

# **Metropolitan Water Reclamation District of Greater Chicago**

*100 East Erie Street  
Chicago, IL 60611*



## **Regular Board Meeting Consent Agenda - Draft**

**Thursday, June 4, 2015**

**10:00 AM**

**Board Room**

### **Board of Commissioners**

*Commissioner Michael A. Alvarez, Chairman of Finance Frank Avila, Commissioner Timothy Bradford, Vice President Barbara J. McGowan, Commissioner Cynthia M. Santos, Commissioner Debra Shore, Commissioner Kari K. Steele, President Mariyana T. Spyropoulos*

**THE FOLLOWING PROCEDURES WILL GOVERN THE MEETING PROCESS:**

- 1. Board Members who vote "Nay, Present, or Abstain" or have a question on any item may request the item be removed from the Consent Agenda.**
- 2. Citizens in the audience who address the Board on any item may request the item be removed from the Consent Agenda.**
- 3. Items removed from the Consent Agenda are considered separately.**
- 4. One roll call vote is taken to cover all Consent Agenda Items.**

## Metropolitan Water Reclamation District of Greater Chicago

### STANDING COMMITTEES

### Chairman

### Vice Chairman

|  |             |             |
|--|-------------|-------------|
| Affirmative Action                       | McGowan     | Avila       |
| Budget & Employment                      | Steele      | Shore       |
| Engineering                              | Avila       | Shore       |
| Ethics                                   | Bradford    | Spyropoulos |
| Federal Legislation                      | Alvarez     | Bradford    |
| Finance                                  | Avila       | Bradford    |
| Industrial Waste & Water Pollution       |             | Avila       |
| Information Technology                   | Steele      |             |
| Judiciary                                | Spyropoulos |             |
| Labor & Industrial Relations             | Santos      | Alvarez     |
| Maintenance & Operations                 | Avila       | Bradford    |
| Monitoring & Research                    |             | Steele      |
| Municipalities                           | Shore       | Santos      |
| Pension, Human Resources & Civil Service | Spyropoulos | McGowan     |
| Public Health & Welfare                  | Avila       | Shore       |
| Public Information & Education           | Shore       | McGowan     |
| Procurement                              | McGowan     | Santos      |
| Real Estate Development                  | Spyropoulos | Santos      |
| State Legislation & Rules                | Santos      | Alvarez     |
| Stormwater Management                    | Alvarez     | Steele      |

### 2015 REGULAR BOARD MEETING SCHEDULE

|           |                    |    |
|-----------|--------------------|----|
| January   | 8                  | 22 |
| February  | 5                  | 19 |
| March     | 5                  | 19 |
| April     | 9                  | 23 |
| May       | 7                  | 21 |
| June      | 4                  | 18 |
| July      | 9                  |    |
| August    | 6                  |    |
| September | 3                  | 17 |
| October   | 1                  | 15 |
| November  | 5                  | 19 |
| December  | 1 (Annual Meeting) |    |
| December  | 3                  | 17 |

# 2015

## January

| S  | M  | T  | W  | T  | F  | S  |
|----|----|----|----|----|----|----|
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| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | 31 |

## February

| S  | M  | T  | W  | T  | F  | S  |
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| 22 | 23 | 24 | 25 | 26 | 27 | 28 |

## March

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| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | 31 |    |    |    |    |

## April

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## May

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| 31 |    |    |    |    |    |    |

## June

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## July

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## August

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## September

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| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 |    |    |    |

## October

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| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | 31 |

## November

| S  | M  | T  | W  | T  | F  | S  |
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| 8  | 9  | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 |    |    |    |    |    |

## December

| S  | M  | T  | W  | T  | F  | S  |
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| 6  | 7  | 8  | 9  | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 |    |    |

**Call Meeting to Order****Roll Call****Approval of Previous Board Meeting Minutes****Recess and Convene as Committee of the Whole****Recess and Reconvene as Board of Commissioners****Finance Committee****Report**

- 1     [15-0560](#)     Report on the 2014 Comprehensive Annual Financial Reports of the Metropolitan Water Reclamation District of Greater Chicago and of the Metropolitan Water Reclamation District Retiree Health Care Trust
- 2     [15-0591](#)     Report on payment of principal and interest for outstanding District bonds due on June 1, 2015  
         Attachments:   [DS 2015-06 att.pdf](#)
- 3     [15-0598](#)     Report on Cash Disbursements for the Month of April 2015, in the amount of \$36,512,852.62

**Procurement Committee****Report**

- 4     [15-0570](#)     Report of bid opening of Tuesday, May 19, 2015
- 5     [15-0587](#)     Report of bid opening of Tuesday, May 26, 2015

**Authorization**

- 6     [15-0569](#)     Authorization to accept amended annual rental bid for Contract 14-366-11 Amendment to Bid for Proposal to Lease for 39-years on approximately 11.66 acres of District real estate located at 3301 S. California Avenue in Chicago, Illinois; Main Channel Parcel 42.03 from Gardner-Gibson, Incorporated in the amount of \$841,000.00 (*Deferred from the May 21, 2015 Board Meeting*)  
         Attachments:   [Map.Parcel 42.03 GG.pdf](#)

- 7      [15-0571](#)      Authorization to amend Board Order of May 7, 2015, regarding authority to advertise Contract 15-340-11, Services to Furnish, Deliver and Install Exterior Electronic Signs at Various District Locations for a Two Year Period, estimated cost \$118,000.00, Account 201-50000-634990, Requisition 1388441, Agenda No. 8, File No. 15-0454A
- 8      [15-0582](#)      Authorization to amend Board Order of May 21, 2015, regarding Issue purchase order for Contract 15-604-11, Furnishing and Delivering Plumbing Supplies, in an amount not to exceed \$132,170.00, Accounts 101-67000, 68000, 69000-623090, Requisitions 1386157, 1385820, 1384955, 1385014, 1386812 and 1386801, Agenda Item No. 28, File No. 15-0542
- 9      [15-0596](#)      Authorization to amend Board Order of May 21, 2015, regarding Issue purchase orders and enter into an agreement with Dresser, Inc., to Provide Technical Field Services for Blowers at the Calumet and Egan Water Reclamations Plants, in an amount not to exceed \$25,000.00, Accounts 101-67000- 68000-612650, Requisitions 1393038 and 1364669, Agenda Item No. 27, File No. 15-0539

**Authority to Advertise**

- 10      [15-0579](#)      Authority to advertise Contract 15-605-21 Furnish and Deliver Two Windrow Turners and One Screener to LASMA and CALSMA, estimated cost \$1,500,000.00, Account 201-50000-634650, Requisition 1398950

**Issue Purchase Order**

- 11      [15-0525](#)      Issue purchase order to SAS Institute Inc. to Furnish and Deliver Renewal of Existing SAS Software and SAS Software Extensions Licenses, in an amount not to exceed \$31,110.00, Account 101-27000-612820, Requisition 1398275
- 12      [15-0576](#)      Issue purchase orders and enter into agreements for Contract 15-RFP-11 Legal Services for Workers' Compensation Defense for the period June 1, 2015 through May 31, 2017 with Dennis Noble & Associates, P.C. in an amount not to exceed \$170,000.00, Neuson Law, P.C. in an amount not to exceed \$80,000.00, and Heyl, Royster, Voelker & Allen, P.C. in an amount not to exceed \$50,000.00. Account 101-25000-601170. Requisitions 1394106, 1394107, and 1394108 (*Deferred from the May 21, 2015 Board Meeting*)
- 13      [15-0577](#)      Issue purchase order and enter into an agreement with DLT Solutions, LLC for furnishing and delivering AutoDesk Constructware Software License Renewal and Consulting Services, in an amount not to exceed \$185,488.92, Account 101-27000-612820, Requisition 1397613
- 14      [15-0584](#)      Issue purchase orders to Drydon Equipment, Inc., to Furnish and Deliver Hayward Gordon, Varec, Watson Marlow, Fairbanks Morse, and Pentair Pumps and Parts, to Various Locations, in a total amount not to exceed \$239,900.00, Accounts 101-67000, 68000, 69000-623090, 623270

- 15     [15-0586](#)     Issue purchase order for Contract 15-100-11, Furnish and Deliver Automatic Samples, to Gasvoda & Associates, Inc., in an amount not to exceed \$45,195.00, Account 101-16000-623570, Requisition 1387993

#### **Award Contract**

- 16     [15-0590](#)     Authority to award Contract 15-006-11 Furnish and Deliver Janitorial Supplies to Various Locations for a One (1) Year Period, to Cicero Manufacturing & Supply Company, Inc., in an amount not to exceed \$58,958.19, Accounts 101-20000-623110, 623170, 623660

**Attachments:**     [ITEM DESCRIPTIONS.pdf](#)

- 17     [15-0597](#)     Authority to award Contract 15-053-11 Furnish and Deliver Lamps to Various Locations for a One (1) Year Period, to Graybar Electric Company, in an amount not to exceed \$111,141.84, Account 101-20000-623070

**Attachments:**     [15-053-11a.pdf](#)

#### **Increase Purchase Order/Change Order**

- 18     [15-0572](#)     Authority to increase Contract 04-202-4F Connecting Tunnels & Gates, Thornton Composite Reservoir, Calumet Service Area, to Walsh/II in One Joint Venture in an amount of \$500,000.00, from an amount of \$136,077,670.92, to an amount not to exceed \$136,577,670.92, Account 401-50000-645600, Purchase Order 5001136

**Attachments:**     [CO Log 04-202-4F.pdf](#)

- 19     [15-0573](#)     Authority to increase Contract 04-203-4F Final Reservoir Preparation, Thornton Composite Reservoir, Calumet Service Area, to Walsh/II in One, Joint Venture in an amount of \$11,121.24, from an amount of \$50,930,121.31, to an amount not to exceed \$50,941,242.55, Account 401-50000-645600, Purchase Order 5001224

**Attachments:**     [Change Order Log 04-203-4F.pdf](#)

- 20     [15-0574](#)     Authority to decrease Contract 06-212-3M Calumet TARP Pumping Station Improvements, Calumet Water Reclamation Plant, to Sollitt/Sachi/Alworth JV in an amount of \$17,000.00, from an amount of \$35,121,983.00, to an amount not to exceed \$35,104,983.00, Account 401-50000-645600, Purchase Order 5001404

**Attachments:**     [CO 06-212-3M, BM 6-4-15.pdf](#)

- 21     [15-0578](#)     Authority to increase purchase order for Contract 14-102-12 Furnish and Deliver Maintenance, Inspection and Repair of Lysimeters and Monitoring Wells, to Patrick Engineering, Inc. in an amount of \$12,000.00, from an amount of \$51,029.21, to an amount not to exceed \$63,029.21, Account 101-16000-612490, Purchase Order 3080361
- Attachments:**     [CO Log Contract 14-102-12 PO Increase.pdf](#)

## Budget & Employment Committee

### Authorization

- 22     [15-0583](#)     Authority to transfer 2015 departmental appropriations in the amount of \$1,134,000 in the Corporate Fund and Construction Fund
- Attachments:**     [06.04.15 Board Transfer BF5 15-0583.pdf](#)

## Engineering Committee

## Monitoring & Research Committee

### Report

- 23     [15-0567](#)     Report on acceptance of yardwaste from Republic Services, Inc., for a pilot-scale evaluation to produce a value-added product by co-composting biosolids, woodchips, and yardwaste

## Pension, Human Resources & Civil Service Committee

### Authorization

- 24     [15-0588](#)     Authority to Amend Metropolitan Water Reclamation District of Greater Chicago Deferred Compensation Plan and Trust, effective June 4, 2015
- Attachments:**     [457 Plan Doc - Laner Revisions Final \(2015\) Clean Copy.pdf](#)
- 25     [15-0589](#)     Authority to Amend the Investment Policy for the Metropolitan Water Reclamation District of Greater Chicago Deferred Compensation Plan and Trust, effective June 4, 2015
- Attachments:**     [JEFa-Board Letter - Appendix A \(Investment Policy - 2015\).pdf](#)  
[JEFa-Investment Policy - Amended 6-4-15 \(Final\) Clean Copy.pdf](#)

## Real Estate Development Committee

### Authorization

- 26     [15-0592](#)     Authority to issue a six (6) month permit extension to the Village of Willow Springs for continued use of a Metra commuter parking lot on approximately 2.13 acres of District real estate located west of Willow Springs Road and south of the Main Channel in Willow Springs, Illinois; Main Channel Parcel 29.04. Consideration shall be \$6,000.00  
**Attachments:**     [Map.Aerial 29.04.pdf](#)
- 27     [15-0593](#)     Authority to grant a 25-year, non-exclusive easement to Commonwealth Edison Company on approximately 10.39 acres of District real estate located west of Pulaski Road and north of the Main Channel in Chicago, Illinois, and known as parts of Main Channel Parcels 40.02, 40.04 and 40.07, to continue to operate, maintain and remove electrical transmission lines. Consideration shall be an initial annual fee of \$307,500.00  
**Attachments:**     [Map.Aerial Parcels 40.02, 40.04, 40.07.pdf](#)
- 28     [15-0594](#)     Authority to issue a 13-month permit to the Forest Preserve District of Cook County to access Dead Stick Pond located east of Stony Island Avenue, south of 122nd Street, and north of the Calumet River in Chicago, Illinois to conduct bird surveys in June, 2015, and from May 1, 2016, through June 15, 2016. Consideration shall be a nominal fee of \$10.00  
**Attachments:**     [Map.Aerial Dead Stick Pond.pdf](#)
- 29     [15-0595](#)     Authority to enter into a 39-year lease with the Village of Wheeling on an approximately two acre segment of the William Rodgers Memorial Diversionary Channel located southwest of the intersection of Milwaukee Avenue and Lake Cook Road in Wheeling, Illinois. Consideration shall be a nominal fee of \$10.00  
**Attachments:**     [Map.Aerial Village of Wheeling.pdf](#)

## Miscellaneous and New Business

### Ordinance

- 30     [O15-002](#)     Authority to Adopt Ordinance O15-002, Affirmative Action Ordinance, Revised Appendix D, of the Metropolitan Water Reclamation District of Greater Chicago  
**Attachments:**     [AFF ACT ORD APP D O15-002 REVISED DIVERSITY FINAL VER 052115 6.4. O15-002 MWRD Disparity Study Final](#)  
                                 [AFF ACT ORD 2015 TL FINAL 050815 6.4.15.pdf](#)

### Ordinance - Prevailing Wage Rate

- 31     [PWR15-001](#)     Adoption of Prevailing Wage Act Ordinance  
**Attachments:**     [PWR 15-001 Board Letter.pdf](#)  
                                 [ORDINANCE PWR 15-001.pdf](#)



## **Adjournment**



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

File #: 15-0560, Version: 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON FINANCE

Mr. David St. Pierre, Executive Director

Report on the 2014 Comprehensive Annual Financial Reports of the Metropolitan Water Reclamation District of Greater Chicago and of the Metropolitan Water Reclamation District Retiree Health Care Trust

Dear Sir:

Attached are the Comprehensive Annual Financial Reports (CAFRs) for the year ended December 31, 2014. The District's CAFR is prepared in compliance with 70 ILCS 2605/5.12 and 5.13 and the Trust's CAFR is prepared pursuant to 70 ILCS 2605/9.6d. The financial statements have been prepared in conformance with generally accepted accounting principals (GAAP) promulgated by the Governmental Accounting Standards Board (GASB).

The District's management is responsible for presenting financial statements that are free from material misstatements and acknowledges its responsibility for the design and implementation of programs and controls to provide reasonable assurance that financial statements are complete and fairly presented.

The Government Finance Officers Association of the United States and Canada (GFOA) awarded the Certificate of Achievement for Excellence in Financial Reporting for the CAFR reports for the fiscal year ended December 31, 2013 to the District and the Retiree Health Care Trust for the 39 and 7 consecutive years, respectively. The certificate will be sought for the 2014 CAFR reports, as we believe they meet all the requirements of the GFOA Certificate of Achievement program.

Baker Tilly Virchow Krause, LLP, independent auditor, examined the basic financial statements of the District and of the Trust. The examination was conducted in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Their audit included the following: examination, on a test basis, evidence supporting the amounts and disclosures in the financial statements; assessment of the accounting principles used and significant estimates made by management; evaluation of the overall financial statement presentation; single audit; and other auditing procedures, as were considered necessary. The Auditor issued unmodified opinions.

It is respectfully requested that the 2014 CAFR reports of the District and the Trust be received and ordered filed by the undersigned. The 2014 CAFR's and the Actuarial Valuation Report are available at [www.mwrd.org](http://www.mwrd.org).

Respectfully Submitted, Jacqueline Torres, Clerk/Director of Finance and Mary Ann Boyle, Treasurer  
JT:ra

Attachment



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

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**File #:** 15-0591, **Version:** 1

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### **TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015**

#### COMMITTEE ON FINANCE

Mr. David St. Pierre, Executive Director

Report on payment of principal and interest for outstanding District bonds due on June 1, 2015

Dear Sir:

In accordance with the Rules of the Board and the various bond ordinances, the District transferred \$51,517,720.05 to the paying agents for payment of interest on outstanding bonds due on June 1, 2015. An additional \$7,162,125.00 was paid by the paying agents for interest due on two partially and fully refunded issues of District bonds. The attached schedule indicates the amount paid on each bond issue.

The total District debt service payment on June 1, 2015, was therefore \$58,679,845.05.

Respectfully Submitted, Mary Ann Boyle, Treasurer, MAB:st

Attachment

**METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO  
DEBT SERVICE PAYMENT**

**June 1, 2015**

|                     |  | Unrefunded Portion |                         | Refunded Portion |                        | Total Debt Service Due  |
|---------------------|--|--------------------|-------------------------|------------------|------------------------|-------------------------|
|                     |  | Principal          | Interest                | Principal        | Interest               |                         |
| <b>Paying Agent</b> | <b>Bond Issue</b>  |                    |                         |                  |                        |                         |
| AMG                 | Capital Improvement Bonds, Unl December 2002C                      | -                  | -                       | -                | -                      | -                       |
| AMG                 | Capital Improvement Bonds, Lim December 2002D                      | -                  | -                       | -                | -                      | -                       |
| BNY                 | Refunding Bonds, Unl May 2006                                      | -                  | 8,665,000.00            | -                | -                      | 8,665,000.00            |
| BNY                 | Refunding Bonds, Lim May 2006                                      | -                  | 1,269,750.00            | -                | -                      | 1,269,750.00            |
| AMG                 | Capital Improvement Bonds, Unl July 2006                           | -                  | -                       | -                | 2,500,000.00           | 2,500,000.00            |
| AMG                 | Capital Improvement Bonds, Lim July 2006                           | -                  | 587,750.00              | -                | 4,662,125.00           | 5,249,875.00            |
| AMG                 | Refunding Bonds, Series 2014D                                      | -                  | 1,422,671.53            | -                | -                      | 1,422,671.53            |
| AMG                 | Refunding Bonds, Unl March 2007A                                   | -                  | 4,201,375.00            | -                | -                      | 4,201,375.00            |
| AMG                 | Refunding Bonds, Unl March 2007B                                   | -                  | 2,410,931.25            | -                | -                      | 2,410,931.25            |
| AMG                 | Refunding Bonds, Unl March 2007C                                   | -                  | 2,673,825.00            | -                | -                      | 2,673,825.00            |
| AMG                 | Capital Improvement Bonds, Lim August 2009 BAB's                   | -                  | 17,160,000.00           | -                | -                      | 17,160,000.00           |
| BNY                 | Capital Improvement Bonds, Lim July 2011                           | -                  | 6,703,921.88            | -                | -                      | 6,703,921.88            |
| BNY                 | Taxable Bonds, Lim July 2011                                       | -                  | 95,495.73               | -                | -                      | 95,495.73               |
| BNY                 | Capital Improvement Bonds, Unl July 2011                           | -                  | 1,869,115.63            | -                | -                      | 1,869,115.63            |
| AMG                 | Capital Improvement Bonds, Series 2014C                            | -                  | 1,496,400.00            | -                | -                      | 1,496,400.00            |
| AMG                 | Capital Improvement Bonds, Series 2014A                            | -                  | 2,013,888.89            | -                | -                      | 2,013,888.89            |
| AMG                 | Capital Improvement Bonds (Alternate Revenue Source), Series 2014B | -                  | 947,595.14              | -                | -                      | 947,595.14              |
|                     |  | -                  | -                       | -                | -                      | -                       |
|                     |  | <b>\$ -</b>        | <b>\$ 51,517,720.05</b> | <b>\$ -</b>      | <b>\$ 7,162,125.00</b> | <b>\$ 58,679,845.05</b> |



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

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**File #:** 15-0598, **Version:** 1

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### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON FINANCE

Mr. David St. Pierre, Executive Director

Report on Cash Disbursements for the Month of April 2015, in the amount of \$36,512,852.62

Dear Sir:

Submitted herewith are the Cash Disbursements for the Month of April 2015.

|                                |                        |
|--------------------------------|------------------------|
| Corporate Fund                 | \$11,290,463.12        |
| Capital Improvements Bond Fund | 22,634,944.55          |
| All Other Funds                | <u>2,587,444.95</u>    |
| Total Disbursements            | <u>\$36,512,852.62</u> |

The Chairman of the Committee on Finance submits the following Cash Disbursements Report for acceptance by the Board of Commissioners. JP Morgan Chase check series 380097 through 381069 as well as electronic vendor payments, both as referenced on Cash Disbursements Report pages 1-33 are included in the attached report.

Pursuant to 70 ILCS 2605 11.23, the Comptroller shall conduct audits of all expenditures incident to all purchase orders and contracts awarded by the Director of Procurement and Materials Management. The Comptroller shall report the results of such audits to the President of the Board of Commissioners. As a result, it is requested that the Board of Commissioners accept the Cash Disbursements Report and direct the Clerk to publish and file the report.

Respectfully Submitted, Matthew Glavas, Comptroller

Attachment



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

File #: 15-0570, Version: 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON PROCUREMENT

Mr. David St. Pierre, Executive Director

Report of bid opening of Tuesday, May 19, 2015

Dear Sir:

Bids were received and opened on 5/19/2015 for the following contracts:

#### CONTRACT 14-254-3FR BLUE ISLAND GREEN INFRASTRUCTURE PROJECT

LOCATION: COOK COUNTY

ESTIMATE: \$413,904.00

#### GROUP: TOTAL

|                                 |              |
|---------------------------------|--------------|
| INDUSTRIA, INC.                 | \$663,838.00 |
| PATH CONSTRUCTION COMPANY, INC. | \$739,400.00 |
| REYES GROUP LTD                 | \$740,000.00 |

BIDDERS NOTIFIED: 696    PLANHOLDERS: 25

#### CONTRACT 15-040-11 FURNISH AND DELIVER COMPUTER SUPPLIES TO VARIOUS LOCATIONS FOR A ONE-YEAR PERIOD

LOCATION: VARIOUS

ESTIMATE: \$57,700.00

#### GROUP: A MISCELLANEOUS SUPPLIES

|   |            |
|---|------------|
| RUNCO OFFICE SUPPLY & EQUIPMENT COMPANY           | \$1,498.00 |
| NOVA STATIONERS, INC. D/B/A MEADOWS OFFICE SUPPLY | \$1,992.76 |
| PRO BIZ PRODUCTS                                  | \$2,352.98 |
| ATLAS STATIONERS                                  | \$2,526.50 |
| MIDWEST COMPUTER PRODUCTS, INC.                   | \$2,560.00 |

#### GROUP: B BLACK LAZER TONER CARTRIDGES

|   |             |
|---|-------------|
| ATLAS STATIONERS                                  | \$22,884.00 |
| MIDWEST COMPUTER PRODUCTS, INC.                   | \$29,001.50 |
| RUNCO OFFICE SUPPLY & EQUIPMENT COMPANY           | \$29,662.00 |
| NOVA STATIONERS, INC. D/B/A MEADOWS OFFICE SUPPLY | \$43,612.62 |
| PRO BIZ PRODUCTS                                  | \$47,446.64 |

#### GROUP: C COLOR LAZER TONER CARTRIDGES AND PRINTER ACCESSORIES

|   |             |
|---|-------------|
| ATLAS STATIONERS                                  | \$21,263.25 |
| RUNCO OFFICE SUPPLY & EQUIPMENT COMPANY           | \$21,278.00 |
| NOVA STATIONERS, INC. D/B/A MEADOWS OFFICE SUPPLY | \$22,748.86 |
| PRO BIZ PRODUCTS                                  | \$23,778.67 |
| MIDWEST COMPUTER PRODUCTS, INC.                   | \$24,816.00 |

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**File #:** 15-0570, **Version:** 1

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BIDDERS NOTIFIED: 521    PLANHOLDERS: 35

Respectfully Submitted, Darlene A. LoCascio, Director of Procurement and Materials Management



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

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**File #:** 15-0587, **Version:** 1

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### **TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015**

#### COMMITTEE ON PROCUREMENT

Mr. David St. Pierre, Executive Director

Report of bid opening of Tuesday, May 26, 2015

Dear Sir:

Bids were received and opened on 5/26/2015 for the following contracts:

CONTRACT 15-910-21 FURNISH AND DELIVER REPLACEMENT PARTS FOR WALKER SLUDGE HEAT EXCHANGERS

LOCATION: STICKNEY, IL

ESTIMATE: \$225,000.00

GROUP: TOTAL

WALKER PROCESS EQUIPMENT DIVISION OF     \$197,852.00  
MCNISH CORPORATION

BIDDERS NOTIFIED: 540     PLANHOLDERS: 11

Respectfully Submitted, Darlene A. LoCascio, Director of Procurement and Materials Management





# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

File #: 15-0569, Version: 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON PROCUREMENT

Mr. David St. Pierre, Executive Director

Authorization to accept amended annual rental bid for Contract 14-366-11 Amendment to Bid for Proposal to Lease for 39-years on approximately 11.66 acres of District real estate located at 3301 S. California Avenue in Chicago, Illinois; Main Channel Parcel 42.03 from Gardner-Gibson, Incorporated in the amount of \$841,000.00  
(*Deferred from the May 21, 2015 Board Meeting*)

Dear Sir:

At its meeting of September 18, 2014, the Board of Commissioners ("Board") authorized the Director of Procurement and Materials Management to advertise for public tender of bids a lease of approximately 11.66 acres of District real estate located at 3301 S. California Avenue in Chicago, Illinois and known as Main Channel Parcel 42.03. The minimum acceptable annual rental bid was established at \$601,000.00.

The initial bid opening for the subject lease was held on November 18, 2014, and the bids received were as follows:

| <b>Bidder</b>                            | <b>Annual Rental Bid</b> |
|--|--------------------------|
| Ameropan Oil Company<br>(current tenant) | \$607,010.00             |
| Gardner-Gibson, Incorporated             | \$776,000.00             |

At its meeting of March 5, 2015, instead of accepting either bid, the Board authorized the Executive Director to solicit amended bids from the two responsible bidders as permitted under the District's leasing statute with the amended minimum acceptable initial annual rental bid being established at \$814,800.00 which was 5% higher than the highest bid of \$776,000.00.

The opening for the amended bids was held on April 14, 2015, and one bid was received from Gardner-Gibson, Incorporated in the amount of \$841,000.00. Ameropan Oil declined to submit an amended bid.

While the minimum annual rental bid was established at 10% of the established fair market value, the amended bid submitted by Gardner-Gibson, Incorporated is 13.978% of the established fair market value and 8.47% greater than its initial bid.

The Finance Department has reviewed Gardner-Gibson, Incorporated's financial information and has reported that it has demonstrated the ability to meet its financial obligations under the Contract 14-366-11 proposed lease.

Gardner-Gibson, Incorporated proposes to use the site for the operation of a liquid asphalt and petroleum terminal.

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**File #:** 15-0569, **Version:** 1

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It is requested that the Executive Director recommend to the Board of Commissioners that it accept the amended initial annual rental bid for Contract 14-366-11 Amendment to Bid for Proposal to Lease for 39-years on approximately 11.66 acres of District real estate located at 3301 S. California Avenue in Chicago, Illinois; Main Channel Parcel 42.03 from Gardner-Gibson, Incorporated in the amount of \$841,000.00.

It is also requested that the Executive Director recommend to the Board of Commissioners that it authorize and direct the Chairman of the Committee on Finance and the Clerk to execute the lease agreement after it has been approved by the General Counsel as to form and legality.

Requested, Ronald M. Hill, General Counsel, RMH:STM:vp:bh

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management

Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

Attachment





California Ave.

Main Channel

M.C. Parcel 42.03

Main Channel

55





# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

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**File #:** 15-0571, **Version:** 1

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### **TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015** **COMMITTEE ON PROCUREMENT**

Mr. David St. Pierre, Executive Director

Authorization to amend Board Order of May 7, 2015, regarding authority to advertise Contract 15-340-11, Services to Furnish, Deliver and Install Exterior Electronic Signs at Various District Locations for a Two Year Period, estimated cost \$118,000.00, Account 201-50000-634990, Requisition 1388441, Agenda No. 8, File No. 15-0454A

Dear Sir:

At the Board meeting of May 7, 2015, the Board of Commissioners duly ordered the above stated action, Agenda Item No. 8, File No. 15-0454A.

Due to the motion at the May 7, 2015 Board meeting and resulting order indicated, Services to Furnish, Deliver and Install Exterior Signs at Various District Locations for a Two Year Period, and "...estimated 2015 and 2016 expenditures are \$100,000.00 per year. The bid deposit for this contract is \$10,000.00." Same should have read, Services to Furnish, Deliver and Install Exterior Signs at Various District Locations, and "...estimated 2015 and 2016 expenditures are \$59,000.00 per year. The bid deposit for this contract is \$5,900.00".

All other information provided in the transmittal letter is correct.

Therefore, it is requested that the aforesaid Board order of May 7, 2015 be amended to effect the changes set forth above, otherwise to remain in force and effect as heretofore enacted.

Requested, Denice E. Korcal, Director of Human Resources

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management

Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

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**File #:** 15-0582, **Version:** 1

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### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON PROCUREMENT

Mr. David St. Pierre, Executive Director

Authorization to amend Board Order of May 21, 2015, regarding Issue purchase order for Contract 15-604-11, Furnishing and Delivering Plumbing Supplies, in an amount not to exceed \$132,170.00, Accounts 101-67000, 68000, 69000-623090, Requisitions 1386157, 1385820, 1384955, 1385014, 1386812 and 1386801, Agenda Item No. 28, File No. 15-0542

Dear Sir:

At the Board meeting of May 21, 2015, the Board of Commissioners duly authorized the above stated action, Agenda Item No. 28, File No. 15-0542.

A textual error in the title/transmittal letter and resulting order indicated, "Issue purchase order for Contract 15-604-11, Furnishing and Delivering Plumbing Supplies, in an amount not to exceed \$132,170.00, Accounts 101-67000, 68000, 69000-623090, Requisitions 1386157, 1385820, 1384955, 1385014, 1386812 and 1386801." Same should have read, "Issue purchase order for Contract 15-604-11, Furnishing and Delivering Plumbing Supplies, to Columbia Pipe & Supply Company, in an amount not to exceed \$132,170.00, Accounts 101-67000, 68000, 69000-623090, Requisitions 1386157, 1385820, 1384955, 1385014, 1386812 and 1386801."

All other information provided in the transmittal is correct.

Therefore, it is requested that the aforesaid Board Order of May 21, 2015, be amended to effect the changes set forth above, otherwise to remain in force and effect as heretofore enacted.

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management, DAL:SEB:cm

Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

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**File #:** 15-0596, **Version:** 1

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### **TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015**

#### COMMITTEE ON PROCUREMENT

Mr. David St. Pierre, Executive Director

Authorization to amend Board Order of May 21, 2015, regarding Issue purchase orders and enter into an agreement with Dresser, Inc., to Provide Technical Field Services for Blowers at the Calumet and Egan Water Reclamations Plants, in an amount not to exceed \$25,000.00, Accounts 101-67000- 68000-612650, Requisitions 1393038 and 1364669, Agenda Item No. 27, File No. 15-0539

Dear Sir:

At the Board meeting of May 21, 2015, the Board of Commissioners duly authorized the above stated action, Agenda Item No. 27, File No. 15-0539.

A textual error in the title/transmittal letter and resulting order indicated, "Requisitions 1393038 and 1364669." Same should have read, "Requisitions 1393038 and 1394669."

All other information provided in the transmittal is correct.

Therefore, it is requested that the aforesaid Board Order of May 21, 2015, be amended to effect the changes set forth above, otherwise to remain in force and effect as heretofore enacted.

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management, DAL:SEB:st  
Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement  
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

**File #:** 15-0579, **Version:** 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON PROCUREMENT

Mr. David St. Pierre, Executive Director

Authority to advertise Contract 15-605-21 Furnish and Deliver Two Windrow Turners and One Screener to LASMA and CALSMA, estimated cost \$1,500,000.00, Account 201-50000-634650, Requisition 1398950

Dear Sir:

Contract documents and specifications have been prepared for Contract 15-605-21, furnish and deliver two windrow turners and one screener to LASMA and CALSMA at the request of the Maintenance and Operations Department.

The purpose of this contract is to procure two self-propelled windrow turners and one mobile star screener to properly mix, aerate and process a mix of biosolids and wood chips for purposes of year round composting. This will accelerate the composting process to four or five weeks, and reduce the cost of low solids drying operations to achieve Class A designation. It will also help reduce odors emanating from the final composted product, improve the marketability of the final product and increase the acreage available for drying operations.

The estimated cost for this contract is \$1,500,000.00.

The bid deposit for this contract is \$75,000.00.

The Multi-Project Labor Agreement (MPLA) is not applicable to this contract because it is primarily a furnish and deliver contract.

The Affirmative Action Interim Ordinance, Appendix D, will not be included because it is primarily a furnish and deliver contract.

The tentative schedule for this contract is as follows:

|             |                  |
|-------------|------------------|
| Advertise   | July 1, 2015     |
| Bid Opening | July 21, 2015    |
| Award       | August 6, 2015   |
| Completion  | October 30, 2015 |

Funds will be available in Account 201-50000-634650 upon approval of a transfer under a separate item at this meeting.

In view of the foregoing, it is recommended that the Director of Procurement and Materials Management be authorized to advertise Contract 15-605-21.

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**File #:** 15-0579, **Version:** 1

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Requested, Manju Prakash Sharma, Director of Maintenance and Operations, AQ:SO'C:MAG:rf:SF  
Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management  
Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement  
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board  
of Commissioners for June 4, 2015





# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

**File #:** 15-0525, **Version:** 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON Procurement

Mr. David St. Pierre, Executive Director

Issue purchase order to SAS Institute Inc. to Furnish and Deliver Renewal of Existing SAS Software and SAS Software Extensions Licenses, in an amount not to exceed \$31,110.00, Account 101-27000-612820, Requisition 1398275

Dear Sir:

Authorization is requested to issue a purchase order to SAS Institute Inc. to furnish and deliver renewal of existing SAS software and SAS software extensions licenses which provides for software licensing, technical support, media, and documentation for SAS software from August 1, 2015 through July 31, 2016.

SAS software is used to maintain the historical water quality database for rivers and streams within the District's jurisdiction and to provide analysis to support reports for external agencies such as the IEPA, USEPA, and Army Corps of Engineers. It is also used to maintain the ground water monitoring database for the TARP. The Environmental Monitoring and Research staff of the Monitoring and Research Department utilizes the software and software extensions to perform daily analyses, data quality control maintenance and analytical statistics. The software is capable of more sophisticated statistical analysis than that which is provided by spreadsheets and similar software.

SAS Institute Inc., the sole service provider of software licensing, technical support, media, and documentation for SAS software, has submitted prices for the renewal licenses required. Inasmuch as SAS Institute Inc. is the only source of supply for the renewal licenses required, said purchase order may be issued without competitive bidding pursuant to Section 11.4 of the Purchasing Act.

SAS Institute Inc. is registered and in good standing with the State of Illinois.

The Multi-Project Labor Agreement is not applicable to this contract because it is primarily a furnish and deliver contract.

In view of the foregoing, it is requested that the Director of Procurement and Materials Management be authorized to issue said purchase order to SAS Institute Inc. in an amount not to exceed \$31,110.00.

Funds are available in Account 101-27000-612820.

Requested, John Sudduth, Acting Director of Information Technology, JS:BVS:bvs  
Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management  
Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement  
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

File #: 15-0576, Version: 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON PROCUREMENT

Mr. David St. Pierre, Executive Director

Issue purchase orders and enter into agreements for Contract 15-RFP-11 Legal Services for Workers' Compensation Defense for the period June 1, 2015 through May 31, 2017 with Dennis Noble & Associates, P.C. in an amount not to exceed \$170,000.00, Neuson Law, P.C. in an amount not to exceed \$80,000.00, and Heyl, Royster, Voelker & Allen, P.C. in an amount not to exceed \$50,000.00. Account 101-25000-601170. Requisitions 1394106, 1394107, and 1394108 (*Deferred from the May 21, 2015 Board Meeting*)

Dear Sir:

Authorization is requested to issue purchase orders and enter into agreements with Dennis Noble & Associates, P.C., Neuson Law, P.C., and Heyl, Royster, Voelker & Allen, P.C. to provide legal services for Workers' Compensation Defense on an as-needed basis for the period June 1, 2015 through May 31, 2017. Services to be provided by legal counsel for Worker' Compensation claims include advice and counsel on disputed claims and litigated claims, processing of pro se settlements, and representation before arbitrators at the Illinois Workers' Compensation Commission and on appeals.

On March 11, 2015, Request for Proposal 15-RFP-11 Legal Services for Workers' Compensation Defense was advertised. Eighty-three (83) firms were notified and twenty-two (22) firms requested proposal documents. The District received a total of eight (8) responsive proposals on March 26, 2015 from the following vendors: Heyl, Royster, Voelker & Allen, P.C., Neuson Law, P.C., Dennis Noble & Associates, P.C., Slavin & Slavin, LLC, Hennessy & Roach, P.C., Del Galdo Law Group, LLC, Leahy, Eisenberg & Fraenkel, LTD, and Roddy Law, LTD.

The proposals were evaluated by staff from the Human Resources and Procurement and the Materials Management Departments. The criteria for these evaluations were outlined in Request for Proposal 15-RFP-11 and included: understanding of the project; approach to the work; technical competence; personnel effectiveness; and affirmative action. Following the preliminary evaluation of proposals, excluding cost, six of the eight proposers were deemed to be finalists. Finalist interviews were conducted on April 15, 2015 and April 16, 2015. A solicitation was sent to the six finalists on April 23, 2015 for an unqualified "best and final" offer. The "best and final" offers were returned to the Director of Procurement and Materials Management on April 29, 2015.

Based on the evaluation of the proposals using the criteria described above and the pricing provided in the "best and final" offer, it is recommended that contracts be awarded to three firms: Dennis Noble & Associates, P.C, Neuson Law, P.C., and Heyl, Royster, Voelker & Allen, P.C. All three firms have attorneys on staff with extensive defense litigation experience before the Illinois Workers' Compensation Commission in Chicago and the firms demonstrated a clear understanding of the services being requested in 15-RFP-11.

Dennis Noble of Dennis Noble & Associates, P.C. has extensive experience and success in defending the

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**File #:** 15-0576, **Version:** 1

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District at the Commission level as well as at the Appellate level. Bridget Neuson of Neuson Law, P.C. has also been successful in representing the District, and as Ms. Neuson is both a nurse and an attorney, she provides a level of medical knowledge that is crucial in defending the District. Heyl, Royster, Voelker & Allen, P.C. demonstrated that they have extensive experience and success representing public entities both at the Commission as well as the Appellate level.

Inasmuch as the firms Dennis Noble & Associates, P.C., Neuson Law, P.C., and Heyl, Royster, Voelker & Allen, P.C. possess a high degree of professional skill, record of past success, competitive pricing as well as innovative strategies to help the District embrace the ongoing challenges at the Illinois Workers' Compensation Commission, it is recommended that the Director of Procurement and Materials Management be authorized to issue purchase orders and enter into agreements per Section 11.4 of the Purchasing Act.

In view of the foregoing, it is requested that the Director of Procurement and Materials Management be authorized to issue purchase orders and enter into agreements with Dennis Noble & Associates, P.C. in an amount not to exceed \$170,000.00, Neuson Law, P.C. in an amount not to exceed \$80,000.00, and Heyl, Royster, Voelker & Allen, P.C. in an amount not to exceed \$50,000.00. The total amount of the two year contract is not to exceed \$300,000.00.

Funds for the 2015 expenditure, in the amount of \$87,500.00, are available in Account 101-25000-601170. The estimated expenditures for 2016 and 2017 are \$150,000 and \$62,500.00 respectively. Funds for the 2016 and 2017 expenditures are contingent on the Board of Commissioners' approval of the District's budget for those years.

Requested, Denice E. Korcal, Director of Human Resources

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management

Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

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# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

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**File #:** 15-0577, **Version:** 1

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### **TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015**

#### COMMITTEE ON PROCUREMENT

Mr. David St. Pierre, Executive Director

Issue purchase order and enter into an agreement with DLT Solutions, LLC for furnishing and delivering AutoDesk Constructware Software License Renewal and Consulting Services, in an amount not to exceed \$185,488.92, Account 101-27000-612820, Requisition 1397613

Dear Sir:

Authorization is requested to issue a purchase order and enter into an agreement with DLT Solutions, LLC for furnishing and delivering AutoDesk Constructware software license renewal and consulting services for a one-year period under GSA Joint Purchasing Contract GS-35F-4543G. The District has the ability to participate in GSA contracts under the Government Joint Purchasing Act, 30 ILCS 525/0.01 et.seq. The term of coverage is from June 29, 2015 through June 29, 2016.

GS-35F-4543G is a GSA Schedule 70 Contract which offers a wide range of software and accompanying services through licensing agreements. The GSA currently has a competitively bid contract with DLT Solutions, LLC for the purchase of AutoDesk, Inc. software and related services. The invitation to bid was issued to establish a contract to enable authorized governmental units to purchase AutoDesk software and software maintenance during the contract period which began on April 4, 1997, and expires on March 31, 2017.

The Engineering Department uses Constructware to manage the administration and documentation of all Capital construction projects in the District

DLT Solutions, LLC, the sole source of products under GSA Contract GS-35F-4543G, has submitted prices for the products required. Inasmuch as DLT Solutions, LLC is the only source of supply for the products required under GSA Contract GS-35F-4543G, nothing would be gained by advertising for bids (Section 11.4 of the Purchasing Act).

DLT Solutions, LLC is registered and in good standing with the State of Illinois.

The Multi-Project Labor Agreement is not applicable to this contract because it is primarily a furnish and deliver contract.

In view of the foregoing, it is recommended that the Director of Procurement and Materials Management be authorized to issue a purchase order and enter into an agreement with DLT Solutions, LLC in an amount not to exceed \$185,488.92

Funds are available in Account 101-27000-612820.

Requested, John Sudduth, Acting Director of Information Technology, JS:BVS:bvs

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**File #:** 15-0577, **Version:** 1

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Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management  
Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement  
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

File #: 15-0584, Version: 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON PROCUREMENT

Mr. David St. Pierre, Executive Director

Issue purchase orders to Drydon Equipment, Inc., to Furnish and Deliver Hayward Gordon, Varec, Watson Marlow, Fairbanks Morse, and Pentair Pumps and Parts, to Various Locations, in a total amount not to exceed \$239,900.00, Accounts 101-67000, 68000, 69000-623090, 623270

Dear Sir:

Authorization is requested to issue purchase orders to Drydon Equipment, Inc., to furnish and deliver Hayward Gordon, Varec, Watson Marlow, Fairbanks Morse, and Pentair pumps and parts, to various locations, on an as needed basis. All pumps and parts under this authority will be delivered prior to December 31, 2015.

Drydon Equipment, Inc., the sole source distributor for Hayward Gordon, Varec, Watson Marlow, Fairbanks Morse, and Pentair pumps and parts, has submitted prices for the pumps and parts required. Purchase orders will be issued for pumps and parts as needed based on the prices received from Drydon Equipment, Inc. Inasmuch as Drydon Equipment, Inc., is the only source of supply for the pumps and parts required, nothing would be gained by advertising for bids (Section 11.4 of the Purchasing Act).

The pumps and parts are needed by the trades on an as needed basis to perform their work.

Drydon Equipment, Inc., is registered to transact business in Illinois and is in good standing. The Multi-Project Labor Agreement is not applicable because this is primarily a furnish and deliver contract.

In view of the foregoing, it is recommended that the Director of Procurement and Materials Management be authorized to issue purchase orders to Drydon Equipment, Inc., in an amount not to exceed \$239,900.00, on an as needed basis ending December 31, 2015. Purchase orders will be issued when the material is required. Payment will be based on the unit cost received by Drydon Equipment, Inc.

Funds are available in Accounts 101-67000, 68000, 69000-623090, 623270.

Requested, Manju Prakash Sharma, Director of Maintenance and Operations  
Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management, DAL:SEB:JN:ms  
Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement  
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

**File #:** 15-0586, **Version:** 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON PROCUREMENT

Mr. David St. Pierre, Executive Director

Issue purchase order for Contract 15-100-11, Furnish and Deliver Automatic Samples, to Gasvoda & Associates, Inc., in an amount not to exceed \$45,195.00, Account 101-16000-623570, Requisition 1387993

Dear Sir:

On November 20, 2014, the Board of Commissioners authorized the Director of Procurement and Materials Management to advertise for bids, Contract 15-100-11 Furnish and Deliver Automatic Samples. The contract expires ninety days from receipt of the purchase order.

In response to a public advertisement of April 1, 2015, a bid opening was held on April 14, 2015. The bid tabulation for this contract is:

|                               |             |
|-------------------------------|-------------|
| GASVODA & ASSOCIATES, INC.    | \$45,195.00 |
| BOOTH COMPANY, INC. GEORGE E. | \$51,872.55 |
| HACH COMPANY                  | \$52,315.20 |

Six hundred twenty-four (624) companies were notified of this contract being advertised and twenty (20) companies requested specifications.

Gasvoda & Associates, Inc., the lowest responsible bidder, is proposing to perform the contract in accordance with the specifications. The estimated cost for this contract was \$52,500.00, placing the bid of \$45,195.00, approximately 14 percent below the estimate.

The Multi-Project Labor Agreement is not applicable to this contract because the classification of work does not fall within the provisions of the MPLA.

The Affirmative Action Interim Ordinance Appendix D is not included in this contract because the estimate is less than the minimum threshold established by Section 4 of the Affirmative Action Interim Ordinance.

In view of the foregoing, it is recommended that the Director of Procurement and Materials Management be authorized to issue a purchase order for Contract 15-100-11 to Gasvoda & Associates, Inc., in an amount not to exceed \$45,195.00.

The bid deposit, in the amount of \$2,625.00, will be retained in lieu of a performance bond, which is satisfactory to the Law Department and approved by the Director of Procurement and Materials Management.

Funds are available in Account 101-16000-623570.

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management, DAL:SEB:cm

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**File #:** 15-0586, **Version:** 1

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Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement  
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015





# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

File #: 15-0590, Version: 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 04, 2015

#### COMMITTEE ON PROCUREMENT

Mr. David St. Pierre, Executive Director

Authority to award Contract 15-006-11 Furnish and Deliver Janitorial Supplies to Various Locations for a One (1) Year Period, to Cicero Manufacturing & Supply Company, Inc., in an amount not to exceed \$58,958.19, Accounts 101-20000-623110, 623170, 623660

On February 19, 2015, the Board of Commissioners authorized the Director of Procurement and Materials Management to advertise for bids, Contract 15-006-11 furnish and deliver janitorial supplies to various locations for a one (1) year period, beginning approximately June 1, 2015 and ending May 31, 2016.

In response to a public advertisement of March 25, 2015, a bid opening was held on April 21, 2015. The bid tabulation for this contract is:

|   |               |
|---|---------------|
| AZTEC SUPPLY CORPORATION                | *\$55,122.86  |
| FAIRMONT SUPPLY COMPANY                 | *\$55,762.24  |
| CICERO MANUFACTURING & SUPPLY CO., INC. | \$58,958.19   |
| THE STANDARD COMPANIES                  | \$59,205.97   |
| EQUITY INDUSTRIAL SUPPLY, INC.          | *\$77,113.61  |
| PROFESSIONAL CLEANING SUPPLIES          | *\$384,986.08 |
| *corrected total                        |               |

Three hundred eighty six (386) companies were notified of the contract being advertised and fifty (50) companies requested specifications.

The lowest bid from Aztec Supply Corporation proposed alternates which did not meet specifications set forth in the contract documents. Therefore, the bid was considered non-responsive and rejected in the public's best interest. The Director of Procurement and Materials Management has notified Aztec Supply Corporation of this action.

The next low bid from Fairmont Supply Company qualified the units of measure for items 2 and 4 of the contract specifications which is prohibited. Therefore, the bid was considered non-responsive and rejected in the public's best interest. The Director of Procurement and Materials Management has notified Fairmont Supply Company of this action.

Cicero Manufacturing & Supply Company, Inc., the lowest responsible bidder for this contract, is proposing to perform the contract in accordance with the specifications. The estimated cost for this contract is \$62,000.00, placing the total bid of \$58,958.19 approximately 5 percent below the estimate.

The Multi-Project Labor Agreement (MPLA) is not applicable to this contract because it is primarily a furnish and deliver contract.

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**File #:** 15-0590, **Version:** 1

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The Affirmative Action Interim Ordinance Appendix D is not included in this contract because it is primarily a furnish and deliver contract.

In view of the foregoing, it is recommended that the Director of Procurement and Materials Management be authorized to award Contract 15-006-11, Furnish and Deliver Janitorial Supplies to Various Locations for a One (1) Year Period to Cicero Manufacturing & Supply Company, Inc., in an amount not to exceed \$58,958.19.

Purchase orders will be issued when material is required. Payment will be based on the unit cost as indicated in the contract documents.

Funds are available in Accounts 101-20000-623110, 623170, 623660.

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management, DAL:SEB:CDD:np  
Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement  
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

Attachment

| #15A06-JANITORIAL SUPPLIES |        |  |     |
|----------------------------|--------|--|-----|
| Item                       | MM #   | DESCRIPTION                              | U/I |
| 1                          | 107520 | PAIL,WATER,STEEL, WITT #114, 14 QT.      | EA  |
| 2                          | 111634 | ABSORBENT,GRANULAR,OIL/WTR,"OIL DRI"50LB | EA  |
| 3                          | 111673 | SWEEPING COMPOUND,WAX BASED,100 LB       | EA  |
| 4                          | 111674 | SWEEPING COMPOUND,OIL BASED,300 LB       | EA  |
| 5                          | 111704 | SQUEEGEE,WINDOW,12",W/BLADE&HANDLE       | EA  |
| 6                          | 111706 | SQUEEGEE/SCRAPERS,FLOOR,18 IN.           | EA  |
| 7                          | 111710 | SCRAPERS,FLOOR,STL,36",CURVED            | EA  |
| 8                          | 111714 | BROOM,ANGLE,13 IN.                       | EA  |
| 9                          | 111715 | BROOM,STREET,W/O HANDLE                  | EA  |
| 10                         | 111718 | BROOM,CORN,WAREHOUSE                     | EA  |
| 11                         | 111719 | BRUSH,GLUE,ROUND,X-HVY,1-1/2IN.DIA.      | EA  |
| 12                         | 111720 | BRUSH,WATER TOOL,RD,1"DIA.,3 1/2" NYLON  | EA  |
| 13                         | 111724 | BRUSH,BOTTLE,3"x15-3/4"                  | EA  |
| 14                         | 111725 | BRUSH,COUNTER / BENCH,13-1/8"            | EA  |
| 15                         | 111728 | BRUSH,TOILET BOWL,WHITE,NYLON            | EA  |
| 16                         | 111730 | BRUSH,SCRUB,HAND                         | EA  |
| 17                         | 111731 | BRUSH,SCRUB,LONG HANDLE                  | EA  |
| 18                         | 111732 | BRUSH,SCRUB,SHORT HANDLE                 | EA  |
| 19                         | 111733 | BRUSH/SQUEEGEE,DECK,1-5/16"x2-7/8"x14"   | EA  |
| 20                         | 111736 | BRUSH,ACID,TIN FERRULE,3/8 IN.           | EA  |
| 21                         | 111737 | BRUSH,WINDOW, 7/8" X 2-9/16" X 9-5/8"    | EA  |
| 22                         | 111739 | BRUSH,FLOOR,HORSEHAIR,18 IN.             | EA  |
| 23                         | 111740 | BRUSH,FLOOR,HORSEHAIR,24 IN.             | EA  |
| 24                         | 111741 | BRUSH,FLOOR,POLYSTYRENE/PROPYLENE,18 IN. | EA  |
| 25                         | 111743 | BRUSH,FLOOR,HORSEHAIR,36 IN.             | EA  |
| 26                         | 111744 | PAIL,PLASTIC,W/O COVER,WHITE,3-1/2 GAL.  | EA  |
| 27                         | 111745 | LID,PLASTIC,WHITE,FOR 3-1/2 GALLON PAIL  | EA  |
| 28                         | 111746 | PAIL,PLASTIC,WHITE,W/O COVER,5 GAL.      | EA  |
| 29                         | 111749 | CAN,WASTE,W/COVER,GALVANIZED,30-32 GAL.  | EA  |
| 30                         | 111752 | CONTAINER,RUBBERMAID"BRUTE",44 GAL.      | EA  |
| 31                         | 111753 | DOLLY,RUBBERMAID"BRUTE",#2640,FITS 44GAL | EA  |
| 32                         | 111755 | LID,FLAT,RUBBERMAID"BRUTE",#2645,F/44GAL | EA  |
| 33                         | 111760 | DEODORANT BLOCKS,URINAL,4 OZ, NON-PARA   | BX  |
| 34                         | 111761 | DEODORANT BLOCKS,HANGING,TOILET,4 OZ.    | BX  |
| 35                         | 111774 | DISPENSER,TOILET SEAT COVER,250 PK.      | EA  |
| 36                         | 111785 | CUP,PAPER,PLAIN,WATER,SOLO #450,100/PKG  | PK  |
| 37                         | 111788 | HANDLE,FRICTION FIT,ROUND,WOOD,1-1/8X60" | EA  |
| 38                         | 111790 | HANDLE,DUST MOP,SWIVEL SNAP,12"x36"SIZE  | EA  |
| 39                         | 111792 | HANDLE,THREADED STEEL ADAPTER,15/16"x60" | EA  |
| 40                         | 111794 | PAD,SCRUBBING,GREEN,3M SCOTCH BRITE #96  | EA  |
| 41                         | 111802 | PAD,STRIPPING,BLACK,17 IN. X 1 IN.       | CS  |
| 42                         | 111809 | PAD,STRIPPING,BLACK,19 IN.,3M            | CS  |
| 43                         | 111810 | PAD,POLISHING,WHITE,1 IN. X 19 IN.       | CS  |
| 44                         | 111816 | BLOCK,WAX APPLICATOR,16 IN.,W/APPLICATOR | EA  |
| 45                         | 111817 | PAD,LAMBSWOOL REFILL, 16 X 5-1/2 IN.     | EA  |
| 46                         | 111818 | SCRUBBER,W/PLASTIC HANDLE,PADDLEBUG TYPE | EA  |
| 47                         | 111819 | PAD,CLEANING,HAND,TAN-HVY DUTY,6X9X5/16" | EA  |
| 48                         | 111820 | PAD,CLEANING,HAND,MAROON,6X9X5/16",3M    | EA  |
| 49                         | 111821 | PAD,CLEANING,GRAY-ULTRA FINE,6"x9"x5/16" | EA  |
| 50                         | 111822 | PAD,SCRUBBING,DOODLEBUG,WHITE            | BX  |
| 51                         | 111823 | PAD,INSTA-LOCK,PADDLEBUG,BROWN           | BX  |
| 52                         | 111824 | PAN,DUST,BLACK STEEL,5"x7-1/2"x12-1/4"   | EA  |
| 53                         | 111828 | HEAD,DUST MOP,RECTANGULAR,SLIP-ON,12"    | EA  |
| 54                         | 111830 | HEAD,MOP,WET TYPE,16 OZ.,4 PLY           | EA  |
| 55                         | 111831 | HEAD,MOP,WET TYPE,24 OZ.,4 PLY           | EA  |
| 56                         | 111832 | HEAD,DUST MOP,36 IN.,4 PLY,SLIP-ON TYPE  | EA  |
| 57                         | 111833 | FRAME,DUST MOP,12 IN.X5 IN.,STL          | EA  |
| 58                         | 111834 | HANDLE,MOP,WET,WOOD,60 IN.,QUICK RELEASE | EA  |
| 59                         | 111835 | BRACE,HANDLE,F/WOOD BACKED FLOOR BRUSH   | EA  |
| 60                         | 111836 | FRAME,DUST MOP,36 IN.X5 IN.,STL          | EA  |

|    |        |   |    |
|----|--------|---|----|
| 61 | 111845 | SCREEN, URINAL, SCENTED, RUBBER, ONE SIZE     | EA |
| 62 | 111853 | BUCKET, MOP, PLASTIC, W/CASTERS, 35 QT, #7570 | EA |
| 63 | 111856 | WRINGER, MOP, PRESSDOWN, YELLOW, #7575-88Y    | EA |
| 64 | 111859 | COVER, TOILET SEAT, PAPER, DISPOSABLE, 16X11  | PK |
| 65 | 112369 | INSECTICIDE, AEROSOL, WASP/BEE, 13.5 OZ.CAN   | EA |
| 66 | 112370 | INSECTICIDE, AEROSOL, FLYING INSECT           | EA |
| 67 | 112371 | REPELLENT, INSECT, BODY SPRAY, 6 OZ.CAN       | EA |
| 68 | 112372 | INSECTICIDE, AEROSOL, ANT&ROACH               | EA |
| 69 | 112424 | PAPER, WRAPPING, BROWN KRAFT, 36"W, 9"DIA.RL  | EA |
| 70 | 114723 | CLEANER, DEGREASER, "TOUGH ON GREASE" 1GAL.   | EA |
| 71 | 116104 | CLEANSER, POLISHING, POWDER, NON-TOXIC        | EA |
|    |        |   |    |



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

File #: 15-0597, Version: 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON PROCUREMENT

Mr. David St. Pierre, Executive Director

Authority to award Contract 15-053-11 Furnish and Deliver Lamps to Various Locations for a One (1) Year Period, to Graybar Electric Company, in an amount not to exceed \$111,141.84, Account 101-20000-623070

Dear Sir:

On February 5, 2015, the Board of Commissioners authorized the Director of Procurement and Materials Management to advertise for bids, Contract 15-053-11 furnish and deliver lamps to various locations for a one (1) year period, beginning approximately May 1, 2015 and ending April 30, 2016.

