 30 times to secure a contract. The other did not respond to this question.

Impact of Constraints on Professional and Non Professional Procurements

Of the 55 construction firms that responded to this survey, most were not constrained in their ability to do business with the City of Evanston. Those factors which had the greatest impact were credit requirements, large volume, cost of completing bids, obtaining working capital, and length of notification of bid deadlines. The factors that had the greatest impact in assisting firms in obtaining a professional service contract was the MWBE and EBE program. All firms that revealed this factor to be helpful were minority or women owned businesses. These factors are illustrated in Table 5.3 below.

Table 5.12
Factors Effect on Firms Ability to Procure Contracts from City of Evanston
Professional and Non-Professional Services

Factor	Helpful	Hindrance	No Effect
Credit requirements	1	5	20
Insurance requirements	5	5	20
Large volume	4	9	18
Costs of completing bids	0	5	23
Obtaining working capital	1	10	16
Length of notification of bid deadlines	0	9	20
Prequalification	6	7	19
Requirements (experience)	12	7	12
Previous dealings with the City of Evanston	8	6	11
MWBE programs	18	1	14
Local business programs	9	2	19

Source: DJMA Survey

* Several firms did not respond to the question or responded that the question was not applicable to their firm. These firms are not included in the table.

Discrimination in Professional and Non Professional Procurement

A majority of firms—39—responded that they had never been discriminated against in applying for commercial loans or other bank credit. While ten firms did not respond, six female owned firms reported to have been discriminated against at least once. Responses to questions concerning discrimination in construction procurement are summarized in Table 5.13.

Table 5.13
Frequency of Being Discriminated Against
Professional and Non-Professional Services

Activity	Discriminated Against	Never Discriminated Against	No Response
Applying for Commercial Loan	6	39	10
Applying for Commercial Insurance	3	42	10
Obtaining placement on vendor lists	7	36	12
Obtaining requests for proposals/bids	9	36	10
Obtaining requests for qualifications	6	39	10
Dealing with pro./trade associations	2	42	11
Obtaining quotes from suppliers	3	41	11
Hiring qualified employees	2	42	11
Obtaining references	3	42	10
Bidding or working as a prime contractor	4	40	11
Bidding or working as a subcontractor	3	40	12
Receiving payments for work	3	42	10

Source: DJMA Survey

In obtaining requests for qualifications, 39 of 55 firms reported no discrimination, while three firms stated that they had been discriminated against at least one to three times, two firms reported being discriminated against four to 15 times and one firm between 16 and 25 times. All the firms claiming discrimination were females or minority businesses.

Thirty-six of the firms reported never to have been discriminated against in obtaining requests for proposals/bids, while eight females or minority businesses firms reported discrimination in this instance.

In obtaining quotes from suppliers, 41 firms (approximately 75 percent) reported not to be faced with any discrimination. Only three firms reported discrimination in these areas; all three were minority owned. Similarly a large percentage, 76.4 percent, of firms reported that they were faced with no discrimination in hiring qualified employees. One African American male owned firm reported discrimination in this area. Only 5.4 percent of the respondents were discriminated against one or more times in receiving payments for work performed, while 76.4 percent responded to have never been discriminated against in receiving payments. In bidding or working on City of Evanston contracts as a prime contractor, only 7.3 percent reported being discriminated against one or more times, while 72.7 percent reported otherwise. However, bidding or working for City of Evanston subcontracting appeared to have even less discrimination (3.6 percent) with 72.7 percent of the firms reporting no discrimination.

Fifty-two of 55 (94.5 percent) firms had experience working with a public entity, while 51 of the respondents had also worked with private companies. A majority of the firms stated that there were three important problems in working with public entities as well as private companies - unawareness of bid opportunities, lack of information about the procurement process and their MWBE status. While other reasons such as slow payments and representatives' unresponsiveness to MWBE firms were also provided, these were faced by fewer firms.

In this context, only 12.7 percent of the firms surveyed reported that more than 80 percent of their business came from the public sector. About 47.3 percent of the firms had less than 40 percent of their business arising from the public sector. In contrast, while only a small percentage of firms, 21.8 percent, received greater than 80 percent of their total business from the private sector, about 69 percent of firms had more than 40 percent of their business in private sector. About 25.4 percent of the respondents had less than 40 percent of their business in the private sector.

Forty percent of the contractors that are required to use MWBE as subcontractors in their government projects reported that they use these firms less than 20 percent of the time when they are not required to do so. About 12.8 percent of firms stated that they would use them more often (more than 40 percent of the times) even when not compelled to do so.

Professional and Non Professional Service Firms with Revenues Less Than \$500,000

In performing a more detailed analysis of the 55 professional and non professional firms who seek procurement opportunities, it was noted that 38 of these firms have less than \$500,000 in gross revenues. These firms include five White male owned firms, ten White female owned firms, ten minority female owned firms and 12 firms owned by minority males. Firms with less than \$500,000 in revenues have been in business for an average of 7.3 years. In the same revenue category, White female owned firms average 9.2 years, while minority business average 5.8 years. For businesses with debt equity ratios less than one, the average years in business is 9.6 years. Among the 38 firms with less than \$500,000 in revenues, five have been in business between five and six years, seven between seven and ten years and nine have been in business for more than ten years but less than 20 years. All White female owned firms with less than \$500,000 in revenue have been in business for more than ten years.

Among those firms surveyed with businesses less than \$500,000 in revenues, 68.4 percent were incorporated while 28.9 percent were sole proprietorships. Only one firm was a partnership in this revenue category. Of the 27 firms with debt equity ratios no greater than one, 77.8 percent are incorporated, five are sole proprietorships and one is a partnership. Among the new firms with less than five years in business, 77.8 percent were corporations and four firms were sole proprietorships. Fourteen of the firms with revenues less than \$500,000, six firms with less than five years in business and five firms with debt ratios less than or equal to one are majority owned by African Americans. Of the other firms with less than \$500,000 in revenues, one is Hispanic owned, four are Asian Pacific owned, three are Asian Indian owned and 16 have no significant ethnic ownership. Five of the 27 firms with debt ratios no greater than one are majority owned by African Americans. In the same category, one firm has majority Hispanic ownership, three have Asian Pacific ownership and two have Asian Indian ownership. The remaining 16 of the firms have no significant ethnic group dominating the ownership structure. Of the 18 firms with less than five years in business, eight are African American owned, two were Asian Pacific owned, two are Asian Indian owned and six have no significant ethnic ownership. Of the firms with less than \$500,000 in revenues, 52.6 percent were majority female owned. Just over 44 percent of the firms in business for less than five years and debt to equity ratios no greater than one are majority female owned.

Thirty-seven of the 38 businesses with less than \$500,000 in revenues employ less than ten employees. These include five White male owned firms, ten White female owned firms, ten minority female owned firms and 11 minority male owned firms. The remaining firms did not respond. Similarly 17 of the 18 firms with less than five years in business employed one to ten employees. These 17 were comprised of three White females, three White male owned, five minority female owned and six minority male owned firms.

In surveying firms with revenues less than \$500,000, 16 minority owned firms report that they employ between one to ten minority males and 20 firms report to employ between one to ten minority females. Among the 27 businesses with debt ratios not greater than one, 11 firms employ one to ten minority females, while 16 firms with similar capital structure did not respond to this inquiry. In contrast, for firms with debt ratios less than or equal to one, 14 firms hire at least one to ten minority males and 13 firms did not respond. For firms with less than five years in business, 13 employed one to ten minority females and eight hired between one to ten minority males.

There were 27 firms with debt equity ratios of less than or equal to one: six White male firms, nine White female firms, three minority female firms and eight minority male firms. Among these, 12 firms tried more than once but less than ten times to secure a contract, while one firm tried between 11 and 20 times. Fourteen firms never tried to secure a contract from the City of Evanston.

Just over 70 percent of firms with debt to equity ratios no greater than one were in professional services, four were in business services, one was in finance and one in health services. Twenty seven of the firms with less than \$500,000 in revenues, 15 firms with less than five years in business and 23 firms with debt ratios less than one reported that the owner(s) or the highest ranking officers in their firm had a college degree in the firm's primary business. Two minority owned firms with less than \$500,000 in revenues and one White female owned firm with a debt to equity ratio no greater than one reported that the owner(s) or the highest ranking officer had less than five years of management experience in the field prior to joining the firm.

Only two White female owned firms attempted to secure a contract with the City of Evanston at least once, while the remaining eight White female owned firms never attempted to secure a contract. Four of the ten minority female owned firms attempted to secure a contract between one to ten times, while six firms never attempted to secure a contract. Six of the ten minority male owned firms attempted one to ten times, while one firm attempted more than 30 times. The remaining five firms never attempted to procure contracts with the City of Evanston. The 55 firms also include 18 firms that were in business for less than five years, seven of which never attempted to secure a contract with the City of

Evanston. Nine of the 18 firms attempted at least once. The 18 firms were comprised of three White male owned firms, three White female owned firms, five minority female owned firms and seven minority male owned firms. Most of these firms attempted at least once to secure a contract with the city.

Impact of Constraints on Professional and Non Professional Service Procurement

Overall, the factors impacting procurement opportunities with the City of Evanston appear to have a greater negative impact on smaller businesses or are less useful to smaller businesses.

Discrimination in Professionals and Non Professional Service Procurement

Close to 70 percent of businesses with less than \$500,000 in revenues responded that they had never been discriminated against in applying for commercial loans or other bank credit. Six firms (15.8 percent) claimed they were discriminated against one to three times. Six of these firms did not respond to this inquiry. Just over 70 percent of firms with debt to equity ratios no greater than one responded to have never been discriminated against in applying for commercial loans or other bank credit. Three firms with similar capital structure claim that they were discriminated against one to three times. In dealing with professional and trade associations, 78.9 percent of firms with less than \$500,000 in revenues claim to have never been discriminated against. Similarly, in obtaining commercial insurance, in hiring qualified employees, in obtaining references and in receiving payments for work performed, 76.3 percent of businesses with revenues less than \$500,000 stated that they had never been discriminated against. Similarly, for the firms with similar revenue category, 71.1 percent claimed to have never been discriminated against in obtaining requests for qualifications, bidding or working on City of Evanston as prime contractor or as a subcontractor. Twenty firms (73.7 percent) with revenues less than \$500,000 reported that they were never discriminated against in obtaining placement or vendor lists or obtaining requests for proposals or bids.

Less than ten percent of firms reported to have been discriminated against at least once while attempting to bid or work as a prime contractor. In obtaining placement or vendor lists, obtaining requests for qualifications, obtaining requests for proposals, a little over 60 percent of firms with less than five years in experience claimed to have been discriminatory. Of particular interest is that between ten and 22 percent of firms claimed that they discriminated against others in the same matters at least once.

A majority of the firms that have revenues less than \$500,000, less than five years experience and debt ratios not greater than one stated that there were four important problems in working with public entities as well as private

companies: unawareness of bid opportunities, representatives unresponsiveness to MWBE status, and lack of information about the procurement process. While other reasons such as slow payments, insufficiency of time for bidding and insufficiency of qualifications were also provided, these were faced only by a few firms.

About 47 percent of businesses with less than \$500,000, 44 percent of businesses with less than five years and 56 percent of businesses with debt equity ratios less than one claimed that 40 to 80 percent of their business came from the private sector.

Contractors that are required to use MWBEs as subcontractors in their government projects are noted to only very rarely (0 to 20 percent of the time) use them when not required to do so. Almost 45 percent of the respondents in businesses with less \$500,000, 44.4 percent of businesses with less than five years and 37 percent of businesses with debt to equity ratios less than or equal to one were in consensus with this result. Only three firms with debt to equity ratios less than one claimed that they would use MWBE subcontractors more than 80 percent of the times even if not compelled to do so.

CONCLUSION

The combined qualitative evidence gathered from the interviews, public hearing and mail survey conducted for this study revealed a pattern of problems affecting MWBEs and small EBES. A recurring comment by minority business owners is that discrimination is still a major obstacle to MWBEs. However, because of the subtle nature of gender and race discrimination, many found it difficult to attribute an inability to secure a loan, bonding, or a contract to discrimination.

The consistent complaints of discrimination were also accompanied by complaints that reflected a perceived apathy by the City to address these issues. Many MWBEs stated that they have had problems collecting payments from prime contractors, submitting and winning bids, being mistreated by prime contractors, and securing financing from local lenders. Yet, the City has not responded to MWBE contractors who have sought help, nor taken the initiative to assist in rectifying these or other problems noted throughout this chapter. As such, many MWBEs believe that the City is not supportive of its own "good faith effort," M/W/EBE program, or the welfare of MWBEs. These individual anecdotal comments of discrimination, the perception that the City condones such behavior and the findings of disparity against MWBEs noted in Chapter VI suggests that an inference of discrimination could be drawn.

INTRODUCTION

This chapter provides a statistical analysis conducted by DJMA to determine whether there is disparity between the availability of minority and women owned business enterprises (MWBE owned businesses), and their utilization by the City of Evanston. To conduct this analysis, DJMA utilized statistical data and contracting and purchase order data obtained from the City of Evanston.

The chapter begins with an overview of the data and data collection procedures used in the analysis; the initial time frame for the study; and, the methodology for assessing MWBE program impacts.

Next, the discussion of the relevant market describes the geographical area in which the City of Evanston does business with its suppliers and contractors, and other firms interested in doing business with the City. The relevant market is then compared with the market defined by the municipal boundaries of the City.

The utilization of MWBE owned businesses by the City of Evanston in each category of procurement is examined. This analysis is followed by a comparison of utilization of local businesses with the utilization of businesses domiciled outside the Evanston city limits. The latter analysis is also done by procurement category.

DJMA then discusses the most difficult and problematic aspect of the disparity analysis—measurement of MWBE availability. Two different approaches to estimating availability are presented: a Census-based measure; and, a measure based on counts of certified MWBE and nonminority vendors.

The last analytical section contains the computation and analysis of the disparity ratios. These measures are found by dividing percentage utilization by percentage availability, and are the criterion for determining whether there is underutilization of MWBEs. Based on these disparity ratios, and associated statistical tests, inferences are drawn about under- or overutilization of MWBEs in the City of Evanston.

DATA COLLECTION

Contract Review Period

For this project, DJMA studied the contracting period from 1986 to 1993. During that period, the City of Evanston's policy towards MWBE owned businesses went through two phases: a "Program" phase—from fiscal years 1986 to 1989, in which

a formal set-aside program was developed and implemented; and, a "Post-Program" phase, from 1989 through 1993, in which voluntary goals were applied to procurements funded from nonfederal sources.

Generally, DJMA attempts to divide a disparity study into pre-program, early program, and mature program periods.¹ The rationale behind this approach is to review contracting activity unassisted by any kind of MWBE programmatic initiatives (pre-program), such as utilization goals, followed by a measure of the impact of formalized MWBE/EBE or DBE program initiatives in their earlier stages of implementation (early program). This is followed by an analysis of the impact the programs have after they have reached a steady state of operations (mature program). The City of Evanston implemented the Set Aside Program in 1973. This approach also provides an opportunity to define and measure a "post-program" period—essentially measuring the effect of the absence of enforceable MWBE utilization goals—for jurisdictions that have had programs suspended or otherwise modified to include the use of voluntary utilization goals or good faith efforts.

Due to the lack of available data, DJMA was unable to amass contracting data for years prior to the beginning of the MWBE program. The data that was available were not in a format that permitted disaggregation to support the required statistical analyses.²

The City of Evanston established an Evanston Business Enterprise (EBE) program which is designed to provide preference for local firms in their procurement efforts with the City. One rationale for the program is to increase contracting opportunities with local businesses in order to strengthen the City's tax base.³

In the utilization analysis, a program/post-program contrast of the City's MWBE initiative is presented. This measures the impact of the removal of enforceable MWBE utilization goals. With regard to the EBE program, an analogous comparison will contrast the utilization of EBEs before 1992 with EBE utilization since then.

¹D.J. Miller & Associates, Inc., *City of St. Petersburg Disparity Study, 1990.*

²The data was limited to year-end reports, "Statements of Cash and Investments and Statements of Revenues and Disbursements."

³Evanston has one of the highest property tax rates in the suburban Cook County area. Northwestern University, the single largest employer in Evanston, is exempt from paying property taxes. There is also a substantial amount of other real property in the City that is exempt from taxes. See Hugh Dellios, "Evanston: A Cultural Melting Pot That Thrives Because of Diversity," *Chicago Tribune*, Wednesday, August 2, 1989.

Contract Data

Contract data collection for the City of Evanston began with a data assessment phase, initiated by conducting interviews with management and procurement officials with the City. Each official was interviewed to assess the location and availability of contract files, contract logs, MWBE lists and financial reports, and to establish a general approach for data collection.⁴

During the data assessment portion of the interviews, DJMA was seeking utilization data in four broad procurement categories: construction; architectural and engineering (A/E); professional services; and, goods and non-professional services.

The contract information required would include total prime and subcontracting dollars awarded during the program years 1986 to 1988 and post-program years 1989 to 1993, for each of the four procurement categories. Other information requested by DJMA included the source of funding for the different projects (CDBG, Water Fund, etc.), the names and addresses of bidders, contract awardees, and subcontractors, as well as race and gender of bidders, awardees, and subcontractors.

During the data assessment phase, DJMA conducted on-site visits to the City's contract storage facilities. Inasmuch as the City had multiple storage facilities, the contracts stored at each of these sites had to be examined for completeness and detail of information found in the contract files. To assess the overall condition and content of the contract files, a DJMA data assessment team sampled five to ten contracts at each facility and completed sample data sheets. Next, DJMA formalized its data collection plan for the City of Evanston. The plan was submitted to the City on March 15, 1995 and actual data collection began on March 27, 1995. The first phase of data collection was completed on April 7, 1995. A second phase of data collection was implemented on May 9 and continued through May 17, 1995.

The plan for data collection provided a guide for the process of developing a history of procurement activity to include the utilization of minority, women, and Evanston owned businesses. A log of all contracts awarded by the City of Evanston was created utilizing Reports of the Purchasing Agent (RPA) from 1986 to 1993. The RPAs provided detail on each contract presented to the City Council for approval. This log, once constructed, provided a complete count of all contracts awarded during the study period. A total of 1,297 contracts were logged during the period 1986 to 1993.⁵

⁴These interviews also elicited information on the City's procurement policies and procedures.

⁵A comparable log of contracts awarded during 1971-1973 could not be constructed due to unavailability of relevant records.

Data collection for the City of Evanston was conducted over a period of two months. The DJMA data collection team gathered data on 928 contracts, the total number of contracts located and provided by the City. Table 6.1 summarizes, by period and procurement type, the number of contract files appearing on DJMA's compiled contract log, and the number from which relevant data was actually extracted. This table includes contracts that were formally bid or negotiated, but does not include purchase orders (POs).

Table 6.1
Counts of Logged Contracts and Contracts Recorded
by Period and Procurement Category

Period	Architecture/ Engineering		Construction		Professional Services		Goods and Non- Professional Services		Total	
	Log	Rec.	Log	Rec.	Log	Rec.	Log	Rec.	Log	Rec.
Program	16	9	135	120	19	18	277	234	447	381
Post-program	61	31	226	232	71	23	492	261	850	547
Total	77	40	361	352	90	41	769	495	1,297	928

Source: DJMA

Note: The table may vary from the number of contracts reflected in the utilization tables, as the following contracts were deleted from the database during data verification: contracts with unidentifiable contract award amounts, lease agreements, grants, revenue generating contracts and fee schedule contracts with unidentifiable final dollar amount.

In collecting contract data, DJMA had to allow for the lack of availability of some contract files. Inability to locate files reported on the City's contract log reduced the number of contracts for the analysis. This will be discussed later in this chapter.

Limitations on Contract Data

Upon reviewing the actual contract files, DJMA was faced with extensive data limitations created by missing information in the areas of contract award amounts, subcontractors utilized, subcontractor award amounts, locations of the prime, bidder, or subcontractor, and race/ethnicity/gender identification. After collecting the information from the contract files, DJMA made attempts to identify missing contract information. These efforts included submitting lists of missing information to the City and contacting prime contractors directly.⁶

⁶The first attempt to collect information involved compiling lists of missing information for the City of Evanston. These lists were provided to the Minority Coordinator of the City and the City Manager. The Minority Coordinator and City Manager disseminated the lists to appropriate personnel to gather any additional contract information. This effort provided DJMA with some additional information needed for the analysis of the agency's procurement activity, mainly in the areas of location identification and missing award data. The City was able to provide little information on race/ethnicity/gender identification.

An additional effort made to collect missing information was to contact prime contractors directly. DJMA requested in writing that the City allow the data collection team to send letters and make telephone calls to prime contractors, requesting that each contractor identify

The lack of available subcontractor information is not unusual in governmental agencies that do not have race neutral or race conscious programs. Since most governmental entities do not contract with the subcontractors, most do not see the need to track subcontractor award dollars. The exception is those entities attempting to track MWBE or small business contract activity. Governmental entities with race neutral or race conscious programs, typically maintain MWBE subcontractor information. *Croson* assumes that sufficient MWBE subcontractor data is available to perform a disparity analysis. However, what is particularly interesting about the City of Evanston is that, while the City had a MBE⁷ Set-Aside Program from 1973 to 1989, it had not maintained complete records reflecting subcontractor utilization before, during or after the program. As such, for this study, MWBE subcontractor data was limited.

Purchase Order and Other Data

DJMA requested accounts payable runs (purchase order runs) to gather additional procurement data. However, the accounts payable runs received did not identify the race, ethnicity, or gender of the vendors. More importantly, the purchase order runs did not identify the commodity or procurement type for a particular purchase. Accounts payable information is computerized from 1990 forward. The City of Evanston provided DJMA with a printout of purchase orders since 1990 which DJMA utilized for payment and location information. DJMA was, however, unable to classify purchase orders into goods, construction, A/E, professional and nonprofessional services categories without making extensive assumptions. After several unsuccessful attempts to restructure the purchase order runs, DJMA decided to rely upon contract data collected.

RELEVANT MARKET

Based on the Supreme Court requirement that an MBE program cover only those groups that have actually been affected by discrimination within the public entity's jurisdiction, most disparity study consultants employ the definition of relevant market as the area of a public entity's commercial activity. Other jurisdictions (e.g., Dallas and Los Angeles) have restricted the relevant market to those firms within their jurisdictional boundaries. The usefulness of the

subcontractors utilized on their projects, as well as to identify dollar amounts paid to the prime contractors and to subcontractors, and ethnicity classifications of prime and subcontractors. For each contractor mailed the information request letter, the general response time given was five days. If a contractor did not mail or fax the information to the City of Evanston's City Manager's office within five days, DJMA called the contractor to inquire about the status of the requested information. The contractors often requested additional descriptive information about the contract, which was provided by referencing the contract logs provided by the City. This attempt to collect contract information was minimally successful.