In response to a public advertisement of February 18, 2015, a bid opening was held on March 10, 2015. The bid tabulation for this contract is:

|                                       |               |
|---------------------------------------|---------------|
| T & N CHICAGO, INC.                   | \$77,869.15   |
| BROOK ELECTRICAL SUPPLY COMPANY       | \$99,081.74   |
| PRODUCTION DISTRIBUTION COMPANIES     | \$102,216.64  |
| CRESCENT ELECTRIC SUPPLY COMPANY      | \$104,866.83  |
| HELSEL - JEPPEPERSON ELECTRICAL, INC. | \$109,705.62  |
| GRAYBAR ELECTRIC CO.                  | *\$111,141.84 |
| EVERGREEN SUPPLY COMPANY              | \$116,497.98  |

\* Corrected total

Six hundred and eighty nine (689) companies were notified of this contract being advertised and thirty two (32) companies requested specifications.

The low bid submitted by T & N Chicago, Inc., offered a substitution on an item that did not comply with the Board of Standards specifications. The value of the item represents approximately sixty (60) percent of the contract value. In accordance with the contract documents, substitutions are not acceptable; therefore, their bid is considered non-responsive and rejected. The Director of Procurement and Materials Management has notified T & N Chicago, Inc., of this action.

Brook Electrical Supply Company offered substitute material on eleven (11) items that did not meet contract specifications by offering incorrect wattage and wrong size lamps. Therefore, in accordance with the contract documents, the bid is considered non-responsive and rejected. The Director of Procurement and Materials Management has notified Brook Electrical Supply Company of this action.

Review of the bid received from Production Distribution Companies revealed the bid was missing the required signature of the Bidder/Authorized Officer on the signature page, Page P-15 of the contract document; therefore, in accordance with the contract documents, the bid is considered non-responsive and rejected. The Director of Procurement and Materials Management has notified Production Distribution Companies of this

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**File #:** 15-0597, **Version:** 1

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action.

Crescent Electric Supply Company failed to bid on all items in the contract as required. They did not bid on six (6) items. Therefore, in accordance with the contract documents, the bid is considered non-responsive and rejected. The Director of Procurement and Materials Management has notified Crescent Electric Supply Company of this action.

Helsel Jepperson Electrical, Inc., offered substitute material on thirty-one (31) items that did not meet contract specifications by offering lamps with low rated life and low lumens. Therefore, the bid is considered non-responsive and rejected. The Director of Procurement and Materials Management has notified Helsel Jepperson Electrical, Inc., of this action.

Graybar Electric Company, the lowest responsible bidder, is proposing to perform the contract in accordance with the specifications. The estimated cost for this contract was \$120,000.00, placing the total bid of \$ 111,141.84, approximately 7.4 percent below the estimate.

The Multi-Project Labor Agreement (MPLA) is not applicable to this contract because it is primarily a furnish and deliver contract.

The Affirmative Action Interim Ordinance Appendix D is not included in this contract because it is primarily a furnish and deliver contract.

In view of the foregoing, it is recommended that the Director of Procurement and Materials Management be authorized to award Contract 15-053-11, to Graybar Electric Company, in an amount not to exceed \$ 111,141.84.

Purchase orders will be issued for the material as required. Payment will be based on the unit cost as indicated in the contract documents. There is no bid deposit for this contract.

Funds are available in Account 101-20000-623070.

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management, DAL:SEB:MB:tc  
Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement  
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

Attachment

| Item | MM #   | #15053-LAMPS                              | U/I |
|------|--------|---|-----|
|      |        | DESCRIPTION                               |     |
| 1    | 102852 | LAMP,MERCURY VAPOR,100W,E-23 1/2,MOGUL    | EA  |
| 2    | 102854 | LAMP,MERCURY VAPOR,175W,E-28,MOGUL,WHITE  | EA  |
| 3    | 102856 | LAMP,MERCURY VAPOR,250W,E-28,MOGUL,WHITE  | EA  |
| 4    | 102857 | LAMP,MERCURY VAPOR,400W,BT-37,MOGUL       | EA  |
| 5    | 102861 | LAMP,METAL HALIDE,70W,ED-17,MEDIUM,CLEAR  | EA  |
| 6    | 102862 | LAMP,METAL HALIDE,100W,E-17,MEDIUM,CLEAR  | EA  |
| 7    | 102863 | LAMP,METAL HALIDE,150W,ED-17,MEDIUM       | EA  |
| 8    | 102864 | LAMP,METAL HALIDE,175W,BT-28,MOGUL,CLEAR  | EA  |
| 9    | 102865 | LAMP,METAL HALIDE,175W,ED-17,CLEAR        | EA  |
| 10   | 102866 | LAMP,METAL HALIDE,250W,BT-28,MOGUL,CLEAR  | EA  |
| 11   | 102869 | LAMP,METAL HALIDE,1000W,BT-56,MOGUL       | EA  |
| 12   | 102870 | LAMP,MINIATURE,3W,0.025 AMP,BAYONET BASE  | EA  |
| 13   | 102872 | LAMP,MINIATURE,HALOGEN,150W,120V,#43693   | EA  |
| 14   | 102873 | LAMP,MINIATURE,28V,0.4 AMP,FLANGED BASE   | EA  |
| 15   | 102874 | LAMP,MINIATURE,28V,0.04 AMP,FLANGED BASE  | EA  |
| 16   | 102879 | LAMP,MINIATURE,F/2D CELL FLASHLIGHT,PR-2  | EA  |
| 17   | 102880 | LAMP,MINIATURE,PR-6,F/2D CELL FLASHLIGHT  | EA  |
| 18   | 102881 | LAMP,MINIATURE,6V,14A,1-CONTACT,#6PSB5    | EA  |
| 19   | 102882 | LAMP,MINIATURE,PR-13,0.5 AMP,4.75V        | EA  |
| 20   | 102885 | LAMP,MINIATURE,3.0W,0.025 AMP,120V,PILOT  | EA  |
| 21   | 102886 | LAMP,MINIATURE,0.15 AMP,6.3V,2 X 2-PIN    | EA  |
| 22   | 102889 | LAMP,MINIATURE,120MB,3W,1.025 AMP,120V    | EA  |
| 23   | 102890 | LAMP,MINI,24X,T-2,BASE#3,SYLVANIA #33257  | EA  |
| 24   | 102891 | LAMP,MINIATURE,28PSB,1.1W,PANEL PILOT     | EA  |
| 25   | 102894 | LAMP,MINIATURE,#44,0.25AMP,6.3V,BAYONET   | EA  |
| 26   | 102897 | LAMP,MINIATURE,#51,0.22AMP,7.5V,G-3-1/2   | EA  |
| 27   | 102910 | LAMP,MINIATURE,#194,0.27AMP,14V,WEDGE     | EA  |
| 28   | 102912 | LAMP,MINIATURE,#259,0.25AMP,6.3V,WEDGE    | EA  |
| 29   | 102919 | LAMP,MINIATURE,#756,0.08AMP,14V,BAYONET   | EA  |
| 30   | 102920 | LAMP,MINIATURE,#757,0.08AMP,28V,BAYONET   | EA  |
| 31   | 102927 | LAMP,MINIATURE,#1157,32.3AMP,12V,BAYONET  | EA  |
| 32   | 102934 | LAMP,MINIATURE,#1819,0.04 AMP,28V.        | EA  |
| 33   | 102936 | LAMP,MINIATURE,#1829,0.07AMP,28V,BAYONET  | EA  |
| 34   | 102937 | LAMP,MINIATURE,#1835,0.05AMP,55V,BAYONET  | EA  |
| 35   | 102938 | LAMP,MINIATURE,#1847,0.15AMP,6.3V.        | EA  |
| 36   | 102942 | LAMP,MINIATURE,#755,0.15AMP,6.3V,BAYONET  | EA  |
| 37   | 102946 | LAMP,QUARTZ,500W,T-3,130V,CLEAR,GE#23733  | EA  |
| 38   | 102947 | LAMP,QUARTZ,500W,T-3,120V,INFRARED        | EA  |
| 39   | 102951 | LAMP,SODIUM VAPOR,50W,ED-17,MEDIUM,CLEAR  | EA  |
| 40   | 102952 | LAMP,SODIUM VAPOR,50W,B-17,MEDIUM,LU50/D  | EA  |
| 41   | 102953 | LAMP,SODIUM VAPOR,50W,E-23-1/2,MOGUL      | EA  |
| 42   | 102954 | LAMP,SODIUM VAPOR,70W,B-17,MEDIUM,CLEAR   | EA  |
| 43   | 102955 | LAMP,SODIUM VAPOR,70W,E-23-1/2,MOGUL      | EA  |
| 44   | 102956 | LAMP,SODIUM VAPOR,100W,E-17,MEDIUM,CLEAR  | EA  |
| 45   | 102957 | LAMP,SODIUM VAPOR,100W,E23-1/2,MOGUL      | EA  |
| 46   | 102958 | LAMP,SODIUM VAPOR,150W,E23-1/2,MOGUL      | EA  |
| 47   | 102959 | LAMP,SODIUM VAPOR,150W,E-28,MOGUL,CLEAR   | EA  |
| 48   | 102960 | LAMP,SODIUM VAPOR,250W,E-18,MOGUL,CLEAR   | EA  |
| 49   | 102962 | LAMP,SODIUM VAPOR,400W,ET-18,MOGUL,CLEAR  | EA  |
| 50   | 102963 | LAMP,SODIUM VAPOR,400W,ED-28,MOGUL,CLEAR  | EA  |
| 51   | 102964 | LAMP,SODIUM VAPOR,1000W,E-25,MOGUL,CLEAR  | EA  |
| 52   | 102965 | LAMP,INCANDESCENT,3W,S-6,CANDELABRA,120V  | EA  |
| 53   | 102967 | LAMP,INCANDESCENT,6W,S6,CANDELABRA,CLEAR  | EA  |
| 54   | 102968 | LAMP,INCANDESCENT,6W,S-6,CANDELABRA,145V  | EA  |
| 55   | 102971 | LAMP,INCANDESCENT,6W,S6,CANDELABRA,CLEAR  | EA  |
| 56   | 102973 | LAMP,INCANDESCENT,10W,S-6,CANDELABRA,250V | EA  |
| 57   | 102974 | LAMP,INSIDE FROST,11W,S-14,MED,120V,SIGN  | EA  |
| 58   | 102975 | LAMP,INCANDESCENT,15W,T-6,CLEAR,145 V.    | EA  |
| 59   | 102979 | LAMP,INCANDESCENT,20W.,T-6-1/2,BAYONET    | EA  |
| 60   | 102980 | LAMP,INCANDESCENT,20W,FROSTED,T6-1/2,     | EA  |
| 61   | 102984 | LAMP,25W,T6-1/2,MED,120V,CLEAR,SHOWCASE   | EA  |
| 62   | 102985 | LAMP,INCANDESCENT,25W,T-8,D.C,BAYONET     | EA  |

|     |        |  |    |
|-----|--------|--|----|
| 63  | 102986 | LAMP,25W,T-10,MEDIUM,130V,CLEAR,SHOWCASE | EA |
| 64  | 102988 | LAMP,40W.,T-8,MEDIUM,130V,CLEAR,SHOWCASE | EA |
| 65  | 102989 | LAMP,INCANDESCENT,40W,INTERMEDIATE,120V. | EA |
| 66  | 102991 | LAMP,HALOGEN,45W,PAR-38,120V,25 DEG.BEAM | EA |
| 67  | 103002 | LAMP,67W,A-21,MEDIUM,130V,TRAFFIC SIGNAL | EA |
| 68  | 103006 | LAMP,75W,R-30,MEDIUM,130V,FLOOD          | EA |
| 69  | 103007 | LAMP,100W,MED.SCREW BASE,130V,ROUGH SER. | EA |
| 70  | 103009 | LAMP,100W,A-21,MEDIUM,120V,ROUGH SERVICE | EA |
| 71  | 103013 | LAMP,116W,A-21,MEDIUM,130V,CLEAR,TRAFFIC | EA |
| 72  | 103018 | LAMP,150W,A-21,MEDIUM,130V,INSIDE FROST  | EA |
| 73  | 103019 | LAMP,SPOT,90W,120V,PAR38,MED.SKIRT BASE  | EA |
| 74  | 103038 | LAMP,500W.,PS-35,MOGUL BASE,130V.,CLEAR  | EA |
| 75  | 103044 | LAMP,6W.,T-5,MINIATURE,2-PIN,FLUORESCENT | EA |
| 76  | 103045 | LAMP,8W.,T-5,MINIATURE,2-PIN,FLUORESCENT | EA |
| 77  | 103046 | LAMP,FLUORESCENT,9W,T4,TWIN-TUBE,COMPACT | EA |
| 78  | 103050 | LAMP,FLUORESCENT,COOLWHITE,15W,18",2-PIN | EA |
| 79  | 103053 | LAMP,FLUORESCENT,TWIN TUBE,18W.,COMPACT  | EA |
| 80  | 103057 | LAMP,FLUORESCENT,COMPACT,20W.,T-4,MEDIUM | EA |
| 81  | 103058 | LAMP,FLUORESCENT,CIRCLINE,22W,8",T9,4PIN | EA |
| 82  | 103060 | LAMP,FLUORESCENT,COMPACT,26W.,T-4,4-PIN  | EA |
| 83  | 103061 | LAMP,FLUORESCENT,COMPACT,25 -28W.,MEDIUM | EA |
| 84  | 103063 | LAMP,FLUORESCENT,CIRCLINE,32W.,12IN.DIA. | EA |
| 85  | 103086 | LAMP,HALOGEN,250W.,120V,T-4,BAYONET BASE | EA |
| 86  | 103087 | LAMP,HALOGEN,300W,120V,T-3,RECESSED BASE | EA |
| 87  | 103089 | LAMP,SEALED BEAM,8W.,6V.,PAR36,EMERGENCY | EA |
| 88  | 113854 | LAMP,FLUORESCENT,COMPACT,13W.,T4,PLUG-IN | EA |
| 89  | 114423 | LAMP,FLUORESCENT,RAPID START,32W,48"     | EA |
| 90  | 115535 | LAMP,FLUORESCENT,COMPACT,7W.,BIAX,2 PIN  | EA |
| 91  | 115536 | LAMP,200W.,PS-30,MEDIUM BASE,130V.,CLEAR | EA |
| 92  | 116305 | LAMP,FLUORESCENT,COMPACT,7W=INCAND:25W   | EA |
| 93  | 116306 | LAMP,FLUORESCENT,COMPACT,42W=INCAND:150W | EA |
| 94  | 116307 | LAMP,FLUORESCENT,COMPACT,11W=INCAND:40W  | EA |
| 95  | 116308 | LAMP,FLUORESCENT,COMPACT,11W=INCAND:45W  | EA |
| 96  | 116309 | LAMP,FLUORESCENT,COMPACT,15W=INCAND:60W  | EA |
| 97  | 116310 | LAMP,FLUORESCENT,COMPACT,15W=INCAND:65W  | EA |
| 98  | 116311 | LAMP,FLUORESCENT,COMPACT,20W=INCAND:75W  | EA |
| 99  | 116314 | LAMP,FLUORESCENT,COMPACT,65W=INCAND:200W | EA |
| 100 | 116535 | LAMP,EMERGENCY LIGHT,6V,25W,PAR-36       | EA |
| 101 | 116972 | LAMP,METAL HALIDE,400W,BT-37,MOGUL,CLEAR | EA |
| 102 | 117007 | LAMP,LED,18W-22W,48IN.,T8,4100K,BI-PIN   | EA |
|     |        |  |    |





# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

**File #:** 15-0572, **Version:** 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON Procurement

Mr. David St. Pierre, Executive Director

Authority to increase Contract 04-202-4F Connecting Tunnels & Gates, Thornton Composite Reservoir, Calumet Service Area, to Walsh/II in One Joint Venture in an amount of \$500,000.00, from an amount of \$136,077,670.92, to an amount not to exceed \$136,577,670.92, Account 401-50000-645600, Purchase Order 5001136

Dear Sir:

On May 6, 2010, the Board of Commissioners authorized the Director of Procurement and Materials Management to award Contract 04-202-4F Connecting Tunnels & Gates, Thornton Composite Reservoir, Calumet Service Area, to Walsh/II in One, Joint Venture, in an amount not to exceed \$135,475,200.00. The scheduled contract completion date was May 14, 2015.

As of May 22, 2015, the attached list of change orders has been approved. The effect of these change orders resulted in an increase in an amount of \$602,470.92 from the original amount awarded of \$135,475,200.00. The current contract value is \$136,077,670.92. The prior approved change orders reflect a 0.44% increase to the original contract value.

The contractor has claimed additional compensation for the issues described below.

Item 1: Additional costs for differing site conditions at the diffuser slab area. The contract documents include the construction of a large concrete diffuser slab inside the quarry at the tunnel portal of the reservoir. The diffuser slab is required to be anchored into the quarry floor using rock anchors. During excavation of the diffuser slab, the contractor discovered fractured rock to depths of up to six feet below the quarry floor as a result of quarry mining operations, instead of the competent rock condition expected. The contractor submitted a cost proposal for an extra in the amount of \$500,000.00 for installation of rock anchors through the fractured subgrade. The work included placement of self-leveling grout over the top of the fractured subgrade and installation of protective collar pipes to prevent loose rock from falling into rock anchor holes.

Item 2: Additional costs for handling water at the diffuser slab area. The contract documents include handling of all water in the construction area of the diffuser slab including groundwater flow. Based on the fractured rock conditions encountered at the apron slab area, the contractor experienced difficulties in keeping the work area dewatered. Additionally, runoff from the tollway is diverted into the reservoir exacerbating the problem. The contractor submitted a cost proposal for an extra in the amount of \$226,200.00 for the cost incurred in handling additional water encountered in the diffuser slab excavation area infiltrating from the other areas of the quarry due to the fractured rock conditions.

Item 3: Additional insurance premium costs due to mining delays. Per the contract documents, the access ramp and the contractor's work area within the quarry were scheduled to be available on January 1, 2011. Due

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**File #:** 15-0572, **Version:** 1

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to a reduced market for aggregate products from the quarry, and work required on other Thornton Composite Reservoir contracts, the quarry operator could not mine the required areas by January 1, 2011. The District granted a 243 day time extension for the contract delay. The contractor submitted a cost proposal for an extra in the amount of \$139,641.00 for reimbursement of the additional insurance premium costs incurred due to this time extension.

Item 4: Contract acceleration costs. The contractor has claimed additional time for the alleged unavoidable delays experienced due to 1) abnormal weather conditions that affected the construction to date, 2) delays experienced due to the extreme inflows of water encountered during excavation of the diffuser slab, and 3) the time for the additional work required due to differing rock conditions at the diffuser slab. The contractor constructed a temporary concrete bulkhead in the existing TARP tunnel at his own risk, to accelerate the contract completion schedule by 164 days. The contractor submitted a cost proposal for an extra in the amount of \$885,600.00 as a result of construction of the bulkhead. The contractor proposed that the temporary bulkhead will allow him recovery of these unavoidable delays, and in addition, it will accelerate the construction of the tunnel connection work significantly by eliminating risk and delays associated with working under live tunnel conditions. The construction of the connecting tunnel and removal of the temporary bulkhead will take only six weeks which saves thirteen weeks compared to the original construction without the bulkhead.

The total cost for all claims described in Items 1 through 4 above is \$1,401,441.00. However, after engaging in settlement negotiations, the contractor agreed to accept \$500,000.00 in full settlement and compromise of any and all claims and liens it has against the District relating to the above described claims.

The Director of Engineering found the proposed settlement (CCO-013) in the amount of \$500,000.00 to be reasonable and acceptable, and stated via correspondence 1478 and 1515, that the Engineering Department would recommend its approval.

The above change orders are in compliance with the Illinois Criminal Code since the changes are due to circumstances not reasonably foreseeable at the time the contract was signed, and are in the best interest of the District.

It is hereby recommended that the Board of Commissioners authorize the Director of Procurement and Materials Management to execute a change order to increase Contract 04-202-4F in an amount of \$500,000.00 (0.37% of the current contract value), from an amount of \$136,077,670.92, to an amount not to exceed \$136,577,670.92.

Funds are available in Account 401-50000-645600.

Requested, Catherine A. O'Connor, Director of Engineering, WSS:KMF  
Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management  
Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement  
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

Attachments

Client : 100  
 Report Name: ZRPT\_CHANGE\_ORDER\_LOG  
 Requester : BOYKINU

## Change Order Log Report

System: ERD  
 05/12/2015 11:59:2  
 Page: 1

PO No. : 5001136  
 Tracking No. : ENG042024F  
 Vendor No. : 6001380

Original Value: 135,475,200.00  
 Approved Value: 136,077,670.92  
 Current Value : 136,077,670.92

| Change Number | Text   | Value          | Initiator | Date       | File Letter | COR # | Board Approval | Status   | Approver      | Seq. No. | Change Number | Object Class |
|---------------|--|----------------|-----------|------------|-------------|-------|----------------|----------|---------------|----------|---------------|--------------|
| 0001          | Portal Wall Area Geological Mapping                    | 3,400.00 DEC   | MCQUIREC  | 08/01/2011 | 0319        | 002   |                | Approved | USNEUBAUERJ   | 0001     | 4153267       | EINKBELEG    |
| 0002          | Additional Work due to HMS Acceleration                | 36,671.69 INC  | MCQUIREC  | 09/08/2011 | 0343        | 003   | X              | Rejected | USNEUBAUERJ   | 0001     | 4153268       | MM_SERVICE   |
| 0003          | Additional Work due to HMS Acceleration                | 13,915.49 INC  | MCQUIREC  | 10/03/2011 | 0343        | 003   | X              | Approved | USDALYC       | 0002     | 4182016       | EINKBELEG    |
| 0004          | Per 04/18/2013 Agenda Item 21, File No. 13-0375        | 50,000.00 DEC  | BOYKINU   | 04/23/2013 |             |       | X              | Rejected | USNEUBAUERJ   | 0002     | 4182017       | MM_SERVICE   |
| 0005          | Per 04/18/2013 Agenda Item                             | 50,000.00 DEC  | BOYKINU   | 05/02/2013 | 0903        | 006   | X              | Rejected | USWAGNERC     | 0003     | 4203380       | EINKBELEG    |
| 0006          | Per 04/18/2013 Agenda Item 21, File No. 13-0375        | 50,000.00 DEC  | BOYKINU   | 05/06/2013 | 0903        | 006   | X              | Approved | USDALYC       | 0003     | 4203381       | MM_SERVICE   |
| 0007          | Per 6/20/2013 Agenda Item 17, File No. 13-0668         | 45,308.98 INC  | BOYKINU   | 06/24/2013 | 1005        | 001   | X              | Rejected | USCARRINGTONS | 0004     | 4635275       | EINKBELEG    |
| 0008          | Per 6/20/2013 Agenda Item 17, File No. 13-0668         | 45,308.98 INC  | BOYKINU   | 07/10/2013 | 1005        | 001   | X              | Approved | USDALYC       | 0004     | 4635276       | MM_SERVICE   |
| 0009          | "Credit"-Contact and Skin Grouting Alternate Procedure | 5,500.00 DEC   | BOYKINU   | 03/06/2014 | 1192        | 008   |                | Approved | USNEUBAUERJ   | 0005     | 4642733       | EINKBELEG    |
| 0010          | Per 8/7/2014 Agenda Item 57, File No. 14-0796          | 602,146.45 INC | BOYKINU   | 08/11/2014 | 1094        |       | X              | Approved | USDALYC       | 0005     | 4642734       | MM_SERVICE   |
|               |  |                |           |            |             |       |                |          |               | 0006     | 4644092       | EINKBELEG    |
|               |  |                |           |            |             |       |                |          |               | 0006     | 4644093       | MM_SERVICE   |
|               |  |                |           |            |             |       |                |          |               | 0007     | 4672379       | EINKBELEG    |
|               |  |                |           |            |             |       |                |          |               | 0007     | 4672410       | MM_SERVICE   |
|               |  |                |           |            |             |       |                |          |               | 0008     | 4681794       | EINKBELEG    |
|               |  |                |           |            |             |       |                |          |               | 0008     | 4681795       | MM_SERVICE   |
|               |  |                |           |            |             |       |                |          |               | 0009     | 4853216       | EINKBELEG    |
|               |  |                |           |            |             |       |                |          |               | 0009     | 4853217       | MM_SERVICE   |
|               |  |                |           |            |             |       |                |          |               | 0010     | 4959072       | EINKBELEG    |
|               |  |                |           |            |             |       |                |          |               | 0010     | 4959073       | MM_SERVICE   |



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

File #: 15-0573, Version: 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON Procurement

Mr. David St. Pierre, Executive Director

Authority to increase Contract 04-203-4F Final Reservoir Preparation, Thornton Composite Reservoir, Calumet Service Area, to Walsh/II in One, Joint Venture in an amount of \$11,121.24, from an amount of \$50,930,121.31, to an amount not to exceed \$50,941,242.55, Account 401-50000-645600, Purchase Order 5001224

Dear Sir:

On December 2, 2010, the Board of Commissioners authorized the Director of Procurement and Materials Management to award Contract 04-203-4F Final Reservoir Preparation, Thornton Composite Reservoir, Calumet Service Area, to Walsh/II in One, Joint Venture, in an amount not to exceed \$50,763,937.00. The scheduled contract completion date is November 1, 2015.

As of May 22, 2015, the attached list of change orders has been approved. The effect of these change orders resulted in an increase in an amount of \$166,184.31 from the original amount awarded of \$50,763,937.00. The current contract value is \$50,930,121.31. The prior approved change orders reflect a 0.33% increase to the original contract value.

The Thornton Composite Reservoir is scheduled to be operational later this year. To address concerns of potential odors to surrounding communities from the open-air reservoir, seven solar aerators will be used to minimize odor escape by maintaining a stable, aerobic layer at the water surface. The aerators are being furnished and installed under a separate contract. However, concrete mooring blocks are needed on the floor of the reservoir to anchor the aerators. Each aerator requires connection to an individual concrete mooring block. Seven concrete blocks with 3-ft x 3-ft x 1-ft dimensions and reinforced with stainless steel rebar will be constructed and placed under this change order. The contractor submitted a cost proposal (CCO-016) for an extra in the amount of \$11,121.24. The engineer reviewed the proposal, found it to be reasonable, and stated via correspondence 615, that the Engineering Department would recommend its approval.

This change order is in compliance with the Illinois Criminal Code since the change is germane to the contract.

It is hereby recommended that the Board of Commissioners authorize the Director of Procurement and Materials Management to execute a change order to increase Contract 04-203-4F in an amount of \$11,121.24 (0.02% of the current contract value), from an amount of \$50,930,121.31, to an amount not to exceed \$50,941,242.55.

Funds are available in Account 401-50000-645600.

Requested, Catherine A. O'Connor, Director of Engineering, WSS:KMF

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management

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**File #:** 15-0573, **Version:** 1

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Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement  
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

Attachment

## Change Order Log Report

Client : 100

Report Name: ZREP\_CHANGE\_ORDER\_LOG

Requester : GRWA

System ID:  
05/12/2015 11:25:2  
Page: 1

PO No. : 5001224

Tracking No. : ENC042034F

Vendor No. : 6001380

Original Value: 50,763,937.00

Approved Value: 50,922,065.60

Current Value: 50,930,121.31

| Change Number | Text  | Value          | Initiator | Date       | File Letter | CR # | Board Approval | Status     | Approver     | Seq. No. | Charge Number | Object Class        |
|---------------|---|----------------|-----------|------------|-------------|------|----------------|------------|--------------|----------|---------------|---------------------|
| 0001          | Rock Dowel Size Substitution                                  | 1,287.35 DEC   | MGUREC    | 09/15/2011 | 0133        | 002  |                | Approved   | USNEUBAUF    | 0001     | 4188265       | ENGINEER MJ_SERVICE |
| 0002          | Construction Staging Area 1 Temporary Fence                   | 11,346.29 DEC  | MGUREC    | 01/31/2012 | 0247        | 006  | X              | Approved   | USPALNC      | 0001     | 4188266       | ENGINEER MJ_SERVICE |
| 0003          | Invert Drain Quantity   | 126,450.00 INC | MGUREC    | 01/31/2012 | 0238        | 004  | X              | Approved   | USPALNC      | 0002     | 4293195       | ENGINEER MJ_SERVICE |
| 0004          | Contract Grotting Electronic Monitoring                       | 5,500.00 DEC   | MGUREC    | 04/02/2012 | 0294        | 005  |                | Approved   | USNEUBAUF    | 0002     | 4293196       | ENGINEER MJ_SERVICE |
| 0005          | Chain Link Mesh - Thorn Creek Tunnel Portal Wall Top of Rock  | 9,728.10 INC   | MGUREC    | 04/04/2012 | 0265        | 008  |                | Approved   | USNEUBAUF    | 0003     | 4340406       | ENGINEER MJ_SERVICE |
| 0006          | Thorn Creek Tunnel Portal Extension                           | 21,283.08 INC  | MGUREC    | 10/01/2012 | 0346        | 009  | X              | Approved   | USPALNC      | 0003     | 4340407       | ENGINEER MJ_SERVICE |
| 0007          | "Extra"-Overlook Structure Ghulam Design                      | 15,531.10 INC  | BOYKIN    | 11/26/2013 | 0499        | 010  | X              | Approved   | USPALNC      | 0004     | 4342679       | ENGINEER MJ_SERVICE |
| 0009          | Per 4/17/2014 Agenda Item 27, File No. 14-0338                | 21,048.30 INC  | BOYKIN    | 05/08/2014 | 0530        | 012  | X              | Approved   | USPALNC      | 0004     | 4342680       | ENGINEER MJ_SERVICE |
| 0010          | Per 05/15/2014 Agenda Item 33, File No. 14-0462               | 1,666.92 DEC   | MCULLOUGH | 05/19/2014 | 0539        | 003  | X              | Approved   | USNEUBAUF    | 0005     | 4485568       | ENGINEER MJ_SERVICE |
| 0011          | "Credit"- Lwr Orndn Tunnel Ostrctn Joint Spacing              | 8,055.71 DEC   | BOYKIN    | 06/20/2014 | 0512        | 011  |                | Approved   | USPALNC      | 0005     | 4485569       | ENGINEER MJ_SERVICE |
| 0012          | Revers change #11, (duplication of change #8 not shown in log | 8,055.71 INC   | BOYKIN    | 05/12/2015 |             |      |                | In-Process | USCORRCTIONS | 0006     | 4787383       | ENGINEER MJ_SERVICE |



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

File #: 15-0574, Version: 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON PROCUREMENT

Mr. David St. Pierre, Executive Director

Authority to decrease Contract 06-212-3M Calumet TARP Pumping Station Improvements, Calumet Water Reclamation Plant, to Sollitt/Sachi/Alworth JV in an amount of \$17,000.00, from an amount of \$35,121,983.00, to an amount not to exceed \$35,104,983.00, Account 401-50000-645600, Purchase Order 5001404

Dear Sir:

On May 2, 2013, the Board of Commissioners authorized the Director of Procurement and Materials Management to award Contract 06-212-3M Calumet TARP Pumping Station Improvements, Calumet Water Reclamation Plant, to Sollitt/Sachi/Alworth JV, in an amount not to exceed \$35,067,000.00. The scheduled contract completion date is May 19, 2018.

As of May 22, 2015, the attached list of change orders has been approved. The effect of these change orders resulted in an increase in an amount of \$54,983.00 from the original amount awarded of \$35,067,000.00. The current contract value is \$35,121,983.00. The prior approved change orders reflect a 0.16% increase to the original contract value.

This contract includes installation of six pump, motor and variable frequency drive (VFD) systems at the TARP Pumping Station at the Calumet Water Reclamation Plant. Power quality meters were specified for each of the six VFDs; however, the VFD manufacturer stated during submittal review stage that the meters are not required for proper operation of the VFDs. Therefore, the meters are not necessary and will be eliminated for the project. The contractor submitted a revised cost proposal (CCO-015) for a credit in the amount of \$17,000.00. The engineer reviewed the proposal, found it to be reasonable, and stated via correspondence 405, that the Engineering Department would recommend its approval.

This change order is in compliance with the Illinois Criminal Code since the change is germane to the contract.

It is hereby recommended that the Board of Commissioners authorize the Director of Procurement and Materials Management to execute a change order to decrease Contract 06-212-3M in an amount of \$17,000.00 (0.05% of the current contract value), from an amount of \$35,121,983.00, to an amount not to exceed \$35,104,983.00.

Funds will be restored to Account 401-50000-645600.

Requested, Catherine A. O'Connor, Director of Engineering, MVL:GG

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management

Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

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**File #:** 15-0574, **Version:** 1

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Attachment



PO No. : 5001404  
Tracking No. : ERO362123M  
Vendor No. : 6001393

Original Value: 35,067,000.00  
Approved Value: 35,121,983.00  
Current Value : 35,121,983.00

| Charge Number | Text  | Value         | Initiator | Date       | File Letter | CR # | Board Approval | Status   | Approver     | Seq. No. | Charge Number | Object Class |
|---------------|---|---------------|-----------|------------|-------------|------|----------------|----------|--------------|----------|---------------|--------------|
| 0001          | "Extra"- Motor Protection Relay CTS                     | 6,773.00 INC  | BOKUNJ    | 10/23/2014 | 0289        | 001  |                | Approved | USNUPALRU    | 0001     | 5015295       | ENGINEER     |
| 0002          | "Credit"- Reduce Circuit Size for 13.2 KV Feeders       | 26,810.00 DEC | BOKUNJ    | 12/22/2014 | 0315        | 004  | X              | Approved | USNLMC       | 0001     | 5015296       | MI_SERVICE   |
| 0003          | "Extra"- Increase Temperature & Vibration Circuit Sizes | 6,241.00 INC  | BOKUNJ    | 12/22/2014 | 0308        | 007  | X              | Approved | USNLMC       | 0002     | 5070337       | ENGINEER     |
| 0004          | Per 2/19/2015 Agenda Item 23, File No. 15-0198          | 35,641.00 INC | BOKUNJ    | 02/25/2015 | 0344        | 008  | X              | Rejected | USORRINGTONS | 0002     | 5070338       | MI_SERVICE   |
| 0005          | Per 2/19/2015 Agenda Item 23, File No. 15-0198          | 33,138.00 INC | BOKUNJ    | 02/25/2015 | 0347        | 011  | X              | Rejected | USORRINGTONS | 0003     | 5113084       | ENGINEER     |
| 0006          | Per 2/19/2015 Agenda Item 23, File No. 15-0198          | 35,641.00 INC | BOKUNJ    | 03/05/2015 | 0344        | 008  | X              | Approved | USNLMC       | 0003     | 5113085       | MI_SERVICE   |
| 0007          | Per 2/19/2015 Agenda Item 23, File No. 15-0198          | 33,138.00 INC | BOKUNJ    | 03/05/2015 | 0347        | 011  | X              | Approved | USNLMC       | 0004     | 5117713       | ENGINEER     |
|               |   |               |           |            |             |      |                |          |              | 0004     | 5117734       | MI_SERVICE   |
|               |   |               |           |            |             |      |                |          |              | 0004     | 5117713       | ENGINEER     |
|               |   |               |           |            |             |      |                |          |              | 0004     | 5117734       | MI_SERVICE   |



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

**File #:** 15-0578, **Version:** 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON Procurement

Mr. David St. Pierre, Executive Director

Authority to increase purchase order for Contract 14-102-12 Furnish and Deliver Maintenance, Inspection and Repair of Lysimeters and Monitoring Wells, to Patrick Engineering, Inc. in an amount of \$12,000.00, from an amount of \$51,029.21, to an amount not to exceed \$63,029.21, Account 101-16000-612490, Purchase Order 3080361

Dear Sir:

On March 6, 2014, the Board of Commissioners authorized the Director of Procurement and Materials Management to issue a purchase order for Contract 14-102-12 Furnish and Deliver Maintenance, Inspection and Repair of Lysimeters and Monitoring Wells, to Patrick Engineering, Inc., in an amount not to exceed \$44,500.00. The contract expires on December 31, 2015.

As of January 27, 2015, the attached list of change orders has been approved. The effect of these change orders resulted in an increase of \$6,529.21 from the original amount awarded of \$44,500.00. The current contract value is \$51,029.21. The prior approved change orders reflect a 14.7% increase to the original contract value.

This change order is required due to an increased need of repairs to the District's aging TARP wells. We are currently monitoring 155 TARP wells. Several wells (12) are not generating any water samples and are in need of repairs. Some wells have minor issues such as a bad electrical connection or a bad valve. However, three wells in the Upper Des Plaines area need major repairs including new pumps and de-silting. These are deep wells (200 feet) and require a crane to pull the old pumps in order to install the new pumps.

This change order is in compliance with the Illinois Criminal Code since the change is due to circumstances not reasonably foreseeable at the time the contract was signed, and is in the best interest of the District.

It is hereby recommended that the Board of Commissioners authorize the Director of Procurement and Materials Management to execute a change order to increase the purchase order for Contract 14-102-12 in an amount of \$12,000.00 (23.5% of the current contract value), from an amount of \$51,029.21, to an amount not to exceed \$63,029.21.00.

Funds are available in Account 101-16000-612490.

Requested, Thomas C. Granato, Director of Monitoring and Research, TCG:MPC:KB:mh  
Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management  
Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement

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**File #:** 15-0578, **Version:** 1

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Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

Attachment

Client : 100  
 Report Name: ZPT CHANGE\_ORDER\_LOG  
 Requester : ABC123

## Change Order Log Report

System: R0  
 05/12/2015 11:58:4  
 Page: 1

14-102-12

Original Value: 44,500.00  
 Approved Value: 51,029.21  
 Current Value : 51,029.21

EO No. : 3080361  
 Tracking No. : LIND  
 Verbr No. : 5011253

| Charge Number | Text   | Value        | Initiator | Date       | File Letter | CR # | Board Approval | Status   | Approver  | Seq. No. | Charge Number      | Object Class           |
|---------------|--|--------------|-----------|------------|-------------|------|----------------|----------|-----------|----------|--------------------|------------------------|
| 0001          | Project with US35 TRAP eval and resulting repair discovered. | 9,900.00 INC | QUINAK    | 10/24/2014 |             |      |                | Approved | UNSUBVENU | 0001     | 5016143            | ENGINEER<br>NM_SERVICE |
| 0002          | Decrease line one.   | 3,370.79 DEC | QUINAK    | 01/27/2015 |             |      |                | Approved | UNSUBVENU | 0002     | 5056281<br>5056282 | ENGINEER<br>NM_SERVICE |



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

File #: 15-0583, Version: 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON BUDGET AND EMPLOYMENT

Mr. David St. Pierre, Executive Director

Authority to transfer 2015 departmental appropriations in the amount of \$1,134,000 in the Corporate Fund and Construction Fund

Dear Sir:

Attached are the departmental appropriation transfers requested to be authorized at the June 4, 2015 Regular Board Meeting, for the following funds:

| <b>Corporate Fund:</b>           | <b>From Amount</b>     | <b>To Amount</b>       |
|----------------------------------|------------------------|------------------------|
| <b>Intra - Departmental</b>      |                        |                        |
| 60000 - Maintenance & Operations | \$ 32,000.00           | \$ 32,000.00           |
| Total Corporate Fund             | <u>\$ 32,000.00</u>    | <u>\$ 32,000.00</u>    |
| <b>Construction Fund:</b>        |                        |                        |
| <b>Intra - Departmental</b>      |                        |                        |
| 50000 - Engineering              | \$ 1,102,000.00        | \$ 1,102,000.00        |
| Total Construction Fund          | <u>\$ 1,102,000.00</u> | <u>\$ 1,102,000.00</u> |

It is requested that the Board of Commissioners authorize the transfers of appropriations submitted herewith.

Requested, Eileen M. McElligott, Administrative Services Manager, JPN:SKL:JR:DT:NG  
Respectfully Submitted, Kari K. Steele, Chairman Committee on Budget and Employment  
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

Attachments

# METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

## 2015 Request for Line Item Transfer

Page \_\_\_\_ of \_\_\_\_

Dept: Maintenance & OperationsBoard Meeting Date: Jun 4, 2015BTB Date: Apr 30, 2015**TRANSFER 2015 FUNDS FROM:**

| CODE   |          |          | BUDGETARY                                   | APPROPRIATION |             | FUNDS       | OUT         | EXPLANATION   |
|--------|----------|----------|---|---------------|-------------|-------------|-------------|---|
| Fund   | Fund Ctr | Cmt Item | ACCOUNT NAME                                | ORIGINAL      | ADJUSTED    | AVAILABLE   | AMOUNT      |   |
| 101    | 60000    | 623560   | Processing Chemicals                        | \$8,950,000   | \$8,950,000 | \$704,163   | \$32,000    | Funds are available due to a reduced estimate of sodium hydroxide required in the phosphorous removal process.  |
| 201    | 50000    | 645690   | Capital Projects, N.O.C.                    | \$1,830,800   | \$1,830,800 | \$1,305,800 | \$267,000   | Funds are available due to a reduced scope of work for Contract 15-711-21, Process Control Building Restoration. The roof replacement was deleted from the scope of work. |
| 201    | 50000    | 645750   | Preservation of Process Facility Structures | \$7,995,800   | \$7,272,200 | \$860,958   | \$835,000   | Funds are available due to the use of the Corporate Fund rather than the Construction Fund for centrifuge rehabilitation at the Stickney WRP.                             |
| TOTAL: |          |          |   |               |             |             | \$1,134,000 |   |

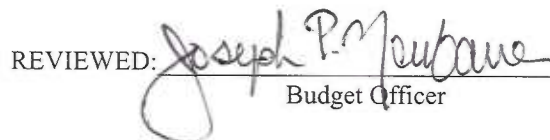
**TRANSFER 2015 FUNDS INTO:**

| CODE   |          |          | BUDGETARY                               | APPROPRIATION |             | FUNDS     | IN          | EXPLANATION |
|--------|----------|----------|---|---------------|-------------|-----------|-------------|-------------|
| Fund   | Fund Ctr | Cmt Item | ACCOUNT NAME                            | ORIGINAL      | ADJUSTED    | AVAILABLE | AMOUNT      |             |
| 101    | 60000    | 634760   | Material Handling and Farming Equipment | \$0           | \$0         | \$0       | \$32,000    |             |
| 201    | 50000    | 634650   | Equipment for Process Facilities        | \$1,045,000   | \$1,045,000 | \$460,440 | \$1,102,000 |             |
| TOTAL: |          |          |   |               |             |           | \$1,134,000 |             |

REQUESTED:


  
Department Head

REVIEWED:


  
Budget Officer

APPROVED:


  
Executive Director



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

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**File #:** 15-0567, **Version:** 1

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### **TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015**

#### COMMITTEE ON MONITORING AND RESEARCH

Mr. David St. Pierre, Executive Director

Report on acceptance of yardwaste from Republic Services, Inc., for a pilot-scale evaluation to produce a value-added product by co-composting biosolids, woodchips, and yardwaste

Dear Sir:

The Monitoring and Research and Maintenance and Operations Departments are collaboratively conducting a pilot-scale evaluation to produce high-quality biosolids compost to widen our biosolids distribution market. We have been successfully co-composting biosolids and woodchips to produce good-quality compost using open windrows. However, meeting the required time-temperature requirements to produce Class A compost with only woodchips during the colder months has been a challenge. We believe that adding highly decomposable material, such as yardwaste, in the compost recipe will help us overcome this challenge. Republic Services, Inc., collects and processes large quantities (tens of thousands of tons per year) of yardwaste from the local communities in Cook County, Illinois, and is willing to bring sufficient quantities of processed yardwaste to the biosolids drying site at no charge to assist with the pilot-scale evaluation. We are planning to accept approximately 5,000 dry tons of yardwaste from Republic Services, Inc. from July through December 2015 to conduct a pilot-scale evaluation to produce high-quality compost by co-composting biosolids with woodchips and yardwaste. Republic Services, Inc. will deliver the required quantities of yardwaste to the Harlem Avenue Solids Management Area. The delivery schedule will be determined by Metropolitan Water Reclamation District of Greater Chicago staff overseeing this pilot-scale evaluation.

Respectfully Submitted, Thomas C. Granato, Director of Monitoring and Research, TCG:HZ:cm



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

**File #:** 15-0588, **Version:** 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON PENSION, HUMAN RESOURCES & CIVIL SERVICE

Mr. David St. Pierre, Executive Director

Authority to Amend Metropolitan Water Reclamation District of Greater Chicago Deferred Compensation Plan and Trust, effective June 4, 2015

Dear Sir:

The District has sponsored a voluntary Deferred Compensation Plan and Trust (Plan) for employees since 1977. The primary purpose of the Plan is to provide retirement income to employees of the District in accordance with Section 457 of the Internal Revenue Code. The Plan Document provides the rules that govern the operation of the Plan. The Plan Document has been revised and restated several times since it was adopted, with the most recent revisions occurring in 2007.

In 2014, the Deferred Compensation Committee (Committee) recommended that a technical review of the Plan Document be conducted to ensure that it is in compliance with all relevant federal and state regulations, including IRS guidelines, related to 457 Deferred Compensation Plans. On August 7, 2014, the Board of Commissioners approved the recommendation that the District enter into an agreement with the law firm Laner Muchin to conduct this technical review.

Laner Muchin completed its analysis of the Plan Document and submitted its recommended changes to the Committee for review in February 2015. The following is a summary of the key substantive changes that are recommended by the Committee:

#### Fiduciary Structure

- Section 2.03, which defines the term "Administrator," now empowers the District (Board of Commissioners), not the Committee, to select/terminate the Administrator.
- Section 2.10 adds "District" to the list of defined terms.
- Section 3.01 shifts authority over the selection of investments, selection of the Administrator and appointment/termination of advisors and consultants from the Committee to the District (Sections 2.03 and 3.03). The Committee shall make recommendations related to these matters.
- Article XIII (new) has been added to provide the District's indemnification of employees and Board members who serve as Plan fiduciaries and authorizes the Plan to purchase fiduciary liability insurance for those internal fiduciaries.

#### Administrative Changes

- Section 2.01 revises the definition of "Account" to provide for Roth subaccounts.
- Section 2.05 establishes a uniform Beneficiary rule that the spouse will be the automatic Beneficiary unless the Participant designates otherwise.
- Section 2.15 allows differential wage payments to those serving in the military to count as



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**File #:** 15-0588, **Version:** 1

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compensation in accordance with the HEART Act.

- Section 3.07 (new) establishes a benefit appeal process allowing the Committee to review a claim that has been initially denied by the Administrator.
- Section 4.01 permits Participants to designate contributions to be treated as Roth contributions.
- Section 6.08 eliminates incoming transfers on behalf of Beneficiaries.
- Section 6.10(b) provides for In-Plan Roth conversions.
- Article VIII has been substantially rewritten, though not changed in ways that substantially affect the Participants, for technical compliance to reflect final regulations governing age 70½ minimum required distributions.

#### Legal Updates

- Section 2.05 revises the definition of "spouse" in recognition of same-sex marriages
- Sections 2.12 and 2.13 revise the definitions of "employee" and "employer" to re-confirm eligibility of Retirement Fund employees
- Section 2.18 revises the definition of "normal retirement age" as required by the recent IRS audit

The Deferred Compensation Committee requests that the Board of Commissioners, as Trustee for the Plan, approve the revisions summarized above and incorporated into the attached Plan Document for the Metropolitan Water Reclamation District of Greater Chicago Deferred Compensation Plan and Trust.

Respectfully Submitted, Frank Avila, Chairman Deferred Compensation Committee; Mary Ann Boyle, Treasurer; Denice E. Korcal, Director of Human Resources

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

Attachment

# METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO DEFERRED COMPENSATION PLAN AND TRUST

As Amended and Restated Effective June 4, 2015

## Article I. Purpose

The Employer hereby amends and restates the Metropolitan Water Reclamation District of Greater Chicago Deferred Compensation Plan and Trust, hereafter referred to as the "Plan" as set forth in this document. This Plan restatement is effective as of June 4, 2015 except as otherwise provided in this document.

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer in accordance with the provisions of Section 457 of the Code. The Plan is intended to comply with Code Section 457(b) and thereby to be exempt from Code Section 409A, and shall be interpreted in accordance with that intent.

This Plan shall be an agreement solely between the Employer and participating Employees. The Plan and Trust forming a part hereof is established and shall be maintained for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

## Article II. Definitions

**2.01 Account:** The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, and any transfers for the benefit of the Participant accepted under the Plan, including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the such assets, and further reflecting any distributions to or for the benefit of the Participant or the Participant's Beneficiary and any fees or expenses charged against such assets. Each Participant's Account shall be divided into separate subaccounts to the extent necessary to reflect the portions of a Participant's deferrals contributed on a pre-tax basis, as opposed to the portion consisting of Roth contributions made pursuant to Section 4.01 (if any) or an in-Plan Roth rollover made pursuant to Section 6.10(b) (if any).

**2.02 Accounting Date:** Each business day that the New York Stock Exchange is open for trading, as provided in Section 6.06 for valuing the Trust's assets.

**2.03 Administrator:** The person or entity selected and retained, from time to time, by the District to provide recordkeeping and other administrative services with respect to the Plan. The District may terminate and replace the Administrator, or the Administrator may resign upon 180 days advance written notice or such other notice period as the District and Administrator shall agree to. In the absence of an appointed Administrator, the Committee shall serve as the Administrator.

**2.04 Automatic Distribution Date:** The later of April 1 of the calendar year after the Plan

Year in which the Participant attains age 70-1/2 or the date the employee has a Severance Event.

**2.05 Beneficiary:** The person or persons, either designated by the Participant or identified in accordance with the Plan, who shall receive any benefits payable hereunder in the event of the Participant's death. If the Participant names two or more Beneficiaries, they shall be entitled to equal shares of the benefits payable at the Participant's death unless otherwise provided in the Participant's Beneficiary designation. If no Beneficiary is designated or identifiable, if the Beneficiary predeceases the Participant, or if the Beneficiary does not survive the Participant for a period of 15 days, then the estate of the Participant shall be the sole Beneficiary. If a married Participant wishes to designate a different Beneficiary than his or her spouse as to all or any part of the Participant's benefit, then the Participant shall be responsible for obtaining and filing with the Administrator appropriate written and notarized consent of his or her spouse to such change. Any further change in Beneficiary, with respect to any portion of a benefit that the spouse has already consented to, will not require the further consent of the spouse. The Participant's spouse, if any, shall automatically be the Beneficiary of a married Participant unless the Participant designates a different Beneficiary. For purpose of this Plan, a Participant's spouse shall mean the individual to whom the Participant is, or whom the deceased Participant was at the time of his or her death, lawfully married under the laws of the State (including a Commonwealth or the District of Columbia) in which the marriage took place, as recognized under federal law governing tax-qualified retirement plans.

**2.06 Benefit Commencement Date:** The date selected by the Participant under Section 7.02, or by the Beneficiary under Section 7.04 or 7.05, or the "default" date that results (by operation of Section 7.02, 7.04 or 7.05 below) from the payee's failure to make such an election, whichever is applicable.

**2.07 Code:** The Internal Revenue Code of 1986, as amended, including any regulations or rulings under the Code. Any reference to Regulations is a reference to Treasury Department regulations under the Code, unless otherwise specified. Any reference to a Section of the Code or Regulations shall be construed to include a reference to the corresponding provision of any successor law. Any reference to a Section of the Code shall be construed to include a reference to the corresponding Treasury Department regulations thereunder.

**2.08 Committee:** The Committee established by the District in accordance with Section 3.05 hereof consisting of the District's Treasurer, its the Director of Human Resources and a Commissioner appointed, from time to time, by the Board of Commissioners that manages the District. The Committee shall be the primary fiduciary of the Plan, with authority to interpret and oversee the administration of the Plan, including the powers specified in Article III below.

**2.09 Deferred Compensation:** The amount of Includible Compensation otherwise payable to the Participant which the Participant elects to defer in accordance with the Plan, plus any amount credited to a Participant's Account by reason of a transfer under Sections 6.08 or 6.09, a rollover under Section 6.10, or any other amount which is properly deposited into the Trust and credited to the Participant's Account from time to time, not including any investment experience.

**2.10 District:** The Metropolitan Water Reclamation District of Greater Chicago, which is a

political subdivision, agency or instrumentality of the State of Illinois as described in Section 457(e)(1)(A) of the Code. The District is the Plan sponsor. The District shall act by written action of its Board of Commissioners or any person to which that Board delegates certain authority to act on its behalf with respect to the Plan.

**2.11 Dollar Limitation:** The applicable dollar amount within the meaning of Section 457(b)(2)(A) of the Code, as adjusted from year to year for changes in the cost-of-living in accordance with Section 457(e)(15) of the Code. The Dollar Limitation is used under Section 5.01 below to determine the maximum amount of Deferred Compensation that may be credited to a Participant's Account under the Plan for any Plan Year.

**2.12 Employee:** Any employee or officer of the District, any employee of the District's statutory retirement fund, and any employee or officer of any other entity which is a statutorily-created affiliate of the District that has adopted the Plan with the consent of the District.

**2.13 Employer(s):** Any of the entities described as an employer in Section 2.12 above that has adopted the Plan for the benefit of its employees, for so long as such entity has an obligation to contribute Employee deferrals to the Plan and qualifies as a governmental employer eligible to maintain a Code Section 457(b) plan.

**2.14 457 Catch-Up Dollar Limitation:** Twice the applicable annual Dollar Limitation. This limit is applied to catch-up contributions described in Section 5.02(b) below.

**2.15 Includible Compensation:** Includible Compensation of a Participant means the "Participant's compensation," as defined in Section 415(c)(3) of the Code, for services performed for the Employer. Includible Compensation shall be determined without regard to any community property laws. . Includible Compensation shall include any differential wage payments (as defined by Section 3401(h)(2) of the Code).

**2.16 Joinder Agreement:** An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, specify a preference among the investment alternatives offered under the Plan, designate the Employee's Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference. The elections in effect under a Participant's Joinder Agreement as of December 31, 2014 shall remain in effect unless and until changed by the Participant, but beginning January 1, 2015, all new elections and changes of elections by Participants shall be made instead using election forms (which may be paper or electronic) made available by the Administrator and approved by the Committee for use by the Participants; provided, however, that any election form used for purposes of deferral elections under the Plan shall satisfy the requirement under Code Section 457(b) that deferrals be elected and made pursuant to an agreement.

**2.17 Normal Limitation:** The maximum amount of Deferred Compensation that may be credited to an Account for any Participant for any taxable year (other than amounts referred to in Sections 6.08, 6.09, and 6.10 below), as determined in accordance with Section 5.01 below and Treasury Regulations under Code Section 457(b)(2).