⁷The City's program was limited to minority-owned businesses. WBEs were not included.

relevant market concept, however, is to mark a geographical boundary that will determine the relevant business market that is the object of analysis of the present study.

Three methods have been used in past disparity studies to establish relevant market areas. The first measures dollars expended on contracts for goods and services, and the location of firms that won those contracts. In the second, vendors and contractors from an entity's bidders or vendors lists are surveyed to determine their location. The former has gathered some measure of acceptance under the U.S. Department of Justice guidelines for defining the relevant geographical market in antitrust and merger cases. The third method is to utilize the census-defined metropolitan area as the relevant market area.

DJMA has modified the first two methods of assessing the relevant market area and developed a composite method for determining a public entity's relevant market area by using its vendors lists, bidders lists, and lists of contract awardees. The criterion used for establishing the relevant market area is any one of the following:

- 85 percent or more of the listed vendors are located
- 85 percent or more of the bidders are located
- 85 percent or more of the awardees are located

Three sources of data that were consulted for the relevant market calculations:

- Vendors list supplied by the City of Evanston's purchasing department
- List of bidders compiled from data collected on construction and professional services contracts awarded by the City of Evanston supplied by the City of Evanston's purchasing department
- List of firms awarded construction, A/E and professional services contracts supplied by the City of Evanston's purchasing department for the study period

Thus, for construction, A/E, and professional services contracting, it is possible (data permitting) to construct a relevant market according to the respective threshold percentages of vendors, bidders, and contract awardees.

In the case of general procurement, however, the form of purchase order data and the special nature of the buying process for much of goods and nonprofessional services normally precludes the development of a complete bidder profile on which relevant market calculations can be made. Nevertheless, bidders and awardees on formal procurement contracts still allow such calculations to be made.

The method for calculating the relevant market is straightforward. For each procurement category, the address of each vendor, bidder, or awardee is placed in

one of four mutually exclusive categories: the City of Evanston; the Chicago PMSA; the state of Illinois; and the United States.

A percentage distribution of firms' addresses is then calculated for each procurement type according to the geographical ordering described above. A cumulative percentage is summed, beginning with addresses in the City of Evanston and moving outward geographically. The geographical category with a cumulative percentage closest to the defined cut-off of 85 percent is then chosen as the relevant market for each procurement category.⁸

These bidder-based and awardee-based relevant market calculations are conducted for each procurement type. Discrete, non-duplicative listings of firms that bid on or are awarded contracts are compiled. The geographical summing of percentages for these groups is performed in the same way as for vendors.

The City of Evanston's purchasing department provided a file with a list of vendors. From this file, 5,325 vendor records were to form the basis of the vendor-based calculation of the relevant market for each procurement type. Although containing the addresses of the vendors, the overall data provided was insufficient to subdivide the file according to procurement category. Thus, vendor-based calculations of the relevant market are not available. However, relevant market calculations were completed from the list of bidders and contract awardees. The results are presented in Table 6.2.⁹

Table 6.2
Relevant Market Identification by Procurement Type
City of Evanston

	Vendors	Bidders	Awardees
Construction	NA	Chicago PMSA	Chicago PMSA
Architecture/Engineering	NA	Chicago PMSA	Chicago PMSA
Professional Services	NA	State of Illinois	State of Illinois
Goods and Non Professional. Services	NA	State of Illinois	State of Illinois

Source: DJMA
NA = Not available

Based on the 85 percent criterion, Table 6.2 indicates that the relevant market for construction contractors is the Chicago metropolitan area.¹⁰ This is also true for A/E consultants.¹¹ In contrast, the relevant market for professional services and

⁸An alternate criterion is a cut-off of 75 percent. As implemented in this chapter there is little practical difference between the two.

⁹In some cases the relevant market calculations may yield conflicting answers. Where this occurs, the bidder-based calculations are chosen following the logic of identifying those businesses that affirmatively identify themselves as ready and willing to do business. Bidders most closely fit that definition--those who bid (compete) and win, as well as those that lose.

¹⁰For bidders and awardees, the cumulative percentages at the metropolitan level were 82.4 percent and 83.2 percent, respectively.

¹¹For bidders and awardees the cumulative percentages at the metropolitan level were 91.8 percent

general procurement is estimated to be the state of Illinois.¹² The alternative 75 percent criterion results in the Chicago PMSA as the relevant market for each procurement category.¹³

In addition to these results, there are practical reasons to define metropolitan Chicago as the relevant market. Most important is the *Croson* requirement that race conscious programs instituted by a jurisdiction be able to redress identified discrimination, if any, in the relevant market. For "relevant" market areas much larger than a metropolitan area, the ability of a municipality's MWBE race conscious programs to redress discrimination is not likely to be plausible. It is arguable that such a large area amounts to no defined relevant market at all.¹⁴

The geographical measurement of relevant markets is appropriate when using availability estimates of MWBE owned businesses that are based on Census data or on other estimates that do not specifically identify firms that are "ready, willing and able" (RWA) to conduct business with the City. RWA estimates, by definition, include all such firms in the relevant market.

For the City of Evanston's EBE programs the appropriate market area, by definition, extends only to the city limits. Thus, the relevant market that pertains to contracting with MWBE owned businesses fully encompasses the EBE "relevant market."

UTILIZATION ANALYSIS

This section presents an analysis of utilization of MWBE owned businesses and EBEs in each procurement category. Initially, the analysis provides an overview of the overall utilization of MWBE owned businesses and EBEs by year, and reviews prime and subcontracting activity as well as the total utilization of MWBE and EBE firms.¹⁵ To distinguish between overall utilization, utilization

and 88.5 percent, respectively.

¹²The bidder and awardee cumulative percentages at the state level were 83.0 percent and 83.9 percent, respectively, for professional services, and 85.4 percent and 84.5 percent, respectively, for general procurement.

¹³At the metropolitan level the bidder and awardee cumulative percentages were 74.4 percent and 80.7 percent, respectively, for professional services, and 72.7 percent and 71.6 percent, respectively, for general procurement.

¹⁴In *Croson*, the City of Richmond had not defined a relevant market so, in principle, any MBE, regardless of location, could have participated in the City's race conscious initiative.

¹⁵When combining the dollar value of prime and subcontractor utilization, care was taken to avoid double counting. In specific instances in which an M/WBE prime contractor subcontracted with another M/WBE, a correct total utilization figure would require an adjustment to the prime contract amount to avoid counting the same dollars twice.

aggregated by MWBE status, and EBE status, results are presented in separate sections. In the final portion of the utilization analysis, a comparative analysis of program and post-program utilization is presented.

MWBE Utilization (by Total Dollars Awarded)

Table 6.3 summarizes the value of prime contracts awarded by the City of Evanston, by year and MWBE category. During the study period, 1986 to 1993, the City of Evanston awarded \$149.6 million, of which MWBE owned businesses received \$6.3 million (4.2 percent of total prime dollars).¹⁶ Minority businesses received \$5.4 million (3.6 percent of total prime dollars) while Women owned businesses¹⁷ received \$928,404 (0.6 percent of total prime dollars). African American owned firms received \$3.2 million of total contracts (2.2 percent), while Hispanic owned firms represented \$899,369 of the prime dollars contracted (0.6 percent of the total).

Table 6.3
Prime Utilization of MWBEs
All Procurement Categories (\$)
City of Evanston

Fiscal Year	White	MWBE	Black	Hispanic	Asian	WBE	Unid. MBE's	Total
1986	5,783,033	203,261	122,016	0	0	78,635	2,610	5,986,294
1987	7,737,210	658,313	402,343	0	11,250	244,720	0	8,395,523
1988	7,373,302	2,552,975	454,158	787,586	0	140,981	1,170,250	9,926,277
Total 1986-88	20,893,545	3,414,549	978,517	787,586	11,250	464,336	1,172,860	24,308,094
1989	7,907,058	419,251	249,806	66,730	0	102,715	0	8,326,309
1990	11,218,497	867,472	720,585	0	65,840	58,547	22,500	12,085,959
1991	36,908,558	956,545	840,594	0	0	115,951	0	37,865,103
1992	44,989,643	297,273	178,948	13,470	0	104,855	0	45,286,921
1993	21,352,273	378,841	265,258	31,583	0	82,000	0	21,731,114
Total 1989-93	122,576,034	2,919,382	2,255,191	111,783	65,840	464,068	22,500	125,295,416
Total 1986-93	143,269,579	6,333,931	3,233,708	899,369	77,090	928,404	1,195,360	149,603,510

Source: DJMA

Table 6.4 summarizes the dollar value of subcontracts generated during the same period. During the study period, the total amount subcontracted was \$15.4 million, of which MWBE owned businesses received \$8.5 million (55.5 percent of total subcontracting dollars). Minority businesses received \$5.3 million (34.5 percent), while Women owned businesses received \$3.4 million (22.3 percent of the total). African American owned firms received \$4.4 million of total subcontracts (28.9 percent), while Hispanic owned firms captured \$454,279 (3.0 percent of the total). Firms in the other MWBE categories received the remainder of the subcontracts.

¹⁶The MWBE totals are simply the sums of the other MBE and WBE categories.

¹⁷WBEs are defined as businesses owned by White women. Businesses owned by minority women are included in the other MBE categories.

Table 6.4
Subcontractor Utilization of MWBEs
All Procurement Categories
City of Evanston

Fiscal Year	White	MWBE	Black	Hispanic	Asian	WBE	Unid. MBE's	Total
1986	193,972	36,168	0	0	0	36,168	0	230,140
1987	621,909	4,255	0	1,355	0	0	2,900	626,164
1988	337,215	325,051	29,239	248,526	0	47,236	0	662,266
Total 1986-88	1,153,096	365,474	29,239	249,881	0	83,404	2,900	1,518,570
1989	731,795	305,896	123,416	129,500	0	47,980	0	1,037,691
1990	821,181	121,263	0	40,300	0	80,963	0	942,444
1991	424,820	187,401	26,895	5,303	0	150,563	4,640	612,221
1992	3,271,295	168,390	36,399	29,295	46,344	41,195	15,157	3,439,685
1993	456,322	7,393,251	4,222,681	0	0	3,024,470	146,100	7,849,573
Total 1989-93	5,705,413	8,176,201	4,414,391	204,398	46,344	3,345,171	165,897	13,881,614
Total 1986-93	6,858,509	8,541,675	4,443,630	454,279	46,344	3,428,575	168,797	15,400,184

Source: DJMA

Total utilization by MWBE category is presented in Table 6.5. Of \$149.6 million in total contracts awarded, total utilization of MWBEs (prime and subcontracting dollars) amounted to \$7.7 million dollars MWBEs (5.1 percent of the total). MBEs received \$6.1 million (4.6 percent) while women owned businesses accounted for \$1.3 million (0.9 percent of the total dollars). Of the individual minority groups, African American owned construction firms earned \$3.5 million in contracts (2.3 percent), while Hispanic owned firms earned \$1.4 million contracted (0.9 percent).

Table 6.5
Total Utilization of MWBEs
All Procurement Categories
City of Evanston

Fiscal Year	White	MWBE	Black	Hispanic	Asian	WBE	Unid. MBE's	Total
1986	5,783,033	203,261	122,016	0	0	78,635	2,610	5,986,294
1987	7,737,210	662,568	402,343	1,355	11,250	244,720	1,545	8,395,523
1988	7,373,302	2,679,118	4483,447	1,036,112	0	189,309	1,170,250	9,926,277
Total 1986-88	20,893,545	3,744,947	1,004,617	1,037,467	11,250	512,664	1,174,405	24,308,094
1989	7,907,058	704,769	358,936	196,230	0	149,603	0	8,326,309
1990	11,218,497	983,735	720,585	40,300	65,840	139,510	22,500	12,085,969
1991	36,908,558	1,172,341	867,489	33,698	0	266,514	4,640	37,865,103
1992	44,989,648	409,268	187,347	14,370	46,344	146,050	15,157	45,286,921
1993	21,352,273	672,092	387,939	31,583	0	106,470	146,100	21,731,114
Total 1989-93	122,376,034	3,947,205	2,392,751	316,181	112,184	808,147	188,397	125,295,416
Total 1986-93	143,269,579	7,692,152	3,397,368	1,353,648	123,434	1,320,811	1,362,802	149,603,510

Source: DJMA

MWBE Utilization (by Counts of contracts)

Table 6.6 shows the distribution of the number of prime contracts awarded by the City of Evanston during the study period. During this period, the City of Evanston awarded 928 contracts. MWBE primes received 84 (9.1 percent of the

total number). Minority owned firms won 55 contracts (5.9 percent) while Women owned businesses won 29 contracts (3.1 percent). African American owned firms received 44 prime contracts (4.7 percent of the total contracts as primes), while Hispanic owned firms were awarded six prime contracts (0.7 percent).

Table 6.6
Prime Utilization of MWBEs
Prime Contract Counts
City of Evanston

Fiscal Year	White	MWBE	Black	Hispanic	Asian	WBE	Unid. MBE's	Total
1986	112	10	6	0	0	3	1	122
1987	119	12	7	0	1	4	0	131
1988	115	11	5	2	0	3	1	126
Total 1986-88	346	33	18	2	1	10	2	379
1989	118	10	3	2	0	5	0	128
1990	108	12	8	0	1	2	1	120
1991	104	11	6	0	0	5	0	115
1992	93	10	4	1	0	5	0	103
1993	75	8	5	1	0	2	0	83
Total 1989-93	498	51	25	4	1	19	1	549
Total 1986-93	844	84	44	6	2	29	3	928

Source: DJMA

Table 6.7 presents the total number of subcontracting contracts generated during the study period. A total of 467 were documented. Seventy-two of the subcontracts went to MWBE owned businesses, accounting for 15.4 percent of total subcontracts. MBEs received 42 awards (9.0 percent of the total) while Women owned businesses won 30 subcontracts (6.4 percent). African American owned firms accounted for 15 subcontracts (3.2 percent). Hispanic owned firms accounted for another 15 subcontracts (3.2 percent). The remainder went to other MWBE categories.

Table 6.7
Subcontractor Utilization of MWBEs
Contract Counts
City of Evanston

Fiscal Year	White	MWBE	Black	Hispanic	Asian	WBE	Unid. MBE's	Total
1986	7	1	0	0	0	1	0	8
1987	72	3	0	1	0	1	1	75
1988	43	11	2	6	0	3	0	59
Total 1986-88	127	15	2	7	0	5	1	142
1989	60	9	4	1	0	4	0	69
1990	57	4	0	2	0	2	0	61
1991	41	14	2	2	0	9	1	55
1992	66	19	4	3	3	6	3	87
1993	42	11	3	0	0	4	4	53
Total 1989-93	268	57	13	8	3	25	8	325
Total 1986-93	395	72	15	15	3	30	9	467

Source: DJMA

Table 6.8 provides an overview of the total number of prime and subcontracting contracts generated during the study period.

**Table 6.8
Total Utilization of MWBEs
Contract Counts
City of Evanston**

Fiscal Year	WHITE	MWBE	Black	Hispanic	Asian	WBE	Unident BEs	Total
1986	119	11	6	0	0	4	1	130
1987	191	15	7	1	1	5	1	206
1988	163	22	7	8	0	7	1	185
Total 1986-88	473	48	20	9	1	15	3	521
1989	178	19	7	3	0	9	0	197
1990	165	16	8	2	1	4	1	181
1991	145	25	8	3	0	14	1	170
1992	161	29	8	3	3	11	3	190
1993	117	19	8	1	0	4	4	136
Total 1989-93	766	108	39	12	4	44	9	874
Total 1986-93	1239	156	59	21	5	59	12	1395

Source: DJMA

MISSING VALUES ANALYSIS

Examination of the prime and subcontractor database revealed that some contracts did not have the contract amount reported, but contained other contract terms. For example, some contracts were priced in dollars per pound or dollars per square foot. Other contract files contained no documentation of any contract dollar amount.

The number and distribution of prime contracts that did not have contract amounts reported or were not in usable form for this analysis is shown in Table 6.9. Based on the summary data presented in Table 6.9, all of the prime contracts for which dollar amounts were not reported, or which contained data not in usable form for this analysis, were awarded to White-owned firms. Hence, the utilization analysis of minority owned businesses, with respect to prime dollars, is not affected by the records with missing amounts.

Table 6.9
Prime Contracts with Missing Contract Amounts
Counts
City of Evanston

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	Native American	MWBE	White	Total
1986	0	0	0	0	0	0	0	3	3
1987	0	0	0	0	0	0	0	4	4
1988	0	0	0	0	0	0	0	4	4
1989	0	0	0	0	0	0	0	7	7
1990	0	0	0	0	0	0	0	9	9
1991	0	0	0	0	0	0	0	2	2
1992	0	0	0	0	0	0	0	2	2
1993	0	0	0	0	0	0	0	6	6
Total	0	0	0	0	0	0	0	37	37

Source: DJMA

The number and distribution of the subcontractors for which there was no subcontract amount reported (or was not in a form that could be used for analysis) is shown in Table 6.10. Based on the results shown in Table 6.10, of 142 subcontractor firms, 118 were White owned (83.1 percent), while 24 were MWBE owned businesses (16.9 percent). Comparing these results with those found in Table 6.7, the MWBE percentage of subcontracting firms with missing amounts roughly corresponded to the MWBE percentage of subcontracting firms that were awarded contracts (15.4 percent of total subcontracting awards went to MWBE owned businesses, while 16.9 percent of subcontracting firms without valid amounts reported were MWBE). MBEs received nine percent of the total number of subcontracts, while the MBE percentage of subcontracts with no valid dollar amounts was 4.2 percent.

Table 6.10
Subcontracts with Missing Subcontract Amounts
Counts
City of Evanston

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	Native American	MWBE	White	Total
1986	0	0	0	0	0	0	0	0	0
1987	0	0	0	0	1	0	1	18	19
1988	2	0	0	0	0	0	2	24	26
1989	4	0	0	0	0	0	4	20	24
1990	0	0	0	0	0	0	0	23	23
1991	2	1	0	0	5	0	8	18	25
1992	4	1	0	0	0	0	5	12	17
1993	3	0	0	1	0	0	4	3	7
Total	15	2	0	1	6	0	24	118	142

Source: DJMA

The fact that several of the subcontractors did not have subcontract amounts reported could bias the results reported in the study. However, since the distribution of subcontracting firms with missing amounts roughly corresponded to the distribution of subcontracting firms that were awarded

contracts, the percentage utilization of minority firms as reported by this study may be expected to reflect the true distribution of the contracts.

UTILIZATION ANALYSIS (By Procurement Category)

Construction

MWBE Utilization

Table 6.11 shows total prime dollars awarded by the City of Evanston for construction, disaggregated by year and MWBE category. For the years 1986 to 1993, the City of Evanston awarded \$123.1 million, of which MWBE owned businesses accounted for \$5.6 million (4.5 percent of total prime dollars). Minority owned businesses received \$5.1 million (4.1 percent) while women owned businesses accounted for \$472,162 (0.4 percent). African American owned construction firms received \$3.1 million in construction (2.5 percent of the total), while firms in the unidentified MBE/DBE category received \$1.2 million in construction contracts (one percent). Hispanic owned firms accounted for the remainder of the prime dollars contracted (0.7 percent). There was no participation by Asian and Native American firms.

Table 6.11
Prime Utilization of MWBEs (\$)
Construction
City of Evanston

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	Native American	MWBE	Total
1986	101,916	0	0	0	0	0	101,916	3,865,694
1987	358,613	0	0	0	220,654	0	589,272	5,781,942
1988	445,458	787,586	0	1,170,250	79,258	0	2,482,552	7,260,239
Total 1986-88	915,992	787,586	0	1,170,250	299,912	0	3,173,740	16,907,875
1989	249,806	66,730	0	0	19,475	0	336,011	6,160,079
1990	709,635	0	0	0	0	0	709,635	8,824,399
1991	840,594	0	0	0	17,400	0	857,994	30,850,523
1992	88,141	0	0	0	83,375	0	171,516	40,724,934
1993	255,258	0	0	0	52,000	0	317,258	19,656,256
Total 1989-93	2,153,434	66,730	0	0	172,250	0	2,392,414	106,216,191
Total 1986-93	3,069,426	854,316	0	1,170,250	472,162	0	5,566,154	123,124,066

Source: DJMA

Total utilization by MWBE category is presented in Tables 6.12 and 6.13. Out of \$123.1 million in total construction procurement, the total utilization of MWBE owned businesses (including prime and subcontracting dollars) accounted for \$6.7 million dollars (representing 5.5 percent of the total dollars). MBEs received \$6.1 million (4.9 percent of the total dollars) while Women owned businesses received \$732,849 (0.6 percent of the total dollars). Of the individual minority groups, African American owned construction firms received \$3.2 million in construction (2.6 percent of total dollars), while firms in the unidentified

MBE/DBE category received \$1.3 million in construction contracts (1.1 percent of total dollars). Hispanic owned firms represented the remainder of the construction dollars contracted (1.1 percent of total dollars). There was no participation by Asian and Native American construction firms.

Annual total utilization percentages vary substantially from 1986 to 1993. The highest rates of MWBE utilization occurred in 1987, 1988 and 1989 (10.3 percent, 38.7 percent, and 10.1 percent, respectively). In contrast, 1992 MWBE utilization was the lowest at 0.5 percent. In 1988, much of the high utilization was due to a single contract of \$1.2 million to an MBE of unidentified ethnicity, and two large prime contracts totaling \$787,586 won by Hispanic firms. In 1987, however, there was higher than average participation of Women owned businesses (a high of \$219,299 for 1987, compared to a total of \$732,849 for the study period as a whole). In 1989, there was higher than average subcontracting activity by MWBE owned businesses (total of \$336,066 in prime contracts, compared to a total of \$285,518 in subcontracting).

Table 6.12
Total Utilization of M/WBEs in Construction (\$)
City of Evanston

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	Native American	MWBE	Total
1986	101,916	0	0	0	0	0	101,916	3,865,694
1987	368,618	1,355	0	2,900	219,299	0	593,527	5,781,942
1988	471,558	1,036,112	0	1,170,250	127,586	0	2,808,695	7,260,239
Total 1986-88	942,092	1,037,467	0	1,173,150	346,885	0	3,504,138	16,907,875
1989	358,936	196,230	0	0	66,363	0	621,529	6,160,079
1990	670,945	40,300	0	0	80,963	0	830,898	8,824,399
1991	758,206	33,698	0	4,640	69,717	0	948,649	30,850,523
1992	88,073	900	0	15,157	100,708	0	213,305	40,724,934
1993	387,939	0	0	146,100	68,213	0	602,252	19,656,256
Total 1989-93	2,264,099	271,128	0	165,897	385,964	0	3,216,633	106,216,191
Total 1986-93	3,206,191	1,308,595	0	1,339,047	732,849	0	6,720,771	123,124,066

Source: DJMA

Table 6.13
Total Utilization of M/WBEs in Construction (%)
City of Evanston

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	Native American	MWBE	Total
1986	2.64%	0.00%	0.00%	0.00%	0.00%	0.00%	2.64%	100.00%
1987	6.38%	0.02%	0.00%	0.05%	3.79%	0.00%	10.27%	100.00%
1988	6.50%	14.27%	0.00%	16.12%	1.76%	0.00%	38.69%	100.00%
Total 1986-88	5.57%	6.14%	0.00%	6.94%	2.05%	0.00%	20.72%	100.00%
1989	5.83%	3.19%	0.00%	0.00%	1.08%	0.00%	10.09%	100.00%
1990	7.60%	0.46%	0.00%	0.00%	0.92%	0.00%	9.42%	100.00%
1991	2.46%	0.11%	0.00%	0.02%	0.23%	0.00%	3.07%	100.00%
1992	0.22%	0.00%	0.00%	0.04%	0.25%	0.00%	0.52%	100.00%
1993	1.97%	0.00%	0.00%	0.74%	0.35%	0.00%	3.06%	100.00%
Total 1989-93	2.13%	0.26%	0.00%	0.16%	0.36%	0.00%	3.03%	100.00%
Total 1986-93	2.60%	1.06%	0.00%	1.09%	0.60%	0.00%	5.46%	100.00%

Source: DJMA

EBE Utilization

Table 6.14 presents the prime utilization of Evanston-based construction firms by year. Of the \$123.1 million awarded in construction contracts from 1986 to 1993, \$2.1 million were awarded to Evanston-based companies (1.7 percent) and the remainder to firms based outside of Evanston (98.3 percent).

Table 6.14
EBE Prime Utilization (\$)
Construction
City of Evanston

Fiscal Year	EBE	Non EBE	Total
1986	236,963	3,628,731	3,865,694
1987	135,370	5,646,572	5,781,942
1988	584,003	6,676,236	7,260,239
Total 1986-88	956,336	15,951,539	16,907,875
1989	247,740	5,912,339	6,160,079
1990	240,131	8,584,268	8,824,399
1991	224,988	30,625,535	30,850,523
1992	277,837	40,447,097	40,724,934
1993	192,199	19,464,057	19,656,256
Total 1989-93	1,182,895	105,033,296	106,216,191
Total 1986-93	2,139,231	120,984,835	123,124,066

Source: DJMA

Tables 6.15 and 6.16 presents the total utilization of construction firms based in Evanston. Evanston based construction firms received \$2.5 million (representing two percent of the total dollars) in prime and subcontracting dollars during the study period. Total utilization of the EBEs for 1991 and 1992 was especially low in relative terms—\$224,988 and \$282,787, approximately 0.7 percent in each year.

Table 6.15
EBE Total Utilization (\$)
Construction
City of Evanston

Fiscal Year	EBE	Non EBE	Total
1986	259,553	3,606,141	3,865,694
1987	254,084	5,527,858	5,781,942
1988	589,873	6,970,366	7,260,239
Total 1986-88	1,103,510	15,804,365	16,907,875
1989	416,196	5,743,883	6,160,079
1990	256,547	8,567,852	8,824,399
1991	224,988	30,625,535	30,850,523
1992	282,787	40,442,147	40,724,934
1993	221,682	19,434,574	19,656,256
Total 1989-93	1,402,200	104,813,991	106,216,191
Total 1986-93	2,505,710	120,618,356	123,124,066

Source: DJMA

**Table 6.16
EBE Total Utilization (%)
Construction
City of Evanston**

Fiscal Year	EBE	Non EBE	Total
1986	6.71%	93.29%	100.00%
1987	4.33%	95.61%	100.00%
1988	8.12%	91.88%	100.00%
Total 1986-88	6.53%	93.47%	100.00%
1989	6.76%	93.24%	100.00%
1990	2.91%	97.09%	100.00%
1991	0.73%	99.27%	100.00%
1992	0.69%	99.31%	100.00%
1993	1.13%	98.87%	100.00%
Total 1989-93	1.32%	98.68%	100.00%
Total 1986-93	2.04%	97.96%	100.00%

Source: DJMA

Architecture/Engineering

MWBE Utilization

Table 6.17 provides an overview of the prime utilization by the City of Evanston for architecture/engineering (A/E). During the study period, the City of Evanston awarded \$8.7 million in prime contracts. An Asian firm (accounting for all of MWBE prime utilization) received \$65,840 (0.8 percent). The remainder was awarded to White contractors. The single contract to the Asian firm was awarded in 1990. No other minority or Women owned firms were awarded A/E contracts in any of the study years.

**Table 6.17
Prime Utilization of MWBEs (\$)
Architecture/Engineering
City of Evanston**

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	Native American	MWBE	Total
1986	0	0	0	0	0	0	0	10,000
1987	0	0	0	0	0	0	0	252,514
1988	0	0	0	0	0	0	0	410,800
Total 1986-88	0	0	0	0	0	0	0	673,314
1989	0	0	0	0	0	0	0	220,556
1990	0	0	65,840	0	0	0	65,840	356,575
1991	0	0	0	0	0	0	0	4,742,798
1992	0	0	0	0	0	0	0	2,427,440
1993	0	0	0	0	0	0	0	310,677
Total 1989-93	0	0	65,840	0	0	0	65,840	8,058,046
Total 1986-93	0	0	65,840	0	0	0	65,840	8,731,360

Source: DJMA

Tables 6.18 and 6.19 provide an overview of the total utilization of A/E firms.

During the study period, of the total \$8.7 million dollars awarded, MWBE owned businesses garnered \$269,444 (3.1 percent of the total). Of these MWBE dollars, Asian businesses received \$112,184 (41.6 percent), African American businesses received \$26,895 (ten percent), and Women owned businesses received \$130,365 (48.4 percent). There was no utilization of Hispanic or Native American businesses in this procurement category.

Table 6.18
Total Utilization of MWBEs (\$)
Architecture/Engineering
City of Evanston

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	Native American	MWBE	Total
1986	0	0	0	0	0	0	0	10,000
1987	0	0	0	0	0	0	0	252,514
1988	0	0	0	0	0	0	0	410,800
Total 1986-88	0	0	0	0	0	0	0	673,314
1989	0	0	0	0	0	0	0	220,556
1990	0	0	65,840	0	0	0	65,840	356,575
1991	26,895	0	0	0	98,246	0	125,141	4,742,798
1992	0	0	46,344	0	23,862	0	70,206	2,427,440
1993	0	0	0	0	8,257	0	8,257	310,677
Total 1989-93	26,895	0	112,184	0	130,365	0	269,444	8,058,046
Total 1986-93	26,895	0	112,184	0	130,365	0	269,444	8,731,360

Source: DJMA

Table 6.19
Total Utilization of MWBEs (%)
Architecture/Engineering
City of Evanston

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	Native American	MWBE	Total
1986	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
1987	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
1988	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
Total 1986-88	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
1989	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
1990	0.00%	0.00%	18.46%	0.00%	0.00%	0.00%	18.46%	100.00%
1991	0.57%	0.00%	0.00%	0.00%	2.07%	0.00%	2.64%	100.00%
1992	0.00%	0.00%	1.91%	0.00%	0.98%	0.00%	2.89%	100.00%
1993	0.00%	0.00%	0.00%	0.00%	2.66%	0.00%	2.66%	100.00%
Total 1989-93	0.33%	0.00%	1.39%	0.00%	1.62%	0.00%	3.34%	100.00%
Total 1986-93	0.31%	0.00%	1.28%	0.00%	1.49%	0.00%	3.09%	100.00%

Source: DJMA

EBE Utilization

Table 6.20 presents data on prime utilization of EBEs in A/E. Throughout the study period, of a total of \$8.7 million in A/E contracts, \$72,633 (0.8 percent of the total) were awarded to Evanston based primes, with the remainder awarded to professionals located outside the Evanston city limits.

**Table 6.20
EBE Prime Utilization (\$)
Architecture/Engineering
City of Evanston**

Fiscal Year	EBE	Non EBE	Total
1986	0	10,000	10,000
1987	30,000	222,514	252,514
1988	0	410,800	410,800
Total 1986-88	30,000	643,314	673,314
1989	13,400	207,156	220,556
1990	13,433	343,142	356,575
1991	0	4,742,798	4,742,798
1992	0	2,427,440	2,427,440
1993	15,800	294,877	310,677
Total 1989-93	42,633	8,015,413	8,058,046
Total 1986-93	72,633	8,658,727	8,731,360

Source: DJMA

Total utilization of EBEs by the City of Evanston for the A/E category is presented in Tables 6.21 and 6.22. The total value (prime and subcontracting) in A/E contracts received by EBEs was \$176,778 (two percent of the total). In 1986 and 1988, no A/E contracts were awarded to EBEs, while in 1993, a total of \$57,688 (18.6 percent of the A/E contracts for the year 1993) was awarded to EBEs.

**Table 6.21
EBE Total Utilization (\$)
Architecture/Engineering
City of Evanston**

Fiscal Year	EBE	Non EBE	Total
1986	0	10,000	10,000
1987	30,000	222,514	252,514
1988	0	410,800	410,800
Total 1986-88	30,000	643,314	673,314
1989	13,400	207,156	220,556
1990	13,433	343,142	356,575
1991	5,490	4,737,308	4,742,798
1992	56,767	2,370,673	2,427,440
1993	57,688	252,989	310,677
Total 1989-93	146,778	7,911,268	8,365,795
Total 1986-93	176,778	8,554,582	9,039,109

Source: DJMA

**Table 6.22
EBE Total Utilization (%)
Architecture/Engineering
City of Evanston**

Fiscal Year	EBE	Non EBE	Total
1986	0.00%	100.00%	100.00%
1987	11.88%	88.12%	100.00%
1988	0.00%	100.00%	100.00%
Total 1986-88	4.46%	95.54%	100.00%
1989	6.08%	93.92%	100.00%
1990	3.77%	96.23%	100.00%
1991	0.12%	99.88%	100.00%
1992	2.34%	97.66%	100.00%
1993	18.57%	81.43%	100.00%
Total 1989-93	1.75%	98.18%	100.00%
Total 1986-93	1.96%	97.98%	100.00%

Source: DJMA

Goods and Services

MWBE Utilization

Table 6.23 summarizes the value of prime contracts awarded by the City of Evanston for goods and services (G&S). From 1986 to 1993, the City of Evanston awarded \$16.4 million for contracts in the G&S area, of which \$701,937 (4.3 percent) was awarded to MWBE primes. Among the MWBE groups, Women owned businesses accounted for the largest share of the contracts (\$456,242, representing 2.8 percent of the total dollars), followed by African American contractors that received \$164,282 (one percent of the total). Hispanic owned firms were awarded \$45,053 (0.3 percent of the total) in G&S prime contracts in 1992 and 1993. Asians received a single contract worth \$11,250 in 1987. Native American firms were not utilized during the study period in this procurement category.

**Table 6.23
Prime Utilization of MWBEs (\$)
Goods and Services
City of Evanston**

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	Native American	MWBE	Total
1986	20,100	0	0	2,610	78,635	0	101,345	1,854,072
1987	33,725	0	11,250	0	24,066	0	69,041	2,231,403
1988	8,700	0	0	0	61,723	0	70,423	2,109,548
Total 1986-88	62,525	0	11,250	2,610	164,424	0	240,809	6,195,023
1989	0	0	0	0	83,240	0	83,240	1,894,499
1990	10,950	0	0	22,500	58,547	0	91,997	2,831,265
1991	0	0	0	0	98,551	0	98,551	1,813,080
1992	90,807	13,470	0	0	21,480	0	125,757	2,070,578
1993	0	31,583	0	0	30,000	0	61,583	1,549,849
Total 1989-93	101,757	45,053	0	22,500	291,818	0	461,128	10,159,271
Total 1986-93	164,282	45,053	11,250	25,110	456,242	0	701,937	16,354,294

Source: DJMA

Tables 6.24 and 6.25 provide an overview of total utilization (prime and subcontracting) of (G&S) firms aggregated by year and MWBE category. Based on the results shown during the study period, 1986 to 1993, total utilization is identical to the utilization of primes—there was no subcontracting to MWBE firms.

Table 6.24
Total Utilization of MWBEs (\$)
Goods and Services
City of Evanston

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	Native American	MWBE	Total
1986	20,100	0	0	2,610	78,635	0	101,345	1,854,072
1987	33,725	0	11,250	0	24,066	0	69,041	2,231,403
1988	8,700	0	0	0	61,723	0	70,423	2,109,548
Total 1986-88	62,525	0	11,250	2,610	164,424	0	240,809	6,195,023
1989	0	0	0	0	83,240	0	83,240	1,894,499
1990	10,950	0	0	22,500	58,547	0	91,997	2,831,265
1991	0	0	0	0	98,551	0	98,551	1,813,080
1992	90,807	13,470	0	0	21,480	0	125,757	2,070,578
1993	0	31,583	0	0	30,000	0	61,583	1,549,849
Total 1989-93	101,757	45,053	0	22,500	291,818	0	461,128	10,159,271
Total 1986-93	164,282	45,053	11,250	25,110	456,242	0	701,937	16,354,294

Source: DJMA

Table 6.25
Total Utilization of MWBEs (%)
Goods and Services
City of Evanston

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	Native American	MWBE	Total
1986	1.08%	0.00%	0.00%	0.14%	4.24%	0.00%	5.47%	100.00%
1987	1.51%	0.00%	0.50%	0.00%	1.08%	0.00%	3.09%	100.00%
1988	0.41%	0.00%	0.00%	0.00%	2.93%	0.00%	3.34%	100.00%
Total 1986-88	1.01%	0.00%	0.18%	0.04%	2.65%	0.00%	3.89%	100.00%
1989	0.00%	0.00%	0.00%	0.00%	4.39%	0.00%	4.39%	100.00%
1990	0.39%	0.00%	0.00%	0.79%	2.07%	0.00%	3.25%	100.00%
1991	0.00%	0.00%	0.00%	0.00%	5.44%	0.00%	5.44%	100.00%
1992	4.39%	0.65%	0.00%	0.00%	1.04%	0.00%	6.07%	100.00%
1993	0.00%	2.04%	0.00%	0.00%	1.94%	0.00%	3.97%	100.00%
Total 1989-93	1.00%	0.44%	0.00%	0.22%	2.87%	0.00%	4.54%	100.00%
Total 1986-93	1.00%	0.28%	0.07%	0.15%	2.79%	0.00%	4.29%	100.00%

Source: DJMA

EBE Utilization

Table 6.26 is an overview of the procurement of EBEs for the G&S category. Of the \$16.4 million awarded in G&S contracts between 1986 and 1993, \$1.3 million (8.1 percent) went to EBEs. With the exception of 1989, when EBEs received \$595,298 (31.4 percent of the total awarded in 1989), the percentage of G&S

contract amounts were in the 3.4 percent to 6.5 percent range for all the other years studied.

Table 6.26
EBE Prime Utilization (\$)
Goods and Services
City of Evanston

Fiscal Year	EBE	Non EBE	Total
1986	119,530	1,734,542	1,854,072
1987	146,310	2,085,093	2,231,403
1988	115,334	1,994,214	2,109,548
Total 1986-88	381,174	5,813,849	6,195,023
1989	595,298	1,299,201	1,894,499
1990	94,997	2,736,268	2,831,265
1991	106,479	1,706,601	1,813,080
1992	80,432	1,990,176	2,070,578
1993	65,925	1,483,924	1,549,849
Total 1989-93	943,101	9,216,170	10,159,271
Total 1986-93	1,324,275	15,030,019	16,354,294

Source: DJMA

From Tables 6.26, 6.27 and 6.28, it may be noted that total utilization of EBEs is identical to prime utilization, implying a lack of subcontracting in G&S contracts.

Table 6.27
EBE Total Utilization (\$)
Goods and Services
City of Evanston

Fiscal Year	EBE	Non EBE	Total
1986	119,530	1,734,542	1,854,072
1987	146,310	2,085,093	2,231,403
1988	115,334	1,994,214	2,109,548
Total 1986-88	381,174	5,813,849	6,195,023
1989	595,298	1,299,201	1,894,499
1990	94,997	2,736,268	2,831,265
1991	106,479	1,706,601	1,813,080
1992	80,402	1,990,176	2,070,578
1993	65,925	1,483,924	1,549,849
Total 1989-93	943,101	9,216,170	10,159,271
Total 1986-93	1,324,275	15,030,019	16,354,294

Source: DJMA

Table 6.28
EBE Total Utilization (%)
Goods and Services
City of Evanston

Fiscal Year	EBE	Non EBE	Total
1986	6.45%	93.55%	100.00%
1987	6.56%	93.44%	100.00%
1988	5.47%	94.53%	100.00%
Total 1986-88	6.15%	93.85%	100.00%
1989	31.42%	68.58%	100.00%
1990	3.36%	96.64%	100.00%
1991	5.87%	94.13%	100.00%
1992	3.83%	96.12%	100.00%
1993	4.25%	95.75%	100.00%
Total 1989-93	9.28%	90.72%	100.00%
Total 1986-93	8.10%	91.90%	100.00%

Source: DJMA

Other Professional Services

MWBE Utilization

The summary of prime utilization by the City of Evanston for Other Professional Services is shown in Table 6.29. Of the total \$1.4 million, there was no prime utilization of MWBE firms during the study period.

Table 6.29
Prime Utilization of M/WBEs (\$)
Other Professional Services
City of Evanston

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	Native American	MWBE	Total
1986	0	0	0	0	0	0	0	256,528
1987	0	0	0	0	0	0	0	129,664
1988	0	0	0	0	0	0	0	145,690
Total 1986-88	0	0	0	0	0	0	0	531,882
1989	0	0	0	0	0	0	0	51,175
1990	0	0	0	0	0	0	0	73,730
1991	0	0	0	0	0	0	0	458,702
1992	0	0	0	0	0	0	0	63,969
1993	0	0	0	0	0	0	0	214,332
Total 1989-93	0	0	0	0	0	0	0	861,908
Total 1986-93	0	0	0	0	0	0	0	1,393,790

Source: DJMA

Based on the data presented in Table 6.30 and 6.31, none of the MWBE owned businesses firms received any subcontracting work in the Other Professional Services category. Hence, there was no utilization (prime or subcontracting) of the MWBE firms in the Other Profession Services category in any of the study years.

Table 6.30
Total Utilization of M/WBEs (\$)
Other Professional Services
City of Evanston

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	Native American	MWBE	Total
1986	0	0	0	0	0	0	0	256,528
1987	0	0	0	0	0	0	0	129,664
1988	0	0	0	0	0	0	0	145,690
Total 1986-88	0	0	0	0	0	0	0	531,882
1989	0	0	0	0	0	0	0	51,175
1990	0	0	0	0	0	0	0	73,730
1991	0	0	0	0	0	0	0	458,702
1992	0	0	0	0	0	0	0	63,969
1993	0	0	0	0	0	0	0	214,332
Total 1989-93	0	0	0	0	0	0	0	861,908
Total 1986-93	0	0	0	0	0	0	0	1,393,790

Source: DJMA

Table 6.31
Total Utilization of M/WBEs (%)
Other Professional Services
City of Evanston

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	Native American	MWBE	Total
1986	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
1987	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
1988	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
Total 1986-88	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
1989	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
1990	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
1991	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
1992	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
1993	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
Total 1989-93	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
Total 1986-93	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%

Source: DJMA

EBE Utilization

Total dollar awards to EBE firms in Other Professional Services is shown in Table 6.32. During the 1986 to 1993 period, of approximately \$1.4 million in Professional Services contracts awarded, \$156,830 (11.3 percent of the total) were awarded to Evanston-based vendors. For the years 1986, 1988, 1989, 1991 and 1992, no contracts were awarded to EBEs in the Professional Services category.

Table 6.32
EBE Prime Utilization (\$)
Other Professional Services
City of Evanston

Fiscal Year	EBE	Non EBE	Total
1986	0	256,528	256,528
1987	65,600	64,064	129,664
1988	0	145,690	145,690
Total 1986-88	65,600	466,282	531,882
1989	0	51,175	51,175
1990	60,730	13,000	73,730
1991	0	458,702	458,702
1992	0	63,969	63,969
1993	30,500	183,832	214,332
Total 1989-93	91,230	770,678	861,908
Total 1986-93	156,830	1,236,960	1,393,790

Source: DJMA

Tables 6.33 and 6.34, indicate that total utilization of EBEs is identical to prime utilization, implying a lack of subcontracting in the Other Professional Services group of contracts.

Tables 6.33
EBE Total Utilization (\$)
Other Professional Services
City of Evanston

Fiscal Year	EBE	Non EBE	Total
1986	0	256,528	256,528
1987	65,600	64,064	129,664
1988	0	145,690	145,690
Total 1986-88	65,600	466,282	531,882
1989	0	51,175	51,175
1990	60,730	13,000	73,730
1991	0	458,702	458,702
1992	0	63,969	63,969
1993	30,500	183,832	214,332
Total 1989-93	91,230	770,678	861,908
Total 1986-93	156,830	1,236,960	1,393,790

Source: DJMA

Tables 6.34
EBE Total Utilization (%)
Other Professional Services
City of Evanston

Fiscal Year	EBE	Non EBE	Total
1986	0.00%	100.00%	100.00%
1987	50.59%	49.41%	100.00%
1988	0.00%	100.00%	100.00%
Total 1986-88	12.33%	87.67%	100.00%
1989	0.00%	100.00%	100.00%
1990	82.37%	17.63%	100.00%
1991	0.00%	100.00%	100.00%
1992	0.00%	100.00%	100.00%
1993	14.23%	85.77%	100.00%
Total 1989-93	10.58%	89.42%	100.00%
Total 1986-93	11.25%	88.75%	100.00%

Source: DJMA

AVAILABILITY ANALYSIS

Since MWBE availability is such an elastic concept, it is important that available data be consulted to determine a likely range of availability percentages. The extreme difficulty inherent in developing accurate availability estimates is a result of the data sources typically used, as well as the various dimensions of availability (as implied by the *Croson* decision): qualifications, willingness, and ability to perform a particular service. Ability or "capacity," is the source of most of the elasticity in the availability concept.

Calculating MWBE availability is the most problematic aspect of determining disparity in the utilization of MWBE owned businesses. There is no single data source available that contains a list of all firms that are "qualified, willing and able to perform a particular service" in a particular geographical area. Various data sources have been used in various disparity studies, and each of these sources has particular advantages and disadvantages in measuring availability of MWBE owned businesses. Data from surveys of MWBE owned businesses, conducted every five years by the Census Bureau, are well-known and used frequently. Vendor lists, developed by cities and other public jurisdictions, have the advantage of identifying firms interested in doing business with the jurisdiction, but exclude firms that have never applied (yet are willing and able) to do business with those entities.