**2.18 Normal Retirement Age:** A Participant's Normal Retirement Age for purposes of the Plan shall be age 70-1/2, unless the Participant elects an earlier Normal Retirement Age in accordance with this Section 2.18. A Participant shall be permitted to file with the Administrator a written election, on a form approved by the Committee, of an earlier Normal Retirement Age so long as the elected Normal Retirement Age is not later than the Participant's attainment of age 70-1/2 and not before the earlier of: (i) the Participant attaining age 65, or, if applicable (ii) any earlier age at which the Participant would have the right to retire and receive, under the basic (statutory) defined benefit pension plan of the District (or under any money purchase pension plan, if then established and in effect, of an Employer, in which the Participant participates if he or she is not eligible to participate in the District's defined benefit pension plan) immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age. Pursuant to 40 ILCS 5/13-301, the basic (statutory) defined pension plan of the District currently allows for immediate retirement benefits without actuarial or similar reduction in accordance with the following:

- (a) Employees entering service prior to June 13, 1997 – employee may retire at age 50 with 30 years of service or at age 60 if less than 30 years of service.
- (b) Employees entering service after June 13, 1997 and before January 1, 2011 – employee may retire at age 55 with 30 years of service or at age 60 if less than 30 years of service.
- (c) Employees entering service on or after January 1, 2011 – employee may retire at age 67 (other than the standard vesting there is no years of service requirement).

Additional benefits established in accordance with the optional plan pursuant to 40 ILCS 5/13-304, may be considered in determining whether the Participant's retirement benefits are without actuarial or similar reduction under (ii) above. The optional plan allowed for the purchase of additional credit toward retirement benefits. Reciprocal service time credit with other qualified agencies will be included in the calculation of the years of service as allowed under the provisions of the defined pension plan of the District.

Normal Retirement Age determines if and when a Participant may be entitled to make catch-up contributions for up to three full Plan Years immediately preceding the Plan Year of the Participant's Normal Retirement Age. A Participant is not required to retire by incurring a Severance Event upon attaining his or her Normal Retirement Age, but the Participant's eligibility to make catch-up contributions under Section 5.02(b) below shall only arise for one catch-up period (of not more than three consecutive Plan Years) and shall cease as of the close of the Plan Year immediately preceding the Participant's Normal Retirement Age regardless of when the Participant may have made an early Normal Retirement Age election and of how long after Normal Retirement Age the Participant continues as an Employee. A Participant who has properly made a Normal Retirement Age election shall be eligible to make catch-up contributions under Section 5.02(b) for whatever portion of the three year catch-up period remains under that Section.

**2.19 Participant:** Any Employee who has joined the Plan pursuant to Article IV and for whom an Account balance is maintained under the Plan. An Employee or former Employee shall remain a Participant until his or her Account balance is zero so the Plan has no remaining

benefit obligation to that Participant.

**2.20 Percentage Limitation:** 100 percent (or such other percentage as applies from time to time under Code Section 457(b)(2)(B)) of the Participant's Includible Compensation available to be contributed as Deferred Compensation for the taxable year. The Percentage Limitation is used under Section 5.01 below to determine the maximum amount of Deferred Compensation that may be credited to a Participant's Account for any Plan Year.

**2.21 Plan Year:** The calendar year.

**2.22 Severance Event:** A severance of the Participant's employment or service relationship with the Employer, and any and all Employers, within the meaning of Section 457(d)(1)(A)(ii) of the Code.

In general, a Participant shall be deemed to have experienced a Severance Event for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship is considered to have actually terminated. In the case of a Participant who is an independent contractor of the Employer, a Severance Event shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will become an Employee of the Employer. These general rules shall be applied consistent with applicable Treasury Regulations for determining a "severance from employment" by an employee or independent contractor under Code Section 457(d)(1)(A)(ii).

**2.23 Trust:** The Trust shall consist of all compensation deferred under the Plan, any amounts transferred to it by or on behalf of Participants, plus any income and gains thereon, less any losses, expenses and distributions to or on behalf of Participants and Beneficiaries.

**2.24 Trustee:** The Trustee shall be the District or any other person (or entity) appointed to serve as Trustee of the Plan from time to time by action of the District's Board of Commissioners or that Board's delegate. The Trustee shall manage the Trust in accordance with Article VI below.

### **Article III. Administration**

**3.01 Committee Powers and Duties:** The Committee shall have the powers and duties set forth herein, in addition to such other powers and duties as may be provided in this Plan and Trust Document.

- (a) To see that all amounts specified in this Plan and Trust Document, from any source, are collected and applied.
- (b) To notify the Clerk of the Employer of the deductions to be made from the salaries of the employees.

- (c) To monitor investments offered by the Plan, recommend to the District changes to these investments when deemed appropriate, implement changes in investment options at the direction of the District and the facilitate investment directions by Participants and surviving Beneficiaries as provided in this Article III.
- (d) To consider and pass upon all applications for distributions and appeals of benefit denials.
- (e) To submit an annual report to the Board of Commissioners of the District. The report shall include the following:
  - (1) A balance sheet, showing the financial conditions of the Plan as of the end of the calendar year;
  - (2) A statement of receipts and disbursements during such year;
  - (3) A statement showing changes in the asset, liability, reserve and surplus accounts during such year;
  - (4) A detailed statement of investments as of the end of the year; and
  - (5) Any additional information as is deemed necessary for proper assessment of the condition of the Plan.
- (f) To recommend to the District appointment, replacement and termination of such advisors, auditors, legal or financial consultants and other Plan service providers as are necessary, from time to time, to fix or modify their compensation and any other terms and conditions of retention, to establish the scope and specific duties of the appointee by agreement, and to periodically review the actions of each appointee and to monitor the appointee's overall performance and compliance with its services agreement.
- (g) To make, adopt or approve rules, procedures and regulations necessary for the administration of the affairs of the Plan.
- (h) To cause to be collected any amounts due to the Plan from any Participant or Beneficiary prior to payment of any distribution due to such person.
- (i) To offset against any amount payable with respect to any Participant such sums as may be due to the Plan from or with respect to such Participant, or such sums as may have been paid by the Plan to or on behalf of such Participant due to misrepresentation, fraud or error.
- (j) To monitor the Administrator and any other Plan fiduciary or service provider, periodically in such manner and to such extent as the Committee, in its sole discretion, deems prudent.



- (k) To conduct or direct inquiry into the capability, experience, performance history, professional licensing or registration, if any, and financial stability of each and every Plan fiduciary or service provider as the Committee, in its sole discretion, deems prudent from time to time.
- (l) To require a fidelity bond to be provided by the Administrator, Trustee or custodian, to the extent deemed necessary or appropriate for the protection of the Plan and Trust, in the sole discretion of the Committee.
- (m) To notify Participants of any material Plan amendments with reasonable promptness before (or, under appropriate circumstances, after) such amendment takes effect. Similarly to notify Participants of any changes in investment options or administrative processes that may be relevant to the Participant's participation in the Plan.
- (n) To bring, settle and defend claims on behalf of or with respect to the Plan, to the extent not undertaken by the District.
- (o) To meet periodically in such a manner and with such frequency as the Committee deems necessary or appropriate, to develop and follow rules and procedures for conducting its business, and to maintain a record of its meetings and decisions.
- (p) To interpret the Plan, consistent with its purpose and applicable law, in the sole discretion of the Committee, and to treat similarly situated Participants and Beneficiaries in a substantially uniform manner insofar as practicable under the circumstances.

The decisions and actions of the Committee, and the fiduciary actions of the District, taken in good faith, shall be binding and enforceable on all interested persons, and shall not be overturned by any court or governmental body unless proven to be arbitrary and capricious, having no basis in the Plan or applicable law.

### **3.02 Officer Duties:**

- (a) In addition to those other requirements set forth in this Article, the proper officers of the District shall, without cost to the Plan:
  - (1) Deduct, or cause to be deducted, all required sums from the salaries of participating Employees, and pay such sums to the Plan in such a manner as the Committee specifies.
  - (2) Furnish to the Committee, in the manner and form requested by it, such information, reports and data concerning Employees, as the Committee deems necessary or appropriate for the proper administration of the Plan.

(3) Furnish suitable rooms for offices and meetings.

- (b) The District shall have the authority to collect and make or oversee Participant contributions and other payments to the Plan, and to perform such other nondiscretionary administrative functions as the Committee may direct.

### 3.03 **Trust Provisions:**

- (a) Trustee: If the District designates a third party to serve as Trustee, then resignation, removal and appointment of the Trustee shall be conducted by action of the District's Board of Commissioners and shall be governed by provisions of Illinois law applicable to resignation, renewal and appointment of such Trustee. The Trustee may from time to time, with the consent of the District, transfer to a common, collective or pooled trust fund maintained by any corporate Trustee hereunder, all or such part of the Trust fund as the Trustee may deem advisable, and such part or all of the Trust fund so transferred shall be subject to all the terms and provisions of the common, collective or pooled trust fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts. The Trustee may, from time to time, withdraw from such common, collective or pooled trust fund all or such part of the Trust fund as the Trustee may deem advisable.
- (b) Investments: The Board of Commissioners of the District shall be responsible for developing and maintaining an Investment Policy Statement for the Plan, which shall provide guidelines for the retention, monitoring and changing of investment options offered under the Plan. The Board of Commissioners shall make all decisions regarding the selection of and changes to investment options under then Plan, and may retain an investment advisor as a consultant to conduct due diligence regarding current and prospective investment options, and to advise regarding portfolio strategy, market trends and conditions, and investment performance. The Board of Commissioners, or by delegation the Committee, shall contract with investment managers for various investment options which shall be available under the Plan from time to time.

The Committee may work with the investment advisor to develop recommendations for changes in or additions to the Plan's investment options. The Committee shall regularly monitor and evaluate the appropriateness of the Plan's investment options, and report to the Board of Commissioners on the Committee's findings and recommendation.

Participants or their surviving Beneficiaries shall be entitled to select from among the available investment options for the investment of their Accounts.

The Committee shall (i) provide appropriate and sufficient information regarding available investment options and investment direction procedures to Participants

and surviving Beneficiaries to enable them to make informed investment choices with respect to their Plan Accounts, (ii) allow changes in investment directions to be made with reasonable frequency, and (iii) offer a suitably diverse array of investment options as will give Participants and surviving Beneficiaries a reasonable opportunity to design a retirement account portfolio that takes into account, generally, such individual factors as age, financial circumstances and risk tolerance. Because investment control over their Accounts rests with the Participants and surviving Beneficiaries, none of the Plan fiduciaries will be liable for any investment loss, or lost investment opportunity, that is experienced by any Participant or Beneficiary with respect to the investment performance of their Account under the Plan. In the event and to the extent a Participant or surviving Beneficiary does not provide investment direction with respect to all or any portion of their Account, the undirected portion of the Account shall be invested in the Plan's "default" investment option, which shall be selected and announced from time to time by the Committee.

- (c) Designation of Fiduciaries: The Trustee, the District the Committee, and the Investment Advisor are fiduciaries under the Plan. The persons they designate to carry out or help carry out their duties or responsibilities may also be fiduciaries of the Plan to the extent they have discretion that may affect benefit rights or the management of Plan assets. For example, proxy voting is a fiduciary function. Each fiduciary has only those duties or responsibilities specifically assigned to it under the Plan or Trust or delegated to that fiduciary by another Plan fiduciary. Each fiduciary may assume (unless it has actual knowledge to the contrary) that any direction, information or action of another fiduciary is proper and need not inquire into the propriety of any such action, direction or information. Except as provided by law, no fiduciary will be responsible for the malfeasance, misfeasance or nonfeasance of any other fiduciary.
- (d) Fiduciary Standards:
  - (1) All fiduciaries shall discharge their duties with respect to this Plan and Trust solely in the aggregate interest of the Participants and Beneficiaries of the Plan. Such duties shall be discharged for the exclusive purpose of providing benefits to the Participants and Beneficiaries and defraying proper administrative expenses of the Plan.
  - (2) All fiduciaries shall discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and in a manner consistent with applicable Illinois law.
- (e) Trust Exemption. The Trust is intended to be exempt from taxation under Section 501(a) of the Code and is intended to comply with Section 457(g) of such Code. The District shall be empowered to submit or designate appropriate representatives

to submit this Plan and Trust to the Internal Revenue Service for a determination of the eligibility of the Plan under Section 457, and the exempt status of the Trust under Section 501(a), if the District concludes that such a determination is desirable.

**3.04 Powers and Duties of the Trustee:** The Trustee is the fiduciary with authority to manage and control the assets of the Trust, except as otherwise provided herein. The Trustee shall have and shall exercise all of the rights and authority of a legal owner with respect to all property of the Trust, including the power and duty to:

- (a) Invest and reinvest the Trust Fund pursuant to Section 6.02 hereof.
- (b) Settle, compromise or submit to arbitration, any claims, debts or damages due or owing to or from the Trust, to commence or defend against suits or legal proceedings and to represent the Trust in all suits or legal proceedings.
- (c) Exercise any right, including the right to vote, pertinent to any Trust property at any time. Notwithstanding the foregoing, the voting of proxies for securities held by the Trust is the responsibility of the District's Treasurer, except to the extent a third party Trustee agrees in writing to assume the responsibility to vote proxies.
- (d) Determine and report to the Administrator the value of Trust assets from time to time and as of any Accounting Date, as needed for the operation of the Plan.
- (e) Prepare, issue and file any financial or tax returns required by or with respect to the Trust from time to time.
- (f) Allow access to Trust records by the Administrator or Committee from time to time upon reasonable request.
- (g) Preserve and maintain Trust records and transfer them to any successor Trustee, or destroy them, as directed by the Committee or the District and consistent with applicable law governing the Trust and the operation of the Trustee.
- (h) Make, execute, and deliver, any and all contracts, contract waivers, releases or other instructions, in writing, necessary or proper for the accomplishment of any of the foregoing powers.

**3.05 Duties of the Employers:** The District shall have the authority to appoint the Administrator and the Committee as provided in Sections 2.03 and 2.08, to serve as Trustee or appoint a third party Trustee as provided in Section 2.24, to determine investment options available under the Plan as provided in Section 3.03(b), and to amend or terminate the Plan and Trust as provided in Article XI below. When taking action as Trustee or selecting investment options, the District shall be a Plan fiduciary, but in all other roles the District shall be acting solely as the Plan sponsor or as an employer of eligible or participating Employees, for which fiduciary responsibility under the Plan shall not attach. The District is free to consider its own

business interests when not acting as a Plan fiduciary. Employers shall cooperate with the Plan fiduciaries and with the District to provide information regarding their Employees and such Employees' elections regarding the Plan, and to facilitate the contribution of Deferred Compensation to the Plan and Trust.

**3.06 Duties of Administrator:** The Administrator shall perform such administrative and custodial services in connection with the Plan as it contracts with the District to provide, which may, without limitation, include the maintenance of Participants' Accounts, the provision of periodic reports to the Committee and the Participants and surviving Beneficiaries on the status of Accounts, providing and processing Joinder Agreements and election forms and maintaining Plan records. Plan records held or controlled by the Administrator shall be maintained on a confidential basis and, as directed by the Committee, shall be destroyed or delivered in usable form to any successor Administrator upon termination of the Administrator's services.

**3.07 Claim and Appeal Procedures:** If a benefit application is denied initially, any Participant, Beneficiary or authorized representative of a claimant under the Plan, who believes he or she is entitled to payment of a benefit for which provision is made in the Plan shall file a formal, written claim with the Committee and shall furnish such evidence of entitlement to benefits as the Committee may reasonably require. The Committee shall have complete discretion, in accordance with the Plan, as to whether a claim shall be allowed or denied. The Committee shall notify the Participant or Beneficiary in writing as to the amount of the benefit to which he or she is entitled, the duration of such benefit, the time the benefit is to commence and other pertinent information concerning his or her benefit. If a claim for a benefit is denied by the Committee, in whole or in part, the Committee shall provide adequate notice in writing to the Participant or Beneficiary whose claim for a benefit has been denied within the 90-day period following receipt of the claim by the Committee. If, under special circumstances, the Committee requires an extension of time for processing the claim, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-day period. In no event shall such extension exceed a period of 90 days from the end of such initial period. If written notice of the denial is not furnished in accordance with the above, the claim shall be deemed denied and the claimant may proceed with an appeal of the denial, as provided below. The written notice regarding the benefit denied shall set forth (a) the specific reason or reasons for the denial; (b) specific reference to pertinent Plan provisions on which the denial is based; (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and (d) a statement that any appeal of the denial must be made in writing to the Committee, within 60 days after receipt of the notice, which must include a full description of the pertinent issues and the basis of the appeal. If the Participant or Beneficiary fails to appeal such action to the Committee in writing within the prescribed period of time, the Committee's determination shall be final, binding and conclusive.

In the event of an adverse benefit determination, the Participant, Beneficiary, or authorized representative shall be permitted to review pertinent documents, which shall be provided free of charge, including copies of all documents, records, and other information relevant to the claim for benefits, and to submit to the Committee issues and comments in writing. If the Committee receives from a Participant or a Beneficiary, within the prescribed period of time, a notice of an appeal of the denial of a claim for benefits, such notice shall immediately be submitted to the District. The District may hold a hearing or otherwise ascertain such facts as it deems necessary

and shall render a decision which shall be binding upon both parties. The decision of the District shall be in writing and a copy thereof shall be sent to each party within 60 days after the receipt by the Committee of the notice of appeal, unless special circumstances require a reasonable extension of such 60-day period, but in any event, not later than 120 days after receipt. If written notice of the denial on appeal of a claim for benefits is not received within the 60 or 120-day period, as applicable, then the claim shall be treated as a denied claim on appeal.

#### **Article IV. Participation in the Plan**

**4.01 Initial Participation:** Participation by any eligible Employee is voluntary. An Employee shall become a Participant by entering into a Joinder Agreement, (or other Committee-approved Plan enrollment form) prior to the beginning of the calendar month in which the enrollment is to become effective. An Employee shall be entitled, in accordance with the Plan, to elect to defer Compensation not yet earned as of any date on which he or she is a Participant insofar as may be permitted under the Code.

An Employee's deferral of Compensation made under this Section 4.01 will be made on a pre-tax basis, unless the Employee affirmatively elects, at the time and in the manner allowed by the Administrator and approved by the Committee, to have such deferrals treated as Roth contributions under the Plan. Roth contributions shall be treated as income to the Participant for tax purposes at the time of deferral, and shall be deposited into, and maintained in, a separate Roth subaccount under the Plan on behalf of the Participant. All gains, losses and other credits or charges will be allocated on a reasonable basis among the Participant's separate subaccounts. All Roth contributions shall be included in the determination of a Participant's aggregate Deferred Compensation for purposes of applying the limits of Article V or any other applicable limits under the Plan and the law.

**4.02 Amendment of Elections:** A Participant may use a Committee-approved election change form to amend an executed Joinder Agreement or other enrollment form in order to change the amount of Includible Compensation not yet earned that is to be deferred (including the reduction of such future deferrals to zero). Such amendment shall become effective as of the beginning of the calendar month commencing after the date such election change form is executed and received by the Administrator, or such other date as may be permitted under the Code. In accordance with the Plan and applicable procedures, a Participant (or surviving Beneficiary, if eligible to do so) may use an election change form to change investment directions, change Beneficiary designations, elect the form of distribution or provide any other election information, application or acknowledgement required by the Plan. Such forms and elections shall not take effect before they have been properly completed, signed and filed with the Administrator.

#### **Article V. Limitations on Deferrals**

**5.01 Normal Limitation:** Except as provided in Section 5.02, the maximum amount of Deferred Compensation for any Participant for any taxable year, shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation. Amounts transferred or rolled over into the Plan by or on behalf of a Participant shall not count for purposes of determining the maximum under

this Section 5.01 to the extent that such transfers and rollovers are not counted for this purpose under the Code Section 457(b)(2).

## 5.02 **Catch-Up Limitations:**

- (a) Catch-up Contributions for Participants Age 50 and Over: In accordance with Code Section 457(e)(18), a Participant who has attained the age of 50 before the close of the Plan Year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of Section 5.01, may make elective deferrals of Deferred Compensation in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of (1) the applicable dollar amount as defined in Section 414(v)(2)(B) of the Code, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the Code, or (2) the excess (if any) of (i) the Participant's Compensation for the year, over (ii) any other elective deferrals of the Participant for such year which are made under the Plan without regard to this Section 5.02(a). An additional contribution made pursuant to this Section 5.02(a) shall not, with respect to the year for which the contribution is made, be subject to any otherwise applicable limitation contained in Section 5.01 above, or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 5.02(a) shall not apply in any year to which a higher limit under Section 5.02(b) applies to the Participant.
- (b) Last Three Years Catch-up Contribution: In accordance with Code Section 457(b)(3), for each of the last three taxable years ending before the Participant's attainment of Normal Retirement Age, his or her maximum amount of Deferred Compensation (without regard to any transfers or rollovers that are not required to be counted for this purpose) shall be the lesser of: (1) the 457 Catch-Up Dollar Limitation, or (2) the sum of (i) the Normal Limitation for the taxable year, and (ii) the Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Deferred Compensation (taken into account for this purpose) for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if (x) the Participant was eligible to participate in the Plan for such year (or in any other eligible deferred compensation plan established under Section 457(b) of the Code which is properly taken into account pursuant to regulations under Code Section 457), and (y) compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation.

**5.03 Sick, Vacation and Back Pay:** A Participant may defer all or a portion of the value of the Participant's accumulated sick pay, accumulated vacation pay and/or back pay, provided that such deferral does not cause total deferrals on behalf of the Participant to exceed any applicable limitation under Sections 5.01 and 5.02 above for the year of deferral. The election to defer such sick, vacation and/or back pay must be made in a manner and at a time permitted under Section 1.457-4(d) of the Treasury Department regulations. Pursuant to Treasury Department regulations issued under Section 415 of the Code, the Plan also permits Participant-elected deferrals from Compensation, including sick, vacation, back pay and any other eligible accrued



pay, so long as such Compensation is paid within 2 ½ months following the Participant's Severance Event and the other requirements of Sections 457(b) and 415 of the Code are met. Additionally, the agreement to defer such amounts must be entered into prior to the first day of the month in which the amounts otherwise would be paid or made available.

**5.04 Other Plans:** Notwithstanding any provision of the Plan to the contrary, the amount excludible from a Participant's gross income under this Plan or any other eligible deferred compensation plan under Section 457(b) of the Code shall not exceed the limits set forth in Sections 457(b) and 414(v) of the Code.

**5.05 Excess Deferrals:** Any deferral contributions made by a Participant that exceed the applicable limitations under this Plan for a taxable year, taking into account all similar plans to which the Participant contributed for the year, to the extent that contributions to such other plans are disclosed by the Participant, shall constitute an excess deferral for that taxable year. Any excess deferral along with allocable net income, shall be subject to corrective distribution as soon as administratively practicable after discovery of the excess in accordance with the requirements for correcting excess deferrals under the Code and Sections 1.457-4(e) and 1.457-5 of the Treasury Department regulations.

**5.06 Protection of Person Who Serves in a Uniformed Service:**

- (a) An Employee whose employment is interrupted by qualified military service (as defined in Section 414(u)(5) of the Code) may elect to contribute additional Deferred Compensation upon resumption of employment with the Employer equal to the maximum Deferred Compensation that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Includible Compensation) without the interruption or leave, reduced by Deferred Compensation, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment, or if sooner, for a period of time equal to three times the period of the interruption or leave.
- (b) If a Participant dies on or after January 1, 2007 in connection with performing such qualified military service, the surviving Beneficiary shall be entitled to any benefits provided under the Plan (without regard to benefit accruals relating to the period of qualified military service, unless otherwise required under Section 414(u) of the Code) as if the Participant had resumed employment with the Employer on the day before his or her death in accordance with the Participant's reemployment rights under chapter 43 of title 38, United States Code, and then incurred a Severance Event on account of his or her death.

## **Article VI. Trust and Investment of Accounts**

**6.01 Investment of Deferred Compensation:** A Trust is hereby created to hold all the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The Trustee shall be the District

or such other person that agrees to act in that capacity hereunder and has been appointed by the District in accordance with Section 2.24 above. Except as permitted by applicable law, no part of the Trust shall revert to the District, or any Employer, or be used for or diverted to purposes other than the exclusive benefit of Participants and other qualifying payees under the Plan (which purposes include the payment of reasonable expenses of operating the Plan and Trust) until all benefit obligations of the Plan have been satisfied, provided that amounts attributable to erroneous contributions or payments to the Trust may be properly and equitably refunded or corrected.

**6.02 Investment Powers:** The Trustee shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants or surviving Beneficiaries pursuant to Section 6.05.

- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period.
- (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to employee plans described under Sections 457 or 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plans the declaration of trust of such commonly collective, or commingled trust fund shall constitute a part of this Plan.
- (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other 457 plan or trust qualified under Section 401(a) of the Code or any other plan described in Section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Administrator, or such custodian as the District may appoint, as agent and nominee for the Trustee. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.
- (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.

- (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan or Trust, or any appointed custodian of Plan assets, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
- (f) Upon such terms as may be deemed advisable for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plans to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefore, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Trust in all suits or legal proceedings in any court of law or equity or before any body or tribunal; provided, however, that the Trust may not be a necessary party to every lawsuit involving the Plan.
- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Trust.
- (h) To open and maintain any bank account or accounts in the name of the Trust, the custodian, or any nominee or agent of the foregoing, in any bank or banks.
- (i) Investment of assets credited to Participant Accounts is subject to the terms of the relevant prospectus or offering document for the applicable investment option, including explicit policies pertaining to market timing and excessive trading. The Administrator reserves the right, in its sole discretion, to reject purchase orders or suspend investment availability to a Participant or Beneficiary when, in the judgment of the Administrator, such action is necessary to prevent abusive market timing or excessive trading and is in the best interest of the Plan. Plan investment providers also reserve the right to enforce the terms of the prospectus or other disclosure document with respect to all investment company securities it offers as such document may relate to market timing and excessive trading. This includes restricting the ability to purchase additional fund shares for an indefinite period of time and other remedial action in order to comply with prospectus terms and to comply with State, Federal and Self-Regulatory

Organization rules and regulation. Account restrictions may occur with or without prior notice to the affected party.

- (j) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.
- (k) To prepare such special and periodic reports concerning the financial status and condition of the Plan as may be requested by the Committee or deemed appropriate for purposes of the Plan, and to grant reasonable access to Trust records upon request of the Committee.

**6.03 Taxes and Expenses:** All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the Plan, or with respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of any Plan fiduciary or service provider, as may be agreed upon from time to time by the Committee and the fiduciary or service provider, and reimbursement for reasonable expenses incurred by the Administrator, the Committee (in aggregate and by the members individually), or any other Plan fiduciary or service provider in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust. Expenses attributable to the administration of one or more particular Accounts may be deducted from that Account or Accounts as directed by the Committee and permitted by applicable law; otherwise, taxes and expenses attributable to operating the Plan or Trust in general shall be allocated pro rata to all Accounts, or to particular investment funds, as deemed appropriate by the Trustee and Administrator.

**6.04 Payment of Benefits:** The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Trustee, or by any Plan custodian in accordance with the direction of the Committee. The Trustee or custodian shall not be liable with respect to any distribution of Trust assets made at the direction of the Committee.

**6.05 Investment Funds:** In accordance with uniform and nondiscriminatory rules established by the Plan's Investment Policy Statement, and implemented by the Committee, a Participant or surviving Beneficiary may direct his or her Account to be invested, from time to time, in one or more investment funds available under the Plan; provided, however, that such investment directions shall not violate any investment restrictions established or accepted by the Plan. The Trustee may refuse to comply with any investment direction from the Participant (or, if applicable, a Beneficiary) in the event the Trustee, in its sole and absolute discretion, deems such direction improper by virtue of applicable law. No Plan fiduciary or service provider shall be liable for any losses incurred by virtue of following Participant (or, if applicable, Beneficiary) investment directions (including the use of the default investment fund where investment direction is not given) or for any reasonable administrative delay in implementing such directions.

**6.06 Valuation of Accounts:** As of each Accounting Date, the Plan assets held in each available investment fund shall be valued by the Trustee, or any other person (or entity)

appointed to serve as Trustee of the Plan, at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account's balance invested in that fund as of the immediately preceding Accounting Date bears to the total of all such Account balances invested in that fund as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and surviving Beneficiaries.

**6.07 Crediting of Accounts:** A Participant's Account shall reflect the amount and value of the investments or other property obtained by the Trustee, or any other person (or entity) appointed to serve as Trustee of the Plan, through the investment of the Participant's Deferred Compensation and other assets transferred to the Trust for the benefit of the Participant. It is anticipated that the Trust investments with respect to a Participant will conform to the investment preferences applicable pursuant to the Participant's applicable Joinder Agreement or investment direction agreement, and to corresponding provisions of the Plan. Each Participant or surviving Beneficiary shall receive periodic reports, not less frequently than annually, showing the then current value of his or her Account.

**6.08 Post-Severance Transfers Among Eligible Deferred Compensation Plans:**

- (a) Incoming Transfers: A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's Account under the Plan if: (i) the Participant has had a Severance Event with that employer and become an Employee of the Employer; (ii) the other employer's plan provides that such transfer will be made; and (iii) the Participant or Beneficiary whose deferred amounts are being transferred will have an Account balance immediately after the transfer at least equal to his or her deferred amount immediately before the transfer. The Committee and Trustee may require such documentation from the predecessor plan as they deem necessary to make the transfer in accordance with Section 457(e)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. The Committee or Trustee may refuse to accept a transfer in the form of assets other than cash, unless they agree to accept and hold such other assets under the Plan. Such transferred amounts shall be separately accounted for by the Plan to the extent required by law.
- (b) Outgoing Transfers: An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a Participant's or Beneficiary's Account under this Plan, if: (i) in the case of a transfer for a Participant, the Participant has a Severance Event with the Employer and becomes an employee of the other employer; (ii) the other employer's plan provides that such transfer will be accepted; (iii) the Participant or Beneficiary and the employers have signed such agreements as are necessary to assure that the Plan's liability to pay benefits to the Participant has been discharged and assumed by the other employer or by its plan; and (iv) the Participant or Beneficiary whose deferred amounts are

being transferred will have an amount credited on his or her behalf immediately after the transfer at least equal to the deferred amount that was credited on his or her behalf immediately before the transfer. The Committee or Trustee may require such documentation from the other plan as they deem necessary to make the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for and properly accounted for under such plan. Such transfers shall be made only under such circumstances as are permitted under Section 457 of the Code and the regulations thereunder.

#### **6.09 Transfers Among Eligible Deferred Compensation Plans of the Employer:**

- (a) Incoming Transfers: A transfer may be accepted from another eligible deferred compensation plan maintained by an Employer and credited to a Participant Account under the Plan if: (i) the Employer's other plan provides that such transfer will be made; (ii) the Participant whose deferred amounts are being transferred will have an amount credited on his or her behalf immediately after the transfer at least equal to the deferred amount credited on his or her behalf immediately before the transfer; and (iii) the Participant whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Plan unless the Participant is performing services for an Employer. Such transfers shall be separately accounted for to the extent required by law.
- (b) Outgoing Transfers: A transfer may be accepted by another eligible deferred compensation plan maintained by an Employer and credited to a Participant's or Beneficiary's Account under the Plan if: (i) the Employer's other plan provides that such transfer will be accepted; (ii) the Participant or Beneficiary whose deferred amounts are being transferred will have an amount credited and properly accounted for on his or her behalf immediately after the transfer at least equal to the deferred amount credited on his or her behalf immediately before the transfer; and (iii) the Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in an Employer's other eligible deferred compensation plan unless the Participant or Beneficiary is performing services for the Employer.

#### **6.10 Eligible Rollover Distributions:**

- (a) Incoming Rollovers: An eligible rollover distribution may be accepted from an eligible retirement plan and credited to a Participant's Account under the Plan. The Employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. The Plan shall separately account (in one or more separate accounts) for eligible rollover distributions from any eligible retirement plan that is not an eligible deferred compensation plan described in Section 457(b) of the Code maintained by an eligible governmental employer

described in Section 457(e)(1)(A) of Code.

- (b) In-Plan Conversion Rollovers: A Participant may elect, at any time and in the manner prescribed by the Committee, to have any distributable, pre-tax, vested amounts held in the Participant's Account rolled distributable over from the Participant's pre-tax subaccount to the Participant's Roth contribution subaccount.
- (c) Outgoing Rollovers: Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (d) Definitions:
  - (1) Eligible Rollover Distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that, in accordance with Code Section 402(c)(4), an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Sections 401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. For purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
  - (2) Eligible Retirement Plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code (other than an endowed contract), an annuity plan described in Sections 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, a Roth IRA, or an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution.
  - (3) Distributee: A distributee includes an Employee or former Employee who has an Account under the Plan. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the

interest of the spouse or former spouse.

- (4) Direct Rollover: A direct rollover is a payment by the Plan directly to the eligible retirement plan specified by the distributee.

**6.11 Trustee-to-Trustee Transfers to Purchase Permissive Service Credit:** All or a portion of a Participant's Account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in Section 414(d) of the Code) if such transfer is (A) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan, or (B) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof, within the meaning of Section 457(e)(17) of the Code.

**6.12 Treatment of Distributions of Amounts Previously Rolled Over From 401(a) and 403(b) Plans and IRAs:** For purposes of Section 72(t) of the Code, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Section 4974(c) of the Code).

## **Article VII. Benefits**

**7.01 Retirement Benefits and Election on Severance Event - General Rule:** Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence as of a Participant's Automatic Distribution Date, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, but subject to the following paragraphs of this Section 7.01, the Participant may elect prior to and/or after a Severance Event (i) the form of distribution under Section 7.02, and (ii) to have the distribution of benefits commence prospectively on a fixed determinable date other than that described in the preceding sentence, but not later than April 1 of the year following the year of the Participant's Severance Event or attainment of age 70-1/2, whichever is later. If no election is made as to form of payment, the Participant's benefit shall be paid in accordance with Section 7.02 (c) over a period of five years in quarterly installments. Notwithstanding the foregoing, in order to ensure the orderly administration of this Section 7.01, from time to time the Administrator may establish a deadline for elections to be made under this Section. No in-service distributions will be permitted except those for unforeseeable emergencies in accordance with Section 7.06 and those for de minimis accounts in accordance with Section 7.07.

**7.02 Payment Options:** As provided in Sections 7.01, 7.04 and 7.05, a Participant may elect to have the value of the Participant's Account, determined by the Trustee as of the closest business day preceding each distribution date (or annuity purchase date, if applicable), distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.03 below.

- (a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;



- (b) One lump-sum payment;
- (c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant;
- (d) Annual payments equal to the minimum distributions required under Section 401(a)(9) of the Code, including the incidental death benefit requirements of Code Section 401(a)(9)(G), over the life expectancy of the Participant or over the joint life expectancies of the Participant and his or her Beneficiary;
- (e) Payments equal to payments made by the issuer of a retirement annuity policy purchased by the Trustee with the value of the Participant's Account;
- (f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7.01, provided that all payments commence (or are made) by the latest benefit commencement date under Section 7.01; or
- (g) Any other payment option elected by the Participant and agreed to by the Committee.

**7.03 Limitation on Options:** No payment option may be selected by a Participant under subsections 7.02(a) or (c) for which the amount of any installment is less than \$100. No payment option may be selected by a Participant under Sections 7.02, 7.04, or 7.05 unless it satisfies the requirements of Sections 401(a)(9) and 457(d)(2) of the Code, including that payments commencing before the death of the Participant shall satisfy the incidental death benefit requirements under Code Section 401(a)(9)(G).

**7.04 Post-Retirement Death Benefits:**

- (a) Should the Participant die after he/she has begun to receive benefits under a payment option, the remaining payments, if any, under the payment option shall continue until the Administrator receives notice of the Participant's death. Upon notification of the Participant's death, benefits shall be payable to the Participant's Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date. Any periodic payments that accrued to the Beneficiary before payment to the Beneficiary begins shall be paid in a cumulative single sum as part of the Beneficiary's first actual payment.
- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to that estate in a lump sum.

#### 7.05 **Pre-Retirement Death Benefits:**

- (a) Should the Participant die before he or she has begun to receive the benefits provided by Section 7.01, the value of the Participant's Account shall be payable to the Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date. Any periodic payments that accrued to the Beneficiary before payment to the Beneficiary begins shall be paid in a cumulative single sum as part of the Beneficiary's first actual payment.
- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to that estate in a lump sum.

**7.06 Unforeseeable Emergencies:** If before separation from service, the Participant is faced with an unforeseeable emergency that is approved by the Committee as meeting the requirements described below, the Participant shall be entitled to receive a distribution (as a cash lump sum) of the amount determined by the Committee to be the amount that is reasonably needed to satisfy the emergency need. To the extent allowed by applicable law, such need may be considered to include the estimated amount of income tax the Participant would pay on the principal amount of the emergency distribution.

An unforeseeable emergency means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent of the Participant (as defined by Code Section 152(a)), loss of the Participant's property due to casualty, or other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant. The need to send the Participant's child to college or the desire to purchase a home shall not be considered an unforeseeable emergency. The determination as to whether an unforeseeable emergency exists shall be based on the facts of each individual case and determined consistent with Treasury Department regulation Section 1.457-6(c).

An unforeseeable emergency distribution shall not be paid to the extent that the financial hardship is or may be relieved through reimbursement or compensation by insurance or otherwise, by borrowing from commercial sources on reasonable commercial terms to the extent that this borrowing would not itself cause a severe financial hardship, by cessation of deferrals under the Plan, or by liquidation of the Participant's other assets (including the assets of the Participant's spouse and minor children that are reasonably available to the Participant) to the extent that this liquidation would not itself cause severe financial hardship.

**7.07 De Minimis Accounts:** Notwithstanding the foregoing provisions of this Article, if the value of a Participant's Account is less than \$1,000, the Participant's Account shall be paid to the Participant in a single lump sum distribution, provided that (a) no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant

pursuant to this Section 7.07. If the value of the Participant's Account is at least \$1,000 but not more than the dollar limit under Section 411(a)(11)(A) of the Code and (a) no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to this Section 7.07, the Participant may elect to receive his or her entire Account. Such distribution shall be made in a lump sum.

## **Article VIII. MINIMUM DISTRIBUTION REQUIREMENTS**

### **8.01 General Rules**

- (a) The requirements of this Article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan.
- (b) All distributions required under Article VII shall be determined and made in accordance with section 401(a)(9) of the Code, including the minimum incidental distribution requirement of Section 401(a)(9)(G) of the Code, and the Income Tax Regulations thereunder, the provisions of which are herein incorporated by reference.

**8.02 Distribution Commencement:** The entire value of the Account of a Participant will commence to be distributed no later than the first day of April following the calendar year in which the later of (a) the attainment of age 70-1/2 by the Participant or (b) the separation from the service of the Employer by the Participant occurs (the "required beginning date"), over the life of such Employee or the lives of such Participant and his or her Beneficiary.

**8.03 Required Amount:** The minimum amount that will be distributed for each distribution calendar year is the lesser of:

- (a) The quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2 of the Income Tax Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
- (b) If the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Survivor Table set forth in Section 1.401(a)(9)-9 Q&A-3 of the Income Tax Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

**8.04 Timing of Distributions:** Distributions shall be made over a period of time not extending beyond the life expectancy of the Participant, the joint lives of the Participant and a designated Beneficiary, a period certain not extending beyond the life expectancy of the Participant, or a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a designated Beneficiary.

The second required minimum distribution shall be made before the end of the calendar year following the calendar year in which the Participant attained age 70-1/2. Subsequent distributions will be made before the end of each following calendar year until the Participant's entire Account has been distributed. A distribution is considered to begin on the date it is required to be distributed to the Participant or, if applicable, the surviving spouse.

The Account balance to be used in determining the required minimum distribution shall be the Account balance as of the Plan Year ending in the calendar year preceding the calendar year in which the Participant attained age 70-1/2 increased by any allocations and decreased by any distributions made during the calendar year containing the end of the Plan Year used to determine the first required minimum distribution. If the first minimum required minimum distribution is made after the end of the calendar year in which the Participant attained age 70-1/2, but before April 2 of the calendar year following the calendar year in which the Participant attained age 70-1/2, the first required minimum distribution shall be deemed made in the preceding calendar year for purposes of determining the second minimum required distribution which must be made before the end of the calendar year following the calendar year in which the Participant attained age 70-1/2. Subsequent distributions must be made before the end of each subsequent calendar year.

#### **8.05 Distribution Upon Death**

- (a) If the Participant dies on or after the date distribution of the Participant's Account has begun, the remaining portion of such Account will be distributed as follows:
  - (1) If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:
    - (A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
    - (B) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.
    - (C) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life

expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

- (2) If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of the September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (b) If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70-1/2, if later.
  - (2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse are required to begin, this Section 8.05(b), other than Section 8.05(b)(1), will apply as if the surviving spouse were the Participant.

For purposes of Section 8.05(a) or Section 8.05(b), unless Section 8.05(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 8.05(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 8.05(b)(1).

If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 00.

## **Article IX. Non-Assignability**

**9.01 General:** Except as provided in Article VIII and Section 9.02, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non-transferable.

### **9.02 Domestic Relations Orders:**

- (a) Allowance of Transfers: To the extent required under a final judgment, decree, or other court order (including approval of a property settlement agreement) that (i) relates to the provision of child support, alimony payments, or marital property rights and (ii) is made pursuant to a state domestic relations law, and (iii) is permitted under Sections 414(p)(11) and (12) of the Code, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the Participant (an "Alternate Payee"). Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the Alternate Payee who shall be entitled to make investment, Beneficiary and distribution selections (except the Alternate Payee may not choose any form of payment that involves survivor benefits to any spouse of the Alternate Payee, nor add contributions to such Account) with respect thereto in the same manner as if he or she were a Participant. Any amount so set aside for an Alternate Payee shall be paid in accordance with the form and timing of payment specified in the order. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under the Plan and Section 457(b) of the Code. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding.
- (b) Release from Liability to Participant: The Plan's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to an Alternate Payee pursuant to paragraph (a) of this Section and the Participant and his or her Beneficiaries shall be deemed to have released the Plan and all its fiduciaries from any claim with respect to such amounts.
- (c) Participation in Legal Proceedings: The Plan shall not be obligated to defend against or set aside any judgement, decree, or order described in paragraph (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of the involvement of the Plan and its fiduciaries in connection with such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Plan or any of its fiduciaries to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Plan's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Administrator or Committee shall be authorized to disclose information relating to the Participant's Account to the Alternate Payee (including the legal representatives of the Alternate Payee), or to a court.

- (d) Determination of Validity of Domestic Relations Orders: The Committee shall establish uniform procedures for determining the validity of any domestic relations order. The Committee's or Administrator's determinations under such procedures shall be conclusive and binding on all parties and shall be afforded the maximum amount of deference permitted by law.

#### **Article X. Relationship to other Plans and Employment Agreements**

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of each Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and any Employer or to give any Participant the right to be retained in the employ of any Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and an Employer.

#### **Article XI. Amendment or Termination of Plan**

The District may, by written action of its Board of Commissioners or any delegate of that Board for this purpose, at any time amend or terminate this Plan. In the event of termination, assets of the Plan shall be distributed to Participants and surviving Beneficiaries as soon as administratively practicable following termination of the Plan. Alternatively, assets of the Plan may be transferred to an eligible deferred compensation plan maintained by another eligible governmental employer within the same State if (i) all assets held and benefit obligations of the Plan are transferred; (ii) the receiving plan provides for the receipt of transfers; (iii) the Participants and Beneficiaries whose deferred amounts are being transferred will have an amount credited to their respective behalves immediately after the transfer at least equal to the deferred amount credited to them, respectively, immediately before the transfer; and such other conditions are met as may apply under applicable law and the terms of the two respective plans.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Section 457(b) of the Code or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to Deferred Compensation credited to his or her Account before the date of the amendment or termination.

#### **Article XII. Applicable Law**

This Plan and Trust shall be construed under the laws of the state where the District is located and is established with the intent that it meet the requirements of an "eligible deferred compensation plan" under Section 457(b) of the Code, as amended. The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Section of the Code.

In addition, notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of Section 414(u) of the Code.

### **Article XIII. Protection of Insider Fiduciaries**

The District shall indemnify and hold harmless the Board, the Committee, any individual members of that Board or Committee, and any other employee of the District who is a fiduciary of the Plan (all such persons being referred to as an “insider fiduciary”), from and against any liability (including, without limitation, any damage, loss, cost or expense, including reasonable attorney’s fees and settlement payments) incurred in connection with any claim by or on behalf of any one or more Participants, other payees under the Plan, or government authority relating to any actual or alleged act or omission of the insider fiduciary taken in reasonable reliance on any direction, lack of direction, record or information provided by the District or the Plan. The District shall also indemnify and hold harmless any such insider fiduciary from any liability asserted or incurred regarding the exercise or performance of the rights, powers, obligations and discretions arising under the Plan, except to the extent such liability is due to the gross negligence, fraud or bad faith of the insider fiduciary. Such indemnification obligation of the District shall be applicable to the fullest extent permitted by law, but shall be secondary to any coverage of such liability available from any applicable liability insurance covering such insider fiduciary.

The Plan may purchase, as an authorized expense, liability insurance for the Plan and for insider fiduciaries of the Plan to cover liability or losses occurring by reason of the acts or omissions of such a fiduciary, provided such insurance policy permits subrogation by an insurer against the fiduciary, in the case of a breach by such fiduciary, for any liabilities, costs or expenses which are judicially determined to be due to the gross negligence, fraud, or bad faith of such fiduciary.

### **Article XIV. Gender and Number**

The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.



IN WITNESS WHEREOF, The District has caused this Amended and Restated Plan and Trust to be approved by its Board of Commissioners and signed by its duly authorized officers on this \_\_\_\_\_ day of \_\_\_\_\_ 2015, and shall be effective as of the 4<sup>th</sup> day of June, 2015, except as otherwise provided herein.

\_\_\_\_\_  
Frank Avila  
Chairman of the Committee on Finance

\_\_\_\_\_  
Denice E. Korcal  
Director of Human Resources

\_\_\_\_\_  
Mary Ann Boyle  
Treasurer

ATTESTED TO BY:

\_\_\_\_\_  
JACQUELINE TORRES  
Clerk of the Metropolitan Water Reclamation  
District of Greater Chicago

FOR THE TRUSTEE:

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Frank Avila  
Chairman of the Committee on Finance

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Denice E. Korcal  
Director of Human Resources

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Mary Ann Boyle  
Treasurer

ATTESTED TO BY:

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JACQUELINE TORRES  
Clerk of the Metropolitan Water Reclamation  
District of Greater Chicago

Approved as to Form and Legality:

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Deputy Attorney

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Attorney



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

File #: 15-0589, Version: 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON PENSION, HUMAN RESOURCES & CIVIL SERVICE

Mr. David St. Pierre, Executive Director

Authority to Amend the Investment Policy for the Metropolitan Water Reclamation District of Greater Chicago Deferred Compensation Plan and Trust, effective June 4, 2015

Dear Sir:

The Investment Policy for the District's Deferred Compensation Plan and Trust (Plan) was first adopted in 1999, and has undergone several revisions over the years. Segal Advisors (Segal) currently serves as the investment consultant for the Plan and assists the Deferred Compensation Committee (Committee) in its periodic review of the investment policy. Any recommended changes to the policy are brought to the Board of Commissioners, as Trustees of the Plan, for approval.

In 2014 Segal completed a review of the investment policy for the Plan and has recommended some changes to the Committee. The first recommendation made by Segal is related to the investment option categories included in the investment policy. The investment policy currently divides the investment options into very specific categories, particularly in the equity category. For example, equity categories include a Large Cap Value Equity Option, a Large Cap Growth Equity Option and a Large Cap Index Equity Option. These options repeat for the mid cap and small cap categories. There is also an international equity category and categories for stable value, bond and balanced options. There are 13 investment categories in total listed in the investment policy. Segal believes that this number is too large and that these categories are unnecessarily narrow. These narrower categories limit the Committee's flexibility in building the fund line-up. Segal recommends the use of broader investment categories such as: Stable Value, Fixed Income, Balanced, U.S. Equity and International Equity. Appendix A shows a comparison of the current categories and the new categories recommended by Segal. These new categories allow the Committee to select the best investment options available across these broader categories without unnecessarily inflating the number of options available in the fund line-up. It will also eliminate duplication in the available fund options, allowing participants to better diversify their investments.

Another recommendation made by Segal was the addition of a separate section to describe the lifecycle (target-date) fund option offered by the Plan. Although the investment policy details the various fixed income and equity categories that will be offered through the Plan, it does not specifically mention the inclusion of lifecycle funds in the investment line-up. A lifecycle mutual fund invests in a combination of underlying equity and fixed income mutual funds. It can be described as a "fund of funds." These funds are designed to adjust investment strategy based on the targeted retirement date of the employee. The employee would select a lifecycle fund whose "maturity date" matches the employee's anticipated retirement date. The fund reallocates its investments over time to be more conservative as the retirement date approaches. The addition of a series of lifecycle funds was approved by the Board of Commissioners on July 14, 2011. Segal has recommended that a separate section in the investment policy be dedicated to lifecycle funds to specify the objectives and performance standards for these investment options.

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**File #:** 15-0589, **Version:** 1

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Finally, Segal recommended some clarification to the "Fund Governance" section of the investment policy. This section provides the objectives of the Committee in determining the selection of investment options for the Plan. It describes the general criteria that each investment option will meet. Segal has recommended the criteria include: maintain asset management fees that are reasonable and consistent with the industry; operate in full accordance with its current published prospectus or "fact sheet," and have its performance results measured against the applicable performance standards described herein for that investment category. These are included in the current criteria, in addition to evaluation of the fund manager's tenure and how the investment addresses rapid trading or market timing issues. While Segal believes these additional criteria are important considerations, they are addressed in the "Periodic Investment Fund Evaluation" section of the policy and therefore are not necessary here. To further clarify this, Segal is recommending the addition of language to this section making reference to the fund evaluation procedures and the ability of the Committee to replace an investment option should it no longer meet these criteria. The addition reads as follows: "If the Committee determines an investment option no longer meets the performance standards, it may replace that option with a suitable alternative pursuant to the investment fund evaluation procedure outlined herein."

The Deferred Compensation Committee requests that the Board of Commissioners, as Trustee for the Plan, approve the revisions described above to the Investment Policy (attached) for the Metropolitan Water Reclamation District of Greater Chicago Deferred Compensation Plan and Trust.

Respectfully Submitted, Frank Avila, Chairman Deferred Compensation Committee; Mary Ann Boyle, Treasurer; Denice E. Korcal, Director of Human Resources  
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

Attachments

## APPENDIX A

### Investment Option Categories, Funds and Benchmarks

| Current Category     | New Category          | Fund Name                        | Market Benchmark  |
|----------------------|-----------------------|----------------------------------|---|
| Stable Value         | Stable Value          | Guaranteed Income Fund           | Hueler Analytics Stable Value Pooled Fund Index   |
| Bond                 | Fixed Income          | Dodge and Cox Income             | Barclays U.S. Aggregate Bond Index  |
| Balanced             | Balanced              | Vanguard Wellington, Admiral     | Composite Benchmark:<br>Russell 1000 Value Index 65%<br>Lehman Aggregate Bond Index 35% |
| Large Cap Value      | U.S. Equity           | Vanguard Windsor II, Admiral     | Russell 1000 Value Index  |
| Large Cap Growth     |                       | Janus Research                   | Russell 1000 Growth Index   |
| Large Cap Index      |                       | Vanguard Institutional Index     | S&P 500 Index   |
| Mid Cap Value        |                       | J.P. Morgan Mid Cap Value        | Russell Mid Cap Value Index   |
| Mid Cap Growth       |                       | Morgan Stanley Mid Cap Growth    | Russell Mid Cap Growth Index  |
| Mid Cap Index        |                       | Vanguard Mid Cap Index, Signal   | MSCI U.S. Mid Cap 450 Index   |
| Small Cap Value      |                       | American Century Small Cap Value | Russell 2000 Value Index  |
| Small Cap Growth     |                       | Baron Growth                     | Russell 2000 Growth Index   |
| Small Cap Blend      |                       | Lord Abbett Small Cap Value      | Russell 2000 Index  |
| International Equity | International Equity  | EuroPacific Growth               | MSCI EAFE Index   |
| None                 | Life Cycle Retirement | T. Rowe Price Retirement Income  | IM Mixed-Asset Target Alloc. Conservative (MF) Median                                   |
|                      |                       | T. Rowe Price 2005               | IM Mixed-Asset Target 2010 (MF) Median  |
|                      |                       | T. Rowe Price 2010               | IM Mixed-Asset Target 2010 (MF) Median  |
|                      |                       | T. Rowe Price 2015               | IM Mixed-Asset Target 2015 (MF) Median  |
|                      |                       | T. Rowe Price 2020               | IM Mixed-Asset Target 2020 (MF) Median  |
|                      |                       | T. Rowe Price 2025               | IM Mixed-Asset Target 2025 (MF) Median  |
|                      |                       | T. Rowe Price 2030               | IM Mixed-Asset Target 2030 (MF) Median  |
|                      |                       | T. Rowe Price 2035               | IM Mixed-Asset Target 2035 (MF) Median  |
|                      |                       | T. Rowe Price 2040               | IM Mixed-Asset Target 2040 (MF) Median  |
|                      |                       | T. Rowe Price 2045               | IM Mixed-Asset Target 2045 (MF) Median  |
|                      |                       | T. Rowe Price 2050               | IM Mixed-Asset Target 2050 (MF) Median  |
|                      |                       | T. Rowe Price 2055               | IM Mixed-Asset Target 2050 (MF) Median  |

**Metropolitan Water Reclamation District of Greater Chicago  
Deferred Compensation Plan**

**INVESTMENT POLICY (Rev. 06/04/15)**

**GENERAL POLICY STATEMENT**

The Deferred Compensation Plan and Trust (Plan) is a long-term retirement savings program intended as a source of supplemental retirement income for eligible participants. The investment options available under the Plan will cover a broad range of investments appropriate for this kind of savings program. The Deferred Compensation Committee (Committee) will recommend to the Board of Commissioners the investment options made available under the plan.

As a voluntary, participant-directed Plan, the participants bear the ongoing responsibility for deciding the amount of current compensation to defer and the selection of investment allocation and options for these contributions. Participants bear the risk and rewards of investment returns that result from the investment options which they select.

The mix of investment options appropriate for a participant depend on a combination of factors including, among others, age, current income, length of time to retirement, tolerance for investment risk, income replacement objectives, and a participant's other assets. To permit participants to establish different investment strategies, the Plan may offer a variety of investment categories, which have varying return and volatility characteristics. Current investment categories and options are summarized in Appendix A. It is the responsibility of each participant to evaluate the investment options determined by the Committee and to select an appropriate mix.

Each investment option offered under the Plan shall:

- Operate in full accordance with its current published prospectus or "fact sheet."
- Have its performance results measured against applicable performance standards described herein for that investment category.
- Support a "best in class" investment strategy in each investment asset category.

**DESCRIPTION OF CURRENT INVESTMENT OPTION CATEGORIES**

**Stability of Principle/Stable Value Option**

## **Objective**

The objective of this investment category is to preserve principal and provide a stable, competitive rate of return. A fund in this category may invest in fixed income instruments, including those of the US Government and its agencies, corporations, mortgage- and asset-backed securities, collateralized, emerging market, high yield, preferred stock securities. Emerging market and high yield securities shall represent a small percentage of total assets, in line with the objective to preserve capital. The Stable Value Option may combine an independently managed stable value fund and GIC's owned directly by the Plan.

## **Performance Standards (Net of Fees)**

- To provide a competitive rate of interest consistent with the marketplace of similar products.
- Provide necessary disclosure of underlying portfolio holdings, performance and fees to ensure proper risk assessment, performance and fee evaluation.

The benchmark for this option is the Hueler Analytics Stable Value Pooled Fund Index.

## **Fixed Income**

### **Objective**

The objective is to invest in bonds, including those issued by the US and foreign governments, corporate securities (primarily investment grade), as well as mortgage- and asset-backed securities.

### **Performance Standards (Net of Fees)**

- Actively managed accounts should exceed the return of the Barclays Capital Aggregate Bond Index and the median return of the fixed income fund universe over a market cycle, or generally a period of 3 to 5 years.
- Index funds should track the performance of the stated index.
- Risk, as measured by the standard deviation of quarterly returns, shall be consistent with that of the Barclays Capital Aggregate Bond Index and the fixed income fund universe, as appropriate.

**Balanced****Objective**

The objective of this investment category is to invest in stocks, bonds and cash to provide capital appreciation and income with less volatility than an all-stock fund. Investment returns are expected to be derived from a combination of capital appreciation and dividend and interest income.

**Performance Standards (Net of Fees)**

- Actively managed accounts should exceed the return of the S&P 500 Index and the Barclays Capital Aggregate Bond Index, allocated the same as the option selected; and the median of the balanced fund universe over a market cycle, or generally a period of 3 to 5 years.
- Risk, as measured by the standard deviation of quarterly returns, shall be consistent with that of the composite index and the balanced fund universe, as appropriate.

**U.S. Equity****Objective**

The objective of this investment category is to invest in common stock of primarily US companies of varying capitalizations.

**Performance Standards (Net of Fees)**

- Actively managed funds shall exceed the return of the stated index and median return of the appropriate equity fund universe over a market cycle, or generally a period of 3 to 5 years.
- Index funds should track the performance of the stated index.
- Risk, as measure by the standard deviation of quarterly returns, shall be consistent with the stated index and the appropriate equity fund universe.

**International Equity****Objective**

The objective of this investment category is to invest primarily in the common stock of companies located outside the United States.



### **Performance Standards (Net of Fee)**

- Actively managed funds shall exceed the return of the MSCI EAFE Index (net of dividends) and the median return of the international equity fund universe over a market cycle, or generally a period of 3 to 5 years.
- Index funds should track the performance of the stated index.
- Risk, as measure by the standard deviation of quarterly returns, shall be consistent with that of the MSCI EAFE Index (net) and the international equity fund universe.

### **Lifecycle Retirement Funds**

#### **Objective**

The objective of this investment category is to invest in equity, fixed income and/or money market instruments using asset allocations targeting investment time horizons. Investment returns are expected to be derived from current income and/or capital appreciation, based on the target allocation of the particular retirement date fund. The funds will become more conservative over time based on the glide path set forth by the manager. Conservative series funds are weighted in favor of fixed income securities to provide a less risky investment option to participants in or nearing retirement. Moderate periods balance between fixed income and equity securities to provide potential for higher returns, while seeking to limit the volatility of overall fund performance. Longer time periods are weighted in favor of equities to provide potential for high returns, but through increased risk, to participants with long investment horizons or with a high tolerance for risk.

### **Performance Standards (Net of Fees)**

- To exceed the return of a composite index over a market cycle, or generally a period of 3 to 5 years.
- The composite indices for all funds will consistently change allocation by gradually shifting its allocation towards money market and fixed income instruments as the fund matures.
- Risk, as measured by the standard deviation of quarterly returns, shall be consistent with that of the composite index.
- The composite index for each fund will be established by the fund manager to reflect the asset location of the portfolio.

### **Self-Directed Brokerage Account Option**

The self-directed brokerage account is offered to Plan participants as a supplemental investment option to the core investment offerings of the Plan. The self-directed brokerage account is intended for Plan participants who are interested in a wider array of investment options and are willing to accept the additional risks associated with those options.

The Deferred Compensation Committee has no responsibility for selecting, monitoring or evaluating the investment options available through the self-directed brokerage services. Participants will have sole discretion regarding the investment options they select in the brokerage window.

The Plan's service providers are responsible for providing participants with enrollment and educational materials for them to decide if a self-directed brokerage account is a suitable investment. The service providers are to provide all necessary materials in connection with participant inquiries regarding the establishment of the brokerage account rules and restrictions.

Under the self-directed brokerage account, the Plan participant will be responsible for the on-going research, trading and risk management responsibilities associated with their specific investment choices.

### **Available Investment Alternatives**

Both load and no-load funds are available within this option.

### **Unavailable Investment Alternatives**

The following investment alternatives are not available through the self-directed brokerage account: Currencies, Limited Partnerships, Tax-Exempt Securities, Futures, Options, Precious Metals, Commodities, Margin Borrowing/Trades, Core Deferred Compensation Plan's Investment Options, Collectibles or Physical Assets, Individual Stocks and Bonds.

## **INVESTMENT SELECTION - MUTUAL FUNDS AND STABLE VALUE FUND**

### **I. Professional Assistance**

The Committee shall retain the assistance of qualified investment professionals in the selection of all investment funds to be offered under the Plan. The investment advisors shall have no vested interest in the selection of any particular option or fund manager. The investment advisor shall be compensated by the District on a fee basis and shall receive no fees, commissions, or supplementary compensation from any investment product provider.

## **II. Selection of Mutual Funds**

The selection of investment funds to be offered under the Plan will consider several factors. These factors include, but are not limited to, the following:

1. Performance data, net of fees and charges;
2. Performance relative to historical statistics (e.g., standard deviation, downside risk, Sharpe ratio, alpha);
3. Performance comparison relative to peer group and market benchmark;
4. Manager's adherence to stated investment style;
5. Expenses; and
6. Fiduciary performance of fund managers and their organizations.

The Plan will have the ability to request mutual funds to reimburse the Plan, through the record keeper, a fee (e.g. 12b-1) for performing administrative services.

## **III. Selection of Stable Value Fund Provider**

The selection of a stable value fund offered under the Plan will consider several factors. These factors include, but are not limited to, the following:

1. Performance data, including net yield;
2. Portfolio characteristics, including maturity profile and credit quality profile;
3. Assets under management, and
4. Overall impact on Plan administrative costs.

## **PERIODIC INVESTMENT FUND EVALUATIONS**

### **POLICY:**

The Committee, in its discretion, may conduct informal review and evaluation of an investment fund at any time..

The Committee may place a fund under formal fund review, terminate a fund, or "freeze" a fund to new contributions for any of the following reasons:

1. The fund has not met the performance standards under the Plan for the fund's investment category;
2. The fund has changed investment manager, or such change appears imminent;
3. The fund has had a significant change in ownership or control;
4. The fund has changed investment focus or has experienced style drift, departing from the investment objectives or parameters in its prospectus or "fact sheet";
5. The fund has violated a SEC rule or regulation;

6. Change of sub advisors;
7. Substantive change in portfolio turnover; and/or
8. Operational difficulties resulting in material client servicing problems.

## **DISCLOSURE OF FEES, COMMISSIONS AND CHARGES**

### **POLICY:**

All fees, commissions and charges for each selected investment option must be fully disclosed to the Committee before the option can be made available to Plan participants. That is, in its review of a fund's performance history, the Committee must be shown all applicable fees, commissions and charges, and the resulting net return.

In addition, these fees, commissions and charges will be disclosed to all participants at enrollment and at any other time as appropriate.

## **INVESTMENT COMMUNICATIONS TO PARTICIPANTS**

### **POLICY:**

Information about each investment option will be given or made available to Plan participants to help them to make informed investment choices. The Plan shall provide at least quarterly statements of fund performance to each participant.

Copies of investment prospectuses or similar equivalent information will be provided to participants as well as such other information as the Committee, or the Plan's deferred compensation service provider, has available.

## **RESPONSIBILITIES OF THE PARTICIPANTS**

### **POLICY:**

The participants of the Plan are responsible for making all investment decisions relating to their accounts. Information will be made available so participants may better understand their investment choices. It will be the participants' responsibility to examine this information and to seek out additional information if necessary.

## **INVESTMENT EDUCATION**

### **POLICY:**

It is the Committee's objective to provide employees with ongoing investment education. The purpose of the investment education program is to provide information and tools to assist in the development of a

personal investment strategy for employees and facilitate the achievement of savings and retirement goals.

In order for participants to effectively exercise control over their accounts, the Committee shall ensure that qualified individuals are available to provide participants with investment information appropriate for this purpose. It is expected that employee communications and education will be provided through the Plan's deferred compensation service provider. The Committee may make additional information available if deemed appropriate.

## **FUND GOVERNANCE**

Each investment option offered under the Plan shall:

- Maintain asset management fees that are reasonable and consistent with the industry;
- Operate in full accordance with its current published prospectus or "fact sheet"; and
- Have its performance results measured against the applicable performance standards described herein for that investment category.

If the committee determines an investment option no longer meets the performance standards, it may recommend to the Board of Commissioners replacement of that option with a suitable alternative pursuant to the investment fund evaluation procedure outlined herein.

From time-to-time, the Committee, in its discretion, may recommend to the Board of Commissioners the addition of investment options/categories to the current core options. At such time, the Statement of Investment Policy will be modified to include these additions.

## **REVIEW**

### **POLICY:**

It is the intention of the Committee to review this document at least every three years and make necessary or appropriate amendments. The Committee encourages investment providers and Plan participants to make recommendations to the Committee regarding appropriate changes to this policy.

\*\*\*\*\*

Revised and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Metropolitan Water Reclamation District of Greater Chicago  
Deferred Compensation Committee

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Frank Avila  
Chairman of the Committee on Finance

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Mary Ann Boyle  
Treasurer

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Denice E. Korcal  
Director of Human Resources



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

**File #:** 15-0592, **Version:** 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON REAL ESTATE

Authority to issue a six (6) month permit extension to the Village of Willow Springs for continued use of a Metra commuter parking lot on approximately 2.13 acres of District real estate located west of Willow Springs Road and south of the Main Channel in Willow Springs, Illinois; Main Channel Parcel 29.04. Consideration shall be \$6,000.00

Dear Sir:

The Village of Willow Springs ("Willow Springs") leased approximately 2.13 acres of District real estate under a lease agreement between Willow Springs and the District that commenced January 1, 1989, and expired December 31, 2014. The permitted use under the lease was for the operation of a Metra commuter parking lot. Upon expiration of the lease, Willow Springs indicated that it would expand its existing commuter parking lot on its own land and therefore would not be seeking a new lease on District land. A six (6) month permit was issued to Willow Springs for continued use of the property as a commuter parking lot until the existing parking lot was expanded. The current six (6) month permit fee is \$6,000.00 and the permit expires June 30, 2015. Willow Springs has requested a six (6) month extension to its permit until it can complete the parking lot expansion.

It is District policy to assess the annual rent based on 6% of the site's appraised fair market value when leasing District land to a government entity for non-recreational purposes. It is therefore recommended that the six (6) month fee be \$6,000.00 which represents the pro-rata share of 6% of the appraised fair market value of \$200,000.00.

The District's technical departments have no objections to the issuance of a six (6) month permit extension to Willow Springs.

It is requested that the Executive Director recommend to the Board of Commissioners that it authorize the issuance of a six (6) month permit extension to the Village of Willow Springs for continued use of a Metra commuter parking lot on approximately 2.13 acres of District real estate located west of Willow Springs Road and south of the Main Channel in Willow Springs, Illinois; Main Channel Parcel 29.04. Consideration shall be \$6,000.00.

It is further requested that the Executive Director recommend to the Board of Commissioners that it authorize and direct the Chairman of the Committee on Finance and the Clerk to execute said permit extension on behalf of the District after it has been approved by the General Counsel as to form and legality.

Requested, Ronald M. Hill, General Counsel, RMH:STM:MLD:vp

Recommended, David St. Pierre, Executive Director

Respectfully Submitted, Mariyana T. Spyropoulos, Chairman Committee on Real Estate Development

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

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**File #:** 15-0592, **Version:** 1

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Attachment



## EXHIBITS





# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

**File #:** 15-0593, **Version:** 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON REAL ESTATE

Mr. David St. Pierre, Executive Director

Authority to grant a 25-year, non-exclusive easement to Commonwealth Edison Company on approximately 10.39 acres of District real estate located west of Pulaski Road and north of the Main Channel in Chicago, Illinois, and known as parts of Main Channel Parcels 40.02, 40.04 and 40.07, to continue to operate, maintain and remove electrical transmission lines. Consideration shall be an initial annual fee of \$307,500.00

Dear Sir:

Commonwealth Edison Company ("ComEd") occupied the subject area under an easement that commenced in 1949, and, as amended and extended, expired January 31, 2015. On January 22, 2015, the Board of Commissioners granted a 6-month permit to ComEd that commenced February 1, 2015, and expires July 31, 2015, to allow continued use while ComEd obtained a survey and appraisals on the easement premises. ComEd operates and maintains overhead and underground electrical transmission lines at this location. ComEd is currently paying an annual rent of \$6,539.82.

ComEd has requested a new 25-year easement to continue to operate and maintain its electrical transmission lines at this location.

The District's technical departments have reviewed ComEd's request for a new easement and have no objections thereto.

A fair market value appraisal on the easement premises valued it at \$3,075,000.00. Accordingly, it is recommended that the annual rent under the easement be established at \$307,500.00, which represents 10% of the appraised fair market value.

It is requested that the Executive Director recommend to the Board of Commissioners that it authorize the grant of a 25-year, non-exclusive easement to Commonwealth Edison Company on approximately 10.39 acres of District real estate located west of Pulaski Road and north of the Main Channel in Chicago, Illinois, and known as parts of Main Channel Parcels 40.02, 40.04 and 40.07 to continue to operate, maintain and remove electrical transmission lines. Consideration shall be an initial annual fee of \$307,500.00.

It is also requested that the Executive Director recommend to the Board of Commissioners that it authorize and direct the Chairman of the Committee on Finance and the Clerk to execute said easement agreement on behalf of the District after it is approved by the General Counsel as to form and legality.

Requested, Ronald M. Hill, General Counsel, RMH:STM:MM:vp

Recommended, David St. Pierre, Executive Director

Respectfully Submitted, Mariyana T. Spyropoulos, Chairman Committee on Real Estate Development

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

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**File #:** 15-0593, **Version:** 1

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Attachment





ILLINOIS CENTRAL GULF RR

W 35TH ST

W 36TH ST

S PULASKI RD

COMED EASEMENT E-030

MC 40.02; 40.04 40.07

ADLAI E STEVENSON EXPY

GM AND O R.R.

BELT RAILYARD OF CHICAGO RR

CIW RR

HWY 50





# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

**File #:** 15-0594, **Version:** 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON REAL ESTATE

Mr. David St. Pierre, Executive Director

Authority to issue a 13-month permit to the Forest Preserve District of Cook County to access Dead Stick Pond located east of Stony Island Avenue, south of 122<sup>nd</sup> Street, and north of the Calumet River in Chicago, Illinois to conduct bird surveys in June, 2015, and from May 1, 2016, through June 15, 2016. Consideration shall be a nominal fee of \$10.00

Dear Sir:

The Forest Preserve District of Cook County ("Forest Preserve") has requested to access Dead Stick Pond located east of Stony Island Avenue, south of 122<sup>nd</sup> Street, and north of the Calumet River in Chicago, Illinois. The Forest Preserve intends to survey the population status of threatened bird species and the overall quality of the Calumet wetland system so that it and its Millennium Reserve partners can develop a plan to improve the habitat for threatened birds in the Calumet Millennium Reserve.

A two-person team will access the area a total of six times; three times in June, 2015, and three times from May 1, 2016, through June 15, 2016, between the hours of 5:00 a.m. to 9:30 a.m. Nothing will be sampled or removed from the site.

The technical departments have no objections to the Forest Preserve's access to Dead Stick Pond.

As is customary with governmental entities using District land for a public purpose, a nominal fee of \$10.00 is recommended.

It is requested that the Executive Director recommend to the Board of Commissioners that it authorize the issuance of a 13-month permit to the Forest Preserve District of Cook County to access Dead Stick Pond located east of Stony Island Avenue, south of 122<sup>nd</sup> Street, and north of the Calumet River in Chicago, Illinois to conduct bird surveys in June, 2015, and from May 1, 2016, through June 15, 2016. Consideration shall be a nominal fee of \$10.00.

It is also requested that the Executive Director recommend to the Board of Commissioners that it authorize and direct the Chairman of the Committee on Finance and the Clerk to execute the permit agreement after it is approved by the General Counsel as to form and legality.

Requested, Ronald M. Hill, General Counsel, RMH:STM:BEB:vp

Recommended, David St. Pierre, Executive Director

Respectfully Submitted, Mariyana T. Spyropoulos Chairman, Committee on Real Estate Development

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

Attachment

# Dead Stick Pond





# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

**File #:** 15-0595, **Version:** 1

### TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

#### COMMITTEE ON REAL ESTATE

Mr. David St. Pierre, Executive Director

Authority to enter into a 39-year lease with the Village of Wheeling on an approximately two acre segment of the William Rodgers Memorial Diversionary Channel located southwest of the intersection of Milwaukee Avenue and Lake Cook Road in Wheeling, Illinois. Consideration shall be a nominal fee of \$10.00

Dear Sir:

The District owns two parcels of real estate consisting of approximately two acres located southwest of the intersection of Milwaukee Avenue and Lake Cook Road in Wheeling, Illinois. The parcels are not contiguous to each other but each parcel comprises a section of the William Rodgers Memorial Diversionary Channel ("Channel"). One parcel ("Parcel A") is located at the western end of Meadow Lane. The second parcel ("Parcel B") is located west of the intersection of Strong Street and Northgate Parkway. Both parcels were acquired by the District as part of a regional stormwater project that involved the construction of the Channel for the benefit of the Village of Wheeling ("Wheeling"). Wheeling assumed sole responsibility for the project in 1999 and has been maintaining the Channel since such time.

Wheeling has requested to lease the parcels and intends to use Parcel A as a footpath available for public use and Parcel B for stormwater management purposes.

The technical departments have no objections to leasing these sections of the Channel to Wheeling. A nominal fee of \$10.00 is recommended as is customary under leases to municipal entities using District land for a public purpose.

Under 70 Illinois Compiled Statutes 2605/8c(11), the lease would be terminable upon the service of a one-year notice if the property becomes essential to the District's corporate needs.

It is requested that the Executive Director recommend to the Board of Commissioners that it authorize the District to enter into a 39-year lease with the Village of Wheeling on an approximately two acre segment of the William Rodgers Memorial Diversionary Channel located southwest of the intersection of Milwaukee Avenue and Lake Cook Road in Wheeling, Illinois. Consideration shall be a nominal fee of \$10.00.

It is also requested that the Executive Director recommend to the Board of Commissioners that it authorize and direct the Chairman of the Committee on Finance and the Clerk to execute said lease agreement after it is approved by the General Counsel as to form and legality.

Requested, Ronald M. Hill, General Counsel, RMH:STM:CMM:vp

Recommended, David St. Pierre, Executive Director

Respectfully Submitted, Mariyana T. Spyropoulos, Chairman Committee on Real Estate Development

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

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**File #:** 15-0595, **Version:** 1

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Attachment









# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

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**File #:** O15-002, **Version:** 1

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### **ORDINANCE FOR BOARD MEETING OF JUNE 4, 2015**

Authority to Adopt Ordinance O15-002, Affirmative Action Ordinance, Revised Appendix D, of the Metropolitan Water Reclamation District of Greater Chicago

AFFIRMATIVE ACTION ~~INTERIM~~ ORDINANCE

REVISED APPENDIX D

OF THE

METROPOLITAN WATER RECLAMATION DISTRICT

OF GREATER CHICAGO

**AFFIRMATIVE ACTION ~~INTERIM~~ ORDINANCE**  
**REVISED APPENDIX D**  
**OF THE**  
**METROPOLITAN WATER RECLAMATION DISTRICT**  
**OF GREATER CHICAGO**

***Section 1. Declaration of Policy***

Whereas, it is the policy of the Metropolitan Water Reclamation District of Greater Chicago (the “District”) to ensure competitive business opportunities for small, minority- and women-owned business enterprises in the award and performance of District contracts, to prohibit discrimination on the basis of race, sex, gender, color, racial group or perceived racial group, disability, age, religion, national origin or ethnicity, sexual orientation, veteran or military discharge status, association with anyone with these characteristics, or any other legally protected characteristic in the award of or participation in District contracts, and to abolish barriers to full participation in District contracts by all person, regardless of race, ethnicity or sex;

Whereas, the District pursuant to its authority under 70 ILCS 2605/11.3, is committed to establishing procedures to implement this policy as well as state and federal regulations to assure the utilization of minority-owned, women-owned and small business enterprises in a manner consistent with constitutional requirements;

Whereas, the District is committed to equal opportunity for minority-, women-owned and small businesses to participate in the award and performance of District contracts;

Whereas, the Supreme Court of the United States in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), has enunciated certain standards that are necessary to maintain effective contracting affirmative action programs in compliance with constitutional requirements;

Whereas, the District is committed to implementing its affirmative action program in conformance with the United States Supreme Court’s decision in *Croson* and its progeny;

Whereas, in furtherance of this commitment, the Board of Commissioners directed the District staff and its outside consultants in 1990 to conduct an investigation into the scope of any discrimination in the award of and participation in District construction contracts as well as in the construction industry in Metropolitan Chicago, the extent to which such discrimination or the effects thereof has denied and continues to deny minority and women’s business enterprises equal opportunity to participate in District contracts and to recommend the appropriate affirmative action steps to be taken to eliminate any such discrimination and its continuing effects.

Whereas, on June 21, 2001, the District adopted its Revised Appendix D, Notice of Requirements for Affirmative Action Program to Ensure Minority, Small and Women’s Business Participation (“Appendix D”); and

Whereas, in 2006 the Board of Commissioners undertook a review of Appendix D, the District’s contracting policy and operation under Appendix D and an investigation into the existence of continued discrimination against minority and women-owned businesses in the

Metropolitan Chicago construction industry to evaluate the continued need for Appendix D and any necessary revisions thereto;

Whereas, the Board of Commissioners ~~undertaken~~ undertook a review in 2012 of Appendix D, the District's contracting policy and operation under Appendix D and an investigation into the existence of continued discrimination against minority- and women-owned businesses in the Metropolitan Chicago construction industry to evaluate the continued need for Appendix D and any necessary revisions thereto;

Whereas, in 2014, the Board of Commissioners undertook a new another review in 2014 of Appendix D, the District's contracting policy and operation under Appendix D and an investigation into the existence of continued discrimination against minority- and women-owned businesses in the District's geographic and procurement market areas to evaluate the continued need for Appendix D and any necessary revisions thereto. That review resulted in commissioning a comprehensive disparity study conducted by an outside consultant that was finalized in 2015.

## Section 2. Findings

The Board of Commissioners, having reviewed the 2015 report of ~~the District's staff,~~ its outside consultants ~~and the reports~~ finds:

1. In 2003, the U.S. District Court in *Builders Association of Greater Chicago v. City of Chicago*, 298 F. Supp.2d 725 (N.D. Ill. 2003) held that the evidence introduced at trial demonstrated that past and current discriminatory practices continue to place MBE and WBE firms at a competitive disadvantage in the award of governmental contracts and such practices have and continue to impede the growth and success of MBEs and WBEs.

2. In 2004, a study of the Metropolitan Chicago Construction Industry by Timothy Bates, Distinguished Professor, Wayne State University, concluded that the evidence that African-American, Hispanic and women-owned businesses have been, and continue to be disadvantaged in the construction industry and small businesses is strong, has remained consistent and that compelling evidence indicates that African-American, Hispanic, and women-owned businesses face barriers in the Metropolitan Chicago construction industry greater than those faced by white males.

3. A November, 2005 study of the Metropolitan Chicago construction industry by David Blanchflower, Professor of Economics at Dartmouth College, has determined that discrimination against Asian-owned businesses existed in the business community in areas of business financing and construction wages and that this, together with evidence of individual discrimination against Asian-owned construction companies, leads to the conclusion that discrimination against Asian owned businesses continues to exist in the Metropolitan Chicago construction industry.

4. In 2005, the U.S. District Court held in *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868 (N.D. Ill. Sept. 8, 2005) that there is strong evidence of the effects of past and current discrimination against MBEs and WBEs in the construction industry in the Chicago area.

5. The trial court's decision was affirmed in *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7<sup>th</sup> Cir. 2007).

6. In 2006, Board of Commissioners of Cook County, Illinois accepted a report it had commissioned titled, "Review of Compelling Evidence of Discrimination Against Minority- and Women-Owned Business Enterprise in the Chicago Area Construction Industry and Recommendations for Narrowly Tailored Remedies for Cook County, Illinois" (Cook County 2006 Report), which concluded that there is extensive evidence of discrimination against MBEs and WBEs in the Chicago area construction marketplace, and the participation of MBEs and WBEs in the County's construction prime contracts and subcontracts is below the availability of such firms.

7. In 2006, the Illinois State Toll Highway Authority commissioned a study for the availability of Disadvantaged Business Enterprises ("DBEs") in its geographic and procurement markets, to ensure that its DBE program was narrowly tailored as required by constitutional standard, which found 19.56% DBE availability in construction, 19.36% DBE availability in construction-related professional services, and that DBE utilization had steadily increased from 2.40% in 2004 to 24.72% in 2010.

8. The Board of Commissioners of Cook County commissioned a new report, entitled "The Status of Minority and Women-Owned Business Enterprises Relevant to Construction Activity In and Around Cook County, Illinois" (Cook County 2010 Study), which found that MBEs and WBEs were not utilized in all aspects in proportion to their availability.

9. In 2010 the U.S. Department of Justice produced a report to Congress, entitled "Compelling Interest for Race- and Gender-Conscious Federal Contracting Programs: An Update to the May 23, 1996 Review of Barriers to Minority- and Women-Owned Businesses," that updated the original basis for the U.S. Department of Transportation's DBE program and concluded that discriminatory barriers continue to impede the ability of MBEs and WBEs to compete with other firms on a fair and equal footing in government contracting markets, including in the construction industry.

10. In 2012, the District commissioned a report on barriers to construction opportunities in the Chicago area market and recommendations for District efforts to reduce such barriers, which found continuing disparities in the Chicago area construction market.

11. In 2014, The District commissioned a its first comprehensive disparity study to investigate report on barriers to equal opportunities in the District's geographic and industry market areas and make recommendations for District efforts to reduce such barriers, which found continuing disparities in the District's market areas.

12. In 2015, the trial court in *Midwest Fence, Corp. v. U.S. Department of Transportation et al*, 2015 WL 139676 (N.D. Ill. March 24, 2015)(Held that discrimination continues to impede full and fair opportunities for disadvantaged business enterprise in the Illinois construction industry).

~~11~~13. The District has determined that it has a continuing compelling interest in preventing public funds in construction contracts from perpetuating the effects of past discrimination and current discrimination against minority- and women-owned firms in its market.

~~12~~14. The Affirmative Action Program adopted by the District ~~and amended April 2, 2009~~ is hereby modified to further continue to ameliorate the effects of racial and gender discrimination in the construction market~~place~~.

~~4315~~. The remedies adopted herein by the District will not overly burden non-MBE and non-WBE firms in the award of District Contracts.

~~4416~~. The Commissioners shall periodically review minority-owned and women-owned participation in contracts awarded by the District to ensure that the District continues to have a compelling interest in remedying discrimination against minority and women-owned firms in the award of District contracts and that the measures adopted herein remain narrowly tailored to accomplish that objective.

Now, therefore, the District Board of Commissioners hereby adopts this ~~Interim~~ Revised Appendix D:

### *Section 3. Purpose and Intent*

The purpose and intent of this Ordinance is to mitigate the present effects of discrimination on the basis of race, ethnicity or sex in opportunities to participate on the District's prime contracts and associated subcontracts and to achieve equitable utilization of minority-owned, women-owned and small business enterprises in District construction contracts.

### *Section 4. Coverage*

The following provisions, to be known as "Appendix D" together with relevant forms, shall apply and be appended to every construction contract awarded by the District where the estimated total expenditure is in excess of \$100,000.00, except contracts let in the event of an emergency pursuant to 70 ILCS 2605/11.5.

### *Section 5. Definitions*

The meaning of these terms in this ~~Interim~~ Ordinance are as follows:

- (a) "Administrator" means the District's Affirmative Action Program Administrator.
- (b) "Affiliate" of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity. In determining Affiliation, the District shall consider all appropriate factors, including common ownership, common management, and contractual relationships.
- (c) "Annual Participation Goals" mean the targeted levels established by the District for the annual aggregate participation of MBEs and WBEs in District construction contracts
- (d) "Bidder" means an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not for profit corporation, a limited liability company or any other entity which has submitted a bid on a District contract.
- (e) "Books and Records" include, but are not limited to, payroll records, bank statements, bank reconciliations, accounts payable documents, account receivable documents, ledgers, all financial software, and all employer business tax returns.
- (f) "Contract Specific Goals" means the Goals established for a particular project or contract based upon the availability of MBEs or WBEs in the scope(s) of work of the Project.

(g) "Construction contract" means any District contract or amendment thereto, providing for a total expenditure in excess of One Hundred Thousand Dollars (\$100,000.00) for the construction, demolition, replacement, major repair or renovation and maintenance of real property and improvement thereon or sludge hauling and any other related contract which the District deems appropriate to be subject to Appendix D consistent with the ~~Interim~~ Ordinance.

(h) "Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities.

(i) "Contract Goals" means the numerical percentage goals for MBE, WBE or SBE participation to be applied to an eligible District construction contract subject to Appendix D for the participation of MBEs, WBEs and SBEs, based upon the scopes of work of the contract, the availability of MBEs, WBEs and SBEs to meet the goals, and the District's progress towards meeting its Annual MBE, WBE and SBE goals.

(j) "Director" means the District's Director of Procurement and Materials Management, formerly known as the Purchasing Agent.

(k) "Economically Disadvantaged" means an individual with a Personal Net Worth less than \$2,000,000.00, indexed annually for the Chicago Metro Area Consumer Price Index, published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January 2008.

(l) "Executive Director" means the chief administrative officer of the District, formerly known as the General Superintendent.

(m) "Expertise" means demonstrated skills, knowledge or ability to perform in the field of endeavor in which certification is sought by the firm as defined by normal industry practices, including licensure where required.

(n) "Good Faith Efforts" means those honest, fair and commercially reasonable actions undertaken by a contractor to meet the MBE or WBE goal, which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Program's goals.

(o) "Hearing Officer" is an attorney licensed to practice in the State of Illinois, appointed by the Board of Commissioners, to conduct hearings as provided in this ~~Interim~~ Ordinance regarding a contractor's compliance or non-compliance with this ~~Interim~~ Ordinance.

(p) "Joint Venture" means an association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, proposing to perform a single for profit business enterprise, in which each Joint Venture partner contributes property, capital, efforts, skill and knowledge, and in which the certified firm is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the Joint Venture are equal to its ownership interest. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibility to the contract.

(q) "Job Order Contract" or "JOC" means a firm, fixed price, indefinite quantity contract designed to complete a large number of construction projects quickly.

(r) "Local business" means a business located within the counties of Cook, DuPage, Kane Lake, McHenry or Will in the State of Illinois or Lake County in the State of Indiana which has the majority of its regular full-time work force located in this region or a business



which has been placed on the District's vendor list or has bid on or sought District construction work.

(s) "Minority-owned business enterprise" or "MBE" means a Local Small business entity, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity, which is at least fifty-one percent (51%) owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more members of one or more minority groups, and whose management, policies, major decisions and daily business operations are controlled by one or more Minority Individuals.

(t) "Minority Individual" means a natural person who is a citizen of the United States or lawful permanent resident of the United States and one of the following:

(i) African-American - A person having origins in any of the Black racial groups of Africa and is regarded as such by the African American Community of which the person claims to be a part.

(iii) Asian-American – A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands or the Northern Marianas, and is regarded as such by the Asian American community of which the person claims to be a part.

(ii) Hispanic-American - A person having origins from Mexico, Puerto Rico, Cuba and South or Central America and is regarded as such by the Hispanic community of which the person claims to be a part, regardless of race.

(iv) Native-American – A person having origins in any of the original peoples of North America and who is recognized through tribal certification as a Native American by either a tribe or a tribal organization recognized by the Government of the United States of America.

(v) Individual members of other groups whose participation is required under state or federal regulations or by court order.

(vi) Individual members of other groups found by the District to be Socially Disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in the District's marketplace or to do business with the District.

(u) "Personal Net Worth" means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other certified MBE or WBE, provided that the other firm is certified by a governmental agency that meets the District's eligibility criteria or the individual's equity in his or her primary place or residence. As to assets held jointly with his or her spouse or recognized civil partner, an individual's personal net worth includes only that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, individual retirement accounts, or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

(v) "Prime Contractor" means a Contractor that is awarded a District contract and is at risk for the completion of an entire District project, including purchasing all materials, hiring and paying subcontractors, and coordinating all the work.

(w) "Small Business Enterprise" or "SBE" means a small business as defined by the U.S. Small Business Administration (SBA), pursuant to the business size standards found in 13 CFR Part 121, relevant to the scope(s) of work the firm seeks to perform on District contracts, except that the size standard for specialty trade construction firms shall be 150 percent of the SBA size standard. A firm is not an eligible SBE in any calendar fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of 13 CFR Part 121.

(x) "Socially Disadvantaged" means a Minority Individual or Woman who has been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States.

(y) "Subcontractor" means a party that enters into a subcontract agreement with a District Prime Contractor to perform work or provide materials on a District project.

(z) "Tier" refers to the relationship of a subcontractor to the prime contractor. A subcontractor having a contract with the prime contractor, including a material supplier to the prime contractor, is considered a "first-tier subcontractor," while a subcontractor's subcontractor is a "second-tier subcontractor" and the subcontractor's material supplier is a "third-tier subcontractor." The subcontractor is subject to the same duties, obligations and sanctions as the contractor under this Ordinance.

(aa) "Utilization Plan" means the plan, in the form specified by the District, which must be submitted by a Bidder listing the MBEs, WBEs and SBE that the Bidder intends to use in the performance of a contract, the scopes of the work and the dollar values or the percentages of the work to be performed.

(bb) "Vendor list" means the District's list of firms that are certified as minority-owned or women-owned by the City of Chicago, the County of Cook, the State of Illinois, the Women's Business Development Center, or the Chicago Minority Supplier Development Council, or as a Disadvantaged Business Enterprise by the Illinois Unified Certification Program, or as a Small Disadvantaged Business by the U.S. Small Business Administration.

(cc) "Women-owned business enterprise" or "WBE" means a Local and Small business business entity which is at least fifty-one percent (51%) owned by one or more women, or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women. Determination of whether a business is at least fifty-one percent (51%) owned by a woman or women shall be made without regard to community property laws.

## **Section 6. Non-Discrimination and Affirmative Action Clause**

As a precondition to selection, a Contractor must include in its bid proposal for a covered contract the following commitments:

During the performance of this contract, the Contractor agrees:

(a) It shall not discriminate on the basis of race, sex, gender, color, racial group or perceived racial group, disability, age, religion, national origin or ethnicity, sexual orientation, veteran or military discharge status, association with anyone with these characteristics, or any

other legally protected characteristic in the solicitation for or purchase of goods in the performance of this contract.

(b) It shall actively solicit bids for the purchase or subcontracting of goods or services from qualified MBEs, WBEs and SBEs.

(c) It shall undertake Good Faith Efforts in accordance with the criteria established in this ~~Interim~~ Ordinance, to ensure that qualified MBEs, WBE, and SBEs are utilized in the performance of this contract and share in the total dollar value of the contract in accordance with each of the applicable utilization goals established by the District for the participation of qualified MBEs, WBEs and SBEs.

(d) It shall require its subcontractors to make similar good faith efforts to utilize qualified MBEs, WBEs and SBEs.

(e) It shall maintain records and furnish the District all information and reports required by the District for monitoring its compliance with this ~~Interim~~ Ordinance.

(f) It shall designate a person to act as an Affirmative Action Coordinator to facilitate the review of all concerns related to the participation MBEs, WBEs and SBEs.

#### **Section 7. Race- and Gender- Neutral Measures to Ensure Equal Opportunities for All Contractors and Subcontractors**

The District shall develop and use measures to facilitate the participation of all firms in District construction contracting activities. These measures shall include, but are not limited to:

(a) Unbundling contracts to facilitate the participation of MBEs, WBEs and SBEs as Prime Contractors.

(b) Arranging solicitation times for the presentations of bids, specifications, and delivery schedules to facilitate the participation of interested contractors and subcontractors.

(c) Providing timely information on contracting procedures, bid preparation and specific contracting opportunities, including through an electronic system and social media.

(d) Assisting MBEs, WBEs and SBEs with training seminars on the technical aspects of preparing a bid for a District contract.

(e) Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing, and support for business development such as accounting, bid estimation, safety requirements, quality control.

(f) Prohibiting Prime Contractors from requiring bonding for subcontractors, where appropriate.

(g) Holding pre-bid conferences, where appropriate, to explain the contract and to encourage Bidders to use all available firms as subcontractors.

(h) Adopting prompt payment procedures, including, requiring by contract that Prime Contractors promptly pay subcontractors and investigating complaints or charges of excessive delay in payments.

(i) Developing Linked Deposit and other financing and bonding assistance programs to assist small firms.

(j) Reviewing retainage, bonding and insurance requirements and their application to bid calculations to eliminate unnecessary barriers to contracting with the District.

(k) Collecting information from Prime Contractors on District construction contracts detailing the bids received from all subcontractors for District on construction contracts and the expenditures to subcontractors utilized by Prime Contractors on District construction contracts.

- (l) Limiting the self-performance of prime contractors, where appropriate.
- (m) To the extent practicable, developing future policies to award contracts to SBEs.
- (n) Maintaining information on all firms bidding on District prime contracts and subcontracts.
- (o) At the discretion of the Board of Commissioners, awarding a representative sample of District construction contracts without goals, to determine MBE, WBE and SBE utilization in the absence of goals.
- (p) Referring complaints of discrimination against MBEs, WBEs or SBEs to the appropriate authority for investigation and resolution.

## Section 8. **Certification Eligibility**

(a) Only businesses that meet the criteria for certification as a MBE, WBE or SBE may be eligible for credit towards meeting Utilization Contract Goals. The applicant has the burden of production and persuasion by a preponderance of the evidence at all stages of the certification process.

(b) Only a firm owned by a Socially and Economically Disadvantaged person(s) may be certified as a MBE or WBE.

(i) The firm's ownership by a Socially and Economically Disadvantaged person(s) must be real, substantial, and continuing, going beyond *pro forma* ownership of the firm as reflected in ownership documents. The owner(s) must enjoy the customary incidents of ownership and share in the risks and profits commensurate with that ownership interest.

(ii) The contributions of capital or Expertise by the Socially and Economically Disadvantaged owner(s) to acquire the ownership interest must be real and substantial. If Expertise is relied upon as part of a Socially and Economically Disadvantaged owner's contribution to acquire ownership, the Expertise must be of the requisite quality generally recognized in a specialized field, in areas critical to the firm's operations, indispensable to the firm's potential success, specific to the type of work the firm performs and documented in the firm's records. The individual whose Expertise is relied upon must have a commensurate financial investment in the firm.

(c) Only a firm that is managed and controlled by a Socially and Economically Disadvantaged person(s) may be certified as a MBE or WBE.

(i) A firm must not be subject to any formal or informal restrictions that limit the customary discretion of the Socially and Economically Disadvantaged owner(s). There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the Socially and Economically Disadvantaged owner(s), without the cooperation or vote of any non-Socially and Economically Disadvantaged person, from making any business decision of the firm, including the making of obligations or the dispersing of funds.

(ii) The Socially and Economically Disadvantaged owner(s) must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long term decisions on management, policy, operations and work.

(iii) The Socially and Economically Disadvantaged owner(s) may delegate various areas of the management or daily operations of the firm to persons who are not Socially and Economically Disadvantaged. Such delegations of authority must be revocable, and the Socially and Economically Disadvantaged owner(s) must retain the power to hire and fire any such person. The Socially and Economically Disadvantaged owner(s) must actually exercise control over the firm's operations, work, management and policy.

(iv) The Socially and Economically Disadvantaged owner(s) must have an overall understanding of, and managerial and technical competence, experience and Expertise, directly related to the firm's operations and work. The Socially and Economically Disadvantaged owner(s) must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to make independent decisions concerning the firm's daily operations, work, management, and policymaking.

(v) If federal, state and/or local laws, regulations or statutes require the owner(s) to have a particular license or other credential to own and/or control a certain type of firm, then the Socially and Economically Disadvantaged owner(s) must possess the required license or credential. If state law, District ordinance or other law regulations or statute does not require that the owner possess the license or credential, that the owner(s) lacks such license or credential is a factor, but is not dispositive, in determining whether the Socially and Economically Disadvantaged owner(s) actually controls the firm.

(vi) A Socially and Economically Disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the owner from devoting sufficient time and attention to the affairs of the firm to manage and control its day to day activities.

(d) Only an independent firm may be certified as a MBE, WBE or SBE. An independent firm is one whose viability does not depend on its relationship with another firm. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent and non-Affiliated. In determining whether an applicant is an independent business, the Director will:

i) Evaluate relationships with non-certified firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(ii) Consider whether present or recent employer/employee relationships between the Socially and Economically Disadvantaged owner(s) of the applicant for MBE or WBE certification or any owners of the applicant for SBE certification and non-certified firms or persons associated with non-certified firms compromise the applicant's independence.

(iii) Examine the applicant's relationships with non-certified firms to determine whether a pattern of exclusive or primary dealings with non-certified firm compromises the applicant's independence.

(iv) Consider the consistency of relationships between the applicant and non-certified firms with normal industry practice.

(e) An applicant shall be certified only for specific types of work in which the Socially and Economically Disadvantaged owner(s) for MBEs and WBEs or the majority owner for SBEs has the ability and Expertise to manage and control the firm's operations and work.

(f) The District shall certify the eligibility of Joint Ventures involving MBEs, WBEs or SBEs and non-certified firms.

(g) The certification status of all MBEs, WBEs and SBEs shall be reviewed periodically by the Administrator. Failure of the firm to seek recertification by filing the necessary documentation with the Administrator as provided by rule may result in decertification.

(h) It is the responsibility of the certified firm to notify the Administrator of any change in its circumstances affecting its continued eligibility. Failure to do so may result in the firm's decertification.

(i) The Administrator shall decertify a firm that does not continuously meet the eligibility criteria.

(j) Decertification by another agency shall create a *prima facie* case for decertification by the District. The challenged firm shall have the burden of proving by a preponderance of the evidence that its District certification should be maintained.

(k) A firm that has been denied certification or recertification or has been decertified may protest the denial or decertification by filing a written appeal with the Executive Director within 10 calendar days of receipt of the denial of District certification, recertification or decertification. The appeal should set forth in detail the facts upon which it is based, and attach all relevant documentations. The Executive Director shall render a decision within 15 calendar days of receipt of a timely appeal. The Executive Director's decision shall be final.

(l) A firm found to be ineligible may not apply for certification for two years after the effective date of the final decision.

### **Section 9. Schedule of Goals for Minority-Owned, Women-Owned and Small Business Enterprise Utilization**

In fulfillment of its policy to provide MBEs, WBEs, and SBEs full and equitable opportunities to participate in the District's construction prime contracts and subcontracts, the District shall establish annually goals for MBE, WBE and SBE participation, based on the availability of MBEs and WBEs in the District's geographic and procurement market.

### **Section 10. Contract Goals.**

(a) The Director, in consultation with the Administrator and the User Department, shall establish Contract Goals for construction contracts based upon the availability of at least three MBEs and three WBEs registered on the District's vendor list to perform the anticipated subcontracting functions of the contract and the District's utilization of MBEs and WBEs to date.

(b) Where a substantial portion of the total construction contract cost is for the purchase of equipment, the Director may designate goals for only that portion of the contract relating to construction work and related supplies and/or modify the limitations on the credit for M~~A~~BE or WBE suppliers herein.

(c) The Contract Goal(s) shall be designated in the contract documents.

### **Section 11. Counting MBE, WBE, and SBE Participation towards Contract Goals**

(a) A Bidder may achieve the Utilization Contract Goals by its status as a MBE, WBE or SBE or by entering into a Joint Venture with one or more MBEs, WBEs and SBEs or by first-tier subcontracting a portion of the work to one or more MBEs, WBEs and SBEs or by direct purchase of materials or services from one or more MBEs, WBEs and SBEs or by any combination of the above.

(b) If a firm is certified as both a MBE and a WBE, the Bidder may count the firm's participation either toward the achievement of its MBE or WBE goal, but not both.

(c) A Bidder may count toward the achievement of its SBE goal the utilization of any MBE or WBE that also satisfies the definition of a SBE.

(d) A Bidder may count the entire amount of that portion of a contract that is performed by MBEs, WBEs or SBEs own forces, including the cost of supplies and materials obtained and installed by the MBE, WBE or SBE for the work of the contract, and supplies purchased or equipment leased by the MBE, WBE or SBE used to directly perform the work of the contract

(except supplies and equipment the MBE, WBE or SBE purchases or leases from the Prime Contractor or the Prime Contractor's Affiliate).

(e) Where a Bidder or first-tier subcontractor engages in a Joint Venture to meet the Contract Goal, the Administrator shall review the profits and losses, initial capital investment, actual participation of the Joint Venture in the performance of the contract with its own forces and for which it is separately at risk, and other pertinent factors of the joint venture, which must be fully disclosed and documented in the Utilization Plan in the same manner as for other types of participation, to determine the degree of MBE, WBE or SBE participation that will be credited towards the Contract Goal. The Joint Venture's Utilization Plan must evidence how it will meet the goal or document the Bidder's Good Faith Efforts to do so. The Administrator has the authority to review all records pertaining to Joint Venture agreements before and after the award of a contract in order to assess compliance with this Ordinance. The MBE, WBE or SBE Joint Venture partner must have a history of proven expertise in performance of a specific area of work and will not be approved for performing only general management of the Joint Venture. The specific work activities for which the MBE, WBE or SBE Joint Venture partner will be responsible and the assigned individuals must be clearly designated in the Joint Venture Agreement. The Joint Venture must submit to the Administrator quarterly work plans, including scheduling dates of the tasks. The Administrator must approve the quarterly plans for the MBE, WBE or SBE Joint Venture partner's participation to be credited towards the Contract Goals.

(f) Only the participation of MBEs, WBEs or SBEs that will perform as first-tier subcontractors will be counted towards meeting the Utilization Contract Goals.

(g) Only expenditures to a MBE, WBE or SBE that is performing a Commercially Useful Function shall be counted towards the Utilization Contract Goal.

(i) A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The firm must pay all costs associated with personnel, materials and equipment. The firm must be formally and directly responsible for the employment, supervision and payment of its workforce must own and /or lease equipment, and must be responsible for negotiating price, determining quality and quantity and paying for and ordering materials used. The firm cannot share employees with the Prime Contractor or its Affiliates. No payments for use of equipment or materials by the firm can be made through deductions by the Prime Contractor. No family members who own related businesses are allowed to lease, loan or provide equipment, employees or materials to the firm.

(ii) A firm does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction through which funds are passed in order to obtain the appearance of MBE, WBE or SBE participation. The Prime Contractor is responsible for ensuring that the firm is performing a commercially useful function.

(iii) The District will evaluate the amount of work subcontracted, industry practices, whether the amount the MBE, WBE or SBE is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors.

(iv) If a firm subcontracts a greater portion of the work of a contract than would be expected based on normal industry practice, it is presumed not to perform a Commercially

Useful Function. When a firm is presumed not to be performing a Commercially Useful Function, the firm may present evidence to rebut this presumption.

(h) Credit towards the Contract Goals will be allowed only for those direct services performed or materials supplied by MBEs, WBEs or SBEs or first-tier subcontractor MBEs, WBEs or SBEs. MBEs, WBEs or SBEs must perform no less than eighty-five percent (85%) of their work with their own forces, through the use of its own management and supervision, employees and equipment. If industry standards and practices differ, the firm must furnish supporting documentation for consideration by the District.

(i) Purchase of materials and supplies must be pre-approved if their purchase is related to goal attainment. Bidder may count payments to MBE, WBE or SBE regular dealers or manufacturers who offer only furnish and deliver contracts for materials and supplies for no more than twenty-five percent (25%) of each MBE, WBE or SBE goal, unless approved by the Administrator. If the bidder exceeds the supplier exception amount allowable as stated in the bid documents, the bid will be viewed as non-responsive.

(j) A dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Bidder.

(k) If a firm ceases to be a certified during its performance on a contract, the dollar value of work performed under a contract with that firm after it has ceased to be certified shall not be counted.

(l) In determining achievement of Utilization Contract Goals, the participation of a MBE, WBE or SBE shall not be counted until that amount has been paid to the MBE, WBE or SBE.

## **Section 12. Utilization Plan Submission**

(a) Compliance documents must be submitted as provided in the solicitation. Failure to do so will render the bid non-responsive. The Director shall review each bid submission to determine if it meets the requirements herein.

(b) A Bidder must either meet the Utilization Contract Goals or establish its Good Faith Efforts to do so as described in Appendix D and the solicitation.

(c) Each Bidder shall submit with its bid a completed and signed Utilization Plan that lists the names, addresses, telephone numbers, email addresses and a description of the work with contract item number and contact person of the businesses intended to be used as subcontractors, subconsultants and suppliers, including those firms proposed to meet the Contract Goal(s); the type of work or service each business will perform; and the dollar amount to be allocated to the certified firm(s). Each Bidder's Utilization Plan shall commit to MBE, WBE or SBE participation equal to or greater than each of the Contract Goals set forth in the solicitation, unless the Bidder requests a partial or total waiver of the requirement that it file a



Utilization Plan or achieve a particular goal by submitting with the bid a signed Waiver Request in the form specified in the solicitation.

(d) Each Bidder must submit with its bid a signed M/W/MBE, WBE or SBE Subcontractor's Letter of Intent for each firm in the form specified in the solicitation, with either a copy of each MBE, WBE or SBEs current Letter of Certification from a state or local government or agency or documentation demonstrating that the firm is a MBE, WBE or SBE within the meaning of this Appendix D. In the event of a conflict between the amounts stated on the Utilization Plan and the M/W/MBE, WBE or SBE Subcontractor's Letter of Intent, the terms stated on the Utilization Plan shall control. An original or facsimile copy of the M/W/MBE, WBE or SBE Subcontractor's Letter of Intent will be acceptable.

(e) Where a Bidder had failed to meet the Contract Goal(s), it must file a Waiver Request documenting its Good Faith Efforts to meet the Goal(s) as provided in the format described in the solicitation, the Administrator shall require the contractor to file a Contractor Information Form and provide additional documentation of its good faith efforts in attempting to fulfill such goals.

(i) Such Good Faith Efforts, as defined herein, shall include, but are not limited to, the following:

(i) Attend any pre-bid conference conducted by the District to acquaint contractors with MBEs, WBEs and SBEs available to provide relevant goods and services and to inform MBEs, WBEs and SBEs of subcontract opportunities on the contract;

(ii) Review lists of available MBEs, WBEs and SBEs maintained by the District and other state and local governments and agencies prior to the bid opening to identify qualified MBEs, WBEs and SBEs for solicitation for bids;

(iii) Advertise, not less than 15 calendar days before the bid opening date, in one or more daily newspapers and/or trade publications, for proposals or bids by MBEs, WBEs and SBEs for subcontracts or the supply of goods and services on the contract;

(iv) Make timely written solicitations of available MBEs, and WBEs and SBEs identified on the District's vendor list that provide relevant services for subcontracts or the supply of goods and services;

(v) Provide MBEs, WBEs and SBEs with convenient and timely opportunities to review and obtain relevant plans, specifications or terms and conditions of the contract to enable such MBEs, WBEs and SBEs to prepare an informed response to a contractor solicitation;

(vi) Divide total contract requirements into small tasks or quantities and adjust performance bond and insurance requirements or otherwise assist MBEs, WBEs and SBEs in obtaining the required bonding, insurance or financing, where economically feasible, to encourage participation of MBEs, WBEs and SBEs;

(vii) Follow up initial solicitation of MBEs, WBEs and SBEs by contacting them to determine if the enterprises are interested in making bids or proposals;

(viii) Negotiate in good faith with MBEs, WBEs and SBEs prior to the bid opening and do not reject as unsatisfactory any bids or proposals submitted by M/WBEs without justifiable reason, including the lack of bonding capacity or the ability to obtain insurance

requirements such as Completed Builders Risk (All Risk) Insurance, Comprehensive General Liability Insurance, Contractor Contractual Liability Insurance and Public Liability Insurance;

(ix) Establish delivery schedules, where the requirements of the work permit, which will encourage participation by MBEs, WBEs and SBEs;

(x) Establish joint ventures with MBEs, WBEs and SBEs;

(xi) Use the services and assistance of the District, the Small Business Administration, the Office of Minority Business Enterprises of the U.S. Department of Commerce and appropriate community and minority and women's business organizations;

(ii) Failure of a Bidder to provide requested information to the Administrator or to cooperate with the Administrator's investigation, may be grounds for the rejection of a bid and/or a Waiver request.

(iii) Upon completion of the investigation, the Administrator shall inform the Director of his or her findings.

(iv) The Director, after consultation with the Administrator, shall determine whether to grant the ~~w~~Waiver request based on the Bidder's Good Faith Efforts at the time of bid submission.

(v) Where the Director determines that a Bidder has not made Good Faith Efforts, the Director shall declare the bid submission non-responsive and will reject the bid.

(d) A contractor's submission of a Utilization Plan that commits to a ~~M~~M/MBE or WBE participation equal to or greater than the applicable utilization goals shall not provide a basis for a higher bid, an increase in contract price or a later change order.

(e) The requirement to submit a Utilization Plan and ~~M~~M/MBE, WBE or SBE Subcontractor's Letters of Intent applies when the individual project is awarded under Job Order Contracts awarded by the District.

(i) A Prime Contractor issued a Job Order Contract shall submit with each work order issued under such a Contract its Utilization Plan that lists the name, address, telephone number, email address and contact person for each ~~M/W~~M/MBE, WBE or SBE to be used on the work order, as well as a description of work to be performed and a dollar amount to be allocated to such ~~M/W~~M/MBE, WBE or SBE. The Prime Contractor shall submit with each work order a ~~M/W~~M/MBE, WBE or SBE Subcontractor's Letter of Intent from each certified firm.

(ii) A Prime Contractor awarded a Job Order Contract shall be subject to the compliance monitoring provisions herein. The Prime Contractor must submit to the Administrator monthly documentation, as specified by the Administrator, demonstrating that the Contractor has attained the Contract Goals for the completed portion of the Job Order Contract, or that it has been unable to do so despite its good faith efforts. Good Faith ~~e~~Efforts must be documented as provided in this Ordinance.

### **Section 13. Compliance Review**

(a) The Director shall declare the bid submission non-responsive if a Bidder:

(i) Failed to submit with its bid a completed and signed Utilization Plan;

(ii) Failed to commit in its Utilization Plan to MBE, WBE and SBE participation equal to or greater than each of the Utilization Contract Goals unless the Bidder submitted with its bid a request for a total or partial waiver of the Goal(s).

(iii) Failed to identify in its Utilization Plan the MBE, WBE or SBE by name, scope of work, contract item number, and dollar value of work or percentage of participation equal to or greater than each of the Contract Goal(s).

(iv) Failed to submit with its bid the M/W/MBE, WBE and SBE Subcontractor's Letter of Intent from each MBE, WBE and SBE listed on its Utilization Plan.

(b) Where, after consultation with the Administrator, the Director determines that the Utilization Plan submitted by a Bidder is false or fraudulent, the bid shall be rejected or, if the determination is made after the bid award, the contract may be forfeited in accordance with the provision of Article 28 of the General Conditions.

(c) If a Mentor-Protégé relationship is proposed to meet the Contract Goal, the Mentor-Protégé Development Plan must be submitted to the Administrator for approval prior to contract award. "Mentor-Protégé relationship" describes an association between large business prime contractor firms and socially disadvantaged firms designed to motivate, encourage and to provide mutually beneficial developmental assistance to those socially disadvantaged firms.

(d) Prior to the award of any contract, the Administrator shall review the Utilization Plan, M/W/MBE, WBE and SBE Subcontractor's Letter(s) of Intent and Letter(s) of Certification, and Contractor Information and Waiver Request Forms as specified in the solicitation, submitted by the apparent low bidder on a contract and conduct any other investigation the Administrator deems appropriate to determine compliance.

(e) Within 30 calendar days after demand, the Prime Contractor shall furnish executed copies of all MBE, WBE and SBE subcontracts to the Administrator. Subsequently, the contractor shall obtain and submit a copy of all MBE, WBE and SBE related subtier contracts on demand.

(f) The Prime Contractor shall set timetables for use of its subcontractors before fifty percent (50%) of the work is completed.

(g) If requested by the Administrator, the Prime Contractor must submit a MBE, WBE and SBE Work Plan projecting the work tasks associated with certified firms' commitments prior to the award of the contract. The Work Plan must provide a description of the work to be subcontracted to other MBEs, WBEs and SBEs and non-certified firms and the dollar amount and the name of the all tiers of subcontractors. The Work Plan becomes part of the Prime Contractor's contractual commitment and the contract record, and may not be changed without prior approval of the Administrator.

#### **Section 14. Contract Performance Compliance**

(a) After the award of a contract, the Administrator shall review the Prime Contractor's compliance with its M/W/MBE, WBE and SBE commitments during the performance of the contract.

(b) The Prime Contractor shall be required to submit the Affirmative Action Monthly MBE/WBE/SBE Status Report providing the information and in the format as specified by the District with every payment request. The Contractor's failure to do so may result in a delay of the progress payment.

(c) Evidence of MBE, WBE and SBE subcontractor participation and payments must be submitted as required by the District to confirm subcontractors' participation and payment.