The strategy used in this study requires an examination of MWBE availability estimates from disparity studies conducted for neighboring jurisdictions (that may share the same relevant market). Using these prior estimates for comparison, specific estimates for the City of Evanston are calculated. If these estimates are close to prior estimates, that fact would offer some support for the idea that the estimate is a good proxy of "true" availability. Alternatively, if

availability estimates are substantially different from the prior estimates, it would be necessary to identify factors to explain the differences in the estimates.

Studies from Neighboring Jurisdictions

Two other studies of public procurement in the Chicago area developed estimates of availability by various procurement categories. These estimates provide points of comparison with the estimates generated in this report. The first study, for the Chicago Park District, was completed in 1991 by Earl L. Neal & Associates, and Vedder, Price, Kaufman, and Kammholz.¹⁸ The second, conducted by the same co-authors, was done for the Metropolitan Water Reclamation District (MWRD).¹⁹

MWBE availability estimates for the Park District were based on that jurisdiction's vendor lists.²⁰ A comparison to the City of Chicago's vendors list showed that MBEs comprised 10 percent and 29.3 percent, respectively, of the District's and the City's non-construction vendors. Women owned businesses comprised 8 percent and 12.3 percent, respectively.²¹ The study also noted an alternative estimate of MWBE availability for the Board of Education (using 1982 Census data): MBE—19.1 percent; WBE—25.7 percent.²²

Observing the significant difference in MWBE percentages between the District's and the City's vendors lists, the study concluded that the District's list likely would "underestimate substantially the number of MWBE owned businesses qualified to provide goods and services to the District."²³ The Park District study noted that MBEs accounted for 44.5 percent of construction companies on the City's vendors lists, while women owned businesses accounted for 10.6 percent.

¹⁸Earl L. Neal & Associates and Vedder, Price, Kaufman, and Kammholz, *Report on Recommendations for New Chicago Park District Minority and Women Owned Business Enterprise Program*, February 28, 1991, hereinafter referred to as *Park District Study*.

¹⁹Earl L. Neal & Associates and Vedder, Price, Kaufman, and Kammholz, *Metropolitan Water Reclamation District Report on Availability and Utilization of Minority and Women Business Enterprises*, no date, hereinafter referred to as *MWRD Study*.

²⁰The Park District study compared M/WBE utilization with the City of Chicago's M/WBE participation on non-construction contracts. The comparison showed that District utilization of M/WBEs was much lower on non-construction contracts compared to the City. Further, the study concluded that M/WBE utilization, compared to M/WBE representation on the District's and the City's vendors lists, "provides additional evidence that M/WBEs have been severely underutilized compared to any reasonable estimate of their availability." See Neal et. al., *Park District Study*, p. 29.

²¹The Park District Study argued that M/WBE representation in local vendors lists "provides the best estimate of M/WBE availability because these vendor lists constitute the pool of qualified contractors and suppliers interested in performing public sector work." *Ibid.*, p. 29, n. 47.

²²*Id.*

²³*Id.*, p. 30.

The Park District study concluded that census-based estimates cannot be the sole basis of availability estimates, due to infirmities in the data and over-inclusiveness (detailed later in this chapter). The study also concluded that the Park District's vendors list provided less reliable estimates of MWBE availability than did the City's or the MWRD lists. Probably of greatest importance, however, "the consultants also concluded that there is ample evidence that, given the opportunity, MWBE owned businesses have the capacity to expand significantly the amount of Park District work they perform.²⁴ The study found that MWBE owned businesses can perform and manage large-scale projects. In addition, "testimony and survey responses consistently have indicated that, if given the opportunity to perform more public sector work, then businesses can expand."²⁵

The MWRD study also presented construction availability estimates based on MWRD's vendors list.²⁶ For the construction category as a whole, MBE availability was determined to be 19.2 percent. WBE availability was measured at 10.1 percent. Availability estimates were also provided for various construction specialties (e.g., electrical, mechanical, excavation, etc.). Those figures are shown in Table 6.35. MBE availability ranged from a high of 41.7 percent in concrete, to a low of 17.9 percent in road construction. Similarly, for women owned businesses, availability ranged from 17.6 percent in structural steel down to 5.4 percent in mechanical contracting. None of the estimates was broken down by detailed race/ethnicity category.

Table 6.35
Percentage Representation in Supplier List
Metropolitan Water Reclamation District

Service Category	Representation in Supplier List	
	MBE	WBE
General Contracting	19.3	10.2
Electrical	18.2	16.7
Mechanical	19.4	5.4
Excavation	18.0	12.8
Sludge Hauling	25.5	16.0
Structural Steel	41.2	17.6
Concrete	41.7	10.0
Architecture & Engineering	26.1	12.0
Road Construction	17.9	8.9
Overall	19.2	10.1

Source: MWRD Study

²⁴Id., p. 68.

²⁵Id.

²⁶Cook County was defined as the relevant market area for construction based on the location of two-thirds of MWRD's contractors in Cook County. For "major" construction projects, the relevant market was defined as extending beyond Cook County.

Appropriately, this chapter has focused on estimates of availability for MWBE construction contractors since: most litigation surrounding MWBE programs has involved construction contractors; construction accounts for the bulk of most jurisdictions' procurement spending; and, most MWBE programs emphasize construction procurement. It is, nevertheless, important to generate credible availability estimates for professional services contracting and procurement of goods and nonprofessional services.

While the previous estimates serve as "road signs," DJMA has developed availability estimates for each of the procurement categories for the City of Evanston.

Sources of Availability Data

DJMA collected a substantial amount of data that is used to measure the availability of M/WBEs.

The following data sources were consulted:

- Bureau of the Census, U.S. Department of Commerce
 - Published *Survey of Minority Owned Business Enterprises* (SMOBE) and *Survey of Women Owned Businesses* (SWOB), 1987
 - Unpublished tabulations of SMOBE and SWOB data from the Census Bureau
- City of Evanston Vendors List
- Evanston Minority Women's Business Directory, 1994
- Compiled list of bidders from City of Evanston contract files
- MWBE Certification Directories from the City of Chicago, Cook County, Illinois, the Chicago Transit Authority, and the Metropolitan Water Reclamation District

There were three potential approaches to measuring availability:

- Census-based estimates of firms with paid employees
- Estimates based on counts of firms in the Vendors List
- "Ready, Willing, and Able" (RWA) estimates

The following is a description of the methods used by DJMA to develop availability estimates from the available data sources.

Census Bureau's SMOBE and SWOB Data

The first measure of availability uses data provided by the U. S. Census Bureau through its Economic Censuses, in particular, the 1987 *Survey of Minority Owned Business Enterprises* (SMOBE), and the 1987 *Survey of Women Owned Businesses* (SWOB). These Census data do not measure a business owner's qualifications or willingness to do business with the City of Evanston, therefore these Census-based measurements are likely to be over-inclusive. However, the numbers do provide a gross estimate of businesses that are available in the City's market area.

Census-based availability estimates were developed for construction, professional services (including A/E), and general procurement. Since the Census data in the published reports represent broad industry categories, the first step in developing the estimates was to match appropriate industry categories with the three broad procurement categories listed previously.

Census data have the advantage of providing direct counts of nonminority and minority owned firms. However, the data are limited by the exclusion of information on "C" corporations,²⁷ which include many firms with the capacity to perform major projects. The Census measure has two additional limitations for the purpose of this study: it identifies all firms, rather than those that have taken affirmative steps to work on City of Evanston contracts; and, while it provides counts of total firms (minority owned plus nonminority owned) as well as counts of firms owned by various minority categories in the geographic region of metropolitan Chicago, it only provides direct counts of minority firms (but no counts of minority owned plus nonminority owned firms) for the City of Evanston.²⁸ Using the 1987 SMOBE and SWOB data sets, DJMA calculated percentage estimates of firms with paid employees, a more stringent estimate of capacity than the set of total firms (i.e., firms without employees).

To determine the availability of MWBE owned businesses in construction, professional services (including A/E), and general procurement, DJMA calculated the percentage of all business enterprises with paid employees that are owned by MWBE owned businesses. Estimates of the total number of MWBE owned businesses and the number of total enterprises (composed of sole proprietorships, partnerships and subchapter S corporations) were acquired from the 1987 SMOBE reports, the most recent reports available. Availability estimates for the Chicago PMSA were developed.

Availability percentages were developed for the following MWBE categories: Asian, African American, Hispanic, Native American, and Women owned

²⁷As defined by subchapter C of the Internal Revenue Service Code.

²⁸Since counts of nonminority firms, by industry, cannot be derived at the level of the City, a direct calculation of a percentage distribution cannot be performed.

businesses. Direct counts of African American, Hispanic and Women owned businesses were available from the published and unpublished SMOBE and SWOB reports. A direct count of firms owned by the single group composed of "Asian Americans, American Indians, and Other Minorities" was also used. Additional adjustments were made to the counts of Asian Americans, American Indians and Other Minorities to derive separate estimates of Asian owned enterprises and businesses owned by American Indians (Native Americans). In addition, adjustments were made to the count of women owned businesses to remove double counting of businesses owned by minority women.²⁹

The number of firms in construction, owned by all races/ethnicity's at the Chicago PMSA level, was obtained from official unpublished tabulations from the U.S. Census Bureau. These data then allowed a calculation of percentage availability for each metropolitan MWBE category. Similar Census-based availability estimates were also developed for firms in professional services and general procurement.

City of Evanston Vendor File

Another basis for defining availability uses a public entity's vendors list. The rationale for using this list as the universe of available businesses is that each listed vendor has fulfilled similar entry requirements, and has demonstrated a willingness to do business with the City of Evanston by completing the vendor application process.

The City of Evanston's purchasing department provided a vendor file containing over 5,300 vendor records. This file contained the name of each vendor, vendor

²⁹The adjustments are as follows. In order to derive separate counts of Asian owned and Native American owned businesses in Construction, we used counts of total firms, at the PMSA and state levels respectively, owned by the various constituent groups in the "Asian Americans, American Indians, and Other Minorities" group to compute a percent distribution of total firms in the respective geographic areas. The percentage for Native American was then applied to the actual count of "Asian Americans, American Indians, and Other Minorities" in Construction. The remaining percentages were treated as a residual and defined as "Asian." This latter residual percentage was then applied to the count of "Asian Americans, American Indians, and Other Minorities" in Construction. The major assumption for this adjustment is that the share of Construction firms in the PMSA owned by Native Americans, relative to all Construction firms owned by "Asian Americans, American Indians, and Other Minorities" in the PMSA, is the same as the share of total firms owned by Native Americans, relative to all firms owned by "Asian Americans, American Indians, and Other Minorities" in the PMSA.

In order to derive separate counts of enterprises owned by nonminority (White) women, the count of businesses owned by Women was adjusted as follows. A census count of total businesses owned by minority women is available at the PMSA and State levels, as is a census count of total businesses owned by women (of all races/ethnicities). The percentage of total firms owned by minority women is computed and subtracted from the total of women owned businesses. The remaining percentage, reflecting the share of total businesses owned by White women is then applied to the count of Construction businesses owned by all women. The result is the percentage of Women owned Construction businesses owned by White women, the desired result.

number, address, zip code and payment data. The file did not contain any consistent description of goods or services provided (or commodity or object codes) which would facilitate grouping the vendors into the four pre-defined procurement categories. Had that grouping been possible, the next step would be to calculate the race/ethnic/gender composition of the file. The resulting percentage distribution of vendors, by procurement category, could then be used as a proxy for the percentage availability of M/WBEs in the relevant market.

The advantage of using vendor data is that firms have indicated interest (willingness) by getting listed in the vendor file. Another advantage is the fact that the file can be kept up to date. Two important disadvantages are: (a) the vendor file does not include all businesses that are able to do business with the City of Evanston; and (b) not all firms that are interested in doing business are necessarily present in the vendor file.³⁰

Due to the absence of a commodity code allowing classification of vendors into the various procurement categories, the vendor based approach to the estimation of M/WBE availability could not be performed.

Ready, Willing, and Able

DJMA developed another approach that is indicative of firms that are affirmatively "ready, willing and able" (RWA) to do business with a public entity. This approach is based on identifying firms with the defining behavioral characteristic that a firm is actively seeking work with the City of Evanston. In principle, this approach to measuring availability is potentially more rigorous because both MWBE owned businesses and nonminority firms must have exhibited willingness to conduct business with the City. MWBE firms must have completed a certification process³¹ (which imposes some cost on the firms).

The lack of an obvious comparable standard of "willingness" (other than listing on a vendors list) for nonminority firms motivates the development of the RWA approach. The RWA measurement uses the universe of discrete nonminority firms that submitted bids or proposals for contracts, and a count of nonminority subcontractors in calculating the nonminority availability component. In other words, bidding/proposing activity (regardless of success) and subcontracting activity are the defining characteristics that put "available" nonminority firms on a comparable behavioral footing with certified MWBE owned businesses.

³⁰For instance, firms that bid on projects (which indicates interest and potential ability) are not necessarily listed as vendors. Thus, the vendor file could be expected to underestimate the number of firms interested in doing business with the City.

³¹The certification either may be granted by the contracting entity, or by another entity if the contracting entity accepts MWBE certifications from other certifying jurisdictions.

The RWA estimate embraces the concept that a business is *ready, willing and able* to do business. The first component, *ready*, means that a business exists. The second, *willing*, suggests that the business understands the requirements and wants to do the work. Among those requirements, of course, might be the necessity to have minority and women owned business participation. The third, *able*, is a measure of a firm's capacity and capability to perform the tasks necessary to complete the job. *For the RWA estimate, the certification of a minority or Woman owned firm is evidence of this readiness, willingness, and ability, and thus defines minority and women business availability.*

Majority firms are considered to have presented themselves as *ready, willing, and able* by placing a bid with an entity (prime contractor) or working on a job (subcontractors). *Therefore, the RWA definition of availability for majority firms is those firms that have placed a bid or received a subcontract.* Thus, both of groups in the RWA have self-selected themselves by expressing their desire to engage in public contracting; MWBE owned businesses through the certification process, and non MWBE owned businesses through bidding or working as subcontractors. The RWA estimate is considered the most appropriate and is discussed in more detail below.

RWA estimates of minority and women owned businesses are calculated according to this formula:

$$(1) \quad A_i = N_i \div (N_m + N_w + N_b + N_s)$$

where A_i is the percentage availability measure for category "i" of the various MWBE categories (African Americans, Hispanics, Asians, Native Americans, and White Women); N_i is the raw count of businesses in category i; N_m is the total number of minority businesses (excluding White women); N_w is the number of women owned businesses (excluding minority females); N_b is the number of nonminority bidders; and N_s is the number of nonminority subcontractors.

In summary, the RWA estimates conservatively define availability and include only those firms that have presented themselves to the entity as *ready, willing and able* to conduct the work requested by the entity agencies. The estimates are structured in the context of the logic of the U. S. Supreme Court's decision.

Since few, if any, MWBE programs routinely keep track of nonminority subcontractors or subconsultants, an estimate of subcontractor counts is often necessary to make the RWA approach operational. Thus, a shortcoming of the RWA model of availability is the possibility of poor estimates of the number of nonminority subcontractors interested in working on City contracts.³²

³²Previous research by DJMA has yielded an estimate of nonminority construction subcontractors equaling the number of prime contracts multiplied by two. Since subcontracting in other procurement categories is far less common, a range of RWA estimates can be obtained for those categories

Undercounts or overcounts of nonminority subcontractors could result in overestimates or underestimates, respectively, of RWA estimates of MWBE owned businesses.

For A/E, several estimates of nonminority subconsultants are possible, ranging from zero to any arbitrary positive number. The actual estimate used was zero. Additionally, in the categories of goods and other (nonprofessional services), no subcontracting was assumed. A similar assumption of zero subcontracting was made for professional (non-A/E) services.

In addition to the absence of actual data on non-minority subcontractors, there were limits on the quality of the certification list of M/WBEs maintained by the City of Evanston. The Evanston Minority Women's Business Directory lists MBEs, WBEs and Evanston-based businesses (EBEs). The list is designed "to help the City of Evanston and others locate and increase business opportunities to these firms." The Evanston Directory provides a direct count of MWBEs that is input to formula (1) used to calculate RWA availabilities of M/WBEs. Thus the accuracy of the RWA approach to availability also depends on the quality of data on certified M/WBEs. The City of Evanston acknowledges that the Evanston Directory is not a comprehensive list of available M/WBEs. In fact, there is no requirement that MWBEs be listed in order to be eligible to compete for city contracts. In addition, anecdotal evidence indicates that local businesses either are not aware of the Directory or simply have not bothered to get listed in the Directory. The immediate consequence of this is an underestimate of the number of M/WBEs, and in turn, an underestimate of the percentage availability of M/WBEs.³³

Summary of Availability Databases

There are three general approaches to measuring availability: Census Bureau estimates of firms with paid employees; vendors database listings; and, RWA estimates.

The Census data provide a common benchmark for estimates of MWBE owned businesses and nonminority firms. However, no direct estimates of firms residing within the city limits of Evanston can be obtained from available Census data. While estimates of metropolitan area distributions of MWBE owned businesses can be obtained, applying those estimates to the City of Evanston

depending upon the specific assumption about subcontracting. For goods procurement, for instance, zero subcontracting is assumed.

³³To compensate for this underestimate, DJMA also collected M/WBE directories from other entities in the relevant market: the City of Chicago, Cook County, Illinois, the Chicago Transit Authority, and the Metropolitan Water Reclamation District. While these other directories were more rigorously maintained, including counts of M/WBEs from these sources would create a problem, at the other extreme—substantial overestimates of M/WBE availability.

requires the imposition of extensive assumptions about the spatial concentration and mix of MWBE owned businesses in the Evanston marketplace.

The vendors database provides counts of firms that have surmounted the threshold of "interest in doing business with the City of Evanston" by having received a contract and continuing to indicate a desire to do business with the City in the future. However, lack of sufficient detail in the vendors list prevents its use in generating estimates of MWBE availability because the list could not be subdivided into the respective procurement categories.

The RWA approach counts firms that are the most proactive in soliciting City of Evanston contracts—certified MWBE owned businesses, and nonminority firms that have bid or submitted proposals, or acted as subcontractors on City work.

Availability estimates derived from the Census Bureau are extrapolations of sample surveys which derive the number of MWBE firms divided by the total number of firms in a particular area of procurement. RWA estimates, on the other hand, are based on active efforts to do business with the City of Evanston. The definition of "active" for nonminority firms is bidders and subcontractors, and the definition for MWBE owned businesses is "certified" firms. In both cases, a contractor must have taken some action that evidenced affirmative interest in doing business with the City although the standard for inclusion in this model is conservative and therefore higher for MWBE owned businesses. Furthermore, RWA estimates define their own relevant market area.

Due to infirmities in the data, no vendor-based estimates are possible. In addition, RWA estimates of M/WBE availability are based on the Evanston Directory, which is known to undercount M/WBEs in the relevant market. This undercount is so severe that RWA estimates derived from the Evanston Directory would have little or no credibility. To partially compensate for the shortcomings of the Directory, DJMA substituted counts of M/WBEs compiled from the contract database, for the Directory counts. This more extensive count of M/WBEs is believed to reflect more accurately the pool of available M/WBEs in the relevant market. The modified RWA estimates that will be used in the subsequent disparity analysis are based, therefore, on this substitution.³⁴

Availability Estimates of MWBEs

The results of the Census-based Chicago PMSA, availability calculations are summarized in Table 6.36. For Construction, there are 400 MBEs in the Chicago PMSA (4.82 percent of all construction firms), and 660 Women owned businesses (7.95 percent of all construction firms). For Professional Services there are 1,526 MBEs in the Chicago PMSA (7.86 percent of all firms in Professional Services

³⁴The Directory-based estimates are not reported.

including A/E), while women owned businesses represent 14.35 percent of all firms in the Professional Services including A/E. With respect to the Goods and Services areas, there are a total of 812 MWBE firms (21.68 percent of all G&S firms) with 229 MBEs (6.11 percent of all G&S firms) and 583 WBEs (15.57 percent of all G&S firms).

Table 6.36
Census-Based Availability Estimates (%)
By Procurement Category
1987 Census
Chicago PMSA

Fiscal Year	MWBE	Black	Hispanic	Asian	Native American	MBE	WBE
Construction	12.77	2.61	1.48	0.72	0.0	4.82	7.95
Prof. Svcs.(Incl. A/E)	22.21	2.83	1.50	3.49	0.03	7.86	14.35
Goods and Services	21.68	1.34	1.36	3.39	0.03	6.11	15.57

Source: Census

The results of the availability counts based on the modified RWA counts from the contract database are summarized in Table 6.37. Table 6.37 indicates 96 MBEs in Construction (7.19 percent of all the construction firms), and 42 women owned businesses (3.15 percent of all the construction firms). There are 15 MWBEs in A/E. There are no MBEs in Professional Services, and one Woman owned business (0.37 percent of all the firms in the Professional Services). There are 73 MWBE firms (4.08 percent of all G&S firms) with 38 minority owned businesses (2.12 percent of all G&S firms) and 35 women owned business in G&S areas (1.96 percent of all G&S firms).

Table 6.37
RWA Availability Estimates (%)
By Procurement Category
Based on Contract Database

Fiscal Year	MWBE	Black	Hispanic	Asian	Unid. MBE	MBE	WBE
Construction	10.34	4.42	1.12	0.15	1.50	7.19	3.15
A/E	9.74	1.95	0.0	4.55	0.0	5.49	3.25
Prof. Svcs.	0.37	0.0	0.0	0.0	0.0	0.0	0.37
Goods and Services	4.08	1.23	0.28	0.06	0.56	2.12	1.96

Source: DJMA

DISPARITY ANALYSIS ON THE DOLLAR AMOUNTS RECEIVED BY MWBEs

This section of the analysis presents calculations of statistical disparity. Aggregate disparity of MWBE owned businesses is examined for the study period, as a whole and in individual years, for each MWBE category. This analysis tests whether the utilization of MWBE owned businesses is lower than would be expected based on their availability, with utilization being measured by dollar value of contracts received. Two sets of calculations are presented in this section:

the disparity ratios that show whether and to what extent MWBE owned businesses have been underutilized in a particular contracting area; and, the t-statistic which can be used to determine the statistical significance of the difference of the actual utilization and its expected value (availability).