(d) District contract compliance officers and auditors, or their designees, shall have access to the contractor's and subcontractor's books and records, including certified payroll records, bank statements, employer business tax returns and all records including all computer records and books of account to determine the contractor and MBE, WBE and SBE subcontractor compliance with the goal commitment. Audits may be conducted at any time and without notice in the total discretion of the District. A Prime Contractor must provide the Administrator any additional compliance documentation within 14 calendar days of such request. Audits may be conducted without notice at any time at the discretion of the District.

(e) If District personnel observe that any purported MBE, WBE and SBE subcontractor other than those listed on the Utilization Plan are performing work or providing materials and/or equipment for those MBE and WBE subcontractors listed on the Utilization Plan, the Prime Contractor will be notified in writing of an apparent violation is taking place and progress payments may be withheld. The contractor will have the opportunity to meet with the Affirmative Action Administrator prior to a finding of noncompliance.

(f) Where a partial or total ~~W~~waiver of the Contract Goal(s) has been granted, the Prime Contractor must continue to make Good Faith Efforts during the performance of the contract to meet the Goal(s), and the Administrator shall provide technical assistance with respect to such efforts. The Administrator shall require the Prime Contractor to provide documentation of its continuing Good Faith Efforts in attempting to fulfill its commitments.

(g) The Prime Contractor cannot make any changes to the approved Utilization Plan or substitutions of the MBE(s), WBE(s) or SBE(s) listed in the Utilization Plan throughout the life of the contract without the prior, written approval of the Administrator. This includes, but is not limited to, instances in which the Prime Contractor seeks to perform work originally designated for a MBE, WBE or SBE subcontractor with its own forces or those of an affiliate, a non-certified firm or another MBE, WBE or SBE. Failure to obtain the prior, written approval of the Administrator in the format specified by the District shall constitute a breach of the contract, and subject the Prime Contractor to any and all available sanctions. The participation of certified firms that did not receive prior, written approval by the Administrator will not be counted towards the Contract Goal(s).

(i) The Prime Contractor must demonstrate good cause to terminate or reduce the scope of work of the MBE, WBE or SBE to the satisfaction of the Administrator. Good cause is limited to the following circumstances:

(1) The listed MBE, WBE, or SBE subcontractor fails or refuses to execute a written contract.

(2) The listed MBE, WBE or SBE subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness.

(3) The listed MBE, WBE or SBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal or state or local law.

(4) The Administrator has determined that the listed MBE, WBE or SBE subcontractor is not a responsible contractor.

(5) The listed MBE, WBE or SBE subcontractor voluntarily withdraws from the project and provides the Administrator written notice of its withdrawal.

(6) The listed MBE, WBE or SBE subcontractor is ineligible to receive credit for the type of work required.

(7) The MBE, WBE or SBE owner dies or becomes disabled with the result that the listed MBE, WBE or SBE subcontractor is unable to complete its work on the contract.

(8) Other good cause as determined in the Administrator's sole discretion.

(ii) Good cause does not include where the Contractor seeks to terminate a MBE, WBE or SBE it relied upon to obtain the contract so that the Contractor can self-perform the work or substitute another MBE, WBE or SBE or non-certified subcontractor to perform the work for which the MBE, WBE or SBE was engaged or listed on the Utilization Plan.

(iii) The Prime Contractor must give the MBE, WBE or SBE notice in writing, with a copy to the Administrator, of its intent to request to terminate and/or substitute, and the detailed reasons for the request.

(iv) If the Prime Contractor proposes to terminate or substitute a MBE, WBE or SBE subcontractor for any reason, the Contractor must make Good Faith Efforts as defined herein to find a substitute MBE, WBE or SBE subcontractor for the original MBE, WBE or SBE to meet its MBE, WBE or SBE contractual commitment. Its Good Faith Efforts shall be directed at finding another MBE, WBE or SBE to perform or provide at least the same amount of work, material or service under the contract as the original MBE, WBE or SBE to the extent necessary to meet its MBE, WBE or SBE contractual commitment.

(v) The Prime Contractor must submit a MBE, WBE or SBE Subcontractor's Letter of Intent for each proposed new MBE, WBE or SBE subcontractor.

(vi) The Administrator will approve or disapprove the substitution based on the Prime Contractor's documented compliance with these provisions.

(h) In the event a Prime Contractor fails to achieve the level of MBE, WBE or SBE participation described in its Utilization Plan as the result of the District's deletion of the work to be performed by a MBE, WBE or SBE, the Prime Contractor shall notify the Administrator in writing and may request an amendment of its Utilization Plan. A letter of release signed by the subcontractor must be included with the request.

(i) In the event a Prime Contractor, in the performance of its contract, determines that the conditions of the work warrant a reduction in the scope of work to be performed by a MBE, WBE or SBE the Prime Contractor must utilize Good Faith Efforts to fulfill its MBE, WBE or SBE contractual commitment. The Prime Contractor must notify the Administrator in writing within 14 calendar days of the determination to request an amendment of its Utilization Plan. The Prime Contractor must give the MBE, WBE or SBE notice in writing, with a copy to the

Administrator, of its intent to request to reduce the scope of work, and the detailed reasons for the request. The Administrator will approve or disapprove the reduction based on the Prime Contractor's documented compliance with these provisions.

(j) Where contract change orders are made individually or in the aggregate that increase the total value of the contract by more than ten percent (10%) of the original contract value, the Prime Contractor shall increase the utilization of all MBEs, WBEs or SBEs, where feasible, so that the total value of the percentage of work performed by MBEs, WBEs or SBEs as to increased contract value bears the same relationship to the total value of the contract (as modified by change orders) as the percentage of MBEs, WBEs or SBEs utilization committed to in the contractor's original Utilization Plan.

#### **Section 15. Sanctions for Non-Compliance**

(a) Where the Administrator believes that the Prime Contractor or subcontractor has committed fraud or misrepresentation against the District or has failed to comply with this Ordinance or its contract, or provided false or fraudulent documentation, the Administrator shall notify the Prime Contractor and/or subcontractor in writing of such determination of noncompliance and withhold up to one hundred percent (100%) of the current progress or final payment due the Prime Contractor for up to 90 days. The amount to be withheld shall be based upon a determination of the degree to which the Prime Contractor has failed to meet its MBE, WBE or SBE contractual commitments and to what extent the Prime Contractor has made Good Faith Efforts to achieve such commitments. The Prime Contractor and/or subcontractor shall have the right to meet with the Administrator within 10 calendar days of receipt of the notice. After conference and conciliation, the Administrator will determine whether the Prime Contractor and/or subcontractor is in compliance.

(b) If the Administrator determines the Prime Contractor and/or subcontractor is not in compliance and the violation cannot be resolved by conference and conciliation, the Administrator shall refer the matter to the Executive Director and the Executive Director may return the referral to the Administrator with direction or may direct the Prime Contractor and/or subcontractor to show cause on a date certain why further sanctions should not be imposed.

(i) The Prime Contractor or subcontractor shall have 15 calendar days after receipt of the show cause notice within which to file a response in writing with the Administrator. A hearing before a duly appointed Hearing Officer shall be convened to provide the contractor and/or subcontractor an opportunity to be heard with respect to the non-compliance. Within 30 calendar days after the Executive Director's referral, the Hearing Officer shall schedule a hearing to be held within 30 calendar days of receipt of the referral for hearing at which the District, the contractor and/or subcontractor may present evidence of the purported violation and/or the absence thereof. The District will carry the burden of proof by a preponderance of the evidence. The Prime Contractor and/or subcontractor may present additional evidence and witnesses to show cause why sanctions should not be imposed. An official record will be kept with the Clerk of the District. All filings by the District or the respondents should be made with the Clerk of the District, with courtesy copies going to the parties and the Hearing Officer.

(ii) The Hearing Officer shall conduct such show cause hearings involving the Ordinance and shall render findings of fact, conclusions of law and recommendations regarding disposition of the hearings. Procedures and rules governing the show cause hearings will be adopted by the Board of Commissioners. The Hearing Officer will not become co-counsel with any attorneys appearing before him/her at any time during the hearing.

(iii) All Show Cause Hearings must be conducted on the record and all testimony must be under oath and transcribed verbatim by a court reporter. All parties shall be given the opportunity to present and respond to evidence. The Hearing Officer shall conduct a fair hearing and maintain order and shall abide by the Judicial Canons of Ethics enacted by the Illinois Supreme Court.

(iv) Within 30 calendar days after the hearing with the Prime Contractor and/or subcontractor, the Hearing Officer shall issue in writing to the Executive Director his/her written findings of fact, conclusions of law as to compliance and recommendations with respect to any appropriate sanctions. The Executive Director shall transmit the Hearing Officer's findings, conclusions and recommendations to the Board of Commissioners which may impose sanctions for a Prime Contractor's and/or subcontractor's noncompliance with this Ordinance including, but not limited to:

(1) Withholding up to fifty percent (50%) of the current progress or final payment due the contractor until the Administrator determines that the contractor is in compliance. Following the withholding of up to fifty percent (50%) of the current progress payment, up to one hundred percent (100%) of further progress payments may be withheld until the contractor is found to be in compliance with the requirements of this Ordinance. The amount to be withheld will be based upon a determination of the degree to which the Prime Contractor has failed to meet its MBE, WBE or SBE contractual commitments and to what extent the Prime Contractor has made good faith efforts to achieve such commitments.

(2) Declaring the Prime Contractor and/or subcontractor to be non-responsible and disqualify/debar the Prime Contractor and/or subcontractor from eligibility to bid on District construction contracts for a period of not less than one (1) year, and not more than three (3) years. An entity that is disqualified pursuant to the provisions of this Ordinance shall be precluded from participation on any District contract as a Prime Contractor, subcontractor and supplier for the period of disqualification. In cases of the use of false documentation, the making of false statements, fraud or misrepresentation, the disqualification period will be not less than eighteen (18) months, and not more than three (3) years for the second violation of the Ordinance and not less than twenty-four (24) months and not more than three (3) years for the third violation of the Ordinance from the date of disqualification established in the Board Order.

(3) Rejecting bids by the Prime Contractor for other contract(s) not yet awarded to that Bidder in instances of the use of false documentation, the making of false statements, fraud or misrepresentation.

(4) For any MBE, WBE or SBE that has misrepresented its MBE, WBE or SBE status and/or failed to operate as an independent business concern performing a Commercially Useful Function, declaring by the Director that the MBE, WBE or SBE ineligible to participate as a MBE, WBE or SBE in District contracts. A firm that has been declared ineligible may not participate as a MBE, WBE or SBE for a period of not less than one (1) year and not more than three (3) years.

(5) Forfeiting and deducting from the Prime Contractor's progress or final payments under the contract an amount up to the dollar amount of its MBE, WBE goal commitment that the contractor has failed to meet. The amount to be deducted will be based upon a determination of the extent to which the Prime Contractor made Good Faith Efforts to achieve such commitments.

(6) Referring the matter to the Office of the Attorney General or Cook County State's Attorney for follow-up action.



(c) The Administrator and Director will take action to prevent a contract from being awarded to a Prime Contractor or first-tier subcontractor disqualified from bidding hereunder for the period of disqualification.

(d) The District's attorneys' fees and costs will be assessed against the Prime Contractor and/or subcontractor where the Hearing Officer makes a finding that the Prime Contractor or subcontractor used false documentation, made false statements, or committed fraud or misrepresentation.

(e) Notice of sanctions imposed by the Board of Commissioners for violations of the Ordinance by the Prime Contractor, subcontractor and/or supplier will be spread upon the public record by the District, including but not limited to publication in the Record of Proceedings of the Board of Commissioners, posting on the District's web site, publication in any type of media, newspaper publication and direct notice by letter to governmental entities.

(f) Any sanctions imposed against an entity shall also apply personally to all officers and directors of the entity or partners of the entity, and their successors and assigns with knowledge of the acts and omissions that give rise to the sanctions against the entity.

(g) The District may take other action, as appropriate, within the discretion of the Administrator, subject to the approval of the Hearing Officer and the Board of Commissioners.

#### **Section 16. Other Federal Regulations**

The provisions of this ~~Interim~~ Ordinance shall not apply to any contract to the extent that different procedures or standards are required by any law or regulation of the United States and nothing herein shall be interpreted to diminish or supplant the present Equal Employment Opportunity Requirements contained in Appendices B, C, ~~and CG~~, and I of Grant funded contracts or Appendix C of non-Grant funded contracts.

#### **Section 17. Reporting and Review**

The Board of Commissioners directs the District staff to report to the Board of Commissioners on an annual basis with respect to the following:

(a) The level of MBE, WBE or SBE participation achieved in each year in District construction contracts subject to Appendix D.

(b) Identification of any problems with the enforcement of Appendix D; and

(c) Any recommendations with respect to improving the implementation of Appendix D.

#### **Section 18. Sunset Provision**

This Appendix D shall be reviewed no later than ~~two-five~~ years from its adoption and shall expire on ~~December 6, 2014~~ June 4, 2020 unless the District finds that its remedial purposes have not been fully achieved and that there is a compelling interest in continuing to implement narrowly tailored remedies to redress discrimination against ~~M/~~MBEs and WBEs so that the District will not function as a passive participant in a discriminatory market~~place~~ in the Metropolitan Chicago construction industry.



**Section 19. Repeal of Prior Inconsistent Provisions**

All enactments and provisions heretofore adopted by this Board of Commissioners in the area of affirmative action in connection with construction contracts subject to this ~~Interim~~ Ordinance that are inconsistent with the provisions of this ~~Interim~~ Ordinance are hereby expressly repealed.

**Section 20. Severability**

If any clause, sentence, paragraph, section or part of this ~~Interim~~ Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this ~~Interim~~ Ordinance directly involved in the controversy in which the judgment shall have been rendered.

**Section 21. Effective Dates**

This amendment to revised Appendix D shall be effective and apply to all bids for contracts advertised after ~~December 6, 2012~~ June 4, 2020.

ADOPTED:

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Mariyana T. Spyropoulos, President  
Board of Commissioners of the  
Metropolitan Water Reclamation  
District of Greater Chicago

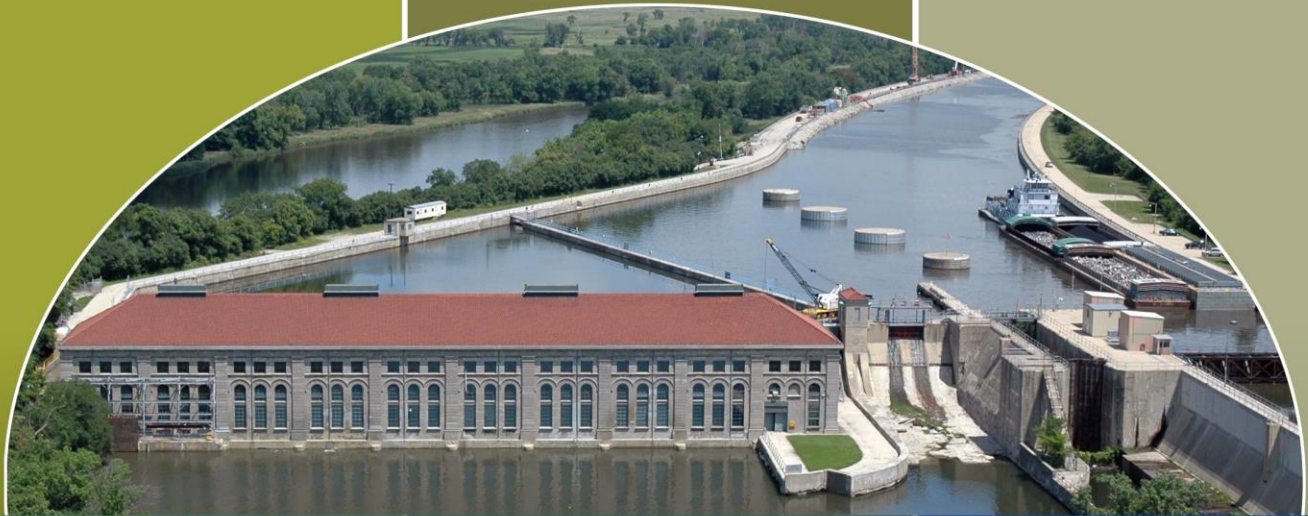
Approved as to form and legality:

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Head Assistant Attorney

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General Counsel



# The Metropolitan Water Reclamation District of Greater Chicago DISPARITY STUDY 2015



Disparity Study for the  
Metropolitan Water Reclamation District of Greater Chicago

May 27, 2015

## About the Study Team

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

**Sandi Llano & Associates, Inc.** (“SLA”) is a Chicago-based consulting firm specializing in Disadvantaged, Minority and Women Business programs, including outreach, program development, project monitoring and certification issues. SLA is certified as a Disadvantaged Business Enterprise, Minority-Owned Business Enterprise and a Woman-Owned Business Enterprise by several agencies.

**Abaci Research & Consulting, LLC** (“ARC”) is a national firm specializing in data collection and management for disparity studies and other research related to contracting affirmative action programs. President Kim Stewart has almost a decade of experience supporting legally defensible disparity studies and serving as Assistant Project Director. ARC is certified as a Disadvantaged Business Enterprise and a Woman-Owned Business Enterprise by several agencies.

## Acknowledgements

We wish to express special thanks to the following individuals who assisted in the conduct of the study: Tia Schrean, Senior Diversity Officer and Project Manager; Thomas Savage, Diversity Administrator; Margaret Conway, Principal Attorney; Darlene LoCascio, Director of Procurement and Materials Management; Beverly Sanders, Acting Diversity Administrator; the Diversity Section; and the Engineering, Information Technology and Maintenance and Operations Departments.

Thanks to Alan Stewart, Springboard Intermedia, for design of the Study cover.

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## I. EXECUTIVE SUMMARY

Colette Holt & Associates was retained by the Water Reclamation District of Greater Chicago (“MWRD” or the “District”) to perform a study of possible disparities on the basis of race and gender in access to its prime contracting and associated subcontracting opportunities. We analyzed purchase order and contract data for calendar years 2008 through 2014. We explored whether Minority-Owned Business Enterprises (“MBEs”) and Women-Owned Business Enterprises (“WBEs”) (collectively, “M/WBEs”) have equal access to District contracts, and if not, what remedies might be appropriate to redress the barriers created by race or gender discrimination.

### A. Study Methodology and Data

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

To address the requirements of strict constitutional scrutiny applicable to M/WBE programs, we examined quantitative and qualitative evidence. We determined the availability of M/WBEs in the District’s geographic and industry market area and whether there is a disparity between the availability of M/WBEs and MWRD’s utilization of these firms. We further analyzed disparities in the wider economy, where affirmative action is rarely practiced, to evaluate whether barriers continue to impede opportunities for minorities and women when remedial intervention is not imposed. We gathered anecdotal data on M/WBEs through focus groups with business owners and stakeholders, and interviews with District staff. We also evaluated the M/WBE program and race- and gender-neutral policies and procedures for their effectiveness and conformance with constitutional parameters and national standards for M/WBE initiatives.

Based on the results of these extensive analyses, we make recommendations about whether a constitutional basis exists for continuing the use of race- and gender-based contracting efforts, and if so, what those efforts might be.

## **B. Study Findings**

### **1. MWRD's M/WBE Program**

#### **a. Program Elements**

The Affirmative Action Ordinance, Appendix D, establishes the District's M/WBE program. The program is administered by the Diversity Section, which reports directly to the Executive Director. It conducts pre-bid, pre-award; and post-award compliance reviews. The Diversity Section also provides regular reports to the Board of Commissioners and the public.

To be eligible for the program, a firm must be owned, managed and controlled by a socially and economically disadvantaged individual and the firm must be small. African-Americans, Hispanic-Americans, Asian-Americans and Native Americans are defined as socially disadvantaged, and other groups or individuals may be added at the Board's discretion. The District has adopted a personal net worth test of \$2 million, indexed annually and the U.S. Small Business Administration's size standards averaged over five years. MWRD accepts M/WBE certifications that meet these standards for inclusion on its vendor listing from various local government and private agencies. To be eligible for credit towards a contract goal, however, a firm must be further reviewed by the District.

MWRD applies various race- and gender-neutral measures, such as unbundling contracts, conducting networking events, providing information to bidders and subcontractors, etc.

The program applies to the District's construction program and construction-related professional services contracts in excess of \$100,000. The current schedule of goals is 20 percent for MBEs, 10 percent for WBEs and 10 percent for SBEs. Waivers are available to bidders that cannot meet the goal(s) despite their good faith efforts to do so. The participation of certified first tier subcontractors is counted at 100 percent of the dollars they receive. A firm must perform a "commercially useful function" to be counted for participation under standards similar to that of the U.S. Department of Transportation's Disadvantaged Business Enterprise program. If a firm is certified as both a MBE and a WBE, the bidder may count the firm's participation toward either goal, but not both. A bidder may count toward the achievement of its SBE goal the utilization of any MBE or WBE that also satisfies the definition of a SBE.

For contracts for which goals have been established, the bidder must submit a Utilization Plan that documents its goal attainment or its good faith efforts to do so. Letters of Intent from the M/W/SBE subcontractors and suppliers must also be submitted with the bid package. A prime contractor awarded a Job Order Contract must submit with each work order a Utilization Plan and subcontractors' letter of intent. A MBE/WBE/SBE Monthly Status Report must be submitted with

every payment request. A prime contractor may amend its Utilization Plan for good cause but it must then make good faith efforts to meet the goal.

Various sanctions may be imposed for compliance failures.

## **b. Interviews**

To explore the impacts of the District's contracting policies and procedures and the implementation of the M/WBE program, we interviewed 48 individuals about their experiences and solicited their suggestions for changes. We solicited input about their experiences and suggestions for changes or improvements. Topics included:

- **Payments:** Most prime contractors reported that the District is exemplary regarding timely payment. Few subcontractors complained that they were not paid promptly by MWRD's prime contractors.
- **Access to information about MWRD's contracting policies and upcoming opportunities:** Most participants were able to access information on upcoming opportunities, although antiquated methods of communications (faxes, U.S. mail) were mentioned as burdens on small firms. Overall, outreach was felt to be comprehensive and consistent. An electronic monitoring and notification system like that used by the City of Chicago was suggested. Information on design and construction-related services contracts was reported to be more difficult to obtain than for construction contracts.
- **Program eligibility requirements:** M/WBEs in general were satisfied with the District's two step certification process.
- **Meeting M/WBE contract goals:** Most prime contractors and consultants reported that they were able to meet the goals. Some prime firms stated they use M/WBEs with which they have become familiar through contracting affirmative action programs on non-goals projects. Most general contractors do not seek waivers of goals on District contracts. There was strong consensus that the District should set goals on a contract-by-contract basis rather than generally applying the same goals regardless of the scopes of work of the project. Requiring all compliance information with the bid was seen as strangling general contractors' abilities to work with new M/WBEs or fully explore the capabilities of M/WBEs. The inability to count second tier and lower subcontracting dollars creates additional issues for general contractors. Several general contractors reported that it is very difficult to substitute a non-performing M/WBE for the original contract price.
- **Supportive services, technical assistance and mentor-protégé relationships:** There was broad support among M/WBEs and non-M/WBEs for providing technical assistance and other resources to increase

M/WBEs' capacities. Some general contractors provide informal support to M/WBEs. Several prime consultants reported good experiences with mentor protégé programs for other agencies. Some participants expressed concern about how to determine the limits of providing assistance to M/WBEs so as not to compromise the subcontractor's independence and performance of a commercially useful function, especially in light of recent prosecutions and high dollar settlements with agencies involving the use of certified firms. A formal Mentor-Protégé program would address some of these issues.

- Small business setasides: M/WBEs and non-M/WBEs broadly supported adoption of a small business setaside program. The current approach of setting SBE contract goals but allowing M/WBEs to be double counted was seen as ineffective.
- Contract performance monitoring and enforcement: By in large, M/WBEs reported that the District monitors participation on construction projects and provides assistance to certified firms in resolving performance issues. An enhancement would be a system to notify subcontractors that were listed by a successful prime contractor.

## **2. MWRD's Industry and Geographic Markets**

The courts require that a local agency limit its race-based remedial program to firms doing business in its geographic and industry markets. We therefore examined a sample of approximately \$1.33 billion of District spending to determine empirically the market areas.

We applied a "90/90/90" rule, whereby we analyzed North American Industry Classification System ("NAICS") codes that cover over 90 percent of the total contract dollars; over 90 percent of the prime contract dollars; and over 90 percent of the subcontract dollars. We took this approach so that we could be assured that we provide an in depth picture of the District's activities. Table A presents the distribution of the number of contracts and the amount of contract dollars across all industry sectors. Chapter IV provides tables disaggregated by dollars paid to prime contractors and dollars paid to subcontractors.

**Table A: NAICS Code Distribution of Contract Dollars,  
All Sectors**

| <b>NAICS</b>  | <b>NAICS Code Description</b>   | <b>PCT Total Contract Dollars</b> | <b>Cumulative PCT Total Contract Dollars</b> |
|---------------|---|-----------------------------------|--|
| <b>237310</b> | Highway, Street, and Bridge Construction  | 22.2%                             | 22.2%  |
| <b>238220</b> | Plumbing, Heating, and Air-Conditioning Contractors   | 11.3%                             | 33.6%  |
| <b>238210</b> | Electrical Contractors and Other Wiring Installation Contractors                                | 10.7%                             | 44.3%  |
| <b>236220</b> | Commercial and Institutional Building Construction  | 6.5%                              | 50.8%  |
| <b>238990</b> | All Other Specialty Trade Contractors   | 6.2%                              | 57.0%  |
| <b>238110</b> | Poured Concrete Foundation and Structure Contractors  | 6.0%                              | 62.9%  |
| <b>541330</b> | Engineering Services  | 4.2%                              | 67.2%  |
| <b>238910</b> | Site Preparation Contractors  | 3.9%                              | 71.1%  |
| <b>484110</b> | General Freight Trucking, Local   | 3.5%                              | 74.5%  |
| <b>237110</b> | Water and Sewer Line and Related Structures Construction  | 3.0%                              | 77.5%  |
| <b>423840</b> | Industrial Supplies Merchant Wholesalers  | 2.4%                              | 79.9%  |
| <b>238140</b> | Masonry Contractors   | 2.3%                              | 82.2%  |
| <b>238120</b> | Structural Steel and Precast Concrete Contractors   | 1.4%                              | 83.6%  |
| <b>424720</b> | Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)      | 1.1%                              | 84.7%  |
| <b>562910</b> | Remediation Services  | 1.1%                              | 85.8%  |
| <b>332911</b> | Industrial Valve Manufacturing  | 1.0%                              | 86.8%  |
| <b>423610</b> | Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers | 1.0%                              | 87.8%  |
| <b>484220</b> | Specialized Freight (except Used Goods) Trucking, Local   | 0.7%                              | 88.5%  |
| <b>238130</b> | Framing Contractors   | 0.7%                              | 89.2%  |
| <b>238320</b> | Painting and Wall Covering Contractors  | 0.6%                              | 89.8%  |
| <b>561730</b> | Landscaping Services  | 0.5%                              | 90.4%  |
|               |   |                                   |  |
| <b>TOTAL</b>  |   |                                   | <b>100.0%</b>                                |

Source: CHA analysis of MWRD data.

We next determined the locations of firms in these NAICS codes to establish the industries in which the District purchases. We applied the rule of thumb of identifying the firm locations that account for at least 75 percent of contract and subcontract dollar payments in the contract data file. Location was determined by ZIP code as listed in the file and aggregated into counties as the geographic unit.

Spending in Illinois accounted for 96.96% of all contract dollars paid in the product market. Of that total, the counties of Cook, DuPage, Kane, and Will accounted for 95.42 percent. Therefore, these four counties constituted the geographic market area from which we drew our availability data. While we could have limited the market area to Cook County, there were several major District contractors located in the other three counties, so we thought it best to cast a broad net. Table B presents data on how the contract dollars were spent across Illinois counties.

**Table B: Distribution of Contracts in MWRD's Product Market within Illinois, by County**

| County            | PCT of Total Contract Dollars Paid |  | County           | PCT of Total Contract Dollars Paid |
|-------------------|------------------------------------|--|------------------|------------------------------------|
| <b>Cook</b>       | 80.81%                             |  | <b>Grundy</b>    | 0.28%                              |
| <b>Dupage</b>     | 7.49%                              |  | <b>Champaign</b> | 0.03%                              |
| <b>Kane</b>       | 3.73%                              |  | <b>Kankakee</b>  | 0.03%                              |
| <b>Will</b>       | 3.41%                              |  | <b>Kendall</b>   | 0.02%                              |
| <b>Stephenson</b> | 1.69%                              |  | <b>Ogle</b>      | 0.02%                              |
| <b>LaSalle</b>    | 1.09%                              |  | <b>Henderson</b> | 0.02%                              |
| <b>Lake</b>       | 1.02%                              |  | <b>Winnebago</b> | 0.01%                              |
| <b>McHenry</b>    | 0.35%                              |  |                  |                                    |
|                   |                                    |  |                  |                                    |
|                   |                                    |  | <b>TOTAL</b>     | <b>100.00%*</b>                    |

\* Four additional counties received agency spending totaling less than 1% of all agency spending  
Source: CHA analysis of MWRD data.

### 3. MWRD's Utilization of M/WBEs in Its Market Areas

The next step was to determine the dollar value of MWRD's utilization of M/WBEs in its market area constrained by geography and industry sector, as measured by payments to prime firms and associated subcontractors and disaggregated by race and gender. Because the District lacked full records for payments to subcontractors other than firms certified as M/WBEs, we contacted the prime vendors to request that they describe in detail their contract and associated subcontracts, including race, gender and dollar amount paid to date. We further developed a Master M/WBE Directory based upon lists solicited from dozens of agencies and organizations. We used the results of this extensive data collection process to assign minority or woman status to the ownership of each firm in the analysis.

Table C presents the distribution of contract dollars by industry sectors by race and gender. Chapter IV provides detailed breakdowns of these results.

**Table C: Distribution of Contract Dollars by Race and Gender, All Sectors  
(share of total dollars)**

| <b>NAICS</b>  | <b>Black</b> | <b>Hispanic</b> | <b>Asian</b> | <b>Native American</b> | <b>White Women</b> | <b>Non-M/WBE</b> |
|---------------|--------------|-----------------|--------------|------------------------|--------------------|------------------|
| <b>236220</b> | 1.33%        | 0.00%           | 0.00%        | 0.00%                  | 1.00%              | 97.67%           |
| <b>237110</b> | 0.00%        | 0.23%           | 58.63%       | 0.00%                  | 32.66%             | 8.47%            |
| <b>237310</b> | 1.52%        | 3.36%           | 2.73%        | 0.00%                  | 0.40%              | 92.00%           |
| <b>237990</b> | 62.69%       | 0.00%           | 0.00%        | 0.00%                  | 0.00%              | 37.31%           |
| <b>238110</b> | 48.01%       | 45.34%          | 0.08%        | 0.00%                  | 4.04%              | 2.54%            |
| <b>238120</b> | 0.00%        | 0.58%           | 0.00%        | 0.00%                  | 89.90%             | 9.52%            |
| <b>238130</b> | 0.00%        | 0.00%           | 0.00%        | 0.00%                  | 95.74%             | 4.26%            |
| <b>238140</b> | 61.56%       | 13.10%          | 0.00%        | 0.00%                  | 0.73%              | 24.61%           |
| <b>238160</b> | 0.00%        | 10.47%          | 0.00%        | 0.00%                  | 0.00%              | 89.53%           |
| <b>238210</b> | 3.66%        | 8.44%           | 0.00%        | 0.00%                  | 9.24%              | 78.66%           |
| <b>238220</b> | 0.23%        | 5.74%           | 0.04%        | 0.00%                  | 7.07%              | 86.91%           |
| <b>238320</b> | 0.26%        | 32.48%          | 0.00%        | 0.00%                  | 56.04%             | 11.22%           |
| <b>238910</b> | 1.75%        | 2.02%           | 0.00%        | 0.00%                  | 1.82%              | 94.41%           |
| <b>238990</b> | 0.00%        | 25.64%          | 0.19%        | 0.06%                  | 16.61%             | 57.49%           |
| <b>332312</b> | 0.00%        | 0.00%           | 0.00%        | 0.00%                  | 20.91%             | 79.09%           |
| <b>332911</b> | 0.00%        | 0.00%           | 0.00%        | 0.00%                  | 0.00%              | 100.00%          |
| <b>332996</b> | 0.00%        | 99.25%          | 0.00%        | 0.00%                  | 0.00%              | 0.75%            |
| <b>423610</b> | 0.00%        | 0.00%           | 0.00%        | 0.00%                  | 97.03%             | 2.97%            |
| <b>423840</b> | 0.00%        | 83.51%          | 0.00%        | 0.00%                  | 15.20%             | 1.28%            |
| <b>424720</b> | 0.00%        | 3.06%           | 91.68%       | 0.00%                  | 5.25%              | 0.01%            |
| <b>484110</b> | 10.10%       | 41.16%          | 0.00%        | 0.00%                  | 44.21%             | 4.54%            |
| <b>484220</b> | 80.53%       | 15.32%          | 2.52%        | 0.00%                  | 1.63%              | 0.00%            |
| <b>541330</b> | 1.15%        | 1.67%           | 18.22%       | 0.00%                  | 7.80%              | 71.16%           |
| <b>561730</b> | 2.47%        | 6.07%           | 0.00%        | 0.00%                  | 47.89%             | 43.57%           |
| <b>562219</b> | 12.31%       | 0.00%           | 0.00%        | 0.00%                  | 0.00%              | 87.69%           |
| <b>562910</b> | 3.38%        | 36.05%          | 4.61%        | 0.00%                  | 0.00%              | 55.97%           |
|               |              |                 |              |                        |                    |                  |
| <b>Total</b>  | <b>6.74%</b> | <b>12.59%</b>   | <b>4.35%</b> | <b>0.00%</b>           | <b>10.85%</b>      | <b>65.47%</b>    |

Source: CHA analysis of MWRD data.

#### 4. Availability of M/WBEs in MWRD's Market

Using the “custom census” approach to estimating availability and the further assignment of race and gender using the Master Directory and misclassification adjustments, we determined the aggregated availability of M/WBEs, weighted by the District’s spending in its geographic and industry markets to be 22.00 percent. Table D presents the weighted availability data for various racial and gender categories.

**Table D: Aggregated Weighted Availability, All Sectors  
(total dollars)**

| NAICS        | Black | Hispanic | Asian | Native American | White Women | M/WBE  | Non-M/WBE | Total   |
|--------------|-------|----------|-------|-----------------|-------------|--------|-----------|---------|
| <b>TOTAL</b> | 5.56% | 5.85%    | 2.24% | 0.07%           | 8.28%       | 22.00% | 78.00%    | 100.00% |

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

#### 5. Disparity Analysis of M/WRD's Utilization of M/WBEs

We next compared the utilization of M/WBEs with the availability of M/WBEs. This is known as the “disparity ratio” or “disparity index.” A disparity ratio measures the participation of a group in the government’s contracting opportunities by dividing that group’s utilization by the availability of that group, and multiplying that result by 100 percent. Courts have looked to disparity indices in determining whether strict scrutiny is satisfied. An index less than 100 percent indicates that a given group is being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission’s “80 percent” rule that a ratio less than 80 percent presents a *prima facie* case of discrimination, referred to as “substantive” significance.<sup>1</sup>

We determined that the disparity ratios were not substantively significant for any group except Native Americans, and were statistically significant for M/WBEs as a whole and for White women.<sup>2</sup> Table E presents the results of this disparity analysis by demographic group for MWRD’s contracts.

<sup>1</sup> 29 C.F.R. § 1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).

<sup>2</sup> For a discussion of the meaning of statistical significance and its role in the Study’s analysis, see Appendix D.



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

|                        | <b>Disparity Ratio</b> |
|------------------------|------------------------|
| <b>Black</b>           | 120.49%                |
| <b>Hispanic</b>        | 215.34%                |
| <b>Asian</b>           | 192.03%                |
| <b>Native American</b> | 0.00%*                 |
| <b>White Women</b>     | 286.31%**              |
| <b>M/WBE</b>           | 156.80%**              |
| <b>Non-M/WBE</b>       | 83.98%                 |

Source: CHA analysis of MWRD data.

\*Indicates substantive significance below the 0.80 level

\*\*Indicates statistical significance at the 0.05 level

## **6. Analysis of Race and Gender Disparities in the Illinois Economy**

We explored the data and literature relevant to how discrimination in the District's market and throughout the wider economy affects the ability of minorities and women to fairly and fully engage in MWRD contract opportunities. First, we analyzed the earnings of minorities and women relative to White men; the rates at which M/WBEs in Illinois form firms; and their earnings from those firms. Next, we summarized the literature on barriers to equal access to commercial credit. Finally, we summarized the literature on barriers to equal access to human capital. All three types of evidence have been found by the courts to be relevant and probative of whether a government will be a passive participant in overall marketplace discrimination without some type of affirmative interventions. Data and literature analyzed were the following:

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

- The literature on barriers to access to commercial credit and the development of human capital further reports that minorities continue to face constraints on their entrepreneurial success based on race. These constraints negatively impact the ability of firms to form, to grow, and to succeed.

Taken together with other evidence such as anecdotal data and the judicial findings regarding the Illinois and Chicago-area construction industry, this is the type of proof that addresses whether, in the absence of the District's strong remedial intervention in its market, it would be a passive participant in the discrimination systems found throughout Illinois. These economy-wide analyses are relevant and probative to whether MWRD may continue to employ narrowly tailored race- and gender-conscious measures to ensure equal opportunities to access its contracts and associated subcontracts.

## **7. Qualitative Evidence of Race and Gender Disparities in MWRD's Market**

In addition to quantitative data, the courts look to anecdotal evidence of firms' marketplace experiences to evaluate whether the effects of current or past discrimination continue to impede opportunities for M/WBEs. To explore this type of anecdotal evidence, we conducted four group interviews, totaling 48 participants, and one stakeholders meeting. Most reported that while progress has been made in reducing barriers on the basis of race and gender, inequities remain significant obstacles to full and fair opportunities.

- Discriminatory attitudes and negative perceptions of competency: Many minority and women owners reported they experience negative attitudes about their competency and professionalism. The assumption is that M/WBEs are less qualified and capable. Some M/WBEs believe large general contractors see them a nuisance. M/WBEs were sometimes perceived to be more costly and troublesome. Lack of access to preferred pricing and supply networks sometimes did result in higher costs of doing business for minority and women contractors.
- Obtaining work on an equal basis: There was almost universal agreement among minority and women owners that the M/WBE Program remains critical to reduce barriers to equal contracting opportunities and to open doors for MWRD work. Goals were said to remain necessary to level the playing field and equalize opportunities. M/WBEs sought the right to compete on a fair and equal basis. Prime contract opportunities were especially difficult for M/WBEs to access. Not only do M/WBEs benefit from working as prime contractors, but minority and women tradespeople do, too. While mentor-protégé programs are often posited as a way to increase M/WBEs' capacities, several firm owners reported poor experiences with participation in a mentor-protégé arrangement. Participation in joint ventures had rarely produced better outcomes. One

commonly suggested approach was setting aside some smaller contracts for bidding only by small firms on a race- and gender-neutral basis.

## **8. Recommendations**

MWRD has implemented an aggressive and successful program for many years. Utilization of M/WBEs has exceeded availability in most industry sectors and for most groups. This is the result of setting contract goals, conducting outreach, and enforcing requirements. The results have been exemplary.

However, evidence beyond the District's achievements strong suggests these results are the effect of the program. Outside of MWRD contracts, M/WBEs face large disparities in opportunities for public sector and private sector work.

We therefore recommend that the program be continued, with the following enhancements.

### **a. Augment Race- and Gender-Neutral Measures**

- Implement an electronic contracting data collection and monitoring system: Functionality should include full firm contact information; utilization plan capture; contract compliance, including verification of payments; contract goal setting; outreach tools; spend analysis of informal purchases and contracts; integrated email and fax notifications; access by authorized users; export/import integration with existing systems; and access by authorized MWRD staff, prime contractors and subcontractors.
- Continue to focus on reducing barriers to M/WBE prime contract awards: Review surety bonding, insurance and experience requirements.
- Revise the Small Business Enterprise program element: Replace SBE contract goals with a SBE setaside element, whereby only SBEs would be eligible bidders on certain contracts. Projects should be selected based on factors such as the dollar value of the project, the scopes of work, and M/WBE availability.
- Ensure bidder non-discrimination and fairly priced subcontractor quotations: The District should require bidders to maintain all subcontractor quotes received on larger projects. At the District's discretion, the prices and scopes can then be compared to ensure that bidders are in fact soliciting and contracting with subcontractors on a non-discriminatory basis and that M/WBEs are not inflating quotes. MWRD should also provide with the invitation for bid the scopes of work used to set the contract goal.
- Consider partnering with other agencies to implement a small contractor bonding and financing program: Access to bonding and working capital

are major barriers to the development and success of M/WBEs and small firms. Traditional underwriting standards have often excluded these businesses. One approach that has proven to be effective for some governments is to develop an agency-sponsored bonding and financing assistance program for such firms. We suggest MWRD explore finding partners to provide this type of assistance.

- **Develop a Mentor-Protégé Program:** A program should include criteria for eligibility, standards for participation, how credit will be given for utilization of the protégé, reimbursable expenses, program monitoring, and measures for program success.
- **Explore developing a Linked Deposit Program:** The District should consider implementing a Linked Deposit program, whereby its depository banks would agree to make loans to District certified M/WBEs that have been awarded District prime contracts.
- **Conduct networking events focused on design projects:** MWRD participates in many outreach and networking events. However, there was a belief by several business owners in the construction-related professional sector that more outreach to their firms and more information about MWRD opportunities would be helpful.

#### **b. Continue to Implement Narrowly Tailored Race- and Gender-Conscious Measures**

- **Use the study to set M/WBE contract goals:** The detailed availability estimates in the study should serve as the starting point for contract goal setting. The electronic system should have a goal setting module and written procedures spelling out the steps should be drafted. We strongly urge MWRD to bid some contracts that it determines have significant opportunities for M/WBE participation without goals, especially in light of the high participation of M/WBEs during the study period. These “control contracts” can illuminate whether certified firms are used or even solicited in the absence of goals. The results of no goals contracts will illuminate whether the District’s success in creating opportunities for M/WBEs is an artifact of the program’s goals and strong enforcement, or whether in fact M/WBEs no longer need the benefits of goals to play on a level field.
- **Continue to apply narrowly tailored eligibility standards:** The personal net worth test and size standards for certification should be continued. We suggest that the certification period be extended to three years to reduce the burden on MWRD staff and businesses. We also urge consideration of accepting without additional review (unless some specific item warrants it) M/WBE certifications in non-construction industries, so long as the certifying agency applies a personal net worth test and size standards at least as stringent as those of the District.

- Revise program administration elements: We recommend that the District count second and lower tier M/WBE participation. Further, to facilitate M/WBE participation, especially that of firms unfamiliar to a general contractor, allow a brief post-submission time to submit some of the compliance paperwork. Finally, we suggest a thorough review of all policies, procedures and forms, including those for obtaining a reduction or waiver of a contract goal.

#### **c. Continue to Conduct Regular Program Reviews**

To meet the requirements of strict constitutional scrutiny and ensure best practices in program administration continue to be applied, the District should set a new sunset date for the revised Ordinance. Data should be reviewed approximately every five to six years, to evaluate whether race- and gender-based barriers have been reduced in both the District's activities and throughout the wider economy, such that affirmative efforts are no longer needed, and if such measures are necessary, to ensure that they remain narrowly tailored.

#### **d. Develop Performance Measures for Program Success**

MWRD should develop quantitative performance measures for M/WBEs and overall success of the program to evaluate its effectiveness in reducing the systemic barriers identified by the study. In addition to meeting goals, possible benchmarks might be the number of good faith effort waiver requests; the number and dollar amounts of bids rejected as non-responsive for failure to make good faith efforts to meet the goal; the number, type and dollar amount of M/WBE substitutions during contract performance; growth in the number, size and scopes of work of certified firms; and increased variety in the industries in which M/WBEs are awarded prime contracts and subcontracts.

## II. LEGAL STANDARDS FOR CONTRACTING AFFIRMATIVE ACTION PROGRAMS

### A. Summary of Constitutional Standards

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

- The government must establish its “compelling interest” in remedying race discrimination by current “strong evidence” of the persistence of discrimination. Such evidence may consist of the entity’s “passive participation” in a system of racial exclusion.
- Any remedies adopted must be “narrowly tailored” to that discrimination, that is, the program must be directed at the types and depth of discrimination identified.<sup>3</sup>

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

- Statistical evidence of the underutilization of minority firms by the agency and/or throughout the agency’s geographic and industry market area compared to their availability in the market area. These are disparity indices, comparable to the type of “disparate impact” analysis used in employment discrimination cases.
- Anecdotal evidence of race-based barriers to the full and fair participation of minority firms in the market area and in seeking contracts with the agency, comparable to the “disparate treatment” analysis used in employment discrimination cases.<sup>4</sup> Anecdotal data can consist of interviews, surveys, public hearings, academic literature, judicial decisions, legislative reports, etc.

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

- The efficacy of race-neutral remedies at overcoming identified discrimination.
- The relationship of numerical benchmarks for government spending to the availability of minority- and women-owned firms and to subcontracting goal setting procedures.
- The congruence between the remedies adopted and the beneficiaries of those remedies.

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<sup>3</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

<sup>4</sup> *Id.* at 509.

- Any adverse impact of the relief on third parties.
- The duration of the program.<sup>5</sup>

In *Adarand v. Peña*,<sup>6</sup> the Supreme Court extended the analysis of strict scrutiny to race-based federal enactments such as the Disadvantaged Business Enterprise (“DBE”) program for federally-assisted transportation contracts. Just as in the local government context, the national government must have a compelling interest for the use of race and the remedies adopted must be narrowly tailored to the evidence relied upon.

In general, courts have subjected preferences for Women-Owned Business Enterprises (“WBEs”) to “intermediate scrutiny.” Gender-based classifications must be supported by an “exceedingly persuasive justification” and be “substantially related” to the objective.<sup>7</sup> However, appellate courts, including the Seventh Circuit Court of Appeals, have applied strict scrutiny to the gender-based presumption of social disadvantage in reviewing the constitutionality of the DBE program.<sup>8</sup> Therefore, we advise that the District evaluate gender-based remedies under the strict scrutiny standard.

Classifications not based on race, ethnicity, religion, national origin or gender are subject to the lesser standard of review of “rational basis” scrutiny, because the courts have held there are no equal protection implications under the Fourteenth Amendment for groups not subject to systemic discrimination.<sup>9</sup> In contrast to strict scrutiny of government action directed towards persons of “suspect classifications” such as racial and ethnic minorities, rational basis means the governmental action must only be “rationally related” to a “legitimate” government interest. Thus, preferences for persons with disabilities, veterans, etc. may be enacted with vastly less evidence than race- or gender-based measures to combat historic discrimination.

Unlike most legal challenges, the defendant has the initial burden of producing “strong evidence” in support of a race-conscious program.<sup>10</sup> The plaintiff must then proffer evidence to rebut the government’s case, and bears the ultimate burden of production and persuasion that the affirmative action program is unconstitutional.<sup>11</sup> “[W]hen the proponent of an affirmative action plan produces sufficient evidence to support an inference of discrimination, the plaintiff must

<sup>5</sup> *United States v. Paradise*, 480 U.S. 149, 171 (1987).

<sup>6</sup> *Adarand v. Peña*, 515 U.S. 200 (1995).

<sup>7</sup> *Cf. United States v. Virginia*, 518 U.S. 515 (1996).

<sup>8</sup> *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 720 (7<sup>th</sup> Cir. 2007) (“*Northern Contracting III*”).

<sup>9</sup> *United States v. Carolene Products Co.*, 304 U.S. 144 (1938).

<sup>10</sup> *Aiken v. City of Memphis*, 37 F.3d 1155, 1162 (6<sup>th</sup> Cir. 1994).

<sup>11</sup> *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1166 (10<sup>th</sup> Cir. 2000), *cert. granted then dismissed as improvidently granted*, 532 U.S. 941 (2001) (“*Adarand VII*”); *W.H. Scott Construction Co., Inc. v. City of Jackson, Mississippi*, 199 F.3d 206, 219 (5<sup>th</sup> Cir. 1999).

rebut that inference in order to prevail.”<sup>12</sup> A plaintiff “cannot meet its burden of proof through conjecture and unsupported criticism of [the government’s] evidence.”<sup>13</sup> For example, in the challenge to the Minnesota and Nebraska DBE programs, “plaintiffs presented evidence that the data was susceptible to multiple interpretations, but they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to and participation in highway contracts. Thus, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.”<sup>14</sup> When the statistical information is sufficient to support the inference of discrimination, the plaintiff must prove that the statistics are flawed.<sup>15</sup> A plaintiff cannot rest upon general criticisms of studies or other evidence; it must carry the case that the government’s proof is inadequate to meet strict scrutiny, rendering the legislation or governmental program illegal.<sup>16</sup>

There is no need of formal legislative findings of discrimination,<sup>17</sup> nor “an ultimate judicial finding of discrimination before [a local government] can take affirmative steps to eradicate discrimination.”<sup>18</sup>

To meet strict scrutiny, studies have been conducted that gather the statistical and anecdotal evidence necessary to support the use of race- and gender-conscious measures to combat discrimination. These are commonly referred to as “disparity studies” because they analyze any disparities between the opportunities and experiences of minority- and women-owned firms and their actual utilization compared to white male-owned businesses. Quality studies also examine the elements of the agency’s programs to determine whether they are sufficiently narrowly tailored. The following is a detailed discussion of the parameters for conducting studies leading to defensible programs that can establish MWRD’s compelling interest in remedying discrimination and developing narrowly tailored initiatives.

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

The U.S. Supreme Court in the case of the *City of Richmond v. J.A. Croson Co.* established the constitutional contours of permissible race-based public contracting programs. Reversing long established law, the Court for the first time

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<sup>12</sup> *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 916 (11<sup>th</sup> Cir. 1997).

<sup>13</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 989, cert. denied, 540 U.S. 1027 (2003) (10<sup>th</sup> Cir. 2003) (“*Concrete Works II*”).

<sup>14</sup> *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d 964, 970 (8<sup>th</sup> Cir. 2003), cert. denied, 541 U.S. 1041 (2004).

<sup>15</sup> *Engineering Contractors II*, 122 F.3d at 916; *Coral Construction Co. v. King County*, 941 F.2d 910 921 (9<sup>th</sup> Cir. 1991).

<sup>16</sup> *Adarand VII*, 228 F.3d at 1166; *Engineering Contractors II*, 122 F.3d at 916; *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1522-1523 (10<sup>th</sup> Cir. 1994) (“*Concrete Works II*”); *Webster v. Fulton County, Georgia*, 51 F.Supp.2d 1354, 1364 (N.D. Ga. 1999); see also *Wygant v. Jackson Board of Education*, 476 U.S. 267, 277-278 (1986).

<sup>17</sup> *Webster*, 51 F.Supp.2d at 1364.

<sup>18</sup> *Concrete Works III*, 36 F.3d at 1522.



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

The Court struck down the City of Richmond’s Minority Business Enterprise Plan that required prime contractors awarded City construction contracts to subcontract at least 30 percent of the project to Minority-Owned Business Enterprises (“MBEs”). A business located anywhere in the country which was at least 51 percent owned and controlled by “Black, Spanish-speaking, Oriental, Indian, Eskimo, or Aleut” citizens was eligible to participate. The Plan was adopted after a public hearing at which no direct evidence was presented that the City had discriminated on the basis of race in awarding contracts or that its prime contractors had discriminated against minority subcontractors. The only evidence before the City Council was: (a) Richmond’s population was 50 percent Black, yet less than one percent of its prime construction contracts had been awarded to minority businesses; (b) local contractors’ associations were virtually all White; (c) the City Attorney’s opinion that the Plan was constitutional; and (d) general statements describing widespread racial discrimination in the local, Virginia, and national construction industries.

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

[A] state or local subdivision...has the authority to eradicate the effects of private discrimination within its own legislative jurisdiction.... [Richmond] can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment... [I]f the City could show that it had essentially become a “passive participant” in a system of racial exclusion...[it] could take affirmative steps to dismantle such a system.<sup>19</sup>

Strict scrutiny of race-based remedies is required to determine whether racial classifications are in fact motivated by either notions of racial inferiority or blatant racial politics. This highest level of judicial review “smokes out” illegitimate uses of race by assuring that the legislative body is pursuing a goal important enough to warrant use of a highly suspect tool.<sup>20</sup> It further ensures that the means

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<sup>19</sup> 488 U.S. at 491-92.

<sup>20</sup> See also *Grutter v. Bollinger*, 539 U.S. 306, 327 (2003) (“Not every decision influenced by race is equally objectionable, and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the reasons advanced by the governmental decision maker for the use of race in that particular context.”).

chosen “fit” this compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype. The Court made clear that strict scrutiny seeks to expose racial stigma; racial classifications are said to create racial hostility if they are based on notions of racial inferiority.<sup>21</sup>

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

[w]hile there is no doubt that the sorry history of both private and public discrimination in this country has contributed to a lack of opportunities for black entrepreneurs, this observation, standing alone, cannot justify a rigid racial quota in the awarding of public contracts in Richmond, Virginia.... [A]n amorphous claim that there has been past discrimination in a particular industry cannot justify the use of an unyielding racial quota. It is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination.<sup>22</sup>

Richmond’s evidence was found to be lacking in every respect. The City could not rely upon the disparity between its utilization of MBE prime contractors and Richmond’s minority population because not all minority persons would be qualified to perform construction projects; general population representation is irrelevant. No data were presented about the availability of MBEs in either the relevant market area or their utilization as subcontractors on City projects. According to Justice O’Connor, the extremely low MBE membership in local contractors’ associations could be explained by “societal” discrimination or perhaps Blacks’ lack of interest in participating as business owners in the construction industry. To be relevant, the City would have to demonstrate statistical disparities between eligible MBEs and actual membership in trade or professional groups. Further, Richmond presented no evidence concerning enforcement of its own anti-discrimination ordinance. Finally, Richmond could not rely upon Congress’ determination that there has been nationwide discrimination in the construction industry. Congress recognized that the scope of the problem varies from market to market, and in any event it was exercising its powers under Section Five of the Fourteenth Amendment, whereas a local government is further constrained by the Amendment’s Equal Protection Clause.

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

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<sup>21</sup> 488 U.S. at 493.

<sup>22</sup> *Id.* at 499.

in any individual case. Under such circumstances, it is simply impossible to say that the City has demonstrated “a strong basis in evidence for its conclusion that remedial action was necessary.”<sup>23</sup>

The foregoing analysis was applied only to Blacks. The Court then emphasized that there was “absolutely no evidence” against other minorities. “The random inclusion of racial groups that, as a practical matter, may have never suffered from discrimination in the construction industry in Richmond, suggests that perhaps the City’s purpose was not in fact to remedy past discrimination.”<sup>24</sup>

Having found that Richmond had not presented evidence in support of its compelling interest in remedying discrimination—the first prong of strict scrutiny—the Court went on to make two observations about the narrowness of the remedy—the second prong of strict scrutiny. First, Richmond had not considered race-neutral means to increase MBE participation. Second, the 30 percent quota had no basis in evidence, and was applied regardless of whether the individual MBE had suffered discrimination.<sup>25</sup> Further, Justice O’Connor rejected the argument that individualized consideration of Plan eligibility is too administratively burdensome.

Apparently recognizing that the opinion might be misconstrued to categorically eliminate all race-conscious contracting efforts, Justice O’Connor closed with these admonitions:

Nothing we say today precludes a state or local entity from taking action to rectify the effects of identified discrimination within its jurisdiction. If the City of Richmond had evidence before it that non-minority contractors were systematically excluding minority businesses from subcontracting opportunities, it could take action to end the discriminatory exclusion. Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise. Under such circumstances, the City could act to dismantle the closed business system by taking appropriate measures against those who discriminate based on race or other illegitimate criteria. In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion.... Moreover, evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.<sup>26</sup>

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<sup>23</sup> *Id.* at 510.

<sup>24</sup> *Id.*

<sup>25</sup> See *Grutter*, 529 U.S. at 336-337 (quotas are not permitted; race must be used in a flexible, non-mechanical way).

<sup>26</sup> 488 U.S. at 509 (citations omitted).

While much has been written about *Croson*, it is worth stressing what evidence was and was not before the Court. First, Richmond presented *no* evidence regarding the availability of MBEs to perform as prime contractors or subcontractors and *no* evidence of the utilization of minority-owned subcontractors on City contracts.<sup>27</sup> Nor did Richmond attempt to link the remedy it imposed to any evidence specific to the Program; it used the general population of the City rather than any measure of business availability.

Some commentators have taken this dearth of any particularized proof and argued that only the most particularized proof can suffice in all cases. They leap from the Court's rejection of Richmond's reliance on only the percentage of Blacks in the City's population to a requirement that only firms that bid or have the "capacity" or "willingness" to bid on a particular contract at a particular time can be considered in determining whether discrimination against Black businesses infects the local economy.<sup>28</sup>

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

[I]t is important to remember what the *Croson* plurality opinion did and did not decide. The Richmond program, which the *Croson* Court struck down, was insufficient because it was based on a comparison of the minority population in its entirety in Richmond, Virginia (50%) with the number of contracts awarded to minority businesses (.67%). There were no statistics presented regarding number of minority-owned contractors in the Richmond area, *Croson*, 488 U.S. at 499, and the Supreme Court was concerned with the gross generality of the statistics used in justifying the Richmond program. There is no indication that the statistical analysis performed by [the consultant] in the present case, which does contain statistics regarding minority contractors in New York City, is not sufficient as a matter of law under *Croson*.<sup>29</sup>

Further, Richmond made no attempt to narrowly tailor a goal for the procurement at issue that reflected the reality of the project. Arbitrary quotas, and the unyielding application of those quotas, did not support the stated objective of ensuring equal access to City contracting opportunities. The *Croson* Court said nothing about the constitutionality of flexible subcontracting goals based upon the availability of MBEs to perform the scopes of the contract in the government's local market area. In contrast, the USDOT DBE Program avoids these pitfalls. 49

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<sup>27</sup> *Id.* at 502.

<sup>28</sup> See, e.g., *Northern Contracting III*, 473 F.3d at 723.

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

CFR Part 26 “provides for a flexible system of contracting goals that contrasts sharply with the rigid quotas invalidated in *Croson*.”<sup>30</sup>

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

### **C. Strict Scrutiny as Applied to Federal Enactments**

In *Adarand v. Peña*,<sup>31</sup> the Supreme Court again overruled long settled law and extended the analysis of strict scrutiny under the Due Process Clause of the Fourteenth Amendment to federal enactments. Just as in the local government context, when evaluating federal legislation and regulations:

[t]he strict scrutiny test involves two questions. The first is whether the interest cited by the government as its reason for injecting the consideration of race into the application of law is sufficiently compelling to overcome the suspicion that racial characteristics ought to be irrelevant so far as treatment by the government is concerned. The second is whether the government has narrowly tailored its use of race, so that race-based classifications are applied only to the extent absolutely required to reach the proffered interest. The strict scrutiny test is thus a recognition that while classifications based on race may be appropriate in certain limited legislative endeavors, such enactments must be carefully justified and meticulously applied so that race is determinative of the outcome in only the very narrow circumstances to which it is truly relevant.<sup>32</sup>

#### **1. U.S. Department of Transportation’s Disadvantaged Business Enterprise Program**

To comply with *Adarand*, Congress reviewed and revised the Disadvantaged Business Enterprise (DBE) Program statute<sup>33</sup> and implementing regulations<sup>34</sup> for federal-aid contracts in the transportation industry. To date, every court that has considered the issue has found the regulations to be constitutional on their face.<sup>35</sup> While binding strictly only upon the federal DBE Program, these cases

<sup>30</sup> *Western States Paving Co., Inc. v. Washington Department of Transportation*, 407 F.3d 983, 994 (9<sup>th</sup> Cir. 2005), cert. denied, 546 U.S. 1170 (2006).

<sup>31</sup> 515 U.S. 200 (1995) (*Adarand III*).

<sup>32</sup> *Adarand Constructors, Inc. v. Peña*, 965 F. Supp. 1556, 1569-1570 (D. Colo. 1997), rev’d, 228 F.3d 1147 (2000) (“*Adarand IV*”); see also *Adarand III*, 515 U.S. at 227.

<sup>33</sup> Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), Pub. L. No. 105-178 (b)(1), 112 Stat. 107, 113.

<sup>34</sup> 49 C.F.R. Part 26.

<sup>35</sup> See, e.g., *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10<sup>th</sup> Cir. 2000) (“*Adarand VII*”), cert. granted then dismissed as improvidently granted, 532 U.S. 941, 534 U.S. 103 (2001);

provide important guidance to MWRD about the types of evidence necessary to establish its compelling interest in adopting a M/WBE program and how to narrowly tailor a program. For example, the Fourth Circuit noted with approval that North Carolina's M/WBE program for state-funded contracts largely mirrored Part 26.<sup>36</sup> Similarly, the Illinois Tollway's DBE program was held to be constitutional in part because it is modeled on Part 26.<sup>37</sup>

All courts have held that Congress had strong evidence of widespread race discrimination in the construction industry.<sup>38</sup> Relevant evidence before Congress included:

- Disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms;
- Disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners;
- The large and rapid decline in minorities' participation in the construction industry when affirmative action programs were struck down or abandoned; and
- Various types of overt and institutional discrimination by prime contractors, trade unions, business networks, suppliers and sureties against minority contractors.<sup>39</sup>

The Eighth Circuit Court of Appeals took a "hard look" at the evidence Congress considered, and concluded that the legislature had:

[S]pent decades compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority-owned construction businesses, and of barriers to entry. In rebuttal, [the plaintiffs] presented evidence that the data were susceptible to multiple interpretations, but they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to and participation in highway contracts. Thus, they failed

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*Northern Contracting, Inc. v. Illinois Department of Transportation*, 2004 U.S. Dist. LEXIS 3226 at \*64 (N.D. Ill., Mar. 3, 2004) ("Northern Contracting I").

<sup>36</sup> *H.B. Rowe Co. v. Tippet*, 615 F.3d 233, 236 (4<sup>th</sup> Cir. 2010).

<sup>37</sup> *Midwest Fence, Corp. v. USDOT et al*, 2015 WL 1396376, at \*5 N.D. Ill March 24, 2015) (The Tollway's program "borrows from [the DBE program regulations] substantially.").

<sup>38</sup> See also *Western States*, 407 F.3d at 993 ("In light of the substantial body of statistical and anecdotal material considered at the time of TEA-21's enactment, Congress had a strong basis in evidence for concluding that-in at least some parts of the country-discrimination within the transportation contracting industry hinders minorities' ability to compete for federally funded contracts.").

<sup>39</sup> 407 F.3d at 992-93.

to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.<sup>40</sup>

Next, the regulations were facially narrowly tailored. Unlike the prior program,<sup>41</sup> Part 26 provides that:

- The overall goal must be based upon demonstrable evidence of the number of DBEs ready, willing, and able to participate on the recipient's federally assisted contracts.
- The goal may be adjusted to reflect the availability of DBEs but for the effects of the DBE Program and of discrimination.
- The recipient must meet the maximum feasible portion of the goal through race-neutral measures as well as estimate that portion of the goal it predicts will be met through such measures.
- The use of quotas and set-asides is limited to only those situations where there is no other remedy.
- The goals are to be adjusted during the year to remain narrowly tailored.
- Absent bad faith administration of the Program, a recipient cannot be penalized for not meeting its goal.
- The presumption of social disadvantage for racial and ethnic minorities and women is rebuttable, "wealthy minority owners and wealthy minority firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage."
- Exemptions and waivers from any or all Program requirements are available.<sup>42</sup>

These elements have led the courts to conclude that the program is narrowly tailored on its face. First, the regulations place strong emphasis on the use of race-neutral means to achieve minority and women participation. Relying upon *Grutter v. Bollinger*, the Eighth Circuit held that while "[n]arrow tailoring does not require the exhaustion of every conceivable race-neutral alternative...it does require serious, good faith consideration of workable race-neutral alternatives."<sup>43</sup>

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<sup>40</sup> *Sherbrooke*, 345 F.3d. at 970; see also *Adarand VII*, 228 F.3d at 1175 (Plaintiff has not met its burden "of introducing credible, particularized evidence to rebut the government's initial showing of the existence of a compelling interest in remedying the nationwide effects of past and present discrimination in the federal construction procurement subcontracting market.").

<sup>41</sup> 49 C.F.R. Part 23.

<sup>42</sup> *Sherbrooke*, 345 F.3d. at 973.

<sup>43</sup> *Id.* at 972.

The DBE Program is also flexible. Eligibility is limited to small firms owned by persons whose net worth is under a certain amount.<sup>44</sup> There are built-in Program time limits, and the recipient may terminate race-conscious contract goals if it meets its annual overall goal through race-neutral means for two consecutive years. Moreover, the authorizing legislation is subject to Congressional reauthorization that will ensure periodic public debate.

The court next held that the goals are tied to the relevant labor market. “Though the underlying estimates may be inexact, the exercise requires the States to focus on establishing realistic goals for DBE participation in the relevant contracting markets. This stands in stark contrast to the program struck down in *Croson*....”<sup>45</sup>

Finally, Congress has taken significant steps to minimize the race-conscious nature of the Program. “[W]ealthy minority owners and wealthy minority-owned firms are excluded, and certification is available to persons who are not presumptively [socially] disadvantaged but can demonstrate actual social and economic disadvantage. Thus, race is made relevant in the program, but it is not a determinative factor.”<sup>46</sup>

DBE programs based upon a methodology similar to that for this study, including the availability analysis and the examination of disparities in the business formation rates and business earnings of minorities and women compared to similarly situated non-minority males, have been held to be narrowly tailored in their application of Part 26. For example, in upholding the Minnesota Department of Transportation’s DBE program using the same approach, the Eighth Circuit opined that while plaintiff attacked the study’s data and methods,

it failed to establish that better data was [sic] available or that Mn/DOT was otherwise unreasonable in undertaking this thorough analysis and in relying on its results. The precipitous drop in DBE participation in 1999, when no race-conscious methods were employed, supports Mn/DOT’s conclusion that a substantial portion of its 2001 overall goal could not be met with race-neutral measures, and there is no evidence that Mn/DOT failed to adjust its use of race-conscious and race-neutral methods as the year progressed, as the DOT regulations require.<sup>47</sup>

## **2. U.S. Department of Defense’s Small Disadvantaged Business Program**

In 2008, the Federal Circuit Court of Appeals struck down the Department of Defense (DOD) program for Small Disadvantaged Businesses (SDBs) in *Rothe*

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<sup>44</sup> The personal net worth limit was \$750,000 when the DBE program regulations were amended to meet strict scrutiny in 1999. The limit was increased to \$1.32 million in 2012, and is now indexed by the Consumer Price Index. 49 C.F.R. § 26.67(b)(1).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 973.

<sup>47</sup> *Id.*



*Development Corporation v. U.S. Department of Defense*.<sup>48</sup> The program set an overall annual goal of five percent for DOD contracting with SDBs and authorized various race-conscious measures to meet the goal.

In *Rothe VII*,<sup>49</sup> the appeals court held that the DOD program violated strict scrutiny because Congress did not have a “strong basis in evidence” upon which to conclude that DOD was a passive participant in racial discrimination in relevant markets across the country. The six local disparity studies upon which the DOD primarily relied for evidence of discrimination did not meet the compelling interest requirement, and its other statistical and anecdotal evidence did not rise to meet the heavy constitutional burden.

Of particular relevance to this report, the primary focus of the court’s analysis was the six disparity studies. The court reaffirmed that such studies are relevant to the compelling interest analysis.<sup>50</sup> It then rejected *Rothe*’s argument that data more than five years old must be discarded, stating “We decline to adopt such a *per se* rule here.... [The government] should be able to rely on the most recently available data so long as that data is reasonably up-to-date.”<sup>51</sup>

In the absence of expert testimony about accepted econometric models of discrimination, the court was troubled by the failure of five of the studies to account for size differences and “qualifications” of the minority firms in the denominator of the disparity analysis, or as the court labeled it, “relative capacity.”<sup>52</sup> The court was concerned about the studies’ inclusion of possibly “unqualified” minority firms and the failure to account for whether a firm can perform more than one project at a time in two of the studies.<sup>53</sup> In the court’s view, the combination of these perceived deficits rendered the studies insufficiently probative to meet Congress’ burden.

The appellate court ignored the analyses in the cases upholding the USDOT DBE Program and the City of Denver’s local affirmative action contracting program where the fallacy of “capacity” was debunked, all of which were cited extensively by the district court. It relied instead on a report from the USCCR, which adopts the views of anti-affirmative action writers, including those of *Rothe*’s consultant.<sup>54</sup>

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<sup>48</sup> *Rothe Development Corporation v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008). We note that the jurisdiction of the Court of Appeals for the Federal Circuit is limited to the jurisdiction described in 28 U.S.C. §§ 1292 (c) and (d) and 1295. Pursuant to 28 U.S.C. § 1295(a)(2), jurisdiction in *Rothe* was based upon the plaintiff’s claim under the Tucker Act, 28 U.S.C. § 1346(a)(2), which governs contract claims against the United States.

<sup>49</sup> This opinion was the latest iteration of an 11-year-old challenge by a firm owned by a White female to the DOD’s award of a contract to an Asian American-owned business despite the fact that plaintiff was the lowest bidder.

<sup>50</sup> *Rothe*, 545 F.3d at 1037-1038.

<sup>51</sup> *Id.* at 1038-1039.

<sup>52</sup> *Id.* at 1042.

<sup>53</sup> *Ibid.*

<sup>54</sup> U.S. Commission on Civil Rights, *Disparity Studies as Evidence of Discrimination in Federal Contracting* (May 2006): 79.

However, the court was careful to limit the reach of its review to the facts of the case:

To be clear, we do *not* hold that the defects in the availability and capacity analyses in these six disparity studies render the studies wholly unreliable for any purpose. Where the calculated disparity ratios are low enough, we do not foreclose the possibility that an inference of discrimination might still be permissible for *some* of the minority groups in *some* of the studied industries in *some* of the jurisdictions. And we recognize that a minority owned firm's capacity and qualifications may themselves be affected by discrimination. But we hold that the defects we have noted detract dramatically from the probative value of these six studies, and, in conjunction with their limited geographic coverage, render the studies insufficient to form the statistical core of the "strong basis in evidence" required to uphold the statute.<sup>55</sup>

The Federal Circuit concluded its analysis of compelling interest by "stress[ing] that [its] holding is grounded in the particular terms of evidence offered by DOD and relied on by the district court in this case, and should not be construed as stating blanket rules, for example, about the reliability of disparity studies."<sup>56</sup>

Given the holding that Congress lacked a strong basis in evidence for the DOD program, the court did not rule on whether its provisions were narrowly tailored. The court did note, however, in its prior rulings that the program is flexible, limited in duration, and not unduly burdensome to third parties, and that the program has tended to narrow the reach of its remedies over time.<sup>57</sup>

#### **D. Establishing a "Strong Basis in Evidence" for MWRD's Minority- And Women-Owned Business Enterprise Program**

It is well established that disparities in an agency's utilization of Minority- and Women-Owned Business Enterprises ("M/WBEs") and their availability in the relevant marketplace provide a sufficient basis for the consideration of race- or gender-conscious remedies. Proof of the disparate impacts of economic factors on M/WBEs and the disparate treatment of such firms by actors critical to their success will meet strict scrutiny. Discrimination must be shown using statistics and economic models to examine the effects of systems or markets on different groups, as well as by evidence of personal experiences with discriminatory conduct, policies or systems.<sup>58</sup> Specific evidence of discrimination or its absence may be direct or circumstantial, and should include economic factors and opportunities in the private sector affecting the success of M/WBEs.<sup>59</sup>

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<sup>55</sup> *Rothe*, 545 F.3d at 1045.

<sup>56</sup> *Id.* at 1049.

<sup>57</sup> *Id.* at 1049.

<sup>58</sup> *Adarand VII*, 228 F.3d at 1166 ("statistical and anecdotal evidence are appropriate").

<sup>59</sup> *Id.*

*Croson*'s admonition that "mere societal" discrimination is not enough to meet strict scrutiny does not apply where the government presents evidence of discrimination in the industry targeted by the program. "If such evidence is presented, it is immaterial for constitutional purposes whether the industry discrimination springs from widespread discriminatory attitudes shared by society or is the product of policies, practices, and attitudes unique to the industry... The genesis of the identified discrimination is irrelevant." There is no requirement to "show the existence of specific discriminatory policies and that those policies were more than a reflection of societal discrimination."<sup>60</sup>

Nor must a government prove that it is itself guilty of discrimination to meet its burden. In upholding Denver's M/WBE construction program, the court stated that Denver can show its compelling interest by "evidence of private discrimination in the local construction industry coupled with evidence that it has become a passive participant in that discrimination...[by] linking its spending practices to the private discrimination."<sup>61</sup> Denver further linked its award of public dollars to discriminatory conduct through the testimony of M/WBEs that identified general contractors who used them on City projects with M/WBE goals but refused to use them on private projects without goals.

The following are the evidentiary elements courts have looked to in examining the basis for and determining the constitutional validity of race- and gender-conscious programs and the steps in performing a disparity study necessary to meet these elements.

## **1. Define MWRD's Market Area**

The first step is to determine the market areas in which the agency operates. *Croson* states that a state or local government may only remedy discrimination within its own contracting market area. The City of Richmond was specifically faulted for including minority contractors from across the country in its program, based on national data considered by Congress.<sup>62</sup> The agency must therefore empirically establish the geographic and product dimensions of its contracting and procurement market area to ensure that the program meets strict scrutiny. This is a fact driven inquiry; it may or may not be the case that the market area is the government's jurisdictional boundaries.<sup>63</sup>

A commonly accepted definition of geographic market area for disparity studies is the locations that account for at least 75 percent of the agency's contract and subcontract dollar payments.<sup>64</sup> Likewise, the accepted approach is to analyze

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<sup>60</sup> *Concrete Works IV*, 321 F.3d at 976.

<sup>61</sup> *Id.* at 977.

<sup>62</sup> *Croson*, 488 U.S. at 508.

<sup>63</sup> *Concrete Works II*, 36 F.3d at 1520 (to confine data to strict geographic boundaries would ignore "economic reality").

<sup>64</sup> "Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program," Transportation Research Board of the National Academy of Sciences, NCHRP Report, Issue No. 644, 2010, p. 49 ("National Disparity Study Guidelines").

those detailed industries that make up at least 75 percent of the prime contract and subcontract payments for the Study period.<sup>65</sup>

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

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

Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise... In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion.<sup>66</sup>

This is known as the "disparity ratio" or "disparity index." A disparity ratio measures the participation of a group in the government's contracting opportunities by dividing that group's utilization by the availability of that group, and multiplying that result by 100%. Courts have looked to disparity indices in determining whether strict scrutiny is satisfied.<sup>67</sup> An index less than 100 percent indicates that a given group is being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission's "80 percent" rule that a ratio less than 80 percent presents a *prima facie* case of discrimination.<sup>68</sup>

The first step in the disparity analysis is to calculate the availability of minority- and women-owned firms in the District's geographic and industry market area. In addition to creating the disparity ratio, correct measures of availability are necessary to determine whether discriminatory barriers depress the formation of firms by minorities and women, and the success of such firms in doing business in both the private and public sectors.<sup>69</sup>

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<sup>65</sup> *Id.* at pp. 50-51.

<sup>66</sup> *Croson*, 488 U.S. at 509; see *Webster*, 51 F.Supp.2d at 1363, 1375.

<sup>67</sup> *Scott*, 199 F.3d at 218; see also *Concrete Works II*, 36 F.3d at 1526-1527; *O'Donnell Construction Co., Inc., v. District of Columbia*, 963 F.2d 420, 426 (D.C. Cir. 1992); *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 916 (11th Cir. 1990), *cert. denied*, 498 U.S. 983 (1990).

<sup>68</sup> 29 C.F.R. § 1607.4(D) ("A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact."); see *Engineering Contractors II*, 122 F.3d at 914.

<sup>69</sup> *Northern Contracting II*, 2005 U.S. Dist. LEXIS 19868, at \*70 (IDOT's custom census approach was supportable because "discrimination in the credit and bonding markets may artificially reduce the number of M/WBEs").

The second step is to determine whether there are disparities between the availability estimates and MWRD's utilization of M/WBEs. Where possible, statistical techniques are applied to examine whether any disparities are significant.

There is no requirement to control for firm size, area of specialization, and whether the firm had bid on agency projects. While it may be true that M/WBEs are smaller in general than white male firms, most construction firms are small and can expand and contract to meet their bidding opportunities. Importantly, the courts have recognized that size and experience are not race- and gender-neutral variables: "M/WBE construction firms are generally smaller and less experienced *because of discrimination*."<sup>70</sup> To rebut this inference, a plaintiff must proffer its own study showing that the disparities disappear when such variables are held constant and that controlling for firm specialization explained the disparities. Additionally, *Croson* does not "require disparity studies that measure whether construction firms are able to perform a *particular contract*."<sup>71</sup>

The agency need not prove that the statistical inferences of discrimination are "correct." In upholding Denver's M/WBE Program, the Tenth Circuit noted that strong evidence supporting Denver's determination that remedial action was necessary need not have been based upon "irrefutable or definitive" proof of discrimination. Statistical evidence creating inferences of discriminatory motivations was sufficient and therefore evidence of market area discrimination was properly used to meet strict scrutiny. To rebut this type of evidence, the plaintiff must prove by a preponderance of the evidence that such proof does not support those inferences.<sup>72</sup>

Nor must the government demonstrate that the "ordinances will *change* discriminatory practices and policies" in the local market area; such a test would be "illogical" because firms could defeat the remedial efforts simply by refusing to cease discriminating.<sup>73</sup>

The District need not prove that private firms directly engaged in any discrimination in which the government passively participates do so intentionally, with the purpose of disadvantaging minorities and women.

Denver's only burden was to introduce evidence which raised the inference of discriminatory exclusion in the local construction industry and link its spending to that discrimination.... Denver was under no burden to identify any specific practice or policy that resulted in discrimination. Neither was Denver required to demonstrate that the purpose of any such practice or policy was to disadvantage women or minorities. To impose such a burden on a municipality would be tantamount to requiring proof of

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<sup>70</sup> *Concrete Works IV*, 321 F.3d at 983 (emphasis in the original).

<sup>71</sup> *Id.* at 987-88 (emphasis in the original).

<sup>72</sup> *Id.* at 971.

<sup>73</sup> *Id.* at 973 (emphasis in the original).

discrimination and would eviscerate any reliance the municipality could place on statistical studies and anecdotal evidence.<sup>74</sup>

Similarly, statistical evidence by its nature cannot identify the individuals responsible for the discrimination.<sup>75</sup>

### 3. Evaluate the Results of Unremediated Markets

Where such evidence is available, a study should next review the results of contracts solicited without goals. Courts have held that such outcomes are an excellent indicator of whether discrimination continues to impact opportunities in public contracting. Evidence of race and gender discrimination in relevant “unremediated”<sup>76</sup> markets provides an important indicator of what level of actual M/WBE participation can be expected in the absence of government mandated affirmative efforts to contract with M/WBEs.<sup>77</sup> As the Eleventh Circuit has acknowledged, “the program at issue may itself be masking discrimination that might otherwise be occurring in the relevant market.”<sup>78</sup> If M/WBE utilization is below availability in unremediated markets, an inference of discrimination may be supportable. The virtual disappearance of M/WBE participation after programs have been enjoined or abandoned strongly indicates substantial barriers to minority subcontractors, “raising the specter of racial discrimination.”<sup>79</sup> Unremediated markets analysis addresses whether the government has been and continues to be a “passive participant” in such discrimination, in the absence of affirmative action remedies.<sup>80</sup> The court in the Chicago case held that the “dramatic decline in the use of M/WBEs when an affirmative action program is terminated, and the paucity of use of such firms when no affirmative action program was ever initiated,” was proof of the City’s compelling interest in employing race- and gender-conscious measures.<sup>81</sup> Evidence of unremediated markets “sharpens the picture of local market conditions for MBEs and WBEs.”<sup>82</sup>

Therefore, if M/WBEs are “overutilized” because of the entity’s program, that does not end the study’s inquiry. Where the government has been implementing affirmative action remedies, M/WBE utilization reflects those efforts; it does not signal the end of discrimination. Any M/WBE “overutilization” on projects with goals goes only to the weight of the evidence because it reflects the effects of a

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<sup>74</sup> *Id.* at 971.

<sup>75</sup> *Id.* at 973.

<sup>76</sup> “Unremediated market” means “markets that do not have race- or gender-conscious subcontracting goals in place to remedy discrimination.” *Northern Contracting II*, at \*36.

<sup>77</sup> See, e.g., *Western States*, 407 F.3d at 992 (Congress properly considered evidence of the “significant drop in racial minorities’ participation in the construction industry” after state and local governments removed affirmative action provisions).

<sup>78</sup> *Engineering Contractors II*, 122 F.3d at 912.

<sup>79</sup> *Adarand VII*, 228 F.3d at 1174.

<sup>80</sup> See also *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 91 F.3d 586, 599-601 (3rd Cir. 1996) (“*Philadelphia III*”).

<sup>81</sup> *Builders Association of Greater Chicago v. City of Chicago*, 298 F. Supp.2d 725, 737 (N.D. Ill. 2003); see also *Concrete Works IV*, 321 F.3d at 987-988.

<sup>82</sup> *Concrete Works II*, 36 F.3d at 1529.

remedial program. For example, Denver presented evidence that goals and non-goals projects were similar in purpose and scope and that the same pool of contractors worked on both types. “Particularly persuasive” was evidence that M/WBE participation declined significantly when the program was amended in 1989; the utilization of M/WBEs on City projects had been affected by the affirmative action programs that have been in place in one form or another since 1977.

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

The courts have repeatedly held that analysis of disparities in the rates at which M/WBEs in the government’s markets form businesses compared to similar non-M/WBEs, their earnings from such businesses, and their access to capital markets are highly relevant to the determination whether the market functions properly for all firms regardless of the race or gender of their ownership. These analyses contributed to the successful defense of Chicago’s construction program.<sup>83</sup> As explained by the Tenth Circuit, this type of evidence

demonstrates the existence of two kinds of discriminatory barriers to minority subcontracting enterprises, both of which show a strong link between racial disparities in the federal government’s disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination. The first discriminatory barriers are to the formation of qualified minority subcontracting enterprises due to private discrimination, precluding from the outset competition for public construction contracts by minority enterprises. The second discriminatory barriers are to fair competition between minority and non-minority subcontracting enterprises, again due to private discrimination, precluding existing minority firms from effectively competing for public construction contracts. The government also presents further evidence in the form of local disparity studies of minority subcontracting and studies of local subcontracting markets after the removal of affirmative action programs.... The government’s evidence is particularly striking in the area of the race-based denial of access to capital, without which the formation of minority subcontracting enterprises is stymied.<sup>84</sup>

Business discrimination studies and lending studies are relevant and probative because they show a strong link between the disbursement of public funds and the channeling of those funds due to private discrimination. “Evidence that private discrimination results in barriers to business formation is relevant because it demonstrates that M/WBEs are precluded *at the outset* from

<sup>83</sup> *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003) (holding that City of Chicago’s M/WBE program for local construction contracts met compelling interest using this framework).

<sup>84</sup> *Adarand VII*, 228 F.3d at 1168-69 .

competing for public construction contracts. Evidence of barriers to fair competition is also relevant because it again demonstrates that *existing* M/WBEs are precluded from competing for public contracts.”<sup>85</sup> Despite the contentions of plaintiffs that possibly dozens of factors might influence the ability of any individual to succeed in business, the courts have rejected such impossible tests and held that business formation studies are not flawed because they cannot control for subjective descriptions such as “quality of education,” “culture” and “religion.”

For example, in unanimously upholding the USDOT DBE Program, the courts agree that disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms and the disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners are strong evidence of the continuing effects of discrimination.<sup>86</sup> The Eighth Circuit Court of Appeals took a “hard look” at the evidence Congress considered, and concluded that the legislature had

spent decades compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority-owned construction businesses, and of barriers to entry. In rebuttal, [the plaintiffs] presented evidence that the data were susceptible to multiple interpretations, but they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to and participation in highway contracts. Thus, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.<sup>87</sup>

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

A In addition to quantitative data, a study should further explore anecdotal evidence of experiences with discrimination in contracting opportunities because it is relevant to the question of whether observed statistical disparities are due to discrimination and not to some other non-discriminatory cause or causes. As observed by the Supreme Court, anecdotal evidence can be persuasive because it “brought the cold [statistics] convincingly to life.”<sup>88</sup> Evidence about discriminatory practices engaged in by prime contractors, bonding companies, suppliers, lenders and other actors relevant to business opportunities has been found relevant regarding barriers both to minority firms’ business formation and

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.*; *Western States*, 407 F.3d at 993; *Northern Contracting I*, 2004 U.S. Dist. LEXIS 3226 at \*64.

<sup>87</sup> *Sherbrooke*, 345 F.3d. at 970; *see also Adarand VII*, 228 F.3d at 1175 (plaintiff has not met its burden “of introducing credible, particularized evidence to rebut the government’s initial showing of the existence of a compelling interest in remedying the nationwide effects of past and present discrimination in the federal construction procurement subcontracting market.”).

<sup>88</sup> *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 399 (1977).



to their success on governmental projects.<sup>89</sup> While anecdotal evidence is insufficient standing alone, “[p]ersonal accounts of actual discrimination or the effects of discriminatory practices may, however, vividly complement empirical evidence. Moreover, anecdotal evidence of a [government’s] institutional practices that exacerbate discriminatory market conditions are [sic] often particularly probative.”<sup>90</sup> “[W]e do not set out a categorical rule that every case must rise or fall entirely on the sufficiency of the numbers. To the contrary, anecdotal evidence might make the pivotal difference in some cases; indeed, in an exceptional case, we do not rule out the possibility that evidence not reinforced by statistical evidence, as such, will be enough.”<sup>91</sup>

There is no requirement that anecdotal testimony be “verified” or corroborated, as befits the role of evidence in legislative decision-making as opposed to judicial proceedings. “Plaintiff offers no rationale as to why a fact finder could not rely on the State’s ‘unverified’ anecdotal data. Indeed, a fact finder could very well conclude that anecdotal evidence need not—indeed cannot—be verified because it ‘is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perception.”<sup>92</sup> Likewise, the Tenth Circuit held that “Denver was not required to present corroborating evidence and [plaintiff] was free to present its own witnesses to either refute the incidents described by Denver’s witnesses or to relate their own perceptions on discrimination in the Denver construction industry.”<sup>93</sup>

### **E. Narrowly Tailoring a Minority- and Women-Owned Business Enterprise Program for MWRD**

Even if the District has a strong basis in evidence to believe that race-based measures are needed to remedy identified discrimination, the program must also be narrowly tailored to that evidence. The courts have repeatedly examined the following factors in determining whether race-based remedies are narrowly tailored to achieve their purpose:

- The efficacy of race-neutral remedies at overcoming identified discrimination;
- The relationship of numerical benchmarks for government spending to the availability of minority- and women-owned firms and to subcontracting goal setting procedures;
- The flexibility of the program requirements, including the provision for good faith efforts to meet goals and contract specific goal setting procedures;

<sup>89</sup> *Adarand VII*, 228 F.3d at 1168-1172.

<sup>90</sup> *Concrete Works II*, 36 F.3d at 1520, 1530.

<sup>91</sup> *Engineering Contractors II*, 122 F.3d at 926.

<sup>92</sup> *Id.* at 249.

<sup>93</sup> *Concrete Works IV*, 321 F.3d at 989.

- The congruence between the remedies adopted and the beneficiaries of those remedies;
- Any adverse impact of the relief on third parties; and
- The duration of the program.<sup>94</sup>

It is imperative that remedies not operate as fixed quotas.<sup>95</sup> Programs that lack waivers for firms that fail to meet the subcontracting goals but make good faith efforts to do so have been struck down.<sup>96</sup> In *Croson*, the Court refers approvingly to the contract-by-contract waivers used in the USDOT's DBE program.<sup>97</sup> This feature has been central to the holding that the DBE program meets the narrow tailoring requirement.<sup>98</sup>

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

Race- and gender-neutral approaches are a necessary component of a defensible and effective DBE program<sup>99</sup> and the failure to seriously consider such remedies has been fatal to several programs.<sup>100</sup> Difficulty in accessing procurement opportunities, restrictive bid specifications, excessive experience requirements, and overly burdensome insurance and/or bonding requirements, for example, might be addressed by the District without resorting to the use of race or gender in its decision-making. Effective remedies include unbundling of contracts into smaller units, providing technical support, and developing programs to address issues of financing, bonding, and insurance important to all small and emerging businesses.<sup>101</sup> Further, governments have a duty to ferret out and punish discrimination against minorities and women by their contractors, staff, lenders, bonding companies or others.<sup>102</sup>

<sup>94</sup> *United States v. Paradise*, 480 U.S. 149, 171 (1987); see also *Sherbrooke*, 345 F.3d at 971-972.

<sup>95</sup> See 49 C.F.R. § 26.43 (quotas are not permitted and setaside contracts may be used only in limited and extreme circumstances "when no other method could be reasonably expected to redress egregious instances of discrimination").

<sup>96</sup> See, e.g., *BAGC v. Chicago*, 298 F. Supp.2d at 740 ("Waivers are rarely or never granted...The City program is a rigid numerical quota...formulistic percentages cannot survive strict scrutiny.").

<sup>97</sup> 488 U.S. at 508; see also *Adarand VII*, 228 F.3d at 1181.

<sup>98</sup> See, e.g., *Sherbrooke*, 345 F.3d at 972.

<sup>99</sup> *Croson*, 488 U.S. at 507 (Richmond considered no alternatives to race-based quota); *Philadelphia III*, 91 F.3d at 609 (City's failure to consider race-neutral alternatives was particularly telling); *Webster*, 51 F.Supp.2d at 1380 (for over 20 years County never seriously considered race-neutral remedies); cf. *Aiken*, 37 F.3d at 1164 (failure to consider race-neutral method of promotions suggested a political rather than a remedial purpose).

<sup>100</sup> See, e.g., *Florida A.G.C. Council, Inc. v. State of Florida*, Case No.: 4:03-CV-59-SPM at 10 (N. Dist. Fla. 2004) ("There is absolutely no evidence in the record to suggest that the Defendants contemplated race-neutral means to accomplish the objectives" of the statute.); *Engineering Contractors II*, 122 F.3d at 928.

<sup>101</sup> See 49 CFR § 26.51.0.

<sup>102</sup> *Croson*, 488 U.S. at 503 n.3; *Webster*, 51 F.Supp.2d at 1380.

The requirement that an agency must meet the maximum feasible portion of the goal through race-neutral measures as well as estimate that portion of the goal it predicts will be met through such measures has been central to the holdings that the DBE regulations meet narrow tailoring.<sup>103</sup>

However, strict scrutiny does not require that every race-neutral approach must be implemented and then proven ineffective before race-conscious remedies may be utilized.<sup>104</sup> While an entity must give good faith consideration to race-neutral alternatives, “strict scrutiny does not require exhaustion of every possible such alternative...however irrational, costly, unreasonable, and unlikely to succeed such alternative might be... [S]ome degree of practicality is subsumed in the exhaustion requirement.”<sup>105</sup>

## 2. Set Targeted Goals

Numerical goals or benchmarks for M/WBE participation must be substantially related to their availability in the relevant market.<sup>106</sup> For example, the DBE regulations require that the overall goal must be based upon demonstrable evidence of the number of DBEs ready, willing, and able to participate on the recipient’s federally assisted contracts.<sup>107</sup> Goal setting, however, is not an absolute science.<sup>108</sup> “Though the underlying estimates may be inexact, the exercise requires the States to focus on establishing realistic goals for DBE participation in the relevant contracting markets. This stands in stark contrast to the program struck down in *Croson*.”<sup>109</sup>

It is settled case law that goals for a particular solicitation should reflect the particulars of the contract, not reiterate annual aggregate targets. Contract specific goals must be based upon availability of D/M/WBEs to perform the anticipated scopes— including the work estimated to be performed by the prime firm— of the individual contract. Not only is contract goal setting legally mandated,<sup>110</sup> but this approach also reduces the need to conduct good faith efforts reviews as well as the temptation to create “front” companies and sham participation to meet unrealistic contract goals. While more labor intensive than defaulting to the annual, overall goals, there is no option to eschew narrowly tailoring program implementation because to do so would be more burdensome.

<sup>103</sup> See, e.g., *Sherbrooke*, 345 F.3d. at 973

<sup>104</sup> *Grutter*, 529 U.S. at 339.

<sup>105</sup> *Coral Construction*, 941 F.2d at 923.

<sup>106</sup> *Webster*, 51 F.Supp.2d at 1379, 1381 (statistically insignificant disparities are insufficient to support an unexplained goal of 35 percent M/WBE participation in County contracts); see also *Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore, et al.*, 83 F.Supp.2d 613, 621 (D. Md. 2000) (“*Baltimore I*”).

<sup>107</sup> 49 C.F.R. § 26.45.

<sup>108</sup> In upholding New Jersey Transit’s DBE program, the court held that “Plaintiffs have failed to provide evidence of another, more perfect, method” of goal setting. *GEOD Corp. v. New Jersey Transit Corp.*, 2009 U.S. Dist. LEXIS 74120, at \*20 (D. N.J. 2009).

<sup>109</sup> *Sherbrooke*, 345 F.3d. at 972.

<sup>110</sup> See *id*; *Coral Construction*, 941 F.2d at 924.

### 3. Ensure Flexibility of Goals and Requirements

It is imperative that remedies not operate as fixed quotas.<sup>111</sup> A M/WBE program must provide for contract awards to firms who fail to meet the contract goals but make good faith efforts to do so.<sup>112</sup> Further, firms that meet the goals cannot be favored over those who made good faith efforts. In *Croson*, the Court refers approvingly to the contract-by-contract waivers used in the USDOT's DBE program.<sup>113</sup> This feature has been central to the holding that the DBE program meets the narrow tailoring requirement.<sup>114</sup>

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

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

First, the groups eligible to benefit from the remedies must be based upon the evidence.<sup>115</sup> The “random inclusion” of ethnic or racial groups that may never have experienced discrimination in the entity's market area may indicate impermissible “racial politics.”<sup>116</sup> In striking down Cook County's program, the Seventh Circuit Court of Appeals remarked that a “state or local government that has discriminated just against blacks may not by way of remedy discriminate in favor of blacks and Asian-Americans and women.”<sup>117</sup> However, at least one court has held some quantum of evidence of discrimination for each group is sufficient; *Croson* does not require that each group included in the ordinance suffer equally from discrimination.<sup>118</sup> Therefore, remedies should be limited to those firms that have suffered actual harm in the market area.<sup>119</sup>

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<sup>111</sup> See 49 C.F.R. 26.43 (quotas are not permitted and setaside contracts may be used only in limited and extreme circumstances “when no other method could be reasonably expected to redress egregious instances of discrimination”).

<sup>112</sup> See, e.g., *BAGC v. Chicago*, 298 F. Supp.2d at 740 (“Waivers are rarely or never granted...The City program is a rigid numerical quota...formulistic percentages cannot survive strict scrutiny.”).

<sup>113</sup> 488 U.S. at 508; see also *VII*, 228 F.3d at 1181.

<sup>114</sup> See, e.g., *Sherbrooke*, 345 F.3d at 972.

<sup>115</sup> *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990, 1007-1008 (3rd Cir. 1993) (“*Philadelphia II*”) (strict scrutiny requires data for each minority group; data was insufficient to include Hispanics, Asians or Pacific Islanders or Native Americans).

<sup>116</sup> *Webster*, 51 F.Supp.2d at 1380–1381.

<sup>117</sup> *Builders Association of Greater Chicago v. County of Cook*, 256 F.3d 642, 646 (7th Cir. 2001).

<sup>118</sup> *Concrete Works IV*, 321 F.3d at 971 (Denver introduced evidence of bias against each group; that is sufficient).

<sup>119</sup> *Rowe*, 615 F.3d at 254 (“[T]he statute contemplates participation goals only for those groups shown to have suffered discrimination. As such, North Carolina's statute differs from measures that have failed narrow tailoring for overinclusiveness.”).

The policy question of the level of specificity at which to define beneficiaries must be addressed. Approaches range from a single M/WBE or DBE goal that includes all racial and ethnic minorities and nonminority women,<sup>120</sup> to separate goals for each minority group and women.<sup>121</sup> It should be noted, however, that the State of Ohio's Program was specifically faulted for lumping together all "minorities," with the court questioning the legitimacy of forcing African American contractors to share relief with recent Asian immigrants.<sup>122</sup>

Second, the DBE Program's limitation to persons who are socially and economical disadvantaged, as opposed to membership in a group standing alone, has been key to its constitutionality. The rebuttable presumptions of social and economic disadvantage, including the requirement that the disadvantaged owner's personal net worth not exceed a certain ceiling and that the firm must meet the Small Business Administration's size definitions for its industry, have been central to the courts' holdings that Part 26 is narrowly tailored.<sup>123</sup> "[W]ealthy minority owners and wealthy minority-owned firms are excluded, and certification is available to persons who are not presumptively [socially] disadvantaged but can demonstrate actual social and economic disadvantage. Thus, race is made relevant in the program, but it is not a determinative factor."<sup>124</sup> Further, anyone can challenge the disadvantaged status of any firm.<sup>125</sup>

## 5. Evaluate the Burden on Third Parties

Failure to make "neutral" changes to contracting and procurement policies and procedures that disadvantage M/WBEs and other small businesses may result in a finding that the program unduly burdens non-M/WBEs.<sup>126</sup> The burden of compliance need not be placed only upon those firms directly responsible for the discrimination. "Innocent" parties can be made to share some of the burden of the remedy for eradicating racial discrimination.<sup>127</sup> The proper focus is whether the burden on third parties is "too intrusive" or "unacceptable."

<sup>120</sup> See 49 C.F.R. § 26.45(h) (overall goal must not be subdivided into group-specific goals).

<sup>121</sup> See *Engineering Contractors II*, 122 F.3d at 900 (separate goals for Blacks, Hispanics and women).

<sup>122</sup> *Associated General Contractors of Ohio v. Drabik*, 214 F.3d 730, 737 (6th Cir. 2000) ("*Drabik II*"); see also *Western States*, 407 F.3d at 998 ("We have previously expressed similar concerns about the haphazard inclusion of minority groups in affirmative action programs ostensibly designed to remedy the effects of discrimination.").

<sup>123</sup> *Sherbrooke*, 345 F.3d at 973; see also *Grutter*, 539 U.S. at 341; *Adarand VII*, 228 F.3d at 1183-1184 (personal net worth limit is element of narrow tailoring); cf. *Associated General Contractors v. City of New Haven*, 791 F.Supp. 941, 948 (D. Conn. 1992), *vacated on other grounds*, 41 F.3d 62 (2nd Cir. 1992) (definition of "disadvantage" was vague and unrelated to goal).

<sup>124</sup> *Id.* at 973.

<sup>125</sup> 49 C.F.R. §26.87.

<sup>126</sup> See *Engineering Contractors Assoc. of South Florida, Inc. v. Metropolitan Dade County* ("*Engineering Contractors I*"), 943 F.Supp. 1546, 1581-1582 (S.D. Fla. 1996) (County chose not to change its procurement system).

<sup>127</sup> *Concrete Works IV*, 321 F.3d at 973; *Wygant*, 476 U.S. at 280-281; *Adarand VII*, 228 F.3 at 1183 ("While there appears to be no serious burden on prime contractors, who are obviously

Burdens must be proven, and cannot constitute mere speculation by a plaintiff.<sup>128</sup> “Implementation of the race-conscious contracting goals for which TEA-21 provides will inevitably result in bids submitted by non-DBE firms being rejected in favor of higher bids from DBEs. Although this places a very real burden on non-DBE firms, this fact alone does not invalidate TEA-21. If it did, all affirmative action programs would be unconstitutional because of the burden upon non-minorities.”<sup>129</sup>

Narrow tailoring permits certified firms acting as prime contractors to count their self-performance towards meeting contract goals. There is no requirement that a program be limited only to the subcontracting portions of contracts, and numerous decisions and studies have found that discrimination operates against D/M/WBE prime vendors. For example, the trial court in upholding the Illinois DOT’s DBE program explicitly recognized that barriers to subcontracting opportunities affect the ability of DBEs also to compete for prime work on a fair basis.

This requirement that goals be applied to the value of the entire contract, not merely the subcontracted portion(s), is not altered by the fact that prime contracts are, by law, awarded to the lowest bidder. While it is true that prime contracts are awarded in a race- and gender-neutral manner, the Regulations nevertheless mandate application of goals based on the value of the entire contract. Strong policy reasons support this approach. Although laws mandating award of prime contracts to the lowest bidder remove concerns regarding direct discrimination at the level of prime contracts, the indirect effects of discrimination may linger. The ability of DBEs to compete successfully for prime contracts may be indirectly affected by discrimination in the subcontracting market, or in the bonding and financing markets. Such discrimination is particularly burdensome in the construction industry, a highly competitive industry with tight profit margins, considerable hazards, and strict bonding and insurance requirements.<sup>130</sup>

The DBE program regulations recognize these facts and therefore provide remedial benefits not only to firms acting as subcontractors on a project,<sup>131</sup> but also to DBEs seeking prime work.<sup>132</sup> Moreover, utilization of D/M/WBEs as prime firms reduces the need to set contract goals, thereby meeting the test that the agency use race-neutral measures to the maximum feasible extent.

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compensated for any additional burden occasioned by the employment of DBE subcontractors, at the margin, some non-DBE subcontractors such as *Adarand* will be deprived of business opportunities”); *cf. Northern Contracting II*, at \*5 (“Plaintiff has presented little evidence that it [sic] has suffered anything more than minimal revenue losses due to the program.”).

<sup>128</sup> See, e.g., *Rowe*, 615 F.3d at 254 (prime bidder had no need for additional employees to perform program compliance and need not subcontract work it can self-perform).

<sup>129</sup> *Western States*, 407 F.3d at 995.

<sup>130</sup> *Northern Contracting II*, 2005 U.S. Dist. LEXIS 19868 at 74.

<sup>131</sup> 49 C.F.R. § 26.45(a)(1).

## 6. Regularly Review the Program

The District should continue to conduct regular reviews of the DBE program. Race-based programs must have duration limits and “not last longer than the discriminatory effects it is designed to eliminate.”<sup>133</sup>

The absence of a sunset clause and lack of review were factors in the court’s holding that the City of Chicago’s M/WBE Program was no longer narrowly tailored; Chicago’s program was based on 14-year-old information, which while it supported the program adopted in 1990, no longer was sufficient standing alone to justify the City’s efforts in 2004.<sup>134</sup> In contrast, the USDOT DBE Program’s periodic review by Congress has been repeatedly held to provide adequate durational limits.<sup>135</sup> Similarly, “two facts [were] particularly compelling in establishing that [North Carolina’s M/WBE program] was narrowly tailored: the statute’s provisions (1) setting a specific expiration date and (2) requiring a new disparity study every 5 years.”<sup>136</sup>

The legal test is the most recent available data.<sup>137</sup> How old is too old is not definitively answered, but MWRD would be wise to analyze data at least once every five or six years.

## F. Cases from the Seventh Circuit Court of Appeals

Three cases from the circuit governing Illinois illustrate almost all of these principles, and have provided significant guidance to other circuits and agencies across the country.

### 1. *Builders Association of Greater Chicago v. City of Chicago*

The City of Chicago relied upon the types and quality of evidence discussed above in establishing its strong basis in evidence for its M/WBE program designed to remedy discrimination against Black-, Hispanic- and women-owned

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<sup>132</sup> 49 C.F.R. § 26.53(g) (“In determining whether a DBE bidder/offeror for a prime contract has met the contractor goal, count the work the DBE has committed to perform with its own forces as well as the work that it has committed to be performed by DBE subcontractors and suppliers.”).

<sup>133</sup> *Adarand III*, 515 U.S. at 238.

<sup>134</sup> *BAGC v. Chicago*, 298 F.Supp.2d at 739. See also *Associated General Contractors of Ohio, Inc. v. Drabik*, 50 F.Supp.2d 741, 747, 750 (S.D. Ohio 1999) (“*Drabik I*”) (“A program of race-based benefits cannot be supported by evidence of discrimination which is now over twenty years old.... The state conceded that it had no additional evidence of discrimination against minority contractors, and admitted that during the nearly two decades the Act has been in effect, it has made no effort to determine whether there is a continuing need for a race-based remedy.”); *Brunet v. City of Columbus*, 1 F.3d 390, 409 (6th Cir. 1993) (fourteen-year-old evidence of discrimination “too remote to support a compelling governmental interest.”).

<sup>135</sup> See *Western States*, 407 F.3d at 995.

<sup>136</sup> *Rowe*, 615 F.3d at 253.

<sup>137</sup> *Rothe*, 545 F.3d at 1038-1039.

construction firms.<sup>138</sup> However, the program as implemented in 2003, which had not been reviewed since its inception in 1990, was not sufficiently narrowly tailored to meet strict constitutional scrutiny. The court stayed the final order against operation of the Program for construction contracts for six months, to permit the City to review the ruling and adopt a new program.<sup>139</sup>

The opinion first reviews the historical proof of discrimination against minorities, particularly Blacks, in the Chicago construction industry. While not legally mandated, Chicago was a segregated city and “City government was implicated in that history.” After the election of Harold Washington as the first Black mayor in 1983, several reports focused on the exclusion of minorities and women from City procurement opportunities as well as pervasive employment discrimination by City departments. Mayor Washington imposed an executive order mandating that at least 25 percent of City contracts be awarded to minority-owned businesses and 5 percent to women-owned businesses.

In response to *Croson*, Chicago commissioned a Blue Ribbon Panel to recommend an effective program that would survive constitutional challenge. Based upon the Panel’s Report, and 18 days of hearings with over 40 witnesses and 170 exhibits, Chicago adopted a new program in 1990 that retained the 25 percent MBE and 5 percent WBE goals; added a Target Market, wherein contracts were limited to bidding only by M/WBEs; and provided that larger construction contracts could have higher goals.

The court held that the playing field for minorities and women in the Chicago area construction industry in 2003 was still not level. The City presented a great amount of statistical evidence. Despite the plaintiff’s attacks about over-aggregation and disaggregation of data and which firms were included in the analyses, “a reasonably clear picture of the Chicago construction industry emerged... While the size of the disparities was disputed, it is evident that minority firms, even after adjustment for size, earn less and work less, and have less sales compared to other businesses.” That there was perhaps overutilization of M/WBEs on City projects was not sufficient to abandon remedial efforts, as that result is “skewed by the program itself.”

Further, while it is somewhat unclear whether disparities for Asians and Hispanics result from discrimination or the language and cultural barriers common to immigrants, there were two areas “where societal explanations do not suffice.” The first is the market failure of prime contractors to solicit M/WBEs for non-goals work. Chicago’s evidence was consistent with that presented in other jurisdictions of the effects of the discontinuance or absence of race-conscious

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<sup>138</sup> *Builders Association of Greater Chicago v. City of Chicago*, 298 F. Supp.2d 725 (N.D. Ill. 2003).

<sup>139</sup> A similar suit was filed against Cook County’s Program, which was declared unconstitutional in 2000. *Builders Association of Greater Chicago v. County of Cook*, 123 F.Supp.2d 1087 (N.D. Ill. 2000); *aff’d*, 256 F.3d 642 (7th Cir. 2001). In contrast to the City of Chicago, Cook County presented very little statistical evidence and none directed towards establishing M/WBE availability, utilization, economy-wide evidence of disparities, or other proof beyond anecdotal testimony. It also provided no evidence related to narrow tailoring.



programs throughout the country. Not only did the plaintiff fail to present credible alternative explanations for this universal phenomenon but also this result “follows as a matter of economics... [P]rime contractors, without any discriminatory intent or bias, are still likely to seek out the subcontractors with whom they have had a long and successful relationship... [T]he vestiges of past discrimination linger on to skew the marketplace and adversely impact M/WBEs disproportionately as more recent entrants to the industry... [T]he City has a compelling interest in preventing its tax dollars from perpetuating a market so flawed by past discrimination that it restricts existing M/WBEs from unfettered competition in that market.”<sup>140</sup>

The judge also relied upon the City’s evidence of discrimination against minorities in the market for commercial loans. Even the plaintiff’s experts were forced to concede that, at least as to Blacks, credit availability appeared to be a problem. Plaintiff’s expert also identified discrimination against white females in one data set.

After finding that Chicago met the compelling interest prong, the court held that the City’s program was not narrowly tailored to address these market distortions and barriers because:

- There was no meaningful individualized review of M/WBEs’ eligibility;
- There was no sunset date for the ordinance or any means to determine a date;
- The graduation threshold of \$27.5M was very high and few firms have graduated;
- There was no personal net worth limit;
- The percentages operated as quotas unrelated to the number of available firms;
- Waivers were rarely granted;
- No efforts were made to impact private sector utilization of M/WBEs; and
- Race-neutral measures had not been promoted, such as linked deposit programs, quick pay, contract downsizing, restricting prime contractors’ self-performance, reducing bonds and insurance requirements, local bid preferences for subcontractors and technical assistance.

Chicago is the only city ever to have received a stay to permit revision of its program to meet narrow tailoring. It amended its ordinance to meet the court’s

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<sup>140</sup> *BAGC v. Chicago*, 298 F. Supp.2d at 738.

2004 deadline and continues to implement M/WBE subcontracting goals without interruption.

## **2. *Northern Contracting, Inc. v. Illinois Department of Transportation***

In this challenge to the constitutionality of the DBE program, the Seventh Circuit Court of Appeals affirmed the district court's trial verdict that the Illinois Department of Transportation's application of Part 26 was narrowly tailored.<sup>141</sup> IDOT had a compelling interest in remedying discrimination in the market area for federally-funded highway contracts, and its DBE Plan was narrowly tailored to that interest and in conformance with the regulations.

To determine whether IDOT met its constitutional and regulatory burdens, the court reviewed the evidence of discrimination against minority and women construction firms in the Illinois area. IDOT had commissioned an Availability Study to meet Part 26's requirements. The IDOT Study included a custom census of the availability of DBEs in IDOT's market area, weighted by the location of IDOT's contractors and the types of goods and services IDOT procures. The Study estimated that DBEs comprised 22.77 percent of IDOT's available firms.<sup>142</sup> It next examined whether and to what extent there are disparities between the rates at which DBEs form businesses relative to similarly situated non-minority men, and the relative earnings of those businesses. If disparities are large and statistically significant, then the inference of discrimination can be made. Controlling for numerous variables such as the owner's age, education, and the like, the Study found that in a race- and gender-neutral market area the availability of DBEs would be approximately 20.8 percent higher, for an estimate of DBE availability "but for" discrimination of 27.51 percent.

In addition to the IDOT Study, the court also relied upon:

- An Availability Study conducted for Metra, the Chicago-area commuter rail agency;
- Expert reports relied upon in *BAGC v. Chicago*;
- Expert reports and anecdotal testimony presented to the Chicago City Council in support of the City's revised M/WBE Procurement Program ordinance;
- Anecdotal evidence gathered at IDOT's public hearings on the DBE program;

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<sup>141</sup> *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7<sup>th</sup> Cir. 2007) (7<sup>th</sup> Cir. 2007) ("*Northern Contracting III*"). Ms. Holt authored IDOT's DBE goal submission and testified as IDOT's expert witnesses at the trial.

<sup>142</sup> This baseline figure of DBE availability is the "step 1" estimate U.S. DOT grant recipients must make pursuant to 49 CFR §26.45.

- Data on DBE involvement in construction projects in markets without DBE goals;<sup>143</sup> and
- IDOT's "zero goal" experiment, where DBEs received approximately 1.5 percent of the total value of the contracts. This was designed to test the results of "race-neutral" contracting policies, that is, the utilization of DBEs on contracts without goals.

Based upon this record, the Court of Appeals agreed with the trial court's judgment that the Program was narrowly tailored. IDOT's plan was based upon sufficient proof of discrimination such that race-neutral measures alone would be inadequate to assure that DBEs operate on a "level playing field" for government contracts.

The stark disparity in DBE participation rates on goals and non-goals contracts, when combined with the statistical and anecdotal evidence of discrimination in the relevant marketplaces, indicates that IDOT's 2005 DBE goal represents a "plausible lower-bound estimate" of DBE participation in the absence of discrimination.... Plaintiff presented no persuasive evidence contravening the conclusions of IDOT's studies, or explaining the disparate usage of DBEs on goals and non-goals contracts.... IDOT's proffered evidence of discrimination against DBEs was not limited to alleged discrimination by prime contractors in the award of subcontracts. IDOT also presented evidence that discrimination in the bonding, insurance, and financing markets erected barriers to DBE formation and prosperity. Such discrimination inhibits the ability of DBEs to bid on prime contracts, thus allowing the discrimination to indirectly seep into the award of prime contracts, which are otherwise awarded on a race- and gender-neutral basis. This indirect discrimination is sufficient to establish a compelling governmental interest in a DBE program.... Having established the existence of such discrimination, a governmental entity has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.<sup>144</sup>

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<sup>143</sup> *Northern Contracting III*, 473 F.3d at 719 ("Also of note, IDOT examined the system utilized by the Illinois State Toll Highway Authority, which does not receive federal funding; though the Tollway has a DBE goal of 15 percent, this goal is completely voluntary -- the average DBE usage rate in 2002 and 2003 was 1.6 percent. On the basis of all of this data, IDOT adopted 22.77 percent as its Fiscal Year 2005 DBE goal.").