Disparity ratios are defined as ratios of the percentage of contracted dollars (utilization) to the percentage of available firms that are MWBE. Ratios exceeding one indicate overutilization, where utilization is greater than availability. Disparity ratios less than one indicate underutilization, where availability is greater than utilization of MWBE owned businesses. For example, a disparity ratio of 0.75 for Hispanics in Construction projects means that Hispanic contractors received 75 percent of the construction projects expected based on the availability of Hispanic construction firms.

The second set of calculations are based on the difference of the actual utilization and expected value (availability). If there were no disparity, the difference between the actual utilization and its expected value (availability) would be zero, or very close to zero. The t-statistic on the difference between the actual utilization and the availability measures whether the difference between the two is statistically significant. A t-statistic with an absolute value greater than 1.96 indicates a statistically significant difference between the actual utilization and availability.³⁵

DISPARITY ANALYSIS (By Procurement Category)

Construction

MWBE Disparity

Table 6.38 shows the summary of disparity in MWBE construction dollars disbursed by the City of Evanston aggregated by year and MWBE category using the availability measure based on the Census of Chicago PMSA. Based on this Census measure of availability for the years 1986 to 1993, for the Hispanic, Asian and Women owned businesses, there is evidence of disparity (disparity ratio less than one), whereas there is no disparity for African American construction contractors. When all MWBE owned businesses were pooled together for the years 1986 to 1993, there is strong evidence of disparity in construction contracts (disparity ratio of 0.43). As there was no availability of Native American

³⁵The t-statistic is derived from the "t-distribution," which is based on the normal distribution, a fundamentally important distribution in statistical theory. A t-statistic with an absolute value of 1.96 describes an area of about 95 percent of the total area under that distribution. Thus a "null hypothesis" in which actual utilization and availability are equal to one another can be rejected, with 95 percent confidence, if the t-statistic corresponding to the null hypothesis yields an absolute value of 1.96 or greater.

construction contractors, the disparity ratio for Native American firms is not defined.

**Table 6.38
Construction Disparity Ratios
Based on Census Availability
City of Evanston**

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	1.01	0.00	0.00	0.00	∞	0.21
1987	2.44	0.02	0.00	0.48	∞	0.80
1988	2.49	9.64	0.00	0.22	∞	3.03
Total 1986-88	2.13	4.14	0.00	0.26	∞	1.62
1989	2.23	2.15	0.00	0.14	∞	0.79
1990	2.91	0.31	0.00	0.12	∞	0.74
1991	0.94	0.07	0.00	0.03	∞	0.24
1992	0.08	0.00	0.00	0.03	∞	0.04
1993	0.76	0.00	0.00	0.04	∞	0.24
Total 1989-93	0.82	0.17	0.00	0.05	∞	0.24
Total 1986-93	1.00	0.72	0.00	0.07	∞	0.43

Source: DJMA

The disparity in MWBE construction dollars disbursed by the City of Evanston aggregated by year and MWBE category using the modified RWA availability measure is summarized in Table 6.39. Based on this measure of availability for the study years, there is evidence of disparity (disparity ratio less than one) for all MWBE groups. When all the MWBE owned businesses were pooled together for the years 1986 to 1993, there is evidence of disparity in construction contracts (overall disparity ratio of 0.53).

**Table 6.39
Construction Disparity Ratios
Based on Modified RWA Availability
City of Evanston**

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	0.60	0.00	0.00	0.00	0.00	0.25
1987	1.44	0.02	0.00	1.20	0.00	0.99
1988	1.47	12.74	0.00	0.56	0.00	3.74
Total 1986-88	1.26	5.48	0.00	0.65	0.00	2.00
1989	1.32	2.84	0.00	0.34	0.00	0.98
1990	1.72	0.41	0.00	0.29	0.00	0.91
1991	0.56	0.10	0.00	0.07	0.00	0.30
1992	0.05	0.00	0.00	0.08	0.00	0.05
1993	0.45	0.00	0.00	0.11	0.00	0.30
Total 1989-93	0.48	0.23	0.00	0.12	0.00	0.29
Total 1986-93	0.59	0.95	0.00	0.19	0.00	0.53

Source: DJMA

Based on the results from Tables 6.38, and 6.39, there is significant disparity in construction dollars disbursed by the City of Evanston for MWBEs.

Table 6.40 shows the results of the t-tests on the difference in the utilization of MWBE in construction and their availability aggregated by year and MWBE category using the availability measure based on the Census. Based on this availability measure, significant differences are found when the data is aggregated for the years 1989-1993 for Hispanics. The differences were also significant for the WBEs for the years 1988, and for the years 1989 thru 1993 (the t-statistics for these years are less than -1.96 in value).

Table 6.40
Significance Tests for Construction Disparity Ratios
Based on Census Availability
City of Evanston

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	0.01	-0.79	-0.55	-1.90	∞	-1.97
1987	2.60	-1.33	-0.94	-1.70	∞	-0.83
1988	2.41	10.49	-0.84	-2.27	∞	7.69
Total 1986-88	3.00	6.24	-1.38	-3.53	∞	3.86
1989	2.23	1.56	-0.94	-2.81	∞	-0.88
1990	3.50	-0.95	-0.95	-2.91	∞	-1.12
1991	-0.10	-1.13	-0.85	-2.84	∞	-2.89
1992	-1.64	-1.34	-0.93	-3.11	∞	-4.00
1993	-0.36	-1.10	-0.77	-2.53	∞	-2.62
Total 1989-93	-0.70	-2.37	-1.99	-6.55	∞	-6.82
Total 1986-93	-0.01	-0.98	-2.42	-7.73	∞	-6.22

Source: DJMA

The results of the t-tests on the difference in the utilization of MWBEs in construction and their availability aggregated by year and MWBE category using the modified RWA availability measure based on the bidders and subcontractor counts from the Evanston contract files is summarized in Table 6.41. Based on this measure of availability for the years 1986 to 1993, there is significant underutilization of Black and WBE construction contractors.

Table 6.41
Significance Tests for Construction Disparity Ratios
Based on Modified RWA Availability
City of Evanston

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	-0.56	-0.69	-0.25	-1.17	-0.25	-1.64
1987	1.05	-1.15	-0.43	0.41	-0.43	-0.03
1988	1.00	12.37	-0.38	-0.79	-0.38	9.22
Total 1986-88	0.91	7.72	-0.63	-1.02	-0.63	5.52
1989	0.76	2.17	-0.43	-1.31	-0.43	-0.09
1990	1.73	-0.70	-0.43	-1.43	-0.43	-0.34
1991	-0.95	-0.96	-0.39	-1.67	-0.39	-2.37
1992	-2.23	-1.16	-0.42	-1.81	-0.42	-3.52
1993	-1.07	-0.96	-0.35	-1.44	-0.35	-2.15
Total 1989-93	-2.60	-1.92	-0.91	-3.73	-0.91	-5.61
Total 1986-93	-2.51	-0.15	-1.10	-4.16	-1.10	-4.56

Source: DJMA

To summarize, from Tables 6.40 and 6.41, there is evidence of statistically significant underutilization in construction dollars disbursed by the City of Evanston towards MWBEs.

EBE Disparity

Table 6.42 shows the summary of the disparity analysis in construction dollars disbursed by the City of Evanston aggregated by year to Evanston Based Enterprises (EBEs) using a measure of availability based on the contract database. For the years 1986 to 1993, there is evidence of underutilization (disparity ratio of 0.21, which is less than one) in the amount of construction contracts received by EBEs. Also, for the individual years 1986 to 1993, none of the years showed a disparity ratio greater than one, indicating a disparity in construction dollars contracted to the EBEs in every year.

The t-statistics obtained on the difference between the total amount contracted to EBEs and the expected amount (based on availability) of construction contracts is also shown in Table 6.42. Based on the t-test results, for the years 1990, through 1993, there is evidence of a statistically significant difference between the actual amount contracted to EBEs and the expected amount based on availability. The overall t-statistic for the years 1986-1993, was found to be statistically significant.

**Table 6.42
Construction Disparity Ratios and Significance Tests
EBE vs Non EBE
City of Evanston**

Fiscal Year	Disparity Ratios	Number of Contracts	t-Statistic
1986	0.69	42	-0.654
1987	0.45	122	-1.980
1988	0.84	98	-0.527
Total 1986-88	0.67	262	-1.735
1989	0.70	122	-1.098
1990	0.30	125	-2.566
1991	0.08	99	-3.016
1992	0.07	119	-3.319
1993	0.12	81	-2.607
Total 1989-93	0.14	546	-6.616
Total 1986-93	0.21	808	-7.361

Source: DJMA

Architecture/Engineering

MWBE Disparity

Table 6.43 shows the summary of the disparity in MWBE A&E dollars disbursed by the City of Evanston aggregated by year and MWBE category using the availability measure based on the Census of Chicago PMSA area. Based on this Census measure of availability, for the years 1986 to 1993, there is evidence of underutilization (disparity ratio less than one) towards all A&E contractors. When all MWBE owned businesses were pooled together for the years 1986 to 1993, there is further indication of underutilization in A&E contracts (disparity ratio of 0.14).

Table 6.43
Architecture/Engineering Disparity Ratios
Based on Census Availability
City of Evanston

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	0.00	0.00	0.00	0.00	∞	0.00
1987	0.00	0.00	0.00	0.00	∞	0.00
1988	0.00	0.00	0.00	0.00	∞	0.00
Total 1986-88	0.00	0.00	0.00	0.00	∞	0.00
1989	0.00	0.00	0.00	0.00	∞	0.00
1990	0.00	0.00	5.29	0.00	∞	0.83
1991	0.20	0.00	0.00	0.14	∞	0.12
1992	0.00	0.00	0.55	0.07	∞	0.13
1993	0.00	0.00	0.00	0.19	∞	0.12
Total 1989-93	0.12	0.00	0.40	0.11	∞	0.15
Total 1986-93	0.11	0.00	0.37	0.10	∞	0.14

Source: DJMA

The disparity in MWBE A&E dollars disbursed by the City of Evanston aggregated by year and MWBE category using the modified RWA availability measure is summarized in Table 6.44. For the years, 1986 to 1993, there is evidence of underutilization (disparity ratio less than one) for all the MWBE groups. As there was no availability of Native American and Hispanic contractors for this procurement category, no disparity ratios are defined for them.

Table 6.44
Disparity Ratios for M/WBE A/E Contracts
Based on Modified RWA Availability
City of Evanston

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	0.00	∞	0.00	0.00	∞	0.00
1987	0.00	∞	0.00	0.00	∞	0.00
1988	0.00	∞	0.00	0.00	∞	0.00
Total 1986-88	0.00	∞	0.00	0.00	∞	0.00
1989	0.00	∞	0.00	0.00	∞	0.00
1990	0.00	∞	4.06	0.00	∞	1.90
1991	0.29	∞	0.00	0.64	∞	0.27
1992	0.00	∞	0.42	0.30	∞	0.30
1993	0.00	∞	0.00	0.82	∞	0.27
Total 1989-93	0.17	∞	0.31	0.50	∞	0.34
Total 1986-93	0.16	∞	0.28	0.46	∞	0.32

Source: DJMA

Table 6.45 shows the results of the t-tests on the difference in the utilization of MWBE in A/E contracts and their availability aggregated by year and MWBE category. The measure of availability used is based on the Census. There is evidence of disparity in the A/E contracts disbursed by the City of Evanston towards the WBEs for the years 1989-1993 (the t-statistics were less than -1.96). Comparing this result with the one obtained in the previous section (disparity ratios for the years 1989-1993 for WBEs obtaining A/E contracts was found to be less than 1), we see a significant underutilization in A/E contracts to WBEs.

Table 6.45
Significance Tests for Architecture/Engineering Disparity Ratios
Based on Census Availability
City of Evanston

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	-0.17	-0.12	-0.19	-0.41	∞	-0.53
1987	-0.34	-0.25	-0.38	-0.82	∞	-1.07
1988	-0.34	-0.25	-0.38	-0.82	∞	-1.07
Total 1986-88	-0.51	-0.37	-0.57	-1.23	∞	-1.60
1989	-0.51	-0.37	-0.57	-1.23	∞	-1.60
1990	-0.48	-0.35	2.31	-1.16	∞	-0.25
1991	-0.55	-0.49	-0.76	-1.40	∞	-1.88
1992	-0.80	-0.58	-0.40	-1.79	∞	-2.18
1993	-0.38	-0.28	-0.43	-0.75	∞	-1.05
Total 1989-93	-1.17	-0.95	-0.89	-2.81	∞	-3.51
Total 1986-93	-1.26	-1.03	-1.00	-3.05	∞	-3.82

Source: DJMA

The results of the t-tests on the difference in the utilization of MWBE in A/E contracts and their availability aggregated by year and MWBE category are shown in Table 6.46. The measure of availability used in this analysis is the modified RWA availability. For the years 1986 to 1993, there is no evidence of disparity (t-statistics are less -1.96) against the MWBEs.

Table 6.46
Significance Tests for Architecture/Engineering Disparity Ratios
Based on Modified RWA Availability
City of Evanston

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	-0.14	∞	-0.22	-0.18	∞	-0.33
1987	-0.28	∞	-0.44	-0.37	∞	-0.66
1988	-0.28	∞	-0.44	-0.37	∞	-0.66
Total 1986-88	-0.42	∞	-0.65	-0.55	∞	-0.99
1989	-0.42	∞	-0.65	-0.55	∞	-0.99
1990	-0.40	∞	1.89	-0.52	∞	0.83
1991	-0.40	∞	-0.87	-0.27	∞	-0.96
1992	-0.66	∞	-0.59	-0.60	∞	-1.08
1993	-0.32	∞	-0.49	-0.07	∞	-0.53
Total 1989-93	-0.91	∞	-1.17	-0.71	∞	-1.67
Total 1986-93	-0.99	∞	-1.30	-0.82	∞	-1.86

Source: DJMA

In summary, based on the results from Tables 6.45, the Census-based availability suggests that there is significant disparity in the contracts received and the expected amounts based on availability towards WBEs. However, based on the results shown in Table 6.46, the difference in the contracts received and the expected amounts based on availability is not statistically significant.

EBE Disparity

Table 6.47 shows the summary of the disparity analysis in A&E dollars disbursed by the City of Evanston aggregated by year to EBEs using modified RWA availability. For the study years 1986 to 1993 as a whole, there is evidence of underutilization (disparity ratio of 0.10, which is less than one) in the amount of construction contracts received by EBEs. Also, for the individual years, the same conclusion holds.

The t-statistics obtained on the difference between the total amount contracted to EBEs and the expected amount (based on availability) for A/E contracts is also shown in Table 6.47. Based on the t-test results, for all the years between 1986 to 1993, there is evidence of significant difference between the actual amount contracted to EBEs and the expected amount based on availability (t-statistics less than -1.96 indicating significant difference) for the years 1991 and 1992. As may be seen from Table 6.47, as the number of A/E contracts that were recorded during the 1986-1993 period were very low (many of these less than 10), the t-statistics are not particularly reliable measures of statistical significance.

Table 6.47
Architecture/Engineering Disparity Ratios and Significance Tests
EBE vs Non EBE
City of Evanston

Fiscal Year	Disparity Ratios	Number of Contracts	t-Statistic
1986	0.00	1	-0.502
1987	0.59	4	-0.411
1988	0.00	4	-1.004
Total 1986-88	0.22	9	-1.173
1989	0.30	9	-1.051
1990	0.19	8	-1.154
1991	0.01	16	-1.997
1992	0.12	22	-2.081
1993	0.92	5	-0.087
Total 1989-93	0.09	60	-3.537
Total 1986-93	0.10	69	-3.751

Source: DJMA

Goods and Services

MWBE Disparity

Table 6.48 shows the summary of disparity analysis in G&S contracts disbursed by the City of Evanston aggregated by year and MWBE category using the availability measure based on the Census. There is evidence of underutilization for all the MWBE groups (disparity ratio less than one). Also, when all MWBE owned businesses were pooled together for the years 1986 to 1993, there is strong evidence of disparity in General Procurement contracts (disparity ratio of 0.2). As there was no availability of Native American construction contractors, the disparity ratio for Native American firms is not defined.

Table 6.48
Goods and Services Disparity Ratios
Based on Census Availability
City of Evanston

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	0.32	0.00	0.00	0.27	∞	0.25
1987	0.45	0.00	0.37	0.07	∞	0.14
1988	0.12	0.00	0.00	0.19	∞	0.15
Total 1986-88	0.30	0.00	0.13	0.17	∞	0.18
1989	0.00	0.00	0.00	0.28	∞	0.20
1990	0.11	0.00	0.00	0.13	∞	0.15
1991	0.00	0.00	0.00	0.35	∞	0.25
1992	1.29	0.49	0.00	0.07	∞	0.28
1993	0.00	1.52	0.00	0.12	∞	0.18
Total 1989-93	0.30	0.33	0.00	0.18	∞	0.21
Total 1986-93	0.30	0.21	0.05	0.18	∞	0.20

Source: DJMA

The disparity in MWBE G&S dollars disbursed by the City of Evanston aggregated by year and MWBE category using the modified RWA availability measure is summarized in Table 6.49. There is some evidence of disparity towards the MWBE groups with respect to general procurement contracts (disparity ratio less than one). When the data was pooled for the years 1986 to 1993, there is evidence of underutilization in general procurement contracts for African Americans.

Table 6.49
Goods and Services Disparity Ratios
Based on Modified RWA Availability
City of Evanston

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	0.88	0.00	0.00	2.16	0.00	1.34
1987	1.23	0.00	8.40	0.55	0.00	0.76
1988	0.34	0.00	0.00	1.49	0.00	0.82
Total 1986-88	0.82	0.00	3.03	1.35	0.00	0.95
1989	0.00	0.00	0.00	2.24	0.00	1.08
1990	0.31	0.00	0.00	1.06	0.00	0.80
1991	0.00	0.00	0.00	2.77	0.00	1.33
1992	3.57	2.32	0.00	0.53	0.00	1.49
1993	0.00	7.28	0.00	0.99	0.00	0.97
Total 1989-93	0.81	1.58	0.00	1.47	0.00	1.11
Total 1986-93	0.82	0.98	1.15	1.42	0.00	1.05

Source: DUMA

Table 6.50 shows the results of the t-tests on the difference in the utilization of MWBE in G&S contracts and their availability aggregated by year and MWBE category using the availability measure based on the Census. Based on this measure of availability, significant differences are found between utilization and the availability of MWBE contractors.

Table 6.50
Significance Tests for Goods and Services Disparity Ratios
Based on Census Availability
City of Evanston

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	-1.13	-1.03	-1.04	-2.76	∞	-3.48
1987	-0.90	-1.01	-0.64	-3.46	∞	-3.91
1988	-1.45	-1.03	-1.04	-3.08	∞	-3.93
Total 1986-88	-2.00	-1.77	-1.55	-5.41	∞	-6.57
1989	-1.47	-0.92	-0.92	-2.43	∞	-3.30
1990	-1.22	-0.86	-0.86	-2.74	∞	-3.29
1991	-1.35	-0.84	-0.85	-2.02	∞	-2.84
1992	0.37	-0.41	-0.80	-2.72	∞	-2.57
1993	-1.23	0.40	-0.77	-2.47	∞	-2.82
Total 1989-93	-2.12	-1.25	-1.83	-5.61	∞	-6.67
Total 1986-93	-2.91	-2.05	-2.46	-7.79	∞	-9.33

Source: DUMA

The results of the t-tests using the modified availability measure is summarized in Table 6.51. Based on this measure of availability, for the years 1986 to 1993, there are no statistically significant differences between utilization and availability of MWBE contractors (none of the t-statistics less than -1.96).

Table 6.51
Significance Tests for Goods and Services Disparity Ratios
Based on Modified RWA Availability
City of Evanston

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	-0.12	-0.47	-0.22	1.45	-0.66	0.62
1987	0.22	-0.46	1.57	-0.55	-0.65	-0.43
1988	-0.66	-0.47	-0.22	0.62	-0.66	-0.33
Total 1986-88	-0.30	-0.81	0.75	0.76	-1.14	-0.15
1989	-0.88	-0.42	-0.19	1.38	-0.59	0.12
1990	-0.56	-0.39	-0.18	0.06	-0.55	-0.31
1991	-0.80	-0.38	-0.18	1.81	-0.54	0.49
1992	1.94	0.48	-0.17	-0.45	-0.51	0.68
1993	-0.73	2.18	-0.16	-0.01	-0.49	-0.04
Total 1989-93	-0.33	0.50	-0.39	1.06	-1.20	0.37
Total 1986-93	-0.45	-0.02	0.08	1.32	-1.66	0.24

Source: DJMA

EBE Disparity

Table 6.52 shows the summary of the disparity analysis in G/S dollars disbursed by the City of Evanston to EBEs using the modified RWA availability measure. Based on this measure of availability, for the study years 1986 to 1993, the disparity ratio were found to be less than 1 (with the exception of 1989) indicating disparity for all the years (except 1989). The overall disparity ratio for the years 1986-1993 was found to be 0.92 (less than 1), indicating evidence of underutilization.

The t-statistics obtained on the difference between the total amount contracted to EBEs and the expected amount (based on availability) for G/S is also shown in Table 6.52. Based on the t-test results, there is no evidence of significant differences between the actual amount contracted to EBEs and the expected amount based on availability (none of the t-statistics less than 1.96 indicating significant difference).

Table 6.52
Goods and Services Disparity Ratios and Significance Tests
EBE vs Non EBE
City of Evanston

Fiscal Year	Disparity Ratios	Number of Contracts	t-Statistic
1986	0.73	78	-0.727
1987	0.75	75	-0.679
1988	0.62	78	-1.033
Total 1986-88	0.70	231	-1.409
1989	3.58	62	6.303
1990	0.38	54	-1.408
1991	0.67	52	-0.740
1992	0.44	46	-1.173
1993	0.48	43	-1.048
Total 1989-93	1.06	257	0.288
Total 1986-93	0.92	488	-0.529

Source: DJMA

Other Professional Services

MWBE Disparity

Tables 6.53 and 6.54 show the summary of disparity in MWBE dollars disbursed by the City of Evanston. The underlying measures of availability are the Census, and modified RWA, respectively. There was zero MWBE utilization throughout the study period. Since there is no MBE availability (according to RWA) disparity ratios for MBE categories are not defined. For women owned businesses, although there was some positive RWA availability, utilization was zero, implying a zero disparity ratio.

Table 6.53
Other Professional Services Disparity Ratios
Based on Census Availability
City of Evanston

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	0.00	0.00	0.00	0.00	0.00	0.00
1987	0.00	0.00	0.00	0.00	0.00	0.00
1988	0.00	0.00	0.00	0.00	0.00	0.00
Total 1986-88	0.00	0.00	0.00	0.00	0.00	0.00
1989	0.00	0.00	0.00	0.00	0.00	0.00
1990	0.00	0.00	0.00	0.00	0.00	0.00
1991	0.00	0.00	0.00	0.00	0.00	0.00
1992	0.00	0.00	0.00	0.00	0.00	0.00
1993	0.00	0.00	0.00	0.00	0.00	0.00
Total 1989-93	0.00	0.00	0.00	0.00	0.00	0.00
Total 1986-93	0.00	0.00	0.00	0.00	0.00	0.00

Source: DJMA

Table 6.54
Professional Services Disparity Ratios
Based on Modified RWA Availability
City of Evanston

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	∞	∞	∞	0.00	∞	0.00
1987	∞	∞	∞	0.00	∞	0.00
1988	∞	∞	∞	0.00	∞	0.00
Total 1986-88	∞	∞	∞	0.00	∞	0.00
1989	∞	∞	∞	0.00	∞	0.00
1990	∞	∞	∞	0.00	∞	0.00
1991	∞	∞	∞	0.00	∞	0.00
1992	∞	∞	∞	0.00	∞	0.00
1993	∞	∞	∞	0.00	∞	0.00
Total 1989-93	∞	∞	∞	0.00	∞	0.00
Total 1986-93	∞	∞	∞	0.00	∞	0.00

Source: DJMA

Table 6.55 shows the results of the t-tests on the difference in the utilization of MWBE in Other Professional Services contracts and their availability shown in Table 6.53. Based on this Census measure of availability, there is some evidence of underutilization for WBEs for over the study period 1986-1993 (the t-statistics for the individual years were not found to be statistically significant).

Table 6.55
Significance Tests for
Other Professional Services Disparity Ratios
Based on Census Availability
City of Evanston

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	-0.51	-0.37	-0.57	-1.23	∞	-1.60
1987	-0.30	-0.21	-0.33	-0.71	∞	-0.93
1988	-0.38	-0.28	-0.43	-0.92	∞	-1.19
Total 1986-88	-0.70	-0.51	-0.78	-1.69	∞	-2.20
1989	-0.34	-0.25	-0.38	-0.82	∞	-1.07
1990	-0.34	-0.25	-0.38	-0.82	∞	-1.07
1991	-0.30	-0.21	-0.33	-0.71	∞	-0.93
1992	-0.30	-0.21	-0.33	-0.71	∞	-0.93
1993	-0.45	-0.33	-0.50	-1.08	∞	-1.41
Total 1989-93	-0.78	-0.57	-0.87	-1.88	∞	-2.45
Total 1986-93	-1.05	-0.76	-1.17	-2.52	∞	-3.29

Source: DJMA

From Table 6.56, the WBEs and the American Indians were the only minority group that provided Other Professional Services. None of the disparity ratios in Table 6.56 reached statistical significance.

Table 6.56
Significance Tests for
Other Professional Services Disparity Ratios
Based on all Modified RWA Availability
City of Evanston

Fiscal Year	Black	Hispanic	Asian	WBE	American Indian	MWBE
1986	∞	∞	∞	-0.18	-0.28	-0.18
1987	∞	∞	∞	-0.11	-0.16	-0.11
1988	∞	∞	∞	-0.14	-0.21	-0.14
Total 1986-88	∞	∞	∞	-0.25	-0.38	-0.25
1989	∞	∞	∞	-0.12	-0.19	-0.12
1990	∞	∞	∞	-0.12	-0.19	-0.12
1991	∞	∞	∞	-0.11	-0.16	-0.11
1992	∞	∞	∞	-0.11	-0.16	-0.11
1993	∞	∞	∞	-0.16	-0.24	-0.16
Total 1989-93	∞	∞	∞	-0.28	-0.42	-0.28
Total 1986-93	∞	∞	∞	-0.38	-0.57	-0.38

Source: DJMA

EBE Disparity

Table 6.57 shows the summary of the disparity analysis in Other Professional Services contracts awarded to EBEs using the RWA availability measure. The overall disparity ratio was found to be 1.21, indicating a lack of disparity (a disparity ratio of exceeding 1). However, if the individual years are examined, with the exception of 1987, 1990 and 1993, which showed disparity ratios of 5.44, 8.86, and 1.53, respectively, all other years had a disparity ratio of less than one (evidence of underutilization for those years).

The t-statistics obtained on the difference between the total amount contracted to EBEs and the expected amount (based on availability) for Other Professional contracts is also shown in Table 6.57. Based on the t-test results, there is no evidence of significant shortfall of the actual amount contracted to EBEs from the expected amount. None of the t-statistics for the years 1986-1993 were less than -1.96, indicating lack of statistical significance for the overall disparity ratio.

Table 6.57
Professional Services Disparity Ratios and Significance Tests
EBE vs Non EBE
City of Evanston

Fiscal Year	Disparity Ratios	Number of Contracts	t-Statistic
1986	0	9	-0.960
1987	5.44	3	2.464
1988	0.00	5	-0.716
Total 1986-88	1.33	17	0.432
1989	0.00	4	-0.640
1990	8.86	4	5.034
1991	0.00	3	-0.554
1992	0.00	3	-0.554
1993	1.53	7	0.450
Total 1989-93	1.14	21	0.204
Total 1986-93	1.21	38	0.416

Source: DJMA

PROGRAM AND POST-PROGRAM ANALYSIS OF UTILIZATION AND DISPARITY

Analysis of program MWBE utilization and disparity in each of the procurement categories was limited to the period 1986 to 1988, and the post-program period used in the study was 1989 to 1993. In this section, comparisons of participation are made between program and post-program years for MWBE prime and total utilization, along with minority subcontractor utilization by majority primes.

The total MWBE utilization varies substantially from 1986 to 1993 for construction procurement (refer to Table 6.12 and 6.13). In the program years 1986 to 1988, the highest rates of MWBE utilization may be seen (the average MWBE utilization during the program years was 20.7 percent compared to the post-program utilization rate of 3.0 percent). Based on the results from Table 6.12 and 6.13, there is evidence of a sharp drop in the utilization of MWBE construction contractors by the City of Evanston following the end of the program period.

With respect to total MWBE utilization of A&E contractors, there is a substantial increase in MWBE utilization from the program years to the post-program years. In the program years, 1986 to 1988, there was no MWBE utilization, whereas during the post-program years, the average MWBE utilization was found to be over 3.3 percent. Based on the results from Tables 6.18 and 6.19 there is evidence of an increase in the utilization of MWBE A&E contractors by the City of Evanston following the end of the program period.

Based on the results from Tables 6.24 and 6.25, total MWBE G&S utilization does not vary substantially between the program period (1986 to 1988) and the post

program period (1989 to 1993). In the program years, the average rate of MWBE utilization was found to be 3.9 percent (range of 3.09 percent to 5.47 percent) compared to the average post-program utilization of 4.5 percent (range of 3.25 percent to 6.07 percent).

The total MWBE utilization of Other Professional services' contractors did not change between the program and post-program years. Based on the results from Table 6.30 and 6.31, there was zero utilization of MWBE Other Professional Services providers by the City of Evanston both during and after the program period.

PROGRAM AND POST-PROGRAM ANALYSIS OF SUBCONTRACTING OF MINORITY FIRMS BY MAJORITY PRIMES

Since a major characteristic of the City of Evanston's MWBE program can be described in terms of subcontractor development, subcontractor involvement and participation in the period 1986 to 1993 is a major focus of this analysis. As the preliminary examination of the data during the program years showed that the bulk of MWBE utilization in all four areas of procurement is at the subcontractor/subconsultant level, the analysis properly focuses on the subcontractor level.

Throughout the period since the program's suspension, contracts awarded by the City of Evanston could not be subject to any mandatory M/WBE utilization goals; any such goals had to be voluntary. While M/WBE utilization is affected by several factors, the impact of the M/WBE program itself on utilization rates can be approximated by comparing the level of M/WBE participation during the post-program period with participation during the program period.

Analysis of the impact of the City of Evanston's MWBE program involves examining differences in utilization rates for contracts to which M/WBE utilization goals applied. Since subcontracting is relatively more important in construction and A/E procurement, and since most M/WBE utilization is in subcontracting, the analysis is limited to those two categories.

Analysis of the impact of suspension was conducted using the contract database disaggregated by procurement type. An additional level of disaggregation was performed by separating nonminority prime contractors from minority primes. Then aggregate subcontractor utilization rates were calculated for nonminority prime contracts in construction and A/E. Even at this level of aggregation, there are so few contracts that doubts may be raised about the statistical robustness of the conclusions about disparity. Nevertheless, differences in utilization tied to the program and post-program periods, if detected, are real.

In the simplest terms, judging the impact of the cessation of the program on M/WBE utilization fundamentally involves a comparison of total utilization rates during the program and post-program periods, as well as a comparison of derived disparity ratios. The maintained hypothesis here is that the suspension of mandatory M/WBE utilization goals in the post-program period resulted in no discernible shortfall of M/WBE utilization relative to the program period. Utilization rates during the post-program period lower than those before the cessation, would be evidence contradicting this hypothesis.

The results of the analysis based on dollar value of contracts are shown in Tables 6.58 and 6.59. Since one of the objectives of the study is to examine the participation of the MWBE owned businesses as subcontractors, this section examines how MWBE participation levels changed with the implementation of the program.

A direct comparison of the two subperiods shows a clear difference in the utilization of M/WBEs subcontractors by non-minority contractors (see Table 6.58). In the program years 1986 to 1988, the overall rate of MWBE subcontractor utilization was 2.4 percent (as measured by the total dollar value of the construction subcontracts awarded) compared to post-program utilization of MWBE subcontractors (0.7 percent). Thus, utilization of MWBE subcontractors declined to 28.3 percent of the rate of utilization that existed during the program period.

Table 6.58
MWBE Subcontractor Activity for Non-minority Prime Contractors
Construction Contracts Dollar Value
City of Evanston

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	MWBE	White	Total
1986	0	0	0	0	0	0	27,643	3,763,778
1987	0	0	0	2,900	0	2,900	401,758	5,192,670
1988	29,289	245,337	0	0	48,328	322,954	325,148	4,777,687
Total 1986-88	29,289	245,337	0	2,900	48,328	325,854	754,549	13,734,135
86-88 Percent	0.21%	1.79%	0.00%	0.02%	0.35%	2.37%	5.49%	100.00%
1989	109,130	129,500	0	0	46,888	285,518	427,019	5,824,068
1990	0	1,610	0	0	80,963	82,573	732,480	8,114,764
1991	0	0	0	4,640	3,627	8,267	51,959	29,992,529
1992	8,399	900	0	15,157	8,866	33,322	3,135,007	40,553,418
1993	122,681	0	0	146,100	16,213	284,994	347,504	19,338,998
Total 1989-93	240,210	132,010	0	165,897	156,557	694,674	4,693,969	103,823,777
89-93 Percent	0.23%	0.13%	0.00%	0.16%	0.15%	0.67%	4.52%	100.00%
Total 1986-93	269,499	377,347	0	168,797	204,885	1,020,528	5,448,518	117,557,912
86-93 Percent	0.23%	0.32%	0.00%	0.14%	0.17%	0.87%	4.63%	100.00%

Source: DJMA

This result provides direct support for the hypothesis that MWBE subcontractor utilization—the object of MWBE contract goals—was negatively affected by the cessation of the MWBE program. The decline in subcontractor utilization is

consistent with the assertion that enforceable goals are necessary to ensure levels of MWBE utilization that are commensurate with MWBE availability, and which are higher than would occur in the absence of goals.

Hispanic subcontractors were the most severely affected by the drop in MWBE subcontractor utilization. During the program period, Hispanic subcontractors accounted for 1.8 percent of total contract value. This rate of utilization dropped to 0.1 percent of total contract value in the post program period, a decline of almost 93 percent. WBEs experienced a drop from 0.4 percent to slightly less than 0.2 percent, a 57 percent decline.

Among African American subcontractors there was a small increase in the subcontractor utilization rate during the post-program period. MBEs of unidentified ethnicity experienced a larger relative increase in the same period. Utilization of White subcontractors changed from 5.5 percent during the program period to 4.5 percent post-program, an 18 percent drop.

With respect to the MWBE subcontractor utilization by majority primes in A&E, there is a substantial increase in the MWBE utilization from the program years to the post-program years (see Table 6.59). In the program years 1986 to 1988, there was no MWBE subcontractor utilization at all, whereas during the post-program years, the MWBE subcontractor utilization was found to be about 2.6 percent.

Table 6.59
MWBE Subcontractor Activity for Non-minority Prime Contractors
Architecture/Engineering Contract Dollar Value
City of Evanston

Fiscal Year	Black	Hispanic	Asian	Unid. MBE's	WBE	MWBE	White	Total
1986	0	0	0	0	0	0	0	10,000
1987	0	0	0	0	0	0	0	252,514
1988	0	0	0	0	0	0	0	410,800
Total 1986-88	0	0	0	0	0	0	0	673,314
86-88 Percent	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
1989	0	0	0	0	0	0	3,588	220,556
1990	0	0	0	0	0	0	6,668	290,735
1991	26,895	0	0	0	98,246	125,141	10,336	4,742,798
1992	0	0	46,344	0	23,862	70,206	99,502	2,427,440
1993	0	0	0	0	8,257	8,257	33,361	310,677
Total 1989-93	26,895	0	46,344	0	130,365	203,604	153,455	7,992,206
89-93 Percent	0.34%	0.00%	0.58%	0.00%	1.63%	2.55%	1.92%	100.00%
Total 1986-93	26,895	0	46,344	0	130,365	203,604	153,455	8,665,520
86-93 Percent	0.31%	0.00%	0.53%	0.00%	1.50%	2.35%	1.77%	100.00%

Source: DJMA

IMPACT OF CESSATION OF CITY OF EVANSTON'S MWBE PROGRAM

The cessation of the MWBE program resulted in a drop in the level of M/WBE construction subcontracting compared to the program period. This decline in the value of subcontract volume can be translated into estimates of the dollar impact of the program cessation on M/WBEs.

Informal estimates of the size of the lost opportunities for subcontracting begin with an examination of the gap between the actual subcontracting percentage with nonminority primes after the program's cessation and the percentage that would exist in a context of goals applied on a contract-by-contract basis. The difference between the percentage in the program period, 2.37 percent, and the actual percentage during the post-program period, 0.67 percent, is the "differential" that can be applied to the appropriate construction contract base.

The total amount of construction contracting with nonminority prime contractors during the post-program period was \$103.8 million. Applying the differential percentage of 1.7 percent to this base results in a value of over \$1,765,000. Thus, one estimate of the value of lost opportunities in construction, incurred during the post-program period, is at least \$1.7 million.

CONCLUSIONS

This chapter of the report described the approach used to compute disparity ratios that indicate any underutilization or overutilization of M/WBEs. The method used incorporates the determination of the pool of available businesses, the amount of dollars awarded in the respective contracting activities, and the disparity ratios themselves.

In establishing estimates of availability, DJMA utilized data from the 1987 Economic Census, which included surveys of minority and women owned businesses. Census-based estimates of MWBE availability were developed for the Chicago metropolitan area. Modified RWA Estimates of MWBE availability were also calculated for all procurement types, using the percentages derived from counts of MWBEs from the contract database.

In analyzing MWBE availability during the study period, our research showed that MWBEs owned 12.8 percent of all construction firms, 22.2 percent of all firms in professional services including A/E, and 21.7 percent of all G&S firms in the Chicago PMSA, according to Census data. However, counts from the contract database showed that MWBE firms represented 10.3 percent of the construction firms, 9.7 percent of the A/E firms, 4.1 percent of the G/S firms and less than 1 percent of the other professional services firms.

Using these estimates of availability and measures of total utilization of MWBEs for each category of procurement, disparity ratios were calculated. Once disparity ratios were calculated, tests of statistical significance were applied to the disparity ratios.

The Census-based availability and availability measure based on bidders and subcontractors' counts suggest that there is disparity in the disbursement of construction dollars by the City of Evanston for MWBEs. It can be reasonably deduced that there is significant disparity in A&E and G&S dollars disbursed by the City of Evanston for MWBEs for some of the years during the study period, whereas the availability measure based on bidders and subcontractors' counts points to a lack of disparity in G&S contracts. However, the results based on Evanston location suggest that, except in 1989, there is also significant disparity in G&S dollars disbursed by the City of Evanston to the EBEs. There was no utilization of MWBEs in the other professional services category, thereby inferring significant disparity in other professional services dollar disbursements except in 1987 and 1990. Some of the differences between the actual amount of construction dollars received and the expected amount based on availability were found to be significant in A/E dollars disbursed by the City of Evanston to the EBEs.

The highest rates of MWBE construction contractor utilization by the City of Evanston is observed in the program years, 1986 to 1988, (average MWBE utilization was 20.7 percent compared to post-program utilization of 3.0 percent). There is evidence of a sharp drop in the utilization of MWBE construction contractors at the end of the program period.

A substantial increase is noted in MWBE utilization of A&E between the program period, when there was no MWBE utilization, to the end of the post-program period, when average MWBE utilization rose to 3.3 percent.

Total MWBE utilization of G&S contractors does not vary substantially between the program period and the post program period. In the program period, the average rate of MWBE utilization was found to be 3.9 percent (range of 3.1 percent to 5.5 percent) compared to the average post-program utilization of 4.5 percent (range of 3.3 percent to 6.1 percent).

Total utilization of MWBEs for Other Professional Services did not change between the program years and the post-program years, since there was no utilization of MWBE Other Professional Services contractors either during the program years, or after by the City of Evanston.

The City's MWBE program, under which MWBE percentage goals are applied to contract awards, was suspended starting in 1989. Analysis of subcontracting by nonminority prime construction contractors indicated a noticeable negative

impact on MWBE subcontracting percentages, due to the cessation of MWBE utilization goals.

The decline in subcontractor utilization is consistent with the proposition that enforceable goals are necessary to ensure levels of MWBE utilization that are commensurate with MWBE availability, and which are higher than would occur in the absence of goals. The decline in utilization also is evidence of lost opportunities to increase MWBE participation in construction. To the extent that the program cessation nullified the enforceability of goals, such contracts were, by default, converted into non-goal contracts—in essence confronting potential MWBEs with the interpretation that there is either (a) insufficient availability of minorities and women in the marketplace for contracts which, heretofore, had MWBE subcontractor participation, or (b) the contracts themselves do not present viable subcontract opportunities. Either interpretation is contradicted by the higher levels of MWBE utilization that existed during the program period.

It is important to emphasize that the calculations developed in this chapter indicate a general trend. Interpretation of this trend can only be done in the context of the entire report. Within the *Crosen* framework, the findings in the other chapters of the report must be integrated into any final assessment of the statistical analysis presented in this chapter.

INTRODUCTION

The Court in *Croson* stated that in Richmond there did “not appear to have been any consideration of the use of race neutral means to increase minority participation in city contracting.”¹ The Court in *Croson* went on to state that in upholding the federal set-aside in *Fullilove v. Klutznik*“ Congress had carefully examined and rejected race neutral alternatives before enacting the MBE set aside.”² This was because “by the time Congress enacted [the MBE set aside] in 1977, it knew that other racial remedies had failed to ameliorate the effects of racial discrimination in the construction industry.”³

While *Croson* does not define race neutral programs or what constitutes a consideration of race neutral programs, other passages in *Croson* do shed some light on the Court’s thinking on these two issues. The Supreme Court noted that the City of Richmond had at its disposal a wide array of race neutral measures which could “increase the accessibility of city contracting opportunities to small entrepreneurs of all races. Simplification of bidding procedures, relaxation of bonding requirements, and training and financial aid for disadvantaged entrepreneurs of all races would open the public contracting market to all those who have suffered the effects of past societal discrimination or neglect.”⁴

The Court also suggested that the city may “[a]ct to prohibit discrimination in the provision of credit or bonding by local suppliers and banks. Business as usual should not mean business pursuant to the unthinking exclusion of certain members of our society from its rewards.”⁵ Thus, the cities can use their considerable influence to impact discrimination in private industries which may have a significant impact upon the ability of a minority contractor to obtain a city contract.⁶

What constitutes an adequate consideration of these race neutral programs is even more vague. As noted earlier, *Fullilove* held that Congress made a thorough investigation of the inadequacy of race neutral measures to promote MBEs. While Richmond could not rely on the Congressional findings referred

¹*City of Richmond v. J.A. Croson*, 488 U.S. 469, 706, 109 S. Ct. at 732 (1989).

²*Ibid* at 751.

³*Ibid*.

⁴*Ibid*.

⁵*Id.* at 729.

⁶However, the Court did not say whether this influence should be exercised through legislative enactments.

to in *Fullilove*, presumably Richmond could have relied on a similar quantum of evidence that Congress relied upon in *Fullilove*. But Congressional findings in *Fullilove* were remarkably thin. In fact, no hearings were held to document the discrimination that the statute in *Fullilove* set out to rectify.

Subsequent federal case law has provided some illumination on the question of what constitutes adequate consideration of race neutral measures. In the first place, a governmental entity does not have to enact race neutral means if they are not feasible or conducive to remedying past discrimination. For example, in *Coral Construction v. King County*, the Circuit Court considered race neutral measures, but found them not to be feasible. The court stated that, "*Associated General Contractors* requires only that a state exhaust race neutral measures that the state is authorized to enact, and that it have a reasonable possibility of being effective. Here, the record reveals that the County considered alternatives, but determined that they were not available as a matter of law...The County cannot be required to engage in conduct that may be illegal; nor can it be compelled to expend precious tax dollars on projects where potential for success is marginal at best."⁷

In *Concrete Works v. Denver*, the City had already enacted several race neutral measures, such as contract signing (breaking down projects to facilitate small business participation), bond guarantee programs, a prompt payment ordinance, a contractor mentor program, a pre-apprenticeship program, good faith measures, and outreach and seminars on procurement procedures. Certain race neutral measures could not be implemented because of state bond requirements, state lowest bidder requirements and prevailing wage requirements. The Court noted, however, that "strict scrutiny requires only good faith, not exhaustion of all alternatives."⁸

In *AGC Hal California v. Coalition for Economic Equity*, the Ninth Circuit found that race neutral alternatives had been sufficiently considered since San Francisco had passed and enforced an ordinance prohibiting city contractors from discriminating against their employees. In *Hillsborough County* the MBE law was adopted when the MBE program failed to remedy the discrimination and the law included "all of the race neutral measures suggested in *Croson*."⁹

Several conclusions can be drawn from these cases as to what evidence a disparity study can and should provide on race neutral programs. First, if race neutral programs and legislation were in place prior to the establishment of a race conscious program, and yet MBE participation in public procurement remain low relative to availability, then an inference is created that race neutral

⁷*Coral Construction v. King County*, 941 F. 2d 910, 923 (1991).

⁸*Concrete Works v. Denver*, 823 F. Supp. 821 (D Colo 1993).