<sup>144</sup> *Northern Contracting II*, at \*82 (internal citations omitted); see *Croson*, 488 U.S. at 492.

### **3. *Midwest Fence, Corp. v. U.S. Department of Justice, Illinois Department of Transportation and Illinois Tollway***

Most recently, the challenge to the DBE regulations, IDOT's implementation of those regulations and its DBE program for state-funded contracts, and to the Illinois Tollway's<sup>145</sup> separate DBE program was rejected.<sup>146</sup>

Plaintiff Midwest Fence is a fencing and guardrail contractor owned and controlled by White males. From 2006-2010, Midwest generated average gross sales of approximately \$18 million per year. It alleged that these programs fail to meet the requirement that they be based on strong evidence of discrimination, and that the remedies are neither narrowly tailored on their face or as applied. In sum, plaintiff's argument was that the agencies lacked proof of discrimination, and it bears an undue burden under the programs as a specialty trade firm that directly competes with DBEs for prime and subcontractors.

The district court granted summary judgment in favor of all defendants on all claims. First, like every prior decision and for the same reasons, the judge held that Part 26 is facially constitutional. Second, IDOT's implementation of the federal regulations was narrowly tailored because it was in conformance with the regulations and its state program, modeled on Part 26, was based upon ample evidence of discrimination as proved through several disparity studies over many years. Third, the Tollway's DBE program "substantially mirrors that of Part 26" and was based on studies similar to those relied upon by IDOT.

Midwest's main objection to the defendants' evidence was that it failed to account for "capacity" when measuring DBE availability and underutilization. However, as is well established, "Midwest would have to come forward with "credible, particularized evidence" of its own, such as a neutral explanation for the disparity, or contrasting statistical data. [citation omitted] Midwest fails to make this showing here."<sup>147</sup> Midwest offered only conjecture about the defendants' studies supposed failure to account for capacity may or may not have impacted the studies' results. Plaintiff "fail[ed] to provide any independent statistical analysis or other evidence demonstrating actual bias."<sup>148</sup>

Turning to the Tollway's program, the court found its

method of goal setting is identical to that prescribed by the Federal Regulations, which this Court has already found to be supported by "strong policy reasons." [citation omitted] Although the Tollway is not beholden to the Federal Regulations, those policy reasons are no different here.... [W]here the Tollway Defendants have provided

<sup>145</sup> The Tollway is authorized to construct, operate, regulate, and maintain Illinois' system of toll highways. The Tollway does not receive any federal funding to accomplish its goals.

<sup>146</sup> *Midwest Fence, Corp. v. USDOT et al.*, 2015 WL 1396376 (N. D. Ill. March 24, 2015).

<sup>147</sup> *Id.* at \*17.

<sup>148</sup> *Id.* at \*18.

persuasive evidence of discrimination in the Illinois road construction industry, the Court finds the Tollway Program's burden on non-DBE subcontractors to be permissible.... The Tollway's race-neutral measures are consistent with those suggested under the Federal Regulations. See, 49 U.S.C. § 26.51. The Court finds that the availability of these programs, which mirror IDOT's, demonstrate 'serious, good faith consideration of workable race-neutral alternatives.' [citations omitted] In terms of flexibility, the Tollway Program, like the Federal Program, provides for waivers where prime contractors are unable to meet DBE participation goals, but have made good faith efforts to do so.... Because the Tollway demonstrated that waivers are available, routinely granted, and awarded or denied based on guidance found in the Federal Regulations, the Court finds the Tollway Program sufficiently flexible. Midwest's final challenge to the Tollway Program is that its goal-setting process is "secretive and impossible to scrutinize." [reference omitted] However, the Tollway has plainly laid out the two goal-setting procedures it has employed since the program's enactment.... The Tollway Defendants have provided a strong basis in evidence for their DBE Program. Midwest, by contrast, has not come forward with any concrete, affirmative evidence to shake this foundation.<sup>149</sup>

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<sup>149</sup> *Id.* at \*22-23.

### **III. MWRD'S MINORITY- AND WOMEN-OWNED CONTRACTING POLICIES AND PROCEDURES**

This Chapter describes the District's Affirmative Action Program for Minority- and Women-Owned Business Enterprises ("M/WBE program") and related procurement policies and procedures. This type of review focuses on the implementation of the race- and gender-conscious program and race- and gender-neutral policies that impact the ability of firms to access the agency's contracts and associated subcontracts on a fair and equitable basis. As discussed in Chapter II, a narrowly tailored program should use race- and gender-neutral measures to the maximum feasible extent, and race- and gender-conscious remedies must be targeted, flexible, realistic and time limited. To meet this standard, we reviewed the District's current efforts and interviewed business owners and MWRD staff about the program.

#### **A. MWRD's M/WBE Program**

##### **1. History of the Program**

The District's Affirmative Action Program was first enacted in 1977, and was the first of its kind in the Chicago metropolitan area. It required that Minority-Owned Business Enterprise ("MBE") goals be set on each construction contract where there were at least three available subcontractors. In 1984, Women-Owned Business Enterprises ("WBEs") were added to comply with requirements of the U.S. Environmental Protection Agency, from which the District receives grant funds.

In the wake of the *Croson* decision, the District commissioned a study in 1989, held a public hearing and received sworn testimony from minority and women construction business owners. Based on this fact-finding, the Board of Commissioners determined that M/WBEs continued to experience discriminatory treatment and diminished opportunities in the local construction industry and in competing for District construction contracts. The District adopted a revised Program Ordinance in 1990, entitled "Appendix D." Appendix D is appended to the District construction specifications, and has been updated several times in the ensuing years, most recently in 2013.

In 2006, the District procured a new report from the law firm of Neal & Leroy, LLC. The 2006 Report reviewed the history of the Program, the governing case law, and a study prepared for the City of Chicago in 2004 by Dr. Timothy Bates of Wayne State University as part of its update of the M/WBE construction ordinance in response to the decision in *Builders Association of Greater Chicago v. City of Chicago*, discussed in Chapter II. The District's 2006 Report concluded that the Program met the requirements of strict constitutional scrutiny that it be flexible and that Dr. Bates' study provided strong evidence of the existence of discrimination against M/WBEs in the Chicago area construction industry. Based upon these results, the District revised Appendix D again.

In 2012, MWRD engaged our firm to develop a Report and provide a revised Appendix D. We found that there was sufficient evidence of the continuing effects of race and sex discrimination in the Chicago construction and construction-related services industries to justify the continued use of M/WBE goals on an interim basis, and that MWRD's program was narrowly tailored. We made recommendations for a revised Ordinance, based on our findings.

An Affirmative Action Ordinance, Interim Appendix D, was adopted in 2012. The discussion below presents the elements of the current program.

## **2. Program Elements and Implementation**

Appendix D embodies the Board of Commissioners' policy to "ensure competitive business opportunities for small, minority- and women-owned business enterprises in the award and performance of District contracts, to prohibit discrimination on the basis of race, ethnicity or sex in the award of or participation in District contracts, and to abolish barriers to full participation in District contracts by all persons, regardless of race, ethnicity or sex." It establishes the definitions for the program and its overall elements to implement that policy.

### **a. Program Administration**

The Program is contained within the District's General Administration Department and reports directly to the Executive Director. The mission of the Diversity Section is to ensure that minority, women, and small businesses are given equal opportunity to participate in the performance of the District's construction program and professional services contracts in excess of \$100,000, in accordance with case law and the District's policies.

The Diversity Administrator is responsible for Program implementation, and the staff consists of two Senior Diversity Officers, six Compliance Officers, and three Support Staff. Compliance Officers obtain relevant compliance and monitoring information by reviewing data that has been submitted by prime contractors and M/WE subcontractors; conducting pre-bid compliance; performing pre-award Program compliance; and conducting post award compliance reviews. The Diversity Section also provides regular reports to the Board of Commissioners and the public on the achievements and operations of the program.

MWRD has several forms to support program administration, including certification applications, documentation of good faith efforts and appeals of good faith efforts determinations by the District, monthly status reports, utilization plans, on-site compliance reviews, warehouse inspections, subcontractors worksheets, and commercially useful function reviews.

Several District staff have received training from the American Contract Compliance Association, the national organization that certifies contracting affirmative action professionals, and have achieved Certificates of Contract Compliance and Masters of Contract Compliance certificates.

### **b. Program Eligibility**

To participate in the program and be credited towards meeting goals, a firm must be owned, managed and controlled day-to-day by a minority individual or a woman. “Minority Individual” means a “Socially Disadvantaged” natural person who is a citizen of the United States or permanent resident of the United States and one of the following:

- African-American - A person having origins in any of the Black racial groups of Africa and is regarded as such by the African American community of which the person claims to be a part.
- Hispanic-American - A person having origins from Mexico, Puerto Rico, Cuba and South or Central America and is regarded as such by the Hispanic community of which the person claims to be a part, regardless of race.
- Asian-American – A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands or the Northern Marianas, and is regarded as such by the Asian American community of which the person claims to be a part.
- Native-American – A person having origins in any of the original peoples of North America and who is recognized through tribal certification as a Native American by either a tribe or a tribal organization recognized by the Government of the United States of America.

The individual relied upon for program eligibility must also be “economically disadvantaged,” defined as a personal net worth less than \$2,000,000.00, excluding the owner’s equity in the business seeking certification and in his or her principal residence, indexed annually for the Chicago Metro Area Consumer Price Index, published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January 2008.

In addition, a firm must be a “Small Business,” defined as annual gross receipts averaged over the preceding five years, that meet the size standards promulgated by the U.S Small Business Administration, 13 C.F.R. Part 121.

A firm must also be a “Local Business,” which means a business located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State of Illinois or Lake County in the State of Indiana which has the majority of its regular full-time work force located in this region and/or a business which has been placed on the District's vendor list and/or has bid on or sought District construction work.

In addition to these requirements, MWRD applies provisions very similar to those of 49 C.F.R. Part 26 to determine the legitimacy of applicants, such as standards for the ownership, management and control of the firm by the socially and



economically disadvantaged owner, and the independence of the firm seeking certification, etc.

The District will place a firm certified as a MBE or a WBE by an agency recognized by the District on its vendor listing and identify the firm as a MBE or WBE. However, to receive credit on a District contract towards meeting a MBE or WBE goal, the firm must seek and receive certification independently by the District. A District certification is valid for two years. If the firm proposed in the utilization plan is found to be ineligible, the prime contractor has the opportunity to substitute another certified firm. A firm denied District certification may appeal to the Affirmative Action Administrator.

While recognizing other entities' certifications for informational purposes, the District has long concluded that it must conduct its own rigorous investigation to ensure that only legitimate firms are accorded the benefits of the Program.

### **c. Race- and Gender-Neutral Measures**

Appendix D lists several race- and gender-neutral approaches to ensuring equal opportunities for all firms to achieve District work. These include:

- Unbundling contracts to facilitate the participation of M/WBEs as prime contractors.
- Arranging solicitation times to facilitate participation.
- Providing timely information on contracting procedures, bid preparation and specific contracting opportunities, including through an electronic system and social media.
- Assisting M/WBEs with training seminars on the technical aspects of preparing a bid for a District contract.
- Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing, and support for business development such as accounting, bid estimation, safety requirements, and quality control.
- Prohibiting prime contractors from requiring bonding for subcontractors, where appropriate.
- Holding pre-bid conferences, where appropriate, to explain the contract and to encourage bidders to use all available firms as subcontractors.
- Adopting prompt payment procedures.
- Developing Linked Deposit and other financing and bonding assistance programs to assist small firms.

- Reviewing retainage, bonding and insurance requirements and their application to bid calculations to eliminate unnecessary barriers to contracting with the District.
- Collecting information from all prime contractors on District construction contracts detailing the bids received from all subcontractors for District construction contracts and the expenditures to subcontractors on District contracts.
- Limiting the self-performance of prime contractors, where appropriate.
- To the extent practicable, developing future policies to award contracts to SBEs.
- Maintaining information on firms bidding on District prime contracts and subcontracts.
- At the discretion of the Board of Commissioners, awarding a representative sample of District construction contracts without goals, to determine MBE, WBE and SBE utilization in the absence of goals.
- Referring complaints of discrimination against MBEs, WBEs or SBEs to the appropriate authority for investigation and resolution.

In addition, interested persons can access information about upcoming bid opportunities and contracts currently being advertised on the District's website.

The Diversity Section, in conjunction with user departments, conducts extensive outreach activities. These include regular attendance at M/WBE organization meetings, trade fairs and networking events; MWRD vendor fairs; events conducted in collaboration with other government agencies such as the City of Chicago, etc.

#### **d. Goal Setting**

Appendix D applies to non-emergency construction contracts where the estimated total expenditure is in excess of \$100,000.00. The Diversity Administrator is to recommend a schedule of goals or MBE, WBE and SBE participation on an annual basis.

Waivers are available to bidders that cannot meet the goal(s) despite their good faith efforts to do so. Appendix D spells out in detail how good faith efforts are established and provides a process for submission and consideration by the Administrator and the Director of Procurement and Materials Management.

#### **e. Counting M/W/SBE Utilization Towards Meeting Goals**

The participation of certified subcontractors is counted at 100 percent of the dollars they spend. Only first tier subcontracting dollars can be counted towards

a goal. A firm must perform a “commercially useful function” to be counted for participation under standards similar to that of the federal DBE program.

Purchases from suppliers receive only 25 percent credit; this ceiling can be waived, however, in the discretion of the Administrator. M/W/SBE subcontractors must perform at least 85 percent of the work of the contract with their own forces and equipment. Joint ventures between non-certified firms and M/W/SBEs are eligible for goal credit, but only to the extent of the certified partner’s contribution of capital, equipment, personnel, efforts and knowledge and share in the capital contribution, control, management, risks, and profits. A Mentor-Protégé Development Plan, may be used to meet the goal

If a firm is certified as both a MBE and a WBE, the Bidder may count the firm’s participation either toward the achievement of its MBE or WBE goal, but not both. A bidder may count toward the achievement of its SBE goal the utilization of any MBE or WBE that also satisfies the definition of a SBE.

For contracts for which goals have been established, the bidder must submit a Utilization Plan that documents its goal attainment or its good faith efforts to do so. Letters of Intent from the M/W/SBE subcontractors and suppliers must also be submitted with the bid package. A prime contractor awarded a Job Order Contract must submit with each work order a Utilization Plan and subcontractors’ letter of intent.

If requested by the Administrator, the prime contractor must submit a MBE, WBE and SBE Work Plan projecting the work tasks associated with certified firms’ commitments prior to the award of the contract.

If the bidder fails to meet the goal, it may request a waiver that details its good faith efforts. Good faith efforts include actions such as attendance at District pre-bid conferences to acquaint contractors with M/W/SBEs; timely solicitation of M/W/SBEs; providing M/W/SBEs with convenient and timely opportunities to review and obtain relevant plans, specifications; dividing total contract requirements into small tasks or quantities and adjusting performance bond and insurance requirements to facilitate M/W/SBE participation; negotiating in good faith with M/WBEs; and using the services of the District to identify suitable M/W/SBEs.

Where a partial or total waiver has been granted, the contractor must continue to make documented good faith efforts during the performance of the contract to meet the goal(s), and the Administrator shall provide technical assistance with respect to such efforts.

A bidder that fails to meet these requirements will have its bid declared non-responsive and ineligible for award.

#### **f. Program Compliance Policies and Procedures**

The Administrator reviews the contractor’s compliance with its Utilization Plan and the Ordinance throughout the performance of the contract. The contractor

cannot make any changes to the approved Utilization Plan or substitutions of the M/W/SBEs listed in the Utilization Plan throughout the life of the contract without the prior, written approval of the Administrator. This includes, but is not limited to, instances in which the contractor seeks to perform work originally designated for a M/W/SBE with its own forces or those of an affiliate, a non-certified firm or another M/W/SBE. Failure to obtain the prior, written approval of the Administrator in the format specified by the District shall constitute a breach of the contract, and subject the contractor to any and all available sanctions. The participation of certified firms that did not receive prior, written approval by the Administrator will not be counted towards the goal(s).

A MBE/WBE/SBE Monthly Status Report providing the information and in the format as specified by the District must be submitted with every payment request.

A prime contractor may amend its Utilization Plan for good cause to the satisfaction of the Administrator and the Director of Purchasing and Materials. It must then make good faith efforts to meet the goal.

Where contract change orders are made individually or in the aggregate that increase the total value of the contract by more than ten percent of the original contract value, the contractor must increase the utilization of M/W/SBEs, where feasible, so that the total value of the percentage of work they perform as to increased contract value bears the same relationship to the total value of the contract (as modified by change orders) as the percentage of M/W/SBE utilization committed to in the original Utilization Plan.

#### **g. Sanctions**

Where the Administrator believes that a contractor or subcontractor has committed fraud or misrepresentation or has failed to comply with the terms of its Utilization Plan or the Ordinance or its contract, the Administrator will notify the firm and may withhold up to 100 percent of its current or final progress payment. If the matter cannot be resolved, the District may direct the firm to show cause why further sanctions should not be imposed. The firm has 15 days to file a response in writing with the Administrator. A hearing before a duly appointed Hearing Officer will then be convened to provide the contractor and/or PCE subcontractor an opportunity to be heard with respect to the non-compliance. The Hearing Officer will issue to the Executive Director written findings of fact, conclusions of law as to compliance and recommendations with respect to any appropriate sanctions. The Executive Director will transmit the Hearing Officer's findings, conclusions and recommendations to the Board of Commissioners, which may impose sanctions for noncompliance.

Sanctions may include but are not limited to withholding payments; debarment from bidding on future District contracts; decertification of a PCE; forfeiture and deduction of the shortfall in goal attainment; and other appropriate actions. Referrals as appropriate will be made to the proper law enforcement authorities.

#### **h. Sunset Date**

Appendix D is to be reviewed no less than two years from its adoption, and is set to expire on June 4, 2015, unless the District finds that its remedial purposes have not been fully achieved and that there is a compelling interest in continuing to implement narrowly tailored remedies to redress discrimination against MBEs and WBEs so that the District will not function as a passive participant in a discriminatory marketplace in the Metropolitan Chicago construction industry.

### **B. Experiences with MWRD's Contracting Policies and Procedures**

To explore the impacts of race- and gender-neutral contracting policies and procedures and the implementation of the District's M/WBE program, we interviewed 48 individuals about their experiences and solicited their suggestions for changes. We also received written comments. The following are summaries of the topics discussed. Quotations are indented, and have been edited for readability. They are representative of the views expressed during four sessions by participants and one public meeting.

#### **1. Payments**

Most prime contractors reported that the District is exemplary regarding timely payment. There were few complaints that subcontractors were not paid promptly by prime contractors.

The District pays.

Like clockwork.

MWRD side of the payments are probably the fastest payment we get [as a prime contractor].

They get bids because they pay their bills.

#### **2. Access to Information**

Most participants were able to access information on upcoming opportunities, although rather antiquated methods of communications (faxes, U.S. mail) were mentioned as burdens on small firms. Overall, outreach was felt to be comprehensive and consistent.

They do do a good amount of outreach [to M/WBEs].

An electronic system like that used by the City of Chicago to monitor participation and notify subcontractors of payments to the prime contractor was suggested as one way to increase M/WBEs' abilities to manage their work and their cash flow.

The report [from the City] comes to the subconsultant: have you received your money because we paid your prime.

Information on design and construction-related services contracts was reported to be more difficult to obtain than for construction contracts.

I for the life of me cannot figure out who to talk to at MWRD.

Some prime non-M/WBE consultants suggested that MWRD do more to invite M/WBEs into the procurement process.

If you want change and you want improvement and you want people to feel comfortable, then you need to invite them in.

### **3. Meeting Program Eligibility Requirements**

M/WBEs in general were satisfied with the District's two step certification process.

They do a really good with certification. It's not like one of those certifications that you get for five years and then you have to send it in to the city and you got to wait for another year before they renew it.

I don't think it's easy necessarily. I think it's thorough.

They appreciated the efforts to weed out fraud because they have been hurt by the proliferation of front firms.

There have been so many cheaters, liars and deceivers, all across the board, all subs, all everybody, so many people have been caught in the last ten years it has put so much undue pressure on all of us to even be able to work with these governmental agencies where we felt safe. This was the place where we felt like we were given an opportunity because there were a lot of people working for government that looked at and spoke like us. They were Blacks and women and Hispanics. Because government gave people that chance. So, we always felt like we were dealing with them. But then, everybody got their mother and their sister and their cousins all certified.

### **4. Meeting M/WBE Contract Goals**

Most prime contractors and consultants reported that they were able to met the goals.

There are some very small firms that are very, very good at what they do and strong DBE firms that are very good at what they do and I think there's a place for them in the business.

Do you as a firm feel that you have the social responsibility to do the right thing?

There's good minority subs and there's bad minority subs. You got to do your homework.... We've gotten burned by minority contractors before. But, we've gotten burned by white contractors.

Some prime firms stated they use M/WBEs with which they have become familiar through contracting affirmative action programs on non-goals projects.

We certainly use some of the DBE firms on projects that do not require DBEs because it's kind of like the mentor-protégé thing. We started a good relationship.

The benefits of good relationships can flow both ways.

We even had one DBE that put us as a sub on a project that they didn't have to and just that's kind of the way the relationship has developed.

Repeat working relationships between prime firms and M/WBEs were said to promote long term growth of certified firms.

You want to give [new firms] an opportunity but also you've made an investment...you have trust in certain DBEs or MBEs that you've used.

Most general contractors do not seek waivers of goals on District contracts.

The waiver process is meaningless. Because no one ever will request a waiver. It's a kiss of death.

You meet the goal.... If you don't meet the goal, don't bid the job.

There was strong consensus that the District should set goals on a contract-by-contract basis rather than generally applying the same goals regardless of the scopes of work of the project.

Look on a job-by-job specific basis of the goals. You get a hundred million dollar project, 30 percent of a hundred, two hundred million dollars is a lot of DBE participation...in a very specialized area.

Requiring all compliance information with the bid was seen as strangling general contractors' abilities to work with new M/WBEs or fully explore the capabilities of M/WBEs.

[Some M/WBEs] don't have complete scopes in their packages.

[This approach] makes our life a living nightmare in terms of late quotes. Trying to sit here and with a minority sub, trying to give them a chance, trying to sit here and say let me understand what you know about the job. Now, we hit the go button and they're either in or out.

A somewhat longer period to submit M/WBE compliance paperwork was urged to increase opportunities for M/WBEs and allow primes to propose firms with which they are less familiar.

Two days would be great.

There's a ferreting out process... Does the concrete flatwork person have the fine grader? Do they back up the curb? Or, oh we didn't have mesh or rebar in[the quote]. All of these things take a little bit of time to work out and I think two days would be an enormous improvement over zero.... If the expectation of the general contractors is they're going to shop the job, in two days you can't get somebody that hasn't looked at the job to take a set of plans.

The District's often highly complex projects present special challenges in meeting goals.

The biggest problem with our DBE subs is they don't have the experience.... The District goes through and identifies and certifies these DBEs but they don't really evaluate their level of talent.

Capacity does not meet the goal.... [So, we] rely on the same ones.

At one point, the District was doing a lot of work so the capacity issue was one thing.

We make every effort to comply with the program and have good relationships with as many of the DBE vendors as we can find. However, the vendors continually have very many work offers and their own set of business priorities.... The problem arises in the lack of sufficient equipment owned by the subcontractors to fulfill all of the contracts that they have. This leaves us short of our affirmative action goals with the District and feeling distressed. We try extremely hard to obtain our goals, even securing an extra credit line so that we can pay them prior to receiving our payment from the District. We host educational days, relational events and have lengthy discussions with the vendors and feel that our relationships are mostly on strong, solid footing with them. The fact is that they just do not have enough equipment to handle all of the work requests that they receive.... This entire situation can be summed up in the fact that there truly seems to be an insufficient pool of resources to subcontract to.

Goals were not always met on consulting projects.

When we put the job together the intent to meet the goals is always there.... I think we do as good of a job as we possibly can to meet the goals. It is a challenge. Sometimes on a larger project, multidiscipline, it might be easier. But on some of the more niche



projects, it's difficult. And we've fallen short at the end but typically we've shown good faith in trying to get there and I think that that's been accepted.

The low goals for WBEs sometimes made it difficult to meet the goal on smaller projects.

WBEs in particular suffer.... We use them on a lot of other projects so that when we need to have them essentially sign up for something that's pretty not appealing [because of the small dollar value] that they're willing to do it with us because the percentages are so low.

The inability to count second tier and lower subcontracting dollars creates additional issues for general contractors.

In the world of MWRD, they only count participation in the M and WBEs at the prime contractor, subcontractor level. Lower tiers are not eligible for participation. And that creates a very messy contractual relationship between me who has no expertise and my [first tier] contractor or suppliers. And in order to take credit for that [lower tier] participation, I am literally forced to contract with somebody in an area I don't have technical expertise.... It's archaic.

I have no logical explanation for why an agency wouldn't allow second tiers. They offer an area of expertise that's foreign to many general contractors.

Contract terms that prime contractors experience as onerous were reported to discourage M/WBEs subcontractors from participating because they also would be subject to these clauses. Once the contract is signed, M/WBEs were seen as having the upper hand.

That's a significant barrier. When those of us in here take quotes the day of, day before a bid and we see [the M/WBE subcontractor says] we exclude this, we exclude that, and a lot of those deal with those onerous contract provisions.... Or they cross it out in your contract three months into the job.... They have that leverage.... If I get a non-MBE roofer that quoted a job and he bleeds all over our subcontract agreement, excluding all kinds of stuff...I can go to roofer B.... One roofer to another roofer, no one cares.... But, should a minority subcontractor do that, we've got live with them because we wrote them in [the bid].

Incentives to meet goals were urged by some non-M/WBE prime consultants.

[There should] be a way that over time certain firms would get preferential treatment for being an A player when it comes to M and W [participation].

Some non-M/WBE prime consultants questioned the District's commitment to the program for design work.

I don't know that I've heard a tremendous groundswell of support coming out of the District that this is important to us.... I've never heard the statement, we believe that the service, that the community we serve should be reflective of those that work here.... I don't get that sense at all.... Where you will get it from the Illinois Tollway, you will get it from Chicago Transit Authority, you will get it from the City of Chicago, Metra. I don't see that sense here.

I don't remember really being called out on the carpet whether we made it or not.

At the end [of a project], I don't recall anyone comparing what we said we would do to how it ended up.

With the Illinois Tollway or Chicago Transit Authority or City of Chicago, Cook County, Metra, whether you have that feeling of social responsibility or not doesn't matter because you're not going to win work because you won't be looked upon as somebody that cares about doing the right thing with good qualified people. And I don't have that same feeling here.

If you're holding a diversity meeting [for consultants] every couple years, that's pretty much in my mind the answer.

[The District's approach to construction compared to consulting is] two different worlds.

Several general contractors reported that it is very difficult to substitute a non-performing M/WBE for the original contract price.

A lot of times you take a hit. They can't do it for that price and you take a little bit of a hit.

If a DBE goes out of business midway through and you have to replace that goal it's very hard to get another DBE to bid it for that dollar amount that's remaining. I can go out to the general public of subcontractors and get five or six bids and one of them hopefully is going to hit the remain dollars I have.... The field [of MN/WBEs] is just narrower.

We always try and get a little bit more [participation than the goal to create a cushion].

One prime contractor advised communicating with MWRD early and often about problems with M/WBE performance. Meeting the goal is still mandatory.

If you let that compliance person or you let that agency know what's going on with your contract, towards the end they'll say, okay we understand that Company A went out of business but you're

forgiven because you used other DBEs that were not a part of your plan here [and met the goal].

## **5. Supportive Services, Technical Assistance and Mentor-Protégé Relationships**

There was broad support among M/WBEs and non-M/WBEs for providing technical assistance and other resources to increase M/WBEs' capacities

IDOT offers all these supportive services to grow businesses whether it's their back office and estimating and something like that. If there was something, some money that maybe Water Rec could put into growing some of these specialty trades [it would be helpful].

Try to help an ongoing DBE firm with how to finance better or how to get financing or how to run their safety program better or how to have meetings with your surety or your insurance broker.

We would like to see a program outlined that assists more DBEs in starting up new businesses or providing capital for expansion or allowing creative solutions, such as letting the DBE lease equipment from the prime, if in fact it is specialty equipment that cannot be readily attained. We would love to be a part of a long term solution.

Some general contractors provide informal supportive services to M/WBE subcontractors.

We'll try to pay you weekly to cover your labor.... Our safety guy can meet with your safety guy and go over some of the programs we run on our safety side. We do that. We're out there mentoring but we're also worried are we then crossing something where we shouldn't be sharing this experience with them?

Several prime consultants reported good experiences with mentor protégé programs for other agencies.

We do a mentor-protégé [relationship]. We've embraced this as many firms have. Now this is on the Tollway and IDOT and Chicago Transit Authority. We have several firms, but two firms that we're really embraced in this opportunity. They've grown significantly. You know, one firm's gone from 30 to 80 people, another firm's gone from maybe 20 to 60 people. One firm has 15 percent of 70 million dollars. Another firm has 15 percent of 30, let's call it million dollars.... The value that we saw was these firms have now grown.... The engineering community at the Tollway has embraced this very well.

The whole joint venture [idea] ... it's misused and doesn't really advance the effort that everybody's trying to do. To me, the mentor-protégé [approach] is much more meaningful.

I demand that my mentor-protégé mentor a new firm.... What better person to mentor somebody that's in a disadvantaged business enterprise than one that has graduated and succeeded?

Some participants expressed concern about the limits of providing assistance to M/WBEs, especially in light of recent prosecutions and high dollar settlements with agencies about the use of certified firms.

[M/WBEs] rely on us to assist them and we're limited on what we can assist them with.... When we're the prime contractor, we're going to hold everybody's hand through the process. No matter who it is. We're going to help them with the scope of work, we're going to help them with the whole contract process.... You may get in trouble helping an MBE or WBE firm because are they not now doing a commercially useful function? Have you overstepped some line in the sand?

We're on a jobsite. We've got four or five subs out there. We have our crane there, we need it for what we're doing. [A non-M/WBE subcontractor is] out there, he needs a pick for a day. We can give him a crane for that day or he needs it for an hour. We can give him that crane for an hour. But my DBE sub over here, if he needs a pick for an hour I can't do it because the way the thing is written he has to get his own equipment.... We can help everybody on the site except for our DBE sub.

The [general] contractors are scared and paranoid to let the MBE, WBE do something that looks like we're helping them and now they're not performing their useful function. There's a paranoia right now.

I'm taking those subs that may or may not be capable and now I have to incorporate them into the work that we do but I'm not allowed to train them, I'm not allowed to give them any experience or expertise that I have to help them.

As a specialty contractor, we have specific issues with the helping or the mentoring process or whatever of subs that do the same work that we do.... There's more problems with that process than a general contractor to a DBE sub.

A formal Mentor-Protégé program would address some of these concerns.

If you gave me the contract and said, okay this is what we're going to do and this is going to meet your goal, and we're going to sign off on this and then as long as we do it we've met the goal. As

opposed to after I do it come back and say, you know what, we really don't like the way you did that.

## **6. Small Business Setasides**

Several M/WBEs recognized that the District has made recent efforts to unbundle contracts into fewer or even single scope of work contracts to support opportunities for smaller firms.

Recently they've been doing those other smaller projects.

With the expansion of their work in the storm water and especially with the expansion into individual communities and sewers, you're getting a lot more traditional civil engineering projects. But they've made an effort to reach out to a whole bunch of smaller firms to do that.

M/WBEs and non-M/WBEs broadly supported adoption of a small business setaside program. The current approach of setting small business enterprise goals on contracts but allowing M/WBEs to be double counted was seen as ineffective.

[A small business setaside] a reasonable good option.... The issue with the District [is] because of the type of work that they do. Usually it's some sort of high end modeling or process oriented. It's not a structural job, it's not a survey job. It doesn't fall into what a lot of the smaller businesses are their focus so they have a hard time taking the lead. So that would be the issue. I think the concept is good but I don't know, I'm hard pressed to think of contracts where it would make sense that they have the major part of the expertise to take the lead.... The work for the District is very detailed, very complex and it has to be spot on.

## **7. Contract Performance Monitoring and Enforcement**

By in large, M/WBEs reported that the District monitors participation on construction projects and provides assistance to certified firms in resolving performance issues.

One of the diversity officers on a job that we had three, four years ago from hell and they actually were very active in trying to help me get my money and they followed it and they paid attention to it.... She was very, very helpful.

[She] helped me years ago, also.

It is apparent the MRWD is well aware of Prime contractors "squeezing" subcontractors. It is very much appreciated by subcontractors, the requirement for prime contractors to submit the

list of subcontractors and subcontractor contract amounts and justification if that information changes.

An enhancement would be a system to notify subcontractors that were listed by a successful prime contractor would help to enforce goals and facilitate their ability to plan their work

You don't know after the bid has gone in whether you're in there or not.

## **C. Conclusion**

The program review and the business owner and stakeholder interviews suggest that the District is administering its M/WBE program in conformance with the requirements of strict scrutiny. However, several enhancements will make it more effective. These include implementing an electronic data collection, monitoring and notification system; increased outreach to M/WBE consulting firms; providing access to information about contracts, especially for consultants; ensuring that the waiver process is well disseminated and understood; setting goals on a contract-by contract basis; permitting a very short window to submit all compliance forms such as letters of intent from M/WBEs; counting second tier and lower subcontracting dollars; working with other agencies to provide technical assistance, bonding and supportive services to M/WBEs; adopting a mentor-protégé initiative; and implementing a small business setaside.

## IV. UTILIZATION, AVAILABILITY AND DISPARITY ANALYSIS FOR MWRD

### A. Contract Data Sources and Sampling Method

We analyzed purchase order and contract data for calendar years 2008 through 2014. The Final File for analysis contained 167 contracts, with a total award amount of \$1,133,783,956. This represents 73% of all dollars in the data. The file of contracts was developed through the following steps:

- From the initial pool of 388 contracts, we eliminated 40 duplicate listings of contracts, contracts that we determined did not fit the scope of the study, etc.
- For the remaining 348 contracts, with a total award amount of \$1,559,527,608, we contacted the prime firms in an effort to obtain complete contract records for the prime and subcontracting levels. We successfully collected data for 73% of the contract award dollars, worth \$1,133,783,956.

This File was used to determine the geographic market area for the Study; to estimate the utilization of M/WBEs on those contracts; and to calculate M/WBE availability in MWRD's marketplace.

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

#### 1. MWRD's Product Market

A defensible disparity study must determine empirically the industries that comprise the agency's product or industry market. The accepted approach is to analyze those detailed industries, as defined by 6-digit North American Industry, Classification System ("NAICS") codes,<sup>150</sup> that make up at least 75 percent of the prime contract and subcontract payments for the Study period.<sup>151</sup> However, for this Study, we went further, and applied a "90/90/90" rule, whereby we analyzed NAICS codes that cover over 90 percent of the total contract dollars; over 90 percent of the prime contract dollars; and over 90 percent of the subcontract dollars. We took this approach so that we could be assured that we provide an in depth picture of the District's activities.

Tables 1 through 3 present the NAICS codes used to define the product market when examining contracts disaggregated by level of contract (*i.e.*, was the firm receiving the contract a prime vendor or a subcontractor); the label for each NAICS code; and the industry percentage distribution of the number of contracts

<sup>150</sup> [www.census.gov/eos/www/naics](http://www.census.gov/eos/www/naics).

<sup>151</sup> "Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program," Transportation Research Board of the National Academy of Sciences, NCHRP Report, Issue No. 644, 2010, pp. 50-51 ("National Disparity Study Guidelines").

and spending across NAICS codes and funding source. The results in Tables 1 through 3 present MWRD's *unconstrained* product market, which will be later constrained by the geographic market area, discussed below.



**Table 1: Industry Percentage Distribution of All Contracts by Dollars Paid, All Sectors**

| <b>NAICS</b>  | <b>NAICS Code Description</b>   | <b>PCT Total Contract Dollars</b> | <b>Cumulative PCT Total Contract Dollars</b> |
|---------------|---|-----------------------------------|--|
| <b>237310</b> | Highway, Street, and Bridge Construction  | 22.2%                             | 22.2%  |
| <b>238220</b> | Plumbing, Heating, and Air-Conditioning Contractors   | 11.3%                             | 33.6%  |
| <b>238210</b> | Electrical Contractors and Other Wiring Installation Contractors                                | 10.7%                             | 44.3%  |
| <b>236220</b> | Commercial and Institutional Building Construction  | 6.5%                              | 50.8%  |
| <b>238990</b> | All Other Specialty Trade Contractors   | 6.2%                              | 57.0%  |
| <b>238110</b> | Poured Concrete Foundation and Structure Contractors  | 6.0%                              | 62.9%  |
| <b>541330</b> | Engineering Services  | 4.2%                              | 67.2%  |
| <b>238910</b> | Site Preparation Contractors  | 3.9%                              | 71.1%  |
| <b>484110</b> | General Freight Trucking, Local   | 3.5%                              | 74.5%  |
| <b>237110</b> | Water and Sewer Line and Related Structures Construction  | 3.0%                              | 77.5%  |
| <b>423840</b> | Industrial Supplies Merchant Wholesalers  | 2.4%                              | 79.9%  |
| <b>238140</b> | Masonry Contractors   | 2.3%                              | 82.2%  |
| <b>238120</b> | Structural Steel and Precast Concrete Contractors   | 1.4%                              | 83.6%  |
| <b>424720</b> | Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)      | 1.1%                              | 84.7%  |
| <b>562910</b> | Remediation Services  | 1.1%                              | 85.8%  |
| <b>332911</b> | Industrial Valve Manufacturing  | 1.0%                              | 86.8%  |
| <b>423610</b> | Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers | 1.0%                              | 87.8%  |
| <b>484220</b> | Specialized Freight (except Used Goods) Trucking, Local   | 0.7%                              | 88.5%  |
| <b>238130</b> | Framing Contractors   | 0.7%                              | 89.2%  |
| <b>238320</b> | Painting and Wall Covering Contractors  | 0.6%                              | 89.8%  |
| <b>561730</b> | Landscaping Services  | 0.5%                              | 90.4%  |
|               |   |                                   |  |
| <b>TOTAL</b>  |   |                                   | <b>100.0%</b>                                |

Source: CHA analysis of MWRD data.

**Table 2: Industry Percentage Distribution of Prime Contracts by Dollars Paid, All Sectors**

| NAICS        | NAICS Code Description   | PCT Total Contract Dollars | Cumulative PCT Total Contract Dollars |
|--------------|--|----------------------------|---------------------------------------|
| 237310       | Highway, Street, and Bridge Construction                         | 49.9%                      | 49.9%                                 |
| 236220       | Commercial and Institutional Building Construction               | 15.1%                      | 64.9%                                 |
| 238210       | Electrical Contractors and Other Wiring Installation Contractors | 9.1%                       | 74.1%                                 |
| 238220       | Plumbing, Heating, and Air-Conditioning Contractors              | 7.5%                       | 81.6%                                 |
| 541330       | Engineering Services   | 4.5%                       | 86.1%                                 |
| 238910       | Site Preparation Contractors                                     | 3.6%                       | 89.7%                                 |
| 484110       | General Freight Trucking, Local                                  | 2.9%                       | 92.6%                                 |
|              |  |                            |                                       |
| <b>TOTAL</b> |  |                            | <b>100.0%</b>                         |

Source: CHA analysis of MWRD data

**Table 3: Industry Percentage Distribution of Subcontracts by Dollars Paid, All Sectors**

| NAICS  | NAICS Code Description   | PCT Total Contract Dollars | Cumulative PCT Total Contract Dollars |
|--------|--|----------------------------|---------------------------------------|
| 238220 | Plumbing, Heating, and Air-Conditioning Contractors  | 14.0%                      | 14.0%                                 |
| 238210 | Electrical Contractors and Other Wiring Installation Contractors                           | 11.8%                      | 25.7%                                 |
| 238990 | All Other Specialty Trade Contractors  | 10.5%                      | 36.2%                                 |
| 238110 | Poured Concrete Foundation and Structure Contractors                                       | 10.1%                      | 46.3%                                 |
| 237110 | Water and Sewer Line and Related Structures Construction                                   | 4.7%                       | 51.0%                                 |
| 238910 | Site Preparation Contractors   | 4.1%                       | 55.1%                                 |
| 541330 | Engineering Services   | 4.0%                       | 59.1%                                 |
| 423840 | Industrial Supplies Merchant Wholesalers   | 4.0%                       | 63.1%                                 |
| 484110 | General Freight Trucking, Local  | 3.9%                       | 67.0%                                 |
| 238140 | Masonry Contractors  | 3.6%                       | 70.6%                                 |
| 237310 | Highway, Street, and Bridge Construction   | 3.2%                       | 73.8%                                 |
| 238120 | Structural Steel and Precast Concrete Contractors  | 2.4%                       | 76.2%                                 |
| 562910 | Remediation Services   | 1.8%                       | 78.0%                                 |
| 424720 | Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals) | 1.8%                       | 79.8%                                 |
| 332911 | Industrial Valve Manufacturing   | 1.7%                       | 81.5%                                 |
| 423610 | Electrical Apparatus and Equipment, Wiring   | 1.6%                       | 83.2%                                 |

| NAICS         | NAICS Code Description                                  | PCT Total Contract Dollars | Cumulative PCT Total Contract Dollars |
|---------------|---|----------------------------|---------------------------------------|
|               | Supplies, and Related Equipment Merchant Wholesalers    |                            |                                       |
| <b>484220</b> | Specialized Freight (except Used Goods) Trucking, Local | 1.2%                       | 84.4%                                 |
| <b>238130</b> | Framing Contractors                                     | 1.2%                       | 85.6%                                 |
| <b>562219</b> | Other Nonhazardous Waste Treatment and Disposal         | 0.9%                       | 86.4%                                 |
| <b>238160</b> | Roofing Contractors                                     | 0.9%                       | 87.3%                                 |
| <b>332312</b> | Fabricated Structural Metal Manufacturing               | 0.8%                       | 88.1%                                 |
| <b>238320</b> | Painting and Wall Covering Contractors                  | 0.8%                       | 89.0%                                 |
| <b>332996</b> | Fabricated Pipe and Pipe Fitting Manufacturing          | 0.8%                       | 89.7%                                 |
| <b>237990</b> | Other Heavy and Civil Engineering Construction          | 0.7%                       | 90.4%                                 |
|               |   |                            |                                       |
| <b>TOTAL</b>  |   |                            | <b>100.0%</b>                         |

Source: CHA analysis of MWRD data.

## 2. MWRD's Geographic Market

The courts require that a local government limit the reach of its race- and gender-conscious contracting program for contracts it funds to its market area.<sup>152</sup> While it may be that the District's jurisdictional boundaries comprise its market area, this element of the analysis must be empirically established.<sup>153</sup>

To determine the relevant geographic market area, we applied the rule of thumb of identifying the firm locations that account for at least 75 percent of contract and subcontract dollar payments in the contract data file.<sup>154</sup> Location was determined by ZIP code as listed in the file and aggregated into counties as the geographic unit.

As presented in Table 4, spending in Illinois accounted for almost 97 percent of all contract dollars paid in MWRD's unconstrained product market. Of that total, the counties of Cook, DuPage, Kane, and Will accounted for 95.42 percent. Therefore, these four counties constituted the geographic market area from which we drew our availability data. While we could limited the market area to Cook County, there were several contractors located in the other three counties, so we thought it best to cast a broad net. Table 5 presents data on how the contract dollars were spent across Illinois counties.

<sup>152</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 508 (1989) (Richmond was specifically faulted for including minority contractors from across the country in its program based on the national evidence that supported the USDOT DBE program).

<sup>153</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1520 (10th Cir. 1994) (to confine data to strict geographic boundaries would ignore "economic reality").

<sup>154</sup> National Disparity Study Guidelines, p. 49.

**Table 4: Distribution of Contracts in MWRD's Product Market, by State**

| State | PCT of Total Contract Dollars Paid |  | State        | PCT of Total Contract Dollars Paid |
|-------|------------------------------------|--|--------------|------------------------------------|
| IL    | 96.96%                             |  | MI           | 0.20%                              |
| PA    | 1.31%                              |  | WI           | 0.13%                              |
| IN    | 0.75%                              |  | CA           | 0.06%                              |
| NY    | 0.37%                              |  | NJ           | 0.01%                              |
| MD    | 0.23%                              |  |              |                                    |
|       |                                    |  |              |                                    |
|       |                                    |  | <b>TOTAL</b> | <b>100.00%*</b>                    |

\* One additional state received agency spending totaling less than 1% of all agency spending  
Source: CHA analysis of MWRD data.

**Table 5: Distribution of Contracts in MWRD's Product Market within Illinois, by County**

| County     | PCT of Total Contract Dollars Paid |  | County       | PCT of Total Contract Dollars Paid |
|------------|------------------------------------|--|--------------|------------------------------------|
| Cook       | 80.81%                             |  | Grundy       | 0.28%                              |
| Dupage     | 7.49%                              |  | Champaign    | 0.03%                              |
| Kane       | 3.73%                              |  | Kankakee     | 0.03%                              |
| Will       | 3.41%                              |  | Kendall      | 0.02%                              |
| Stephenson | 1.69%                              |  | Ogle         | 0.02%                              |
| LaSalle    | 1.09%                              |  | Henderson    | 0.02%                              |
| Lake       | 1.02%                              |  | Winnebago    | 0.01%                              |
| McHenry    | 0.35%                              |  |              |                                    |
|            |                                    |  |              |                                    |
|            |                                    |  | <b>TOTAL</b> | <b>100.00%*</b>                    |

\* Four additional counties received agency spending totaling less than 1% of all agency spending  
Source: CHA analysis of MWRD data.

## **C. MWRD's Utilization of M/WBEs in Its Market Areas<sup>155</sup>**

The next essential step was to determine the dollar value of the District's utilization of M/WBEs in its geographic and constrained product market areas, as measured by payments to prime firms and subcontractors and disaggregated by race and gender. Because the agency was unable to provide us with full records for payments to prime contractors and subcontractors other than firms certified as M/WBEs, we contacted the prime vendors to request that they describe in detail their contract and subcontracts, including race, gender and dollar amount paid to date. We used the results of this extensive contract data collection

<sup>155</sup> While Sections C and D present data on utilization and availability for contracts aggregated to the level of all sectors, Appendix F presents this data disaggregated into key sub-sectors: Construction, Construction-related Services, Goods, and Other Services.

process to assign minority or female status to the ownership of each firm in the contract data file.

Table 6 presents data on the total contract dollars paid by MWRD for each NAICS code and the share the contract dollars comprise of all industries.

**Table 6: NAICS Code Distribution of Contract Dollars, All Sectors**

| <b>NAICS</b>  | <b>NAICS Code Description</b>   | <b>Total Contract Dollars</b> | <b>Pct Total Contract Dollars</b> |
|---------------|---|-------------------------------|-----------------------------------|
| <b>237310</b> | Highway, Street, and Bridge Construction  | \$238,513,254                 | 24.60%                            |
| <b>238220</b> | Plumbing, Heating, and Air-Conditioning Contractors   | \$122,286,689                 | 12.60%                            |
| <b>238210</b> | Electrical Contractors and Other Wiring Installation Contractors                                | \$115,172,013                 | 11.90%                            |
| <b>236220</b> | Commercial and Institutional Building Construction  | \$70,355,861                  | 7.30%                             |
| <b>238990</b> | All Other Specialty Trade Contractors   | \$66,668,705                  | 6.90%                             |
| <b>238110</b> | Poured Concrete Foundation and Structure Contractors  | \$60,730,715                  | 6.30%                             |
| <b>238910</b> | Site Preparation Contractors  | \$41,624,000                  | 4.30%                             |
| <b>541330</b> | Engineering Services  | \$32,120,279                  | 3.30%                             |
| <b>484110</b> | General Freight Trucking, Local   | \$31,323,121                  | 3.20%                             |
| <b>237110</b> | Water and Sewer Line and Related Structures Construction  | \$31,255,222                  | 3.20%                             |
| <b>423840</b> | Industrial Supplies Merchant Wholesalers  | \$25,648,789                  | 2.60%                             |
| <b>238140</b> | Masonry Contractors   | \$24,015,366                  | 2.50%                             |
| <b>238120</b> | Structural Steel and Precast Concrete Contractors   | \$15,421,294                  | 1.60%                             |
| <b>562910</b> | Remediation Services  | \$11,511,131                  | 1.20%                             |
| <b>424720</b> | Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)      | \$11,443,066                  | 1.20%                             |
| <b>332911</b> | Industrial Valve Manufacturing  | \$11,066,861                  | 1.10%                             |
| <b>423610</b> | Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers | \$10,287,975                  | 1.10%                             |
| <b>484220</b> | Specialized Freight (except Used Goods) Trucking, Local   | \$7,933,798                   | 0.80%                             |
| <b>238130</b> | Framing Contractors   | \$7,556,927                   | 0.80%                             |
| <b>238320</b> | Painting and Wall Covering Contractors  | \$6,460,408                   | 0.70%                             |
| <b>561730</b> | Landscaping Services  | \$5,742,715                   | 0.60%                             |
| <b>562219</b> | Other Nonhazardous Waste Treatment and Disposal   | \$5,665,015                   | 0.60%                             |
| <b>238160</b> | Roofing Contractors   | \$5,537,369                   | 0.60%                             |
| <b>332312</b> | Fabricated Structural Metal Manufacturing   | \$5,289,732                   | 0.50%                             |
| <b>332996</b> | Fabricated Pipe and Pipe Fitting Manufacturing  | \$4,924,200                   | 0.50%                             |
| <b>237990</b> | Other Heavy and Civil Engineering   | \$733,849                     | 0.10%                             |

| NAICS        | NAICS Code Description | Total Contract Dollars  | Pct Total Contract Dollars |
|--------------|------------------------|-------------------------|----------------------------|
|              | Construction           |                         |                            |
| <b>TOTAL</b> |                        | <b>\$969,288,356.00</b> | <b>100.00%</b>             |

Source: CHA analysis of MWRD data.

Tables 7a through 7d present the paid contract dollars (total dollars and share of total dollars) by NAICS codes for all industries, this time disaggregated by race and gender.

**Table 7a: Distribution of Contract Dollars by Race and Gender, All Sectors (total dollars)**

| NAICS        | Black                  | Hispanic                | Asian                  | Native American    | White Women             | Non-M/WBE               |
|--------------|------------------------|-------------------------|------------------------|--------------------|-------------------------|-------------------------|
| 236220       | \$933,747              | \$0                     | \$0                    | \$0                | \$703,552               | \$68,718,563            |
| 237110       | \$0                    | \$72,720                | \$18,326,385           | \$0                | \$10,207,569            | \$2,648,548.00          |
| 237310       | \$3,614,728            | \$8,002,400             | \$6,499,770            | \$0                | \$965,781               | \$219,430,574.00        |
| 237990       | \$460,080              | \$0                     | \$0                    | \$0                | \$0                     | \$273,770.00            |
| 238110       | \$29,154,461           | \$27,533,050            | \$47,617               | \$0                | \$2,454,079             | \$1,541,508.00          |
| 238120       | \$0                    | \$89,660                | \$0                    | \$0                | \$13,863,139            | \$1,468,495.00          |
| 238130       | \$0                    | \$0                     | \$0                    | \$0                | \$7,235,338             | \$321,588.00            |
| 238140       | \$14,784,499           | \$3,146,131             | \$0                    | \$0                | \$175,746               | \$5,908,989.00          |
| 238160       | \$0                    | \$580,000               | \$0                    | \$0                | \$0                     | \$4,957,369.00          |
| 238210       | \$4,214,000            | \$9,722,134             | \$0                    | \$0                | \$10,642,378            | \$90,593,502.00         |
| 238220       | \$286,360              | \$7,018,700             | \$54,475               | \$0                | \$8,641,956             | \$106,285,198.00        |
| 238320       | \$16,832               | \$2,098,381             | \$0                    | \$0                | \$3,620,113             | \$725,082.00            |
| 238910       | \$728,354              | \$842,706               | \$                     | \$0                | \$756,990               | \$39,295,949.00         |
| 238990       | \$0                    | \$17,095,413            | \$129,048              | \$37,781           | \$11,076,730            | \$38,329,733.00         |
| 332312       | \$0                    | \$0                     | \$0                    | \$0                | \$1,105,979             | \$4,183,752.00          |
| 332911       | \$0                    | \$0                     | \$0                    | \$0                | \$0                     | \$11,066,861.00         |
| 332996       | \$0                    | \$4,887,201             | \$0                    | \$0                | \$0                     | \$36,999.00             |
| 423610       | \$0                    | \$0                     | \$0                    | \$0                | \$9,982,842             | \$305,133.00            |
| 423840       | \$0                    | \$21,419,635            | \$0                    | \$0                | \$3,899,839             | \$329,314.00            |
| 424720       | \$0                    | \$349,725               | \$10,490,856           | \$0                | \$601,333               | \$1,151.00              |
| 484110       | \$3,162,336            | \$12,891,650            | \$0                    | \$0                | \$13,848,086            | \$1,421,049.00          |
| 484220       | \$6,388,908            | \$1,215,683             | \$199,770              | \$0                | \$129,437               | \$0                     |
| 541330       | \$368,495              | \$536,651               | \$5,852,495            | \$0                | \$2,506,758             | \$22,855,880.00         |
| 561730       | \$141,758              | \$348,729               | \$0                    | \$0                | \$2,750,391             | \$2,501,837.00          |
| 562219       | \$697,108              | \$0                     | \$0                    | \$0                | \$0                     | \$4,967,907.00          |
| 562910       | \$388,893              | \$4,149,256             | \$530,545              | \$0                | \$0                     | \$6,442,437.00          |
|              |                        |                         |                        |                    |                         |                         |
| <b>Total</b> | <b>\$65,340,559.00</b> | <b>\$121,999,827.00</b> | <b>\$42,130,961.00</b> | <b>\$37,781.00</b> | <b>\$105,168,038.00</b> | <b>\$634,611,189.00</b> |

Source: CHA analysis of MWRD data.

**Table 7b: Distribution of Contract Dollars by Race and Gender, All Sectors  
(share of total dollars)**

| NAICS        | Black        | Hispanic      | Asian        | Native American | White Women   | Non-M/WBE     |
|--------------|--------------|---------------|--------------|-----------------|---------------|---------------|
| 236220       | 1.33%        | 0.00%         | 0.00%        | 0.00%           | 1.00%         | 97.67%        |
| 237110       | 0.00%        | 0.23%         | 58.63%       | 0.00%           | 32.66%        | 8.47%         |
| 237310       | 1.52%        | 3.36%         | 2.73%        | 0.00%           | 0.40%         | 92.00%        |
| 237990       | 62.69%       | 0.00%         | 0.00%        | 0.00%           | 0.00%         | 37.31%        |
| 238110       | 48.01%       | 45.34%        | 0.08%        | 0.00%           | 4.04%         | 2.54%         |
| 238120       | 0.00%        | 0.58%         | 0.00%        | 0.00%           | 89.90%        | 9.52%         |
| 238130       | 0.00%        | 0.00%         | 0.00%        | 0.00%           | 95.74%        | 4.26%         |
| 238140       | 61.56%       | 13.10%        | 0.00%        | 0.00%           | 0.73%         | 24.61%        |
| 238160       | 0.00%        | 10.47%        | 0.00%        | 0.00%           | 0.00%         | 89.53%        |
| 238210       | 3.66%        | 8.44%         | 0.00%        | 0.00%           | 9.24%         | 78.66%        |
| 238220       | 0.23%        | 5.74%         | 0.04%        | 0.00%           | 7.07%         | 86.91%        |
| 238320       | 0.26%        | 32.48%        | 0.00%        | 0.00%           | 56.04%        | 11.22%        |
| 238910       | 1.75%        | 2.02%         | 0.00%        | 0.00%           | 1.82%         | 94.41%        |
| 238990       | 0.00%        | 25.64%        | 0.19%        | 0.06%           | 16.61%        | 57.49%        |
| 332312       | 0.00%        | 0.00%         | 0.00%        | 0.00%           | 20.91%        | 79.09%        |
| 332911       | 0.00%        | 0.00%         | 0.00%        | 0.00%           | 0.00%         | 100.00%       |
| 332996       | 0.00%        | 99.25%        | 0.00%        | 0.00%           | 0.00%         | 0.75%         |
| 423610       | 0.00%        | 0.00%         | 0.00%        | 0.00%           | 97.03%        | 2.97%         |
| 423840       | 0.00%        | 83.51%        | 0.00%        | 0.00%           | 15.20%        | 1.28%         |
| 424720       | 0.00%        | 3.06%         | 91.68%       | 0.00%           | 5.25%         | 0.01%         |
| 484110       | 10.10%       | 41.16%        | 0.00%        | 0.00%           | 44.21%        | 4.54%         |
| 484220       | 80.53%       | 15.32%        | 2.52%        | 0.00%           | 1.63%         | 0.00%         |
| 541330       | 1.15%        | 1.67%         | 18.22%       | 0.00%           | 7.80%         | 71.16%        |
| 561730       | 2.47%        | 6.07%         | 0.00%        | 0.00%           | 47.89%        | 43.57%        |
| 562219       | 12.31%       | 0.00%         | 0.00%        | 0.00%           | 0.00%         | 87.69%        |
| 562910       | 3.38%        | 36.05%        | 4.61%        | 0.00%           | 0.00%         | 55.97%        |
|              |              |               |              |                 |               |               |
| <b>TOTAL</b> | <b>6.74%</b> | <b>12.59%</b> | <b>4.35%</b> | <b>0.00%</b>    | <b>10.85%</b> | <b>65.47%</b> |

Source: CHA analysis of MWRD data.