⁹See also *AGC of California v. Coalition*, 950 F. 2d 1401, 1417 (1991).

programs were inadequate to relieve the impact of past discrimination. Second, all race neutral programs do not have to be considered. Third, low participation by MWBEs in race neutral programs is evidence that the race neutral programs do not provide an adequate remedy for past discrimination.

DJMA conducted an investigation of the race neutral programs available in Evanston and the surrounding areas in the greater Chicago metropolitan area. Although DJMA's researchers were able to identify a number of providers of management and technical services to businesses, quantitative data regarding the impact these programs were having on businesses, in particular MWBEs were not available. Programs either did not track the information in a manner that was useful for this study, the information simply did not exist, or program representatives were unwilling to release the data to DJMA. However, during discussions and interviews, directors and sponsors of these programs typically expressed their belief that their respective programs were important programs for the business community. Consequently, the following sections of this chapter provide a descriptive overview of the various federal, city, and state race neutral programs available in the City of Evanston and surrounding area.

STATE AND LOCAL SMALL BUSINESS PROGRAMS

The mission of the Illinois Department of Commerce and Community Affairs (DCCA) is "to enhance the economic well-being of the people of Illinois by providing leadership in the coordination and mobilization of public and private resources to facilitate business, community and workforce development." In so doing, DCCA offers a variety of race neutral business development programs that include the following:

Development Corporation Grant Program. Provides grants to public or private development corporations, financial intermediaries or other entities to assist in the establishment and operation of development Corporations.

Development Corporation Loan Program. Provides qualified investments or loans to public or private development corporations, financial intermediaries or other entities whose purpose is to enhance local or regional economic development.

Certified Lender Program. Identifies and trains eligible entities in public financing criteria required by DCCA to expedite approval of loan applications submitted in conjunction with DCCA's Small Business Development Loan programs. The Certified Lender Program was implemented to streamline the financial assistance delivery system of DCCA and to better leverage financial assistance to small businesses on a statewide basis.

Small Business Development Loan Program. Provides direct financing to small businesses with market or below-market interest rates in cooperation with private and public sector lenders. The program can fund up to 25 percent of the total project cost or up to \$750,000.

Illinois Export Finance Partnership. Provides access to working capital loans to small and medium-sized Illinois exporters.

Business Development Public Infrastructure Program. Provides low-interest financing to units of local government for public improvements on behalf of businesses with expansion or relocation projects that meet program criteria and that demonstrate the greatest potential in the creation and retention of jobs. The infrastructure improvements must be made on public property and must directly result in the creation or retention of private sector jobs.

Community Services Block Grant Loan Program (CSBG). Provides long-term, fixed-rate financing to new or expanding companies in exchange for job creation and employment for low-income individuals. It links federal, state and private financing by using CSBG funds at low interest rates in combination with bank funds and equity.

Enterprise Zone Program. Offers a number of state and local tax incentives to businesses that make investments or create jobs in any of the 90 zones located throughout the State of Illinois.

High Impact Business Program. Provides investment tax credit, an exemption for state tax on utilities and a state sales tax exemption on manufacturing repair, and equipment repairs and replacement parts. Businesses located in an enterprise zone are not eligible for the high impact business program.

Business Expansion, Retention and Location Assistance. Provides business development assistance to companies wishing to locate or relocate within Illinois.

Evanston Business and Technology Center (EBTC) . Offers a comprehensive array of programs and services that encourage the formation and growth of entrepreneurial businesses.

Illinois Small Business Development Center Network. Provides prospective and existing business owners with a variety of business resource programs. The Network Centers are located throughout the state and are comprise of:

Small Business Development Centers (SBDC). Provides businesses with management, marketing and financial counseling. The SBDC was established in 1989 with support from the Illinois DCAA and the U.S. Small Business Administration.

Procurement Assistance Centers. Assists existing business owners in doing business with the federal, state, and local government.

International Trade Centers. Provides existing business owners with professional advice and resources to enter the global marketplace.

Small Business Incubators. Provides businesses with sheltered environments during their early stages of development. Established in 1986 as the entrepreneurial hub of the Northwestern University/Evanston Research Park, the incubator now has more than 40 tenants, one of the largest concentrations of technology-based start-ups in Illinois.

Export Assistance. DCCA maintains a full-time staff in Chicago, five International Trade Centers across the state and a network of foreign trade offices to help Illinois businesses begin exporting or gain entry to new world markets.

Small Business Advocacy Program. Provides Illinois entrepreneurs with liaisons to state government programs and resources when preparing to start or expand a business. Advocates work with individual companies and professional associations in order to tackle the wide-range of questions business ownership presents.

Evanston Business Investment Corporation (EBIC). Provides equity investments in growth-oriented companies based in Evanston. Founded in 1986 as a non-profit organization, EBIC's mission is to encourage entrepreneurship and new job creation in Evanston. EBIC invests only in high-growth ventures, and structures its investments so as to provide the maximum potential for return.

Microloan Program. A joint venture of the EBIC, the SBDC, and area banks, this program assists small businesses in meeting short-term financial needs. The term for the loan can be between three months and three years. Borrowers are asked to personally guarantee the loan, and maintain life insurance and business insurance sufficient to cover full repayment. Borrowers are also expected to demonstrate a personal investment in and commitment to their business.

Chicagoland Enterprise Center (CEC). Provides free management consulting services to small companies who are in need of specialized advice in a full range of business related areas of expertise. CEC is a project of the Commercial Club of Chicago. CEC works with the SBDC's, DCCA, a variety of economic development organizations, chambers of commerce and banks to provide their members and clients and customers with intensive, long-term (if necessary), highly professional consulting help to restore health, promote growth and create and protect jobs in small business.

FEDERAL RACE NEUTRAL PROGRAMS

Federal programs are normally available for all businesses that meet standardized criteria across the country. In this section, several federal race neutral programs including those established by the Small Business Administration and the Department of Housing and Urban Development are presented. Some of these programs are administered at the local level by the federal agencies. Others are administered by local government agencies with federal guidelines or backing.

Small Business Administration 7(a) Loan Program. The 7(a) Loan Guaranty was designed to offer financial assistance to small business enterprises. The 7(a) program guarantees commercial lending institutions up to 90 percent for loans under \$155,000, and up to 85 percent for loans over this amount but not exceeding \$750,000. Agents of the Department of Commerce serve as contacts between small business enterprises and lending institutions. Staff also assists businesses in accessing debt service capacity and structuring in preparation of loan applications. Proceeds from loans may be used to finance working capital, fixed assets, land and buildings, as well as equipment.

The term for repayment depends on the use of the proceeds and the ability of the business to repay. Working capital loans generally have maturities of five to seven years, with the maximum maturity being 25 years. Receipt of a 25 year repayment term usually would involve the purchase or renovation of business premises.

Interest rates are negotiated between the lender and the borrower. Rates for these loans may not exceed the prime rate by more than 2 1/4 percent for loans of seven years or less, or 2 3/4 percent for loans longer than seven years. These loans may be for either a fixed or a variable rate. Collateral may include mortgages on commercial structures, equipment, and/or personal assets.

Eligibility for a 7(a) loan depends on the type and size of the business seeking the loan. Loans cannot be made to businesses that create or distribute ideas (newspapers, magazines, etc.), businesses engaged in speculation, or businesses involved with rental real estate investment. The SBA determines if a business is eligible based on the average number of employees for the preceding year, or on sales volume averaged over a three year period. For business loans, the general size/standard eligibility requirements are as follows:

- Manufacturing* — generally less than 500 employees, but up to 1,500 employees, depending on the industry
- Wholesale* — no more than 100 employees
- Service* — average annual receipts from \$3.5 to \$14.5 million, depending on the industry
- Retail* — average annual sales not exceeding \$3.5 to 13.5 million, depending on the industry
- Construction* — not exceeding \$7 million for the three most recent fiscal years
- Agriculture* — annual receipts not exceeding \$500,000 to \$3.5 million, depending on the specific type of agriculture

SBA 504 Loan Program. The 504 loan is a fixed assets financing program which provides small business owners with fixed interest loans below the market rate. The purpose of the program is to stimulate investment and to create or save jobs. Staff of the Department of Commerce serve as liaisons between the business enterprise and the lender, the Small Business Administration, and the local certified development company. These loans may only be used to acquire or rehabilitate land, buildings, machinery, or equipment. Private lenders make first mortgage loans for 50 percent of the project cost using their normal credit terms. Forty percent of the total project cost may be financed by SBA with a limit of \$750,000. The small business enterprise must provide the remaining 10 percent of the equity.

The 504 loan is available for small businesses who are expanding or relocating. Businesses that have been in operation at least three years are preferred. Eligible businesses must have net worth under \$6 million and after tax profits under \$2 million for the previous two years. Developers are not eligible to participate in the loan program. The 504 loan is at an interest rate 3/4 percent over the Treasury Bond rate for the same maturity. The loan term varies from ten to twenty years depending on the useful life of the assets purchased.

SBA Surety Bond Guarantee Program. The Surety Bond Guarantee Program is designed to provide bonding for small business owners who do not qualify for bonds in the market. Surety bonds are a form of insurance that guarantee a contractor's performance on a contract. Most public construction contracts require bonding of some form.

The Guarantee Program enhances a small business's ability to compete for contracts by guaranteeing to pay for a portion of the surety company's risk on a project. The SBA normally guarantees between 70 and 90 percent of maximum \$1.25 million surety bonds.

Three kinds of bonds can be guaranteed by the SBA:

- **Bid bond:** Attests that a contractor is qualified to enter the contract and can provide the required performance and payment bond.
- **Performance bond:** Protects the covenant of the contractor that the services will be provided and completed in accordance to the terms and conditions of the contract.
- **Payment bond:** Protects subcontractors and suppliers from the risk of a prime contractor's inability or unwillingness to pay them.

Contractors that meet the SBA's business size requirements (i.e., gross annual receipts under \$3.5 million) are eligible. Although the business owner may identify the surety company with which it desires to do business, that company must be a participant in the SBA program. Once a surety has acted favorably on a contractor's application and agrees to issue a bond, the SBA evaluates the file.

SBA Greenline Program. The purpose of the Greenline Program is to assist small business owners in establishing lines of credit by guaranteeing loans to a particular business for a period of up to five years. There are two types of revolving credit involved: fixed asset and current asset. Because the loan is similar to a line of credit established by a traditional lender, SBA requires the lender to make an annual review of the account to ensure that the borrower is reasonably managing the line of credit. The SBA also insures that the business continues to be able to convert the loan through available cash flow. Applicants select a participating lender and apply for the Greenline Program through this local lender. The lender will conduct a credit analysis. If the applicant meets SBA and the lender's guidelines, the application is forwarded to the local SBA office for review. The credit provisions for the Greenline Program come from one of two sources: cash flow from the small business or equity in realty or machinery and equipment owned by the business.

The credit review for a current asset Greenline loan is based on a determination of whether the borrower's cash flow is able to cover a fixed principal payment including accrued interest. If so, the borrower may liquidate the line of credit at any time. The borrower may receive an advance based on a predetermined percentage of the collateral applicable to the line. Applicants are asked to provide yearly financial statements to be reviewed as part of the process.

The credit review for fixed asset support involves a recent appraisal of collateral by an independent appraiser for line amounts greater than or equal to \$50,000. "recent" is defined as within ninety days. For lines less than \$50,000, appraisal requirements are determined at the discretion of the local SBA office. The credit line may not exceed the present market value of the collateral. At the end of each month, the lender must demonstrate that this limit has not been surpassed.

The SBA requires that the lender charge an extra fee for servicing which is not to exceed two percent per annum or .16 percent based on the outstanding monthly balance. Repayment dates for advances must be established at the time of the advance. If payments are made under the agreement, the borrower would be able to obtain advances as required or as needed. This is based on the condition that the total loan outstanding at one time does not exceed the pre approved amount. The SBA's standard guaranty percentage and interest rate requirement apply to the Greenline Program. The Greenline Program allows small business owners to secure long-term assurance from a lender for working capital and its financial arrangements are flexible enough to meet the needs of a borrower having many contracts with a single loan.

Service Corps of Retired Executives (SCORE). SCORE is a nationwide organization that seeks to acquaint individuals considering starting or maintaining a small business with experienced business executives. The SBA sponsors this effort. SCORE offers a variety of services including free and confidential business counseling, seminars, and workshops that are designed to cover a wide variety of business topics.

In addition to its management and technical assistance programs, the SBA also has a variety of financial and loan assistance programs which include the, Contract Loan Program, Small Loan Program, International Trade Loan Program, Small General Contractor Loan, Seasonal Line of Credit Program, Microloan Program, and the Export Revolving Line of Credit.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Development Block Grant (CDBG) Entitlement Program. Under the auspices of the U.S. Department of Housing and Urban Development, the CDBG program awards grants to entitlement communities to facilitate neighborhood revitalization, economic development and improved community facilities, and services. Generally, cities designated as central cities of metropolitan statistical areas (MSAs) or cities with populations of at least 50,000 are entitled to receive annual grants. The amount of the grant a community will receive is determined by a statutory formula that uses the measures of population, age of housing, extent of poverty, housing overcrowding, and population growth lag in relation to all MSAs. The communities develop their own programs and funding priorities, but are limited to activities that address one or more of the national objectives of the program. The national objectives are: 1) to benefit low and moderate income persons, 2) to aid in prevention or elimination of slums or blight, and 3) to meet other urgent community development needs. The program provides funds to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, improved community, facilities and services, and most recently micro enterprise.

The City of Evanston has been receiving CDBG funds since 1986. In retail, commercial, and industrial areas, CDBG funds are use to encourage facade renovation of commercial structures in the West Evanston area and central business district. CDBG funds are also use to make technical/financial assistance available to small businesses.

The City of Evanston in conjunction with various civic and commercial development organizations has used CDBG funds to launch the following business development initiatives:

Small Business Development Program . Provides merchants in Evanston's small business community a comprehensive program for commercial revitalization focusing on strengthening their individual management capacity while becoming an integral part of the economic development plan within the West Evanston business areas.

Small Business Center. Provides technical assistance and low interest loans for Evanston area small and/or minority businesses.

Commercial Area Assistance Program. Provides financial assistance to commercial property owners and merchants in the form of rebate grants for facade improvements.

CONCLUSION

The Court in *Croson* made it clear that the second prong of the "strict scrutiny" test demands that any remedial action be "narrowly tailored" to address past or present discrimination. To meet this requirement, any race conscious program should be instituted either after or in conjunction with race neutral means of increasing minority business participation. The objective of this chapter is to provide a descriptive summary of federal, state, and local race-neutral programs available in the City of Evanston and to determine whether or not these programs are a sufficient means by which to increase minority participation in city contracting.

The City of Evanston has a wealth of race neutral management, financial and technical assistance programs to potentially increase the accessibility of city contracting opportunities to small entrepreneurs of all races, as well as several federal race neutral programs that are administered at the local level which include those established by the Small Business Administration and the Department of Housing and Urban Development. These programs offer valuable assistance for the growth and expansion of small businesses.

Because DJMA was unable to gather statistical data indicating the impact that these programs may be having on businesses, in particular MWBEs, DJMA is unable to draw conclusive statements as to how these programs individually have contributed to the inclusion of MWBEs in public and private sector contracting. However, given the statistical evidence of disparity presented in Chapter VI, one might generally conclude that these programs have not been sufficient to adequately remedy the effects of past discrimination.

Some of the race neutral programs and legislation discussed above were in place prior to the establishment of a race conscious program, yet MWBE participation in the City of Evanston's public procurement contracts have, in general, remained low. Therefore, it can be concluded that low participation by MWBEs in race neutral programs is evidence that the race neutral programs do not provide an adequate remedy for the effects of past discrimination.

INTRODUCTION

As stated in Chapter II, *Croson* clearly provides that race conscious measures adopted by state and local entities must be based on a compelling governmental interest in remedying identified discrimination and be "narrowly tailored" to accomplish these purposes. Gender-conscious programs must be based on an important governmental interest and substantially related to that interest, and local business programs must be based on a rational intent of the government. Using these legal principals as a guide, the following are DJMA's summary conclusions of the findings enumerated in the preceding chapters of this report.

CONCLUSIONS

Based on the evidence presented in this study, DJMA concludes that:

- Systemic barriers in the procurement process may be creating a disparate impact on minorities and women businesses.
- There is a disparity between the utilization of MWBEs and majority contractors, though not a statistically significant disparity.
- There is disparity between the utilization of EBEs and non local contractors, though not statistically significant.
- The cessation of the City of Evanston's MWBE program resulted in a decline in the utilization of MWBEs which was particularly significant among MWBE subcontractors.
- There is underutilization of minority and women owned businesses in the Chicago PMSA marketplace in general.

Chapter IV—Procurement—analyzed the City's procurement policies and practices. DJMA found numerous practices which are barriers to MWBEs, and in some instances, small EBEs seeking to participate on City contracts. The bid notification practices, in particular, created a tremendous opportunity for the City to increase responses to bids from contractors with long-standing relationships with the City while decreasing the probability of receiving bids from MWBEs or new EBEs. The M/W/EBE program design creates no incentive to achieve a substantive percentage of participation on a project. As a result, the program provides majority firms with a potentially competitive advantage over other majority firms, and does not create opportunities for M/W/EBEs.

Chapter VI—Statistical—notes overall disparity between MWBEs and majority contractors during the study period—from 1986 to 1993—and significant disparity among MWBE construction firms. However, statistical calculations revealed that the disparity results were not statistically significant. As such, DJMA cannot conclusively state that the disparity is a result of discrimination. What is clear, however, is that DJMA did find an overall underutilization of MWBEs relative to their availability. The corroborating anecdotal evidence from the public hearing, interviews, and survey which obtained qualitative data regarding the experiences of firms doing business with the City of Evanston support the disparity findings. DJMA also found disparity between the expected utilization of local Evanston businesses and their availability, except in the category of other professional services. In the instances where disparity was found, the disparity was not statistically significant.

The termination of the sixteen-year-old minority set aside program resulted in an overall drop in utilization of MWBEs. For prime contractors, the difference between pre- and post-participation is most significant among MWBE construction firms. Among the other procurement categories, there was no change except for A&E firms which showed a substantial increase in MWBE utilization after the termination of the original set aside program. MWBE programs primarily affect utilization of MWBE subcontractors, and it is among subcontractors that DJMA found the most significant decrease in participation, to 28.3 percent of the rate of utilization, during the program period.

In Chapter III—Economic Market Analysis—DJMA showed the continued effects of past discrimination against MWBEs. Minorities and women consistently lagged far behind White males in education, income, and wealth generation. These factors contribute significantly to a MWBE's ability to form and sustain a business venture. Chapter III also reflects private industry disparity across all industry categories from which an inference of discrimination could be drawn.

Croscon also requires public entities to consider race neutral means of assisting MWBEs. In Evanston, the City has implemented a race neutral EBE program after dismantling the original minority set aside program. As previously noted, DJMA found that a race neutral program was ineffective in preventing a significant decrease in MWBE utilization.

RECOMMENDATIONS

While a local entities are individually responsible for crafting policies regarding race conscious and race neutral programmatic initiatives, this chapter serves to highlight policy and program considerations that are grounded in the findings of this study. First, any plan of action developed by the City of Evanston must consider race neutral measures. Second, the plan should avoid the use of rigid

numerical quotas.¹ Third, the program must be limited in its effective scope to the boundaries of the member governmental entity.

Croson found the 30 percent quota in Richmond to be a rigid numerical quota without justification, "except perhaps outright racial balancing." Given that the City considered bids and waivers on a case-by-case basis, the Court found no need for the rigid quotas. In creating a plan, a public entity cannot employ quotas simply to avoid "the bureaucratic effort necessary to tailor remedial relief to those who truly have suffered the effects of prior discrimination."²

Yet, based on the discovery of a significant statistical disparity, the public entity can then institute measures to "end the discriminatory exclusion." In fact, in severe showings of discrimination, quotas or set asides can be employed: "in the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion."³ Even so, any plan of action by the City of Evanston containing preferences should be grounded in the statistical assessment of disparity.

In *Hillsborough County*, the Court found that goals, as opposed to quotas, were flexible because goals were set for each project based on the number of qualified minorities. If three qualified minorities were not available, no goal was set for the project. Additionally, no goal could exceed 50 percent, and the ordinances required only that a prime contractor demonstrate a good faith effort in obtaining MBEs.⁴

In *Concrete Works*, the Court held that goals are "flexible aspirational goals" because they were set on a project-by-project basis and goals were rarely ever met. Goals could be set for minority groups with statistically insignificant numbers to avoid a circular argument: "discrimination against these groups may not be remedied because discrimination, among other things, has kept their numbers so small that discrimination cannot be proven with airtight statistical significance."⁵

A narrowly tailored program should also contain waivers. In *Coral Construction Co. v. King County*,⁶ the court found King County's waiver of goals in the instance of lack of availability of a MBE sufficient and contributed to the narrow tailoring of the MWBE program. The county ordinance provided that contractors could seek a waiver of the goal requirements where there was neither a minority or female business available to provide the needed services or goods

¹*City of Richmond v. Croson*, 488 U.S. 467, 109 S.Ct. 706, 724 (1989).

²*Id.* at 729.

³*Id.* at 729.

⁴*Cone v. Hillsborough County*, 905 F.2d 908 (1990)

⁵*Concrete Works v. County of Denver*, 823 F. Supp. 821, 843 (1993).

⁶941 F.2d at 924.

or where "available minority or female businesses submitted price quotes which are unreasonably high in that they exceed competitive levels beyond amounts which can be attributed to cover costs inflated by present effects of discrimination."⁷

A sunset clause is also a component of a narrowly tailored MWBE program. This can involve: 1) a graduation program such as was approved in *AGC v. Coalition for Economic Equality*;⁸ 2) a definite date to end the program as in *AGC v. San Francisco*;⁹ or, 3) an annual review of MWBE program efficacy, goals, and MWBE utilization.

Additionally, any race conscious program or other remedial action should not extend its benefits to minorities outside the municipality, unless the minorities can show that they have suffered discrimination within the locale. "[A] state or local subdivision has the authority to eradicate the effects of private discrimination within its own legislative jurisdiction."¹⁰ The program or ordinance can only apply to contracts let by the public entity for work to be performed within its jurisdiction.¹¹ In *Concrete Works*,¹² the court found the MWBEs outside the state must either attest to city-sponsored discrimination or show that they attempted to work in the Denver MSA in the period before the program; that is, the period during which discrimination can be inferred. The ordinance was intended to benefit those MWBEs inside the Denver MSA and those outside it who had suffered local discrimination.

Racial groups not represented in Denver may not avail themselves of the Ordinance and neither may individuals even of the protected groups who nevertheless have never attempted to do business in Denver. Moreover, if Denver tried to limit the remedy for its own discrimination to contractors based on residence, it would face even more serious constitutional challenges from contractors who allege discrimination by Denver but have been excluded from the remedy.¹³

In *Coral Construction*, the court found that the program did not limit its scope to within the county and, therefore, was overly broad. The program allowed a minority business to qualify for preferential treatment if the business had been discriminated against "in the particular geographical areas in which [it]

⁷*Id.*

⁸950 F.2d 1407, 1417 (1991).

⁹748 F. Supp. 1443, 1454 (1990).

¹⁰*Croson*, supra n. 1, at 720.

¹¹*Concrete Works*, supra n. 5. This was true even if the statistical evidence shows discrimination by contractors in cities in other locales.

¹²*Id.* at 234.

¹³*Id.* at 234.

operated.” In finding this language overly broad, the court held that the relevant question was whether the MWBE has been a victim of discrimination within King County.

The question is not one of business location, but of business participation. Indeed, an MBE headquartered in Seattle might not be eligible for preferential treatment, whereas a similar business located in Miami might. In order for an MBE to reap the benefits of King County’s MBE program, it is necessary to determine if the company has ever been victimized by discrimination within King County.¹⁴

The court held that any MWBE that previously sought to do business within the county is presumed to have been discriminated against, whereas MWBEs with no prior contact with the county could not benefit from the program. Unfortunately, it is not clear what level of particularized evidence is required for determining whether a non local MBE has been discriminated against. This case law has several implications:

- Rigid numerical quotas run a greater risk of being overturned by judicial review than flexible goals.
- MWBE programs should not be designed as permanent fixtures in a procurement system without regard to remedying bias in standard procurement operations.
- MWBE programs should be instituted after, or in conjunction with, race neutral programs.
- MWBE programs should be limited in scope to the jurisdiction enacting the program.

PROCUREMENT PROCEDURES AND PRACTICES

Although there are a traditional number of factors which inhibit the survival and development of MWBEs, the City is limited in its efforts to remove these barriers. The City’s procurement process, however, is well within its control, and its operation can have a tremendous affect on MWBEs and local Evanston businesses. The elimination of identified procurement barriers to MWBE or EBE participation is no panacea, but it will provide equal access to opportunities and convey policy makers’ and top management’s support of equitable participation in procurement opportunities. As such, DJMA offers recommendations to remove the barriers identified in two general areas: procurement and current MWBE and EBE program operation.

¹⁴*Coral Construction v. King County*, 941 F.2d 910, 925 (1991).

The City's procurement practices are inconsistent with stated policy. The procurement policy states that the process was developed to centralize procurement. Given the relatively small volume of procurement and the adequate number of City staff, a centralized purchasing process would be an improvement over the current arrangement for the City. However, as noted in Chapter IV, the City has not sufficiently centralized its procurement process to ensure that procurement opportunities for MWBEs and EBEs utilization are enhanced. To effect the City's goals, the City should implement several new procedures:

Centralized Procurement Processes

- The City should ensure that all procurement activities are carefully and completely documented and tracked by purchasing. A centralized file numbering or naming convention should be used by all departments. Purchasing's procurement files should be maintained for at least seven years, or in accordance with state law or the requirements of the projects funding source. At least one set of files should be centrally stored.
- Purchasing should disaggregate data for each minority group when collecting data, i.e., create separate categories by race, ethnicity, and gender. Additionally, this information should be tracked on the user departments' supplier lists and purchasing vendor or bidders list. Data entry personnel should also include the ethnicity and gender of the vendor in the automated vendor file and vendor check history file. Relevant City staff should be able to access the following information:
 - Past procurement activity by commodity and contract type
 - Projected procurement opportunity by commodity type
 - MWBE participation rates by dollar volume by: awardee name; awards; final payment; specific commodity area; contract type—construction, professional services, architectural engineering and procurement of goods and services, prime and subcontractor; and, race/ethnicity/gender.
- The City should track prime contractors and subcontractors consistently in the central procurement files.

Contracting for Goods and Supplies

- The City should establish a citywide monitoring system for specifications and product requirements. *Require MWBE and EBE solicitations by buyers and user departments for small purchases (i.e., purchase less than \$5,000).*

- Purchasing should develop a tracking mechanism to record the number of M/W/EBEs (by locality and ethnicity and gender) contacted monthly for quotes. This data should be collected by commodity category in addition to procurement type.
- The City should include MWBEs and EBEs in the vendor rotating system. This could be accomplished by establishing a set number of MWBEs and EBEs to be contacted for each purchase.

Outreach and Bid Notifications

- The City should establish telephone notification of bid opportunities to M/W/EBEs. When the City directory of M/W/EBEs grows, the City should send a notice (perhaps on brightly colored paper), mailed well in advance of bid due dates, announcing upcoming bid opportunities. Additionally, notices of bid opportunities should be placed in local trade and professional association newsletters. The City should require City procurement staff to include relevant M/W/EBEs on the list of vendors who will receive a direct mailing of bid specifications or RFPs as part of its bid notification process.
- The Minority Coordinator should engage in frequent communication with various MWBE and EBE trade and professional organizations, attend association meetings, and establish specific times to meet with MWBEs and local business owners to discuss the City's procurement process and opportunities for work.

Buyer Reviews

- To ensure that the procurement system is functioning properly, personnel involved in the buying cycle should receive semi-annual performance reviews. To perform these evaluations, buyers should have previously established goals for a diverse portfolio that include targets at the prime and subcontractor levels. Buyers must thoroughly document bidders contacted and awards made—a practice that is especially critical for informal contracts, where buyers have the most decision making discretion. Without some level of documentation of a buyer's activity, purchasing agents have no accurate measure of buyer performance. Purchasing agents should establish bonus/penalty systems for diversity of procurement portfolios. To assist buyers in contacting MWBEs, all agencies should create their own MWBE Business Directories, especially on commodities that are unique purchases by a particular agency.
- The City should conduct annual or semi-annual in-house training for City staff involved in the procurement process to ensure full awareness

of the M/W/EBE procurement policies and staff's obligation to support and comply with these procedures.

Bonding Assistance

It is well known that many MWBEs lack the large financial reserves and credit history sufficient to secure adequate bonding. Moreover, sureties are uncomfortable approving large loans in bonding. That is, a firm that can secure \$300,000 bonds will probably not be approved for \$1 million bonds. This is a barrier to MBEs transitioning to prime contractor status.

Surety underwriting is a very conservative market. As a result of heavy losses in the mid-1980s, most major sureties raised their underwriting standards or applied existing standards more rigorously. However, several major sureties are now eager to bond small contractors. The current advisory rates used by major sureties generate higher premiums for small bonds. Five major sureties participate in the SBA's Preferred Surety Bond (PSB) program: Fidelity and Deposit Company of Maryland (F&D of Maryland); SafeCO, U.S. Fidelity and Guaranty (USF&G); Aetna Casualty & Surety (Aetna); and, Continental Insurance Company (Continental). The PSB permits sureties to preapprove contractors under SBA standards and eliminates the necessity of obtaining approval for each bonding occurrence.

- There are several recommended approaches to providing effective assistance to MWBE:
 - Bond guarantees. A local bond guarantee program can be supported by funds from the City, e.g., \$20,000 can leverage \$1 million in treasury listed bonds, subject to actual confirmation. Such a guarantee program would reinsure commercially rated surety companies participating in the program. This approach has been applied with some success by the New York State Economic Development Bank, the Florida Black Business Investment Board, and the New Jersey Casino Program. The SBA also guarantees between 70 and 90 percent of a maximum \$1.25 million surety bond.
 - Some programs provide collateral to MWBEs seeking bonds.
 - Direct bonding. Certain states, such as Maryland, provide bonding for small and minority contractors.
 - Bond waiver program. The City of Tallahassee, for example, issue bond waivers for MWBE participants for projects up to \$250 million. However, bond waivers do not facilitate MWBE growth and development because surety agencies classify work completed under a bond waiver as "unbonded" work.

- In cases where bond waivers apply, DJMA recommends that the City of Evanston limit bond requirements to state law thresholds; on professional services contracts, waive performance bond requirements or require performance bond equivalent; and, on goods and services contracts, eliminate bond requirements—allow contractors to bill up front for insurance and bonding, instead of across 12 months.
- The Los Angeles Transportation Commission developed a local agency approach to bonding. Funds are generated by a Los Angeles County tax on gasoline, a portion of which is devoted to mass transit. The City of Los Angeles and the Los Angeles County Transportation Commission have each deposited \$7.5 million from these funds in two commercial banks. Private contractors refer subcontractors that are unable to obtain bonding from private surety companies to the Transit Bond Guarantee Program. The program determines that the MWBE is competent to perform the subcontracting work, has accurately estimated the job, has the management and technical capacity to perform, and is otherwise eligible for bond assistance. If these, and other, criteria are satisfied, the bond guarantee program will obtain bonding for the subcontractor from one of four participating surety companies. One of the two banks then issues an irrevocable letter of credit to the surety company in an amount identified by that surety company as necessary to secure its bond. The program also provides bonding assistance to MWBE prime contractors who are bidding on contracts under \$1 million. Although the program has been underutilized, it offers one innovative, but relatively low risk, model for increasing the involvement of MWBEs more fully in the economic mainstream.
- DJMA recommends an aggressive approach by the City of Evanston to coordinate its bonding requirements with the appropriate surety companies to support small contractors in their quest to qualify for bonds.

Small Contractors Assistance Program

Construction is an area of procurement where management and technical assistance needs are the greatest. Consequently, many cities have established programs targeting small and disadvantaged contractors. These programs typically encompass the following services:

- Serve as a clearinghouse for city, county, state, and federal contracting opportunities;
- Assist contractors in bid estimation and bid development;

- Provide a plan room and blueprint availability;
- Offer seminars to contractors that result in tangible benefits for contractors (seminars that do not have strong incentives integrated into the seminar itself, are generally poorly attended by contractors. For example, a seminar on bonding assistance could be offered as a prerequisite to securing a bond from a bonding company that has an understanding with the City and its certified contractors.);
- Foster mentor-protégé relationships with majority contractors, utilize the SBA SCORE (Service Corps of Retired Executives) program where retired general contractors provide assistance to MWBE contractors;
- Attend pre-bid conferences; and,
- Encourage majority contractors to joint venture with or utilize MWBE business owners on majority contracts at the project management level.

Financial Assistance Programs

As in many parts of the country, adequate contract financing is an issue in the City of Evanston. A typical problem for MWBEs is the inability to perform the contract because banks do not accept contracts as collateral to secure financing required to complete a contract. The following programs would be valuable in the City of Evanston to address these problems:

- **Bank Consortia.** Revisions to the Community Reinvestment Act (CRA) provide the City of Evanston with an important opportunity to address this gap in M/W/EBE financing. As a result of the CRA, numerous financial institutions are forming consortia to facilitate lending to CRA-targeted businesses. An example is the Entrepreneurial Development Loan Fund (EDLF) in Atlanta, organized by the Atlanta Chamber of Commerce in conjunction with several major Atlanta banks. The EDLF is administered by GRASP, an Atlanta economic development organization.
- **Working Capital Loan Program.** The City of Evanston takes bids from local financial institutions to lend up to 5 percent of the contract amount to a M/W/EBE holding a City contract or subcontract. The bank reviews and approves/disapproves each application, and, if approved, monitors proper application of installment payments to the M/W/EBE as the work progresses. Bids received from the banks would be evaluated by a City committee on the basis of the lowest interest rate which will be offered to the M/W/EBE firms; the credit criteria utilized by the bank; and, the percentage of risk that the bank will assume. The City would guarantee the bank's receipt of the remaining portion of the loan.

- **Contract Financing.** A vehicle that provides working capital, contract financing is also a financial approach that banks find expensive to administer. Publicly subsidized contract financing provides a low cost alternative to costly factoring services which is often the only alternative small companies have for obtaining working capital.
- **Public Venture Capital Funds.** Some cities have collaborated with states to create semi-public venture capital funds. BIDCO in Detroit, Michigan provides preferred stock and/or long-term debt to promising firms.

M/W/EBE PROGRAM RECOMMENDATIONS

Minority Coordinator

- The Minority Coordinator must be given the authority and information to effectively track M/W/EBE participation; develop opportunities with purchasing and the relevant user departments for MWBE and EBE participation; and, monitor the City's and prime contractor's compliance with the M/W/EBE program. During the course of this study, the City moved the minority coordinator position to the purchasing department. As a new development, it is difficult to determine the effect of this change on the minority coordinator's effectiveness and the utilization of M/W/EBEs. However, with centralized procurement practices, the minority coordinator may be ideally positioned to access necessary documentation and user department personnel to effectuate the M/W/EBE goals. To be truly effective, the minority coordinator must be diligent in his/her pursuit of program goals, and attentive to and innovative in addressing the needs of M/W/EBEs. Additionally, the coordinator must have the commitment and support of senior staff, purchasing, the City Manager's office, and the City Council.
- The minority coordinator should be included in all Review Committee sessions regarding the development of RFPs or bid specifications and should participate in the vendor selection process.
- Currently, the minority coordinator operates with a staff of one. Given the volume of procurement activity and the size of the City, there is no need indicated to hire additional staff. Where additional resources are needed, the coordinator should be authorized to use user department and purchasing staff to monitor compliance. If resources do not permit monitoring 100 percent of the projects, the City could develop a sampling procedure to monitor a certain percentage of projects within certain dollar ranges. This should also help to create a database foundation for cross referencing subcontractor and contractor data. As

the program is more widely used and participation increases, the coordinator's staffing needs may need to be reevaluated.

- MWBE advisory committee should be charged with evaluating the M/W/EBE programs on no less than an annual basis. The advisory committee should also submit an annual review of the performance of the minority coordinator. These evaluations will afford the City's business community with an opportunity to participate in and concentrate towards the successful implementation of program objectives.

Certification

The City should equalize the certification burdens on MWBEs and EBEs by creating a City certification process for both. While the process should not overwhelm businesses, it should be sufficient to ensure that M/W/EBEs are benefiting from the program. The certification process should be designed in conjunction with a strong monitoring process. Additionally, the City should institute a certification renewal process.

M/W/EBE Directory

- The City should routinely update and distribute its M/W/EBE directory. The City should obtain the certification lists and MWBE directories of neighboring municipalities and the state to create a comprehensive listing of available MWBEs interested in procuring public sector work. To obtain a comprehensive listing of local businesses, the City should conduct a mass mailing to all identified local businesses, submit an ad to the local paper and relevant industry journals, and distribute notices to trade and professional organizations and local churches to inform the public of the program and request applications for certification. Upon receiving certification, the respondents' names should be added to the directory. The directory should be readily available in hard copy and on diskette to contractors and City staff. The directory should have a MWBE section and an EBE section. The MWBE section should include the ethnicity and gender of ownership, address, whether the business is an EBE, and a description of the business by SIC code or procurement type. The EBE section should include the address and description of each business by SIC code or procurement type.

Professional and Personal Service Projects

- The City should implement procedures to ensure that M/W/EBEs are always included in the list of vendors to which the City mails an early copy of the RFP or bid specifications.

- The City could also establish a proposal review process that informs unsuccessful M/W/EBE bidders about the weaknesses and strengths of their bids.

Monitoring Procedures

- The City should establish monitoring procedures to ensure that contractors and City procurement staff are complying with M/W/EBE program goals. The City generally practices some contract compliance monitoring. However, more particularized monitoring efforts should be created to monitor the M/W/EBE program, specifically. Among the procedures the City should include are:
 - Announced and unannounced site visits to verify M/W/EBE presence on the job site;
 - Affidavits or other contractual forms that evidence the prime contractor's agreement to utilize a specific M/W/EBE for a project; and,
 - Implementation of a phone audit procedure to verify that payments to M/W/EBE subcontractors (as reported by the primes) correspond with the subcontractors reports—a sampling procedure can be implemented.

Project Sizing

A major constraint for many MWBEs and small EBEs, especially in construction, is large project size. Capacity, bonding, and insurance issues tend to exclude MWBEs and small EBEs from many bid opportunities. As such, the City, with the minority coordinator, should ensure that projects are appropriately sized to maximize opportunities for MWBE and small EBE participation.

Preference Programs

- The significant underutilization of MWBE firms relative to their availability suggests that consideration of MWBE goals is appropriate.
- With respect to the professional and personal service program, DJMA recommends that the number of preference points awarded to contractors be a factor of the amount of MWBE and EBE participation on the job. To discourage contractors from using the program with only nominal MWBE participation, contractors must show that the M/W/EBE is performing a commercially viable portion of the contract before awarding preference points to the contractor.
- The EBE program's three percent or \$1,000, (whichever is less) preference, should be tailored to create a real benefit to the bottom line

of the City's local businesses. If the City is seeking to reduce the flight of local businesses to neighboring cities, increase business development in the City, and create a means to "give back" to its taxpaying business community, DJMA recommends the following:

- Remove the \$1,000 limitation on the program. A local business seeking to bid on a goods, supplies, or construction project need only submit a bid within three percent of the lowest bid to qualify to win the contract. On small dollar projects valued less than \$33,000, the local bidder will need to submit a quote of less than \$1,000 over the lowest bid to prevail. On larger dollar projects, a three percent cap provides a true incentive for businesses to locate within the City and for local businesses to remain and seek opportunities with the City. What the City may pay in additional costs is offset by the good will developed in the business community, increased tax revenues, and more competitive bidding on City contracts. Increasing competitive bidding reduces the inflated price the City sometimes pays when too few contractors bid on City projects. Additionally, the cost to the City in the long term should be reduced by a growing base resulting from increasing the number and revenue of local businesses. The City may need to consider limiting the three percent preference to projects under a certain size (e.g., \$5 million) to control costs to the City.
- The City will need to develop a more stringent certification process for EBEs to ensure that program objectives and the City's long-term goals are being achieved. In addition to current requirements, the City should require EBEs to be duly licensed businesses with the City and subject to its taxes. Businesses seeking to purchase, redevelop, or renovate property in Evanston should be advised of the EBE program, the certification requirements and tax incentive programs offered by the City to encourage such activity in certain areas. A package could be developed for new local businesses with important contact names and telephone numbers of City staff; names of assisting agencies; information about the City's procurement programs, tax incentive programs, a licensing application, and other information as a value added service for the City's business community.
- M/W/EBEs should receive early and direct notification of bid opportunities to maximize participation in the preference program.
- Many minority owned business owners, in particular, have complained that majority businesses will work with them only when required on a public sector project with a MWBE program. As a result, many majority companies will not use MWBEs on private sector contracts. To overcome this barrier, the City could create a preference program which gives contractors that have used or are using MBEs and

WBEs in private sector work credit toward their overall bid score during the City vendor selection process.

- Because the availability of MWBE firms changes periodically, participation goals must also change. Participation goals should be established each year based on projections of availability, forecasts of coming projects, and the anticipated amount of federal, state, and city spending.
- With respect to MWBEs, the City should pursue and implement other race neutral initiatives. Alone, race-neutral alternatives appear inadequate to correct the underutilization of MWBEs. However, such programs serve to complement MWBE program goals when implemented as parallel initiatives.

COURSE OF ACTION

Establishing MWBE and EBE goals is a policy decision and requires action by the City and the City Council. These official bodies are charged with establishing overall policy goals for a complete race/gender/local business program.

This study establishes a factual predicate that M/W/EBE programs are appropriate to remedy the current effects of discrimination. Prior to the implementation of any such programs, two steps must be taken: establishment of legislative findings and tailoring of adopted programs to address the problem. It is crucial that legislative findings be formed in the most thorough and probing manner possible. This should include solicitation of comments, oral and written, from the widest possible spectrum of the community. Legislation then adopted should be tailored to address the disparity of participation among those groups specifically identified in the formation of the federal predicate. It should be noted that if legislative findings reveal there is no need to include MWBEs of certain classifications due to current utilization or low levels of presence in the community (for instance citizens of Eskimo and Aleut descent), individual members of those groups will have recourse for any individual discrimination they may suffer.

The City's obligation with respect to the EBE program is not subject to the same legal scrutiny as the MWBE programs. As long as the program participation is not contingent upon an Evanston residency requirement of the individual business owners or businesses' employees, the City need only develop program goals that are rationally related to its program objective. However, to ensure that the concerns of local business owners are included in this process, the City should make an effort to conduct legislative findings related to the issues and problems facing local businesses.

DJMA recommends that the time frame for further action should be approximately eighteen months:

- 90 to 120 days after receipt of this study—legislative findings;
- 60 days after formation of legislative findings—tailoring legislation to narrowly meet the disparity found and relate legislation to the local business program and local business needs;
- 12 months after enactment of the legislation—capture data on enacted legislation to match the factual predicate for progress report.

The City should develop an action plan that specifies annual procedural, programmatic, and goal improvements, and time lines for the implementation of each. In the recommendations above, DJMA has identified procedural and programmatic changes which it believes will strengthen the City's procurement and contracting system and increase utilization of M/W/EBEs. However, the improvements in operating systems and the use of race neutral initiatives alone will not ensure the utilization of M/W/EBE, in particular MWBEs. As previously stated, some goal-based initiatives are justified and, therefore, should be included.

Consideration of Target Setting Methodology

In the policy arena, we have not set or recommended a specific goal. The actual setting of goals is a policy decision reserved for the City decision makers. The decision making paradigm should tie the City's utilization of MWBEs and EBEs with the marketplace's level of MWBE and EBE availability. Within this framework, the number of MWBEs and EBEs in the relevant market would drive the City policy decisions regarding the entity's goals for MWBEs and EBEs.

A practical goal setting methodology that reflects legal thought should incorporate the seven factors used in the report to establish the current levels of subcontractor availability and subsequent disparities in utilization.

- The size of minority and female populations in the relevant market areas;
- The number of minority and female owned businesses in the relevant market areas;
- The availability of minority and female owned businesses in the relevant market areas willing to do business with the City;
- The general availability of minorities and females in the relevant market areas having the requisite skills to manage or form businesses;

- The percentage of minority and female businesses compared to the total number of businesses in the relevant market areas;
- The availability of minority and female businesses in the relevant market areas which the City can reasonable add to their certification lists; and,
- The degree of outreach and training that the City is reasonable able to undertake as a means of making opportunity available to minority and female businesses.

SUMMARY

D.J. Miller & Associates, Inc. submits that the findings of disparity between the availability of M/W/EBEs and their utilization by the City of Evanston provides sufficient data to justify a race/gender/local based procurement program. Our economic and statistical utilization analyses may serve as part of policy and target-making decisions regarding the establishment of MWBE and EBE participation goals for specific local, racial, ethnic, or gender groups.

We suggest that the City consider the foregoing recommendations, as appropriate, to improve equal access to contracting and procurement opportunities for all groups.

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