**Table 7c: Distribution of Contract Dollars by Race and Gender, All Sectors  
(M/WBE, Non-M/WBE, Total)  
(total dollars)**

| NAICS  | MBE             | M/WBE           | Non-M/WBE        | Total            |
|--------|-----------------|-----------------|------------------|------------------|
| 236220 | \$933,747.00    | \$1,637,299.00  | \$68,718,563.00  | \$70,355,861.00  |
| 237110 | \$18,399,105.00 | \$28,606,674.00 | \$2,648,548.00   | \$31,255,222.00  |
| 237310 | \$18,116,899.00 | \$19,082,680.00 | \$219,430,574.00 | \$238,513,254.00 |
| 237990 | \$460,080.00    | \$460,080.00    | \$273,770.00     | \$733,849.00     |
| 238110 | \$56,735,128.00 | \$59,189,207.00 | \$1,541,508.00   | \$60,730,715.00  |
| 238120 | \$89,660.00     | \$13,952,799.00 | \$1,468,495.00   | \$15,421,294.00  |
| 238130 | \$0.00          | \$7,235,338.00  | \$321,588.00     | \$7,556,927.00   |
| 238140 | \$17,930,630.00 | \$18,106,377.00 | \$5,908,989.00   | \$24,015,366.00  |
| 238160 | \$580,000.00    | \$580,000.00    | \$4,957,369.00   | \$5,537,369.00   |
| 238210 | \$13,936,134.00 | \$24,578,512.00 | \$90,593,502.00  | \$115,172,013.00 |
| 238220 | \$7,359,534.00  | \$16,001,490.00 | \$106,285,198.00 | \$122,286,689.00 |



| NAICS        | MBE                     | M/WBE                   | Non-M/WBE               | Total                   |
|--------------|-------------------------|-------------------------|-------------------------|-------------------------|
| 238320       | \$2,115,213.00          | \$5,735,327.00          | \$725,082.00            | \$6,460,408.00          |
| 238910       | \$1,571,061.00          | \$2,328,051.00          | \$39,295,949.00         | \$41,624,000.00         |
| 238990       | \$17,262,243.00         | \$28,338,972.00         | \$38,329,733.00         | \$66,668,705.00         |
| 332312       | \$0.00                  | \$1,105,979.00          | \$4,183,752.00          | \$5,289,732.00          |
| 332911       | \$0.00                  | \$0.00                  | \$11,066,861.00         | \$11,066,861.00         |
| 332996       | \$4,887,201.00          | \$4,887,201.00          | \$36,999.00             | \$4,924,200.00          |
| 423610       | \$0.00                  | \$9,982,842.00          | \$305,133.00            | \$10,287,975.00         |
| 423840       | \$21,419,635.00         | \$25,319,475.00         | \$329,314.00            | \$25,648,789.00         |
| 424720       | \$10,840,581.00         | \$11,441,914.00         | \$1,151.00              | \$11,443,066.00         |
| 484110       | \$16,053,986.00         | \$29,902,072.00         | \$1,421,049.00          | \$31,323,121.00         |
| 484220       | \$7,804,361.00          | \$7,933,798.00          | \$0.00                  | \$7,933,798.00          |
| 541330       | \$6,757,641.00          | \$9,264,399.00          | \$22,855,880.00         | \$32,120,279.00         |
| 561730       | \$490,487.00            | \$3,240,878.00          | \$2,501,837.00          | \$5,742,715.00          |
| 562219       | \$697,108.00            | \$697,108.00            | \$4,967,907.00          | \$5,665,015.00          |
| 562910       | \$5,068,694.00          | \$5,068,694.00          | \$6,442,437.00          | \$11,511,131.00         |
|              |                         |                         |                         |                         |
| <b>TOTAL</b> | <b>\$229,509,128.00</b> | <b>\$334,677,166.00</b> | <b>\$634,611,189.00</b> | <b>\$969,288,356.00</b> |

Source: CHA analysis of MWRD data.

**Table 7d: Distribution of Contract Dollars by Race and Gender, All Sectors  
(M/WDBE, Non-M/WBE, Total)  
(share of total dollars)**

| NAICS  | MBE    | M/WBE   | Non-M/WBE | Total   |
|--------|--------|---------|-----------|---------|
| 236220 | 1.33%  | 2.33%   | 97.67%    | 100.00% |
| 237110 | 58.87% | 91.53%  | 8.47%     | 100.00% |
| 237310 | 7.60%  | 8.00%   | 92.00%    | 100.00% |
| 237990 | 62.69% | 62.69%  | 37.31%    | 100.00% |
| 238110 | 93.42% | 97.46%  | 2.54%     | 100.00% |
| 238120 | 0.58%  | 90.48%  | 9.52%     | 100.00% |
| 238130 | 0.00%  | 95.74%  | 4.26%     | 100.00% |
| 238140 | 74.66% | 75.39%  | 24.61%    | 100.00% |
| 238160 | 10.47% | 10.47%  | 89.53%    | 100.00% |
| 238210 | 12.10% | 21.34%  | 78.66%    | 100.00% |
| 238220 | 6.02%  | 13.09%  | 86.91%    | 100.00% |
| 238320 | 32.74% | 88.78%  | 11.22%    | 100.00% |
| 238910 | 3.77%  | 5.59%   | 94.41%    | 100.00% |
| 238990 | 25.89% | 42.51%  | 57.49%    | 100.00% |
| 332312 | 0.00%  | 20.91%  | 79.09%    | 100.00% |
| 332911 | 0.00%  | 0.00%   | 100.00%   | 100.00% |
| 332996 | 99.25% | 99.25%  | 0.75%     | 100.00% |
| 423610 | 0.00%  | 97.03%  | 2.97%     | 100.00% |
| 423840 | 83.51% | 98.72%  | 1.28%     | 100.00% |
| 424720 | 94.73% | 99.99%  | 0.01%     | 100.00% |
| 484110 | 51.25% | 95.46%  | 4.54%     | 100.00% |
| 484220 | 98.37% | 100.00% | 0.00%     | 100.00% |
| 541330 | 21.04% | 28.84%  | 71.16%    | 100.00% |
| 561730 | 8.54%  | 56.43%  | 43.57%    | 100.00% |
| 562219 | 12.31% | 12.31%  | 87.69%    | 100.00% |



| NAICS        | MBE           | M/WBE         | Non-M/WBE     | Total          |
|--------------|---------------|---------------|---------------|----------------|
| 562910       | 44.03%        | 44.03%        | 55.97%        | 100.00%        |
|              |               |               |               |                |
| <b>TOTAL</b> | <b>23.68%</b> | <b>34.53%</b> | <b>65.47%</b> | <b>100.00%</b> |

Source: CHA analysis of MWRD data.

## D. The Availability of Minority- and Women-Owned Business Enterprises in MWRD's Markets

### 1. Methodological Framework

Estimates of the availability of minority- and female-owned firms in the District's market area are a critical component of the analysis of possible barriers to equal opportunities to participate in the agency's contracting activities. These availability estimates are compared to the utilization percentage of dollars received by M/WBEs to examine whether these firms receive parity.<sup>156</sup> Availability estimates are also required to set narrowly tailored contract goals.

We applied the "custom census" approach to estimating availability. As recognized by Illinois courts and the National Model Disparity Study Guidelines,<sup>157</sup> this methodology is superior to the other methods for at least four reasons.

- First, it provides an internally consistent and rigorous "apples to apples" comparison between firms in the availability numerator and those in the denominator. Other approaches often have different definitions for the firms in the numerator (e.g., certified M/WBEs) and the denominator (e.g., registered vendors).
- Next, by examining a comprehensive group of firms, it "casts a broader net" beyond those known to the agency. As recognized by the Seventh Circuit, this comports with the remedial nature of contracting affirmative action programs by seeking to bring in businesses that have historically been excluded. A custom census is less likely to be tainted by the effects of past and present discrimination than other methods, such as bidders lists, because it seeks out firms in the agency's markets areas that have not been able to access its opportunities.

<sup>156</sup> For our analysis, the term "DBE" includes firms that are certified by the Illinois Unified Certification Program and firms that are not certified. As discussed in Chapter II, the inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts that supports the remedial nature of the programs. See *Northern Contracting, Inc. v. Department of Transportation*, 473 F.3d 715, 723 (7<sup>th</sup> Cir. 2007) (The "remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net.").

<sup>157</sup> National Disparity Study Guidelines, pp.57-58.

- Third, this approach is less impacted by variables affected by discrimination. Factors such as firm age, size, qualifications and experience are all elements of business success where discrimination would be manifested. Most courts have held that the results of discrimination— which impact factors affecting capacity— should not be the benchmark for a program designed to ameliorate the effects of discrimination. They have acknowledged that minority and women firms may be smaller, newer, and otherwise less competitive than non-DBEs because of the very discrimination sought to be remedied by race-conscious contracting programs. Racial and gender differences in these “capacity” factors are the *outcomes* of discrimination and it is therefore inappropriate as a matter of economics and statistics to use them as “control” variables in a disparity study.<sup>158</sup>
- Fourth, it has been upheld by every court that has reviewed it, including in the successful defenses of the Illinois Tollway’s DBE program,<sup>159</sup> the Illinois Department of Transportation’s DBE program,<sup>160</sup> and the M/WBE construction program for the City of Chicago.<sup>161</sup>

## 2. Estimation of M/WBE Availability

To conduct the custom census for this study, we took the following steps:

1. Created a database of representative, recent, and completed stated contracts;
2. Identified MWRD’s relevant geographic market by counties;
3. Identified MWRD’s relevant product market by 6-digit NAICS codes;
4. Counted all businesses in the relevant markets using Dun & Bradstreet/Hoovers databases;
5. Identified listed minority-owned and female-owned businesses in the relevant markets; and
6. Assigned ownership status to all other firms in the relevant markets.

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<sup>158</sup> For a detailed discussion of the role of capacity in disparity studies, see the National Disparity Study Guidelines, Appendix B, “Understanding Capacity.”

<sup>159</sup> *Midwest Fence, Corp. v. U.S. Department of Transportation et al*, 1:10-cv-05627 (N. Dist. Ill., March 24, 2015).

<sup>160</sup> *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7<sup>th</sup> Cir. 2007).

<sup>161</sup> *Builders Association of Greater Chicago v. City of Chicago*, 298 F. Supp.2d 725 (N.D. Ill. 2003).

As described in sections B and C of this Chapter, we first determined MWRD's market area and its utilization of firms by 6-digit NAICS codes, aggregated industries and total dollars spent. Based on these results, the share of total dollars spent in each NAICS code for firms in the market area was used to create the overall M/WBE availability estimate for each NAICS code, the availability estimates for each aggregated industry and the availability estimates for all industries.

We purchased the firm information from Hoovers for the firms in the NAICS codes located in the District's market area. Hoovers, a Dun & Bradstreet company, maintains a comprehensive, extensive and regularly updated listing of all firms conducting business. The database includes a vast amount of information on each firm, including location and detailed industry codes, and is the broadest publicly available data source for firm information.

In past years, the data from Hoovers (then Dun & Bradstreet) contained detailed information on the racial identity of the owner(s) of firm. However, recently Hoovers changed its practice and currently, the data simply identify a firm as being minority-owned.<sup>162</sup> This change required us to revise our approach to determining the racial identity of firms' ownership so as to provide narrowly tailored and accurate analyses concerning possible disparity in an agency's contracting practices.

To provide race detail and improve the accuracy of the race and sex assignments, we created a Master D/M/WBE Directory that combined the results of an exhaustive search for directories and other lists containing information about minority and women-owned businesses. This included the Illinois Unified Certification Program; City of Chicago; Cook County; Illinois Department of Central Management Services; and many others. In total, we contacted 119 organizations for this Study. The resulting list of minority businesses is comprehensive and, provides data to supplement the Hoovers data base by disaggregating the broad category of "minority-owned" into specific racial groupings. The list of these groups is provided in Appendix A.

We used information from the Master Directory to estimate the specific racial identity of firms in the Hoovers database that are listed as minority-owned. The process involved the following steps:

1. Sort Hoovers by the 6-digit NAICS codes that comprise MWRD's product market area;
2. Identify the number of minority-owned firms in these NAICS codes;

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<sup>162</sup> The variable is labeled: "Is Minority Owned" and values for the variable can be either "yes" or "no".

3. Sort the Master Directory by each 6-digit NAICS code in MWRD's product market area;
4. Determine the number of firms in each NAICS code that are minority owned (some firms in the Master Directory are woman-owned firms);
5. Determine the percentage of the minority-owned firms that are owned by:
  - a. Blacks
  - b. Hispanics
  - c. Asians
  - d. Native Americans; and
6. Apply these percentages to the number of minority-owned firms in Hoovers.

Below is an example of how this process works after Hoovers and the Master Directory have been sorted and the number of minority-owned firms in each NAICS code has been identified in Hoovers:

1. Hoovers data base (basic counts in original)

| NAICS | Is Minority Owned | Total Firms (Overall) |
|-------|-------------------|-----------------------|
| 99999 | 200               | 2000                  |

2. Master Directory (basic count in original)

| NAICS | Black | Hispanic | Asian | Native American | Total |
|-------|-------|----------|-------|-----------------|-------|
| 99999 | 40    | 20       | 4     | 16              | 80    |

3. Master Directory (percentages)

| NAICS | Black | Hispanic | Asian | Native American | Total |
|-------|-------|----------|-------|-----------------|-------|
| 99999 | 50%   | 25%      | 5%    | 20%             | 100%  |

4. Hoovers data base (with Master Directory percentages applied)

| NAICS | Black | Hispanic | Asian | Native American | Is Minority-Owned | Total Firms (Overall) |
|-------|-------|----------|-------|-----------------|-------------------|-----------------------|
| 99999 | 100   | 50       | 10    | 40              | 200               | 2000                  |

An important element to determining availability is to properly assign a race and gender label to each firm owner. As discussed above, we took the answers that Hoovers provides to two broad questions (“Is the firm minority-owned” and “Is the firm female-owned”) and disaggregated the responses to the “minority owned” question into specific racial categories. However, another concern is that firm ownership has been racially misclassified. There can be three sources of the misclassification: 1. A firm that has been classified as non-M/WBE owned is actually M/WBE owned. 2. A firm that has been classified as M/WBE owned is actually non-M/WBE owned. 3. A firm that has been classified as a particular type of M/WBE firm (e.g., Black) is actually another type of M/WBE firm (e.g., Hispanic).

Based upon the results of these classifications and further assignments, we estimated the availability of M/WBEs as a percentage of total firms. M/WBE unweighted availability is defined as the number of M/WBEs divided by the total number of firms in the District’s market area.

Table 10 presents data on the unweighted availability by race and gender and by NAICS codes for all industries in the product market.

**Table 10: Unweighted Availability, All Sectors**

| NAICS  | Black  | Hispanic | Asian | Native American | White Women | M/WBE  | Non-M/WBE | Total   |
|--------|--------|----------|-------|-----------------|-------------|--------|-----------|---------|
| 236220 | 8.90%  | 7.19%    | 3.91% | 0.17%           | 9.41%       | 29.58% | 70.42%    | 100.00% |
| 237110 | 4.58%  | 6.03%    | 3.24% | 0.04%           | 13.89%      | 27.78% | 72.22%    | 100.00% |
| 237310 | 7.50%  | 10.31%   | 3.20% | 0.05%           | 8.50%       | 29.56% | 70.44%    | 100.00% |
| 237990 | 4.23%  | 1.88%    | 2.57% | 0.02%           | 10.87%      | 19.57% | 80.43%    | 100.00% |
| 238110 | 6.47%  | 5.82%    | 1.43% | 0.05%           | 7.21%       | 20.98% | 79.02%    | 100.00% |
| 238120 | 11.12% | 9.22%    | 1.39% | 0.06%           | 17.95%      | 39.74% | 60.26%    | 100.00% |
| 238130 | 2.83%  | 2.56%    | 0.74% | 0.15%           | 3.79%       | 10.07% | 89.93%    | 100.00% |
| 238140 | 4.59%  | 3.51%    | 1.07% | 0.04%           | 7.50%       | 16.70% | 83.30%    | 100.00% |
| 238160 | 2.58%  | 1.86%    | 0.93% | 0.17%           | 3.79%       | 9.33%  | 90.67%    | 100.00% |
| 238210 | 4.80%  | 2.85%    | 1.56% | 0.04%           | 10.63%      | 19.87% | 80.13%    | 100.00% |
| 238220 | 2.52%  | 1.73%    | 0.72% | 0.03%           | 5.05%       | 10.04% | 89.96%    | 100.00% |
| 238320 | 2.88%  | 1.99%    | 0.67% | 0.02%           | 5.68%       | 11.23% | 88.77%    | 100.00% |
| 238910 | 6.82%  | 7.20%    | 2.27% | 0.06%           | 10.58%      | 26.92% | 73.08%    | 100.00% |
| 238990 | 2.22%  | 2.27%    | 0.92% | 0.21%           | 6.16%       | 11.78% | 88.22%    | 100.00% |
| 332312 | 3.97%  | 5.24%    | 1.36% | 0.06%           | 10.00%      | 20.63% | 79.38%    | 100.00% |
| 332911 | 0.00%  | 0.00%    | 4.17% | 0.00%           | 16.67%      | 20.83% | 79.17%    | 100.00% |
| 332996 | 0.00%  | 4.17%    | 0.00% | 0.00%           | 8.33%       | 12.50% | 87.50%    | 100.00% |
| 423610 | 3.40%  | 2.40%    | 1.50% | 0.04%           | 9.98%       | 17.31% | 82.69%    | 100.00% |
| 423840 | 2.74%  | 2.35%    | 1.25% | 0.22%           | 7.98%       | 14.54% | 85.46%    | 100.00% |
| 424720 | 4.02%  | 3.66%    | 1.82% | 0.04%           | 5.03%       | 14.57% | 85.43%    | 100.00% |
| 484110 | 2.45%  | 1.90%    | 0.72% | 0.03%           | 4.25%       | 9.35%  | 90.65%    | 100.00% |
| 484220 | 16.28% | 33.27%   | 2.15% | 0.06%           | 11.40%      | 63.16% | 36.84%    | 100.00% |
| 541330 | 6.36%  | 4.67%    | 6.80% | 0.13%           | 6.88%       | 24.84% | 75.16%    | 100.00% |
| 561730 | 3.33%  | 3.00%    | 0.81% | 0.03%           | 5.86%       | 13.03% | 86.97%    | 100.00% |
| 562219 | 1.29%  | 1.06%    | 0.52% | 0.02%           | 4.35%       | 7.25%  | 92.75%    | 100.00% |

| NAICS         | Black        | Hispanic     | Asian        | Native American | White Women  | M/WBE         | Non-M/WBE     | Total          |
|---------------|--------------|--------------|--------------|-----------------|--------------|---------------|---------------|----------------|
| <b>562910</b> | 17.25%       | 20.07%       | 6.17%        | 0.10%           | 6.41%        | 50.00%        | 50.00%        | 100.00%        |
|               |              |              |              |                 |              |               |               |                |
| <b>Total</b>  | <b>4.09%</b> | <b>3.55%</b> | <b>1.71%</b> | <b>0.07%</b>    | <b>6.70%</b> | <b>16.12%</b> | <b>83.88%</b> | <b>100.00%</b> |

Source: CHA analysis of MWRD data.

To further meet the constitutional requirement that the availability estimates that will be used to set goals are narrowly tailored, we then weighted the availability estimate for each of the aggregated industries in the NAICS codes by the share of MWRD's spending in each code. Table 11 presents these weights.

**Table 11: Share of MWRD Spending by NAICS Code, All Sectors**

| NAICS         | NAICS Code Description  | WEIGHT (PCT SHARE of TOTAL SECTOR DOLLARS) |
|---------------|---|--|
| <b>237310</b> | Highway, Street, and Bridge Construction  | 24.60%                                     |
| <b>238220</b> | Plumbing, Heating, and Air-Conditioning Contractors   | 12.60%                                     |
| <b>238210</b> | Electrical Contractors and Other Wiring Installation Contractors                                | 11.90%                                     |
| <b>236220</b> | Commercial and Institutional Building Construction  | 7.30%                                      |
| <b>238990</b> | All Other Specialty Trade Contractors   | 6.90%                                      |
| <b>238110</b> | Poured Concrete Foundation and Structure Contractors  | 6.30%                                      |
| <b>238910</b> | Site Preparation Contractors  | 4.30%                                      |
| <b>541330</b> | Engineering Services  | 3.30%                                      |
| <b>484110</b> | General Freight Trucking, Local   | 3.20%                                      |
| <b>237110</b> | Water and Sewer Line and Related Structures Construction  | 3.20%                                      |
| <b>423840</b> | Industrial Supplies Merchant Wholesalers  | 2.60%                                      |
| <b>238140</b> | Masonry Contractors   | 2.50%                                      |
| <b>238120</b> | Structural Steel and Precast Concrete Contractors   | 1.60%                                      |
| <b>562910</b> | Remediation Services  | 1.20%                                      |
| <b>424720</b> | Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)      | 1.20%                                      |
| <b>332911</b> | Industrial Valve Manufacturing  | 1.10%                                      |
| <b>423610</b> | Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers | 1.10%                                      |
| <b>484220</b> | Specialized Freight (except Used Goods) Trucking, Local   | 0.80%                                      |
| <b>238130</b> | Framing Contractors   | 0.80%                                      |

| NAICS        | NAICS Code Description                             | WEIGHT<br>(PCT<br>SHARE of<br>TOTAL<br>SECTOR<br>DOLLARS) |
|--------------|--|---|
| 238320       | Painting and Wall Covering Contractors             | 0.70%   |
| 561730       | Landscaping Services                               | 0.60%   |
| 562219       | Other Nonhazardous Waste Treatment<br>and Disposal | 0.60%   |
| 238160       | Roofing Contractors                                | 0.60%   |
| 332312       | Fabricated Structural Metal Manufacturing          | 0.50%   |
| 332996       | Fabricated Pipe and Pipe Fitting<br>Manufacturing  | 0.50%   |
| 237990       | Other Heavy and Civil Engineering<br>Construction  | 0.10%   |
|              |  |   |
| <b>TOTAL</b> |  | <b>100.00%</b>  |

Source: CHA analysis of MWRD data.

Table 12 presents the final estimates of the weighted averages of all the individual 6-digit level availability estimates in the District's market area. These weighted availability estimates can be used to set an overall MBE and a WBE goal for District procurement.

**Table 12: Aggregated Weighted Availability, All Sectors  
(total dollars)**

| NAICS        | Black | Hispanic | Asian | Native<br>American | White<br>Women | M/WBE  | Non-<br>M/WBE | Total   |
|--------------|-------|----------|-------|--------------------|----------------|--------|---------------|---------|
| <b>TOTAL</b> | 5.56% | 5.85%    | 2.24% | 0.07%              | 8.28%          | 22.00% | 78.00%        | 100.00% |

Source: CHA analysis of MWRD data.

## **E. Analysis of Race and Gender Disparities in MWRD's Utilization of M/WBEs**

To meet the strict scrutiny requirement that the District consider evidence of disparities to establish its compelling interest in remedying discrimination in its market area, we next calculated disparity ratios for total M/WBE utilization compared to the total weighted availability of M/WBEs, measured in dollars paid. Tables 13 through provides the results of our analysis.

A "large" or "substantively significant" disparity is commonly defined by courts as utilization that is equal to or less than 80 percent of the availability measure. A substantively significant disparity supports the inference that the result may be caused by the disparate impacts of discrimination.<sup>163</sup> A statistically significant

<sup>163</sup> See U.S. Equal Opportunity Employment Commission regulation, 29 C.F.R. § 1607.4(D) ("A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty

disparity means that an outcome is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from random chance alone. One asterisk indicates substantive significance. Two asterisks indicates statistical significance. A more in depth discussion of statistical significance is provided in Appendix D.

**Table 13: Disparity Ratios by Demographic Group,  
All Sectors**

|                        | <b>Disparity Ratio</b> |
|------------------------|------------------------|
| <b>Black</b>           | 120.49%                |
| <b>Hispanic</b>        | 215.34%                |
| <b>Asian</b>           | 192.03%                |
| <b>Native American</b> | 0.00%*                 |
| <b>White Women</b>     | 286.31%**              |
| <b>M/WBE</b>           | 156.80%**              |
| <b>Non-M/WBE</b>       | 83.98%                 |

Source: CHA analysis of MWRD data.

**Table 14: Disparity Ratios by Demographic Group,  
Construction**

|                        | <b>Disparity Ratio</b> |
|------------------------|------------------------|
| <b>Black</b>           | 131.93%                |
| <b>Hispanic</b>        | 176.58%                |
| <b>Asian</b>           | 142.54%                |
| <b>Native American</b> | 6.41%*                 |
| <b>White Women</b>     | 251.04%**              |
| <b>M/WBE</b>           | 145.96%**              |
| <b>Non-M/WBE</b>       | 87.02%                 |

Source: CHA analysis of MWRD data.

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percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).



**Table 15: Disparity Ratios by Demographic Group,  
Construction-related Services**

|                        | <b>Disparity Ratio</b> |
|------------------------|------------------------|
| <b>Black</b>           | 18.80%*                |
| <b>Hispanic</b>        | 122.94%                |
| <b>Asian</b>           | 220.63%                |
| <b>Native American</b> | 0.00%*                 |
| <b>White Women</b>     | 401.30%**              |
| <b>M/WBE</b>           | 104.37%                |
| <b>Non-M/WBE</b>       | 97.99%                 |

Source: CHA analysis of MWRD data.

**Table 16: Disparity Ratios by Demographic Group,  
Goods**

|                        | <b>Disparity Ratio</b> |
|------------------------|------------------------|
| <b>Black</b>           | 0.00%*                 |
| <b>Hispanic</b>        | 1772.85%**             |
| <b>Asian</b>           | 986.67%                |
| <b>Native American</b> | 0.00%*                 |
| <b>White Women</b>     | 687.24%**              |
| <b>M/WBE</b>           | 454.41%**              |
| <b>Non-M/WBE</b>       | 31.90%*                |

Source: CHA analysis of MWRD data.

**Table 17: Disparity Ratios by Demographic Group,  
Goods**

|                        | <b>Disparity Ratio</b> |
|------------------------|------------------------|
| <b>Black</b>           | 953.07%                |
| <b>Hispanic</b>        | 0.00%*                 |
| <b>Asian</b>           | 0.00%*                 |
| <b>Native American</b> | 0.00%*                 |
| <b>White Women</b>     | 0.00%*                 |
| <b>M/WBE</b>           | 169.82%                |
| <b>Non-M/WBE</b>       | 94.55%                 |

Source: CHA analysis of MWRD data.

Source: CHA analysis of MWRD data.

## V. ANALYSIS OF DISPARITIES IN THE ILLINOIS ECONOMY

### A. Introduction

Nobel Laureate Kenneth Arrow, in his seminal paper on the economic analysis of discrimination, observed:

Racial discrimination pervades every aspect of a society in which it is found. It is found above all in attitudes of both races, but also in social relations, in intermarriage, in residential location, and frequently in legal barriers. It is also found in levels of economic accomplishment; this is income, wages, prices paid and credit extended.<sup>164</sup>

This Chapter explores the data and literature relevant to how discrimination in the District's market and throughout the wider economy affects the ability of minorities and women to fairly and fully engage in MWRD contract opportunities. First, we analyzed the rates at which M/WBEs in Illinois form firms and their earnings from those firms. Next, we summarize the literature on barriers to equal access to commercial credit. Finally, we summarize the literature on barriers to equal access to human capital. All three types of evidence have been found by the courts to be relevant and probative of whether a government will be a passive participant in discrimination without some type of affirmative interventions.

A key element to determine the need for government intervention through contract goals in the sectors of the economy where the District procures goods and services is an analysis of the extent of disparities in those sectors independent of the agency's intervention through its contracting affirmative action programs. The courts have repeatedly held that analysis of disparities in the rates at which minority- and women-owned business enterprises ("M/WBEs") in the government's markets form businesses compared to similar non-M/WBEs, and their earnings from such businesses, are highly relevant to the determination whether the market functions properly for all firms regardless of the race or gender of their ownership.<sup>165</sup>

The courts have repeatedly held that analysis of disparities in the rates at which M/WBEs in the government's markets form businesses compared to similar non-M/WBEs, their earnings from such businesses, and their access to capital markets are highly relevant to the determination whether the market functions properly for all firms regardless of the race or gender of their ownership. These

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<sup>164</sup> Arrow, Kenneth J., "What Has Economics to say about racial discrimination?", *Journal of Economic Perspectives*, (1998), 12(2), pp. 91-100.

<sup>165</sup> See the discussion in Chapter X of the legal standards applicable to contracting affirmative action programs.

analyses contributed to the successful defense of Chicago's construction program.<sup>166</sup> As explained by the Tenth Circuit, this type of evidence

demonstrates the existence of two kinds of discriminatory barriers to minority subcontracting enterprises, both of which show a strong link between racial disparities in the federal government's disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination. The first discriminatory barriers are to the formation of qualified minority subcontracting enterprises due to private discrimination, precluding from the outset competition for public construction contracts by minority enterprises. The second discriminatory barriers are to fair competition between minority and non-minority subcontracting enterprises, again due to private discrimination, precluding existing minority firms from effectively competing for public construction contracts. The government also presents further evidence in the form of local disparity studies of minority subcontracting and studies of local subcontracting markets after the removal of affirmative action programs.... The government's evidence is particularly striking in the area of the race-based denial of access to capital, without which the formation of minority subcontracting enterprises is stymied.<sup>167</sup>

Business discrimination studies and lending studies are relevant and probative because they show a strong link between the disbursement of public funds and the channeling of those funds due to private discrimination. "Evidence that private discrimination results in barriers to business formation is relevant because it demonstrates that M/WBEs are precluded *at the outset* from competing for public construction contracts. Evidence of barriers to fair competition is also relevant because it again demonstrates that *existing* M/WBEs are precluded from competing for public contracts."<sup>168</sup> Despite the contentions of plaintiffs that possibly dozens of factors might influence the ability of any individual to succeed in business, the courts have rejected such impossible tests and held that business formation studies are not flawed because they cannot control for subjective descriptions such as "quality of education," "culture" and "religion."

For example, in unanimously upholding the USDOT DBE Program, the courts agree that disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms and the disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners are strong evidence of the continuing effects of

<sup>166</sup> *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003) (holding that City of Chicago's M/WBE program for local construction contracts met compelling interest using this framework).

<sup>167</sup> *Adarand VII*, 228 F.3d at 1168-69.

<sup>168</sup> *Id.*

discrimination.<sup>169</sup> The Eighth Circuit Court of Appeals took a “hard look” at the evidence Congress considered, and concluded that the legislature had

spent decades compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority-owned construction businesses, and of barriers to entry. In rebuttal, [the plaintiffs] presented evidence that the data were susceptible to multiple interpretations, but they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to and participation in highway contracts. Thus, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.<sup>170</sup>

To conduct this type of court-approved economy-wide analysis, we utilized U.S. Bureau of the Census datasets to address the central question whether firms owned by non-Whites and White women face disparate treatment in MWRD’s marketplace.<sup>171</sup>

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

- The Census Bureau’s *Survey of Business Owners* allows us to examine disparities using individual firms as the basic unit of analysis.
- The Census Bureau’s *American Community Survey* allows us to examine disparities using individual entrepreneurs as the basic unit of analysis.<sup>172</sup>

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

## **B. Summary of Findings**

### **1. Disparities in Firm Sales and Payroll**

One way to measure equity is to examine the share of total sales and/or payroll a group has relative to its share of total firms. Parity would be represented by the ratio of sales or payroll share over the share of total firms equaling 100% (*i.e.*, a

<sup>169</sup> *Id.*; *Western States*, 407 F.3d at 993; *Northern Contracting I*, 2004 U.S. Dist. LEXIS 3226 at \*64.

<sup>170</sup> *Sherbrooke*, 345 F.3d. at 970; *see also Adarand VII*, 228 F.3d at 1175 (plaintiff has not met its burden “of introducing credible, particularized evidence to rebut the government’s initial showing of the existence of a compelling interest in remedying the nationwide effects of past and present discrimination in the federal construction procurement subcontracting market.”).

<sup>171</sup> While this is often described as a “private sector analysis,” a more accurate description is an “economy-wide” analysis because expenditures by the public sector are included in the Census databases.

<sup>172</sup> Data from 2007-2011 American Community Survey are the most recent for a five year period.

group has 10% of total sales and comprises 10% of all firms.) A ratio that is less than 100% indicates an underutilization of a demographic group, and a ratio of more than 100% indicates an overutilization of a demographic group. Table 1 presents data from the Census Bureau's Survey of Business Owners that indicate very large disparities between non-White and White women-owned firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), or the payroll of employer firms. In contrast, the firms that were not non-White and not White women-owned were overutilized using the identical metric.<sup>173</sup>

**Table 1. Disparity Ratios of Firm Utilization Measures  
All Industries,  
Survey of Business Owners, 2007**

|  | Ratio of Sales<br>to Number of<br>Firms<br>(All Firms) | Ratio of Sales to<br>Number of Firms<br>(Employer<br>Firms) | Ratio of<br>Payroll to<br>Number of<br>Employer<br>Firms |
|--|--|---|--|
| <b>Non-whites</b>                            | 11.2%  | 20.3%   | 28.0%  |
| <b>White Women</b>                           | 14.6%  | 20.5%   | 28.1%  |
| <b>Not<br/>Non-White/Not<br/>White Women</b> | 161.0%   | 124.3%  | 122.0%   |

Source: CHA Calculations from Survey of Business Owners

## 2. Disparities in Wages and Business Earnings

Another way to measure equity is to examine how the economic utilization of particular demographic groups compares to White men. Multiple regression statistical techniques allowed us to examine the impact of race and gender on economic outcome while controlling for other factors, such as education, that might impact outcomes.<sup>174</sup> Using these techniques and data from the Census Bureau's American Community Survey, we found that Blacks, Latinos, Native Americans, Asian/Pacific Islanders, Others, and White women were underutilized relative to White men: controlling for other factors relevant to business success, wages and business earnings were lower for these groups compared to White men. We report wages and business earnings because disparities in wages and business earnings can lead to disparities in business outcomes. These findings are presented in Table 2. Parity would exist if the figures in Table 2 were 0.0%; in other words, non-Whites and White women would be utilized identical to White men. When the Table indicates that the wage differential between Blacks and White men is -34.3%, for example, this means that wages received by Blacks are 34.3% less than wages received by similar White men. Because of these

<sup>173</sup> The Survey of Business Owners data available via American Fact Finder do not permit the use of regression analysis on these results.

<sup>174</sup> See Appendix A for more information on multiple regression statistical analysis.

disparities, the rates at which these groups formed businesses were lower than the business formation rate of similarly-situated White men.

**Table 2. Economic Outcome Differentials of Minorities and White Women  
Relative to White Males  
All Industries,  
American Community Survey, 2007-2011**

| Demographic Group      | Wages<br>Differentials<br>Relative to<br>White Men<br>(% Change) | Business<br>Earnings<br>Relative to<br>White Men<br>(% Change) |
|------------------------|--|--|
| Black                  | -34.3%   | -44.4%   |
| Latino                 | -12.1%   | -25.5%   |
| Native American        | -32.6%   | -49.3%   |
| Asian/Pacific Islander | -30.5%   | -24.2%   |
| Other                  | -23.4%   | -12.3%   |
| White Women            | -33.9%   | -53.2%   |

Source: CHA calculations from the American Community Survey

### 3. Disparities in Business Formation

A third method of exploring differences in economic outcomes is to examine the rate at which different demographic groups form businesses. We developed these business formation rates using data from the U.S. Bureau of the Census' American Community Survey. Table 3a presents these results. The Table indicates that White men have higher business formation rates compared to non-Whites and White women. Table 3b explores the same question but utilizes multiple regression analysis to control for important factors beyond race and gender. This Table indicates that non-Whites and White women are less likely to form businesses compared to similarly situated White men. For instance, Blacks are 4.9% less likely to form a business compared to White men after other key explanatory variables are controlled. These Tables reinforce the notion that there are significant differences in the rate of non-Whites and White women to form business compared to the rate of White men. These differences support the inference that minority- and women-owned business enterprises ("M/WBEs") suffer major barriers to equal access to entrepreneurial opportunities in the overall Illinois economy.

**Table 3a. Business Formation Rates  
All Industries,  
American Community Survey, 2007-2011**

| Demographic Group      | Business Formation Rates |
|------------------------|--------------------------|
| Black                  | 4.5%                     |
| Latino                 | 4.7%                     |
| Native American        | 8.6%                     |
| Asian/Pacific Islander | 8.4%                     |
| Other                  | 5.9%                     |
| Non-White              | 5.2%                     |
| White Women            | 6.9%                     |
| Non-White Male         | 6.0%                     |
| White Male             | 11.2%                    |

Source: CHA calculations from the American Community Survey

**Table 3b. Business Formation Probabilities Relative to White Males  
All Industries,  
American Community Survey, 2007-2011**

| Demographic Group      | Probability of Forming<br>a Business Relative to<br>White Men |
|------------------------|---|
| Black                  | -4.9%   |
| Latino                 | -3.2%   |
| Native American        | -3.0%   |
| Asian/Pacific Islander | -1.4%   |
| Other                  | -0.9%   |
| White Women            | -2.6%   |

Source: CHA calculations from the American Community Survey

Overall, the results of our analyses of the Illinois economy demonstrate that minorities and White women continue to face race- and gender-based barriers to equal opportunities as firm owners, and to equal opportunities to earn wages and salaries that impact their ability to form firms and to earn income from those firms. While not dispositive, this suggests that absent some affirmative intervention in the current operations of the Illinois marketplace, the District will function as a passive participant in these potentially discriminatory outcomes.<sup>175</sup>

### **C. Disparate Treatment in the Marketplace: Evidence from the Census Bureau's 2007 Survey of Business Owners**

Every five years, the Census Bureau administers the *Survey of Business Owners* ("SBO") to collect data on particular characteristics of businesses that report to the Internal Revenue Service receipts of \$1,000 or more.<sup>176</sup> The 2007 SBO was released on August 16, 2012, so our analysis reflects the most current data available. The SBO collects demographic data on business owners disaggregated into the following groups:<sup>177 178</sup>

- Non-Hispanic Blacks

<sup>175</sup> Various appendices to this Chapter contain additional data and methodological explanations. Appendix A provides a "Further Explanation of the Multiple Regression Analysis." Appendix B provides a "Further Explanation of Probit Regression Analysis." Appendix C discusses the meaning and role of "Significance Levels." Appendix D provides detailed "Additional Data from the Analysis of the Survey of Business Owners." Appendix E provides "Additional Data from the Analysis of American Community Survey."

<sup>176</sup> See <http://www.census.gov/econ/sbo/about.html> for more information on the Survey.

<sup>177</sup> Race and gender labels reflect the categories used by the Census Bureau.

<sup>178</sup> For expository purposes, the adjective "Non-Hispanic" will not be used in this chapter; the reader should assume that any racial group referenced does not include members of that group who identify ethnically as Latino.



- Latinos
- Non-Hispanic Native Americans
- Non-Hispanic Asians
- Non-Hispanic White Women
- Non-Hispanic White Men
- Firms Equally Owned by Non-Whites and Whites
- Firms Equally Owned by Men and Women
- Firms where the ownership could not be classified
- Publicly-Owned Firms

For purposes of this analysis, the first four groups were aggregated to form a Non-White category. Since our interest is the treatment of non-White-owned firms and White women-owned firms, the last five groups were aggregated to form one category. To ensure this aggregated group is described accurately, we label this group “not non-White/non-White women”. While this label is cumbersome, it is important to be clear this group includes firms whose ownership extends beyond White men, such as firms that are not classifiable or that are publicly traded and thus have no racial ownership.

In addition to the ownership demographic data, the Survey also gathers information on the sales, number of paid employees, and payroll for each reporting firm.

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

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

However, the nature of the SBO data— a sample of all businesses, not the entire universe of all businesses— required some adjustments. In particular, we had to define the sectors at the 2-digit North American Industry Classification System (“NAICS”) code level and therefore our sector definitions do not exactly

correspond to the definitions used to analyze the District's contract data in Chapter IV, where we are able to determine sectors at the 6-digit NAICS code level. At a more detailed level, the number of firms sampled in particular demographic and sector cells may be so small that the Census Bureau does not report the information, either to avoid disclosing data on businesses that can be identified or because the small sample size generates unreliable estimates of the universe.<sup>179</sup> We therefore report 2-digit data.

Table 4 presents information on which NAICS codes were used to define each sector.

**Table 4. 2-Digit NAICS Code Definition of Sector**

| SBO Sector Label  | 2-Digit NAICS Codes                |
|---|------------------------------------|
| <b>Construction</b>   | 23                                 |
| <b>Professional, Scientific, and Technical Services<sup>180</sup></b> | 54                                 |
| <b>Information</b>  | 51                                 |
| <b>Goods</b>  | 31, 42, 44                         |
| <b>Services</b>   | 48, 52, 53, 56, 61, 62, 71, 72, 81 |

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

## 1. All SBO Industries

For a baseline analysis, we examined all industries in the state of Illinois. Data are not available beyond the state level. Table 5 presents data on the percentage share that each group has of the total of each of the following six business outcomes:

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

<sup>179</sup> Even with these broad sector definitions, there was an insufficient number of Native American owned firms to perform our analysis on this demographic group. This limitation also arose for Latinos and Asians in the Services sector.

<sup>180</sup> This sector includes (but is broader than just) construction-related services. It is impossible to narrow this category to construction-related services without losing the capacity to conduct race and gender specific analyses.

- The annual payroll of employers firms

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

- Black
- Latino
- Native American
- Asian

Panel B of Table 5 presents data for six types of firm ownership:

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

Categories in the second panel are mutually exclusive. Hence, firms that are non-White and equally owned by men and women are classified as non-White and firms that are equally owned by non-Whites and Whites and equally owned by men and women are classified as equally owned by non-Whites and Whites.<sup>181</sup>

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<sup>181</sup> Some of the figures in Panel B may not correspond to the related figures in Panel A because of discrepancies in how the SBO reports the data

**Table 5. Percentage Demographic Distribution of Sales and Payroll Data  
All Industries, 2007**

|   | Total<br>Number of<br>Firms<br>(All Firms) | Sales &<br>Receipts -<br>All Firms<br>(\$1,000) | Number of<br>Firms with<br>Paid<br>Employees<br>(Employer<br>Firms) | Sales &<br>Receipts -<br>All Firms<br>with Paid<br>Employees<br>(Employer<br>Firms)<br>(\$1,000) | Number of<br>Paid<br>Employees | Annual<br>payroll<br>(\$1,000) |
|---|--|---|---|--|--------------------------------|--------------------------------|
| <b>Panel A: Distribution of Non-White Firms</b> |  |   |   |  |                                |                                |
| <b>Black</b>                                    | 9.3%                                       | 0.5%  | 1.5%  | 0.3%   | 0.8%                           | 0.6%                           |
| <b>Latino</b>                                   | 5.0%                                       | 0.7%  | 3.0%  | 0.6%   | 1.5%                           | 0.9%                           |
| <b>Native American</b>                          | 0.3%                                       | 0.0%  | 0.2%  | 0.0%   | 0.1%                           | 0.0%                           |
| <b>Asian</b>                                    | 5.2%                                       | 1.2%  | 6.3%  | 1.1%   | 1.9%                           | 1.4%                           |
| <b>Panel B: Distribution of All Firms</b>       |  |   |   |  |                                |                                |
| <b>Non-White</b>                                | 19.8%                                      | 2.2%  | 9.6%  | 2.0%   | 3.9%                           | 2.7%                           |
| <b>White Women</b>                              | 21.3%                                      | 3.1%  | 13.8%   | 2.8%   | 5.4%                           | 3.9%                           |
| <b>White Men</b>                                | 42.3%                                      | 25.4%   | 50.5%   | 24.7%  | 32.2%                          | 29.4%                          |
| <b>Equally Non-White &amp;<br/>White</b>        | 1.0%                                       | 0.1%  | 0.4%  | 0.1%   | 0.2%                           | 0.2%                           |
| <b>Equally Women &amp;<br/>Men</b>              | 12.1%                                      | 3.1%  | 14.8%   | 2.8%   | 5.4%                           | 3.5%                           |
| <b>Firms Not<br/>Classifiable</b>               | 3.5%                                       | 66.0%   | 10.9%   | 67.6%  | 52.9%                          | 60.3%                          |
|   |  |   |   |  |                                |                                |
| <b>All Firms</b>                                | <b>100.0%</b>                              | <b>100.0%</b>                                   | <b>100.0%</b>   | <b>100.0%</b>  | <b>100.0%</b>                  | <b>100.0%</b>                  |

Source: CHA calculations from Survey of Business Owners

Since the central issue is the possible disparate treatment of non-White and White women firms, Table 6 re-aggregates the last four groups– White men; equally non-White and White; equally women and men; and firms not classifiable– into one group: Not Non-White/Not White Women.<sup>182</sup> We then present the shares each group has of the six indicators of firm utilization. These data were then used to calculate three disparity ratios, presented in Table 7:

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

<sup>182</sup> Again, while a cumbersome nomenclature, it is important to remain clear that this category includes firms other than those identified as owned by White men.

- Ratio of annual payroll share over the share of total number of employer firms.

For example, the disparity ratio of sales and receipts share for all firms over the share of total number of all firms for Black firms is 13.9% (as shown in Table 7). This is derived by taking the Black share of sales and receipts for all firms (1.3%) and dividing it by the Black share of total number of all firms (9.6%) that are presented in Table 6. If Black-owned firms earned a share of sales equal to their share of total firms, the disparity would have been 100%. An index less than 100 percent indicates that a given group is being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission's "80 percent" rule that a ratio less than 80 percent presents a *prima facie* case of discrimination.<sup>183</sup> Except for the Black ratio of payroll to the number of employer firms, all disparity ratios for non-White firms and White women firms are below this threshold.<sup>184</sup>

**Table 6. Demographic Distribution of Sales and Payroll Data  
All Industries, 2007**

|   | Total<br>Number of<br>Firms<br>(All Firms) | Sales &<br>Receipts -<br>All Firms<br>(\$1,000) | Number of<br>Firms with<br>Paid<br>Employees<br>(Employer<br>Firms) | Sales &<br>Receipts -<br>All Firms<br>with Paid<br>Employees<br>(Employer<br>Firms)<br>(\$1,000) | Number of<br>Paid<br>Employees | Annual<br>payroll<br>(\$1,000) |
|---|--|---|---|--|--------------------------------|--------------------------------|
| <b>Panel A: Distribution of Non-White Firms</b> |  |   |   |  |                                |                                |
| <b>Black</b>                                    | 9.6%                                       | 1.3%  | 1.7%  | 1.1%   | 1.8%                           | 1.5%                           |
| <b>Latino</b>                                   | 5.2%                                       | 2.1%  | 3.4%  | 1.9%   | 3.1%                           | 2.3%                           |
| <b>Native American</b>                          | 0.3%                                       | 0.1%  | 0.2%  | 0.1%   | 0.2%                           | 0.1%                           |
| <b>Asian</b>                                    | 5.3%                                       | 3.6%  | 7.0%  | 3.5%   | 4.0%                           | 3.4%                           |
| <b>Panel B: Distribution of All Firms</b>       |  |   |   |  |                                |                                |
| <b>Non-Whites</b>                               | 20.6%                                      | 6.5%  | 10.8%   | 6.0%   | 8.2%                           | 6.8%                           |
| <b>White Women</b>                              | 22.1%                                      | 9.2%  | 15.4%   | 8.7%   | 11.4%                          | 9.7%                           |
| <b>White Men</b>                                | 57.3%                                      | 84.3%   | 73.8%   | 85.3%  | 80.4%                          | 83.5%                          |
|   |  |   |   |  |                                |                                |
| <b>All Firms</b>                                | <b>100.0%</b>                              | <b>100.0%</b>                                   | <b>100.0%</b>   | <b>100.0%</b>  | <b>100.0%</b>                  | <b>100.0%</b>                  |

Source: CHA calculations from Survey of Business Owners

<sup>183</sup> 29 C.F.R. § 1607.4(D) ("A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.").

<sup>184</sup> Because the data in Tables 6 and 7 are presented for descriptive purposes, significance tests on these results are not conducted.

**Table 7. Disparity Ratios of Firm Utilization Measures  
All Industries, 2007**

|  | Ratio of Sales<br>to Number of<br>Firms (All<br>Firms) | Ratio of Sales<br>to Number of<br>Firms<br>(Employer<br>Firms) | Ratio of<br>Payroll to<br>Number of<br>Employer<br>Firms |
|--|--|--|--|
| <b>Panel A: Disparity Ratios for Non-White Firms</b> |  |  |  |
| <b>Black</b>   | 13.9%  | 62.7%  | 84.7%  |
| <b>Latino</b>  | 39.6%  | 55.6%  | 66.4%  |
| <b>Native American</b>                               | 39.6%  | 59.9%  | 60.6%  |
| <b>Asian</b>   | 68.2%  | 50.0%  | 48.5%  |
| <b>Panel B: Disparity Ratios for All Firms</b>       |  |  |  |
| <b>Non-Whites</b>                                    | 11.2%  | 20.3%  | 28.0%  |
| <b>White Women</b>                                   | 14.6%  | 20.5%  | 28.1%  |
| <b>Not Non-<br/>White/Not White<br/>Women</b>        | 161.0%   | 124.3%   | 122.0%   |
| <b>All Firms</b>                                     | <b>100.0%</b>  | <b>100.0%</b>  | <b>100.0%</b>  |

Source: CHA calculations from Survey of Business Owners

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

## 2. Construction

Of the 18 disparity ratios for non-White firms and White women firms presented in Table 8, 14 fall under the 80% threshold.

**Table 8. Disparity Ratios – Aggregated Groups  
Construction, 2007**

|  | Ratio of<br>Sales to<br>Number of<br>Firms (All<br>Firms) | Ratio of<br>Sales to<br>Number of<br>Firms<br>(Employer<br>Firms) | Ratio of<br>Payroll to<br>Number of<br>Employer<br>Firms |
|--|---|---|--|
| <b>Panel A: Disparity Ratios for Non-White Firms</b> |   |   |  |
| <b>Black</b>   | 25.8%   | 100.1%  | 108.4%   |
| <b>Latino</b>  | 29.7%   | 50.3%   | 66.6%  |
| <b>Native American</b>                               | 35.0%   | 63.2%   | 76.4%  |
| <b>Asian</b>   | 56.0%   | 64.4%   | 79.0%  |
| <b>Panel B: Disparity Ratios for All Firms</b>       |   |   |  |
| <b>Non-White</b>                                     | 29.3%   | 62.9%   | 78.4%  |
| <b>White Women</b>                                   | 86.7%   | 70.4%   | 96.4%  |
| <b>Not Non-<br/>White/Not White<br/>Women</b>        | 110.6%  | 105.1%  | 101.5%   |
|  |   |   |  |
| <b>All Firms</b>                                     | <b>100.0%</b>   | <b>100.0%</b>   | <b>100.0%</b>  |

Source: CHA calculations from Survey of Business Owners

### 3. Professional, Scientific and Technical Services

Table 9 presents disparity ratios in this sector. Because of the dearth of Native American firms in this sector, no analysis is provided for this demographic group. All of the available disparity ratios for non-White firms and White women firms presented in Table 9 are under the 80% threshold.<sup>185</sup>

**Table 9. Disparity Ratios – Aggregated Groups  
Professional, Scientific, and Technical Services, 2007**

|  | Ratio of<br>Sales to<br>Number of<br>Firms<br>(All Firms) | Ratio of<br>Sales to<br>Number of<br>Firms<br>(Employer<br>Firms) | Ratio of<br>Payroll to<br>Number of<br>Employer<br>Firms |
|--|---|---|--|
| <b>Panel A: Disparity Ratios for Non-White Firms</b> |   |   |  |
| <b>Black</b>   | 17.2%   | 49.6%   | 53.1%  |
| <b>Latino</b>  | 27.8%   | 44.6%   | 36.9%  |
| <b>Native American</b>                               | S   | S   | S  |
| <b>Asian</b>   | 47.8%   | 46.2%   | 46.4%  |
| <b>Panel B: Disparity Ratios for All Firms</b>       |   |   |  |
| <b>Non-White</b>                                     | 30.1%   | 48.1%   | 47.2%  |
| <b>White Women</b>                                   | 26.8%   | 30.9%   | 29.1%  |
| <b>Not Non-<br/>White/Not White<br/>Women</b>        | 142.6%  | 120.3%  | 120.8%   |
|  |   |   |  |
| <b>All Firms</b>                                     | <b>100.0%</b>   | <b>100.0%</b>   | <b>100.0%</b>  |

Source: CHA calculations from Survey of Business Owners

<sup>185</sup> The values of “S” in Tables 9 – 12 reflect that the SBO did not publish data in these instances because it was “withheld because estimate did not meet publication standards”. See the Disclosure section under Methodology at <http://www.census.gov/econ/sbo/methodology.html>.



#### 4. Information

Once again, the small number of Native American firms in this sector meant that no analysis is provided for this demographic group. In addition, the SBO was unable to provide reliable estimates for the firms in this sector that are equally owned by non-Whites and Whites. Thirteen of the available 15 disparity ratios for non-White firms and White women firms presented in Table 10 fall below the 80% threshold.

**Table 10. Disparity Ratios – Aggregated Groups  
Information, 2007**

|  | Ratio of<br>Sales to<br>Number of<br>Firms (All<br>Firms) | Ratio of<br>Sales to<br>Number of<br>Firms<br>(Employer<br>Firms) | Ratio of<br>Payroll to<br>Number of<br>Employer<br>Firms |
|--|---|---|--|
| <b>Panel A: Disparity Ratios for Non-White Firms</b> |   |   |  |
| <b>Black</b>   | 21.3%   | 145.9%  | 262.0%   |
| <b>Latino</b>  | 5.4%  | 16.3%   | 17.4%  |
| <b>Native American</b>                               | S   | S   | S  |
| <b>Asian</b>   | 18.3%   | 21.3%   | 25.9%  |
| <b>Panel B: Disparity Ratios for All Firms</b>       |   |   |  |
| <b>Non-White</b>                                     | 16.4%   | 48.5%   | 79.0%  |
| <b>White Women</b>                                   | 6.0%  | 7.8%  | 10.2%  |
| <b>Not Non-<br/>White/Not White<br/>Women</b>        | 150.4%  | 119.4%  | 117.1%   |
|  |   |   |  |
| <b>All Firms</b>                                     | <b>100.0%</b>   | <b>100.0%</b>   | <b>100.0%</b>  |

Source:

calculations from Survey of Business Owners

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## 5. Services

The SBO was unable to provide reliable estimates for the firms that are equally owned by non-Whites and Whites and Native American firms in this sector; consequently, no analysis is provided for these demographic groups. In addition, estimates could not be made for Asian-owned firms in four of the six categories and Latino-owned firms in two of the four categories. Of the available 12 disparity ratios for non-White firms and White women firms presented in Table 11, all fall below the 80% threshold.

**Table 11. Disparity Ratios – Aggregated Groups**

**All Services, 2007**

|  | Ratio of<br>Sales to<br>Number of<br>Firms (All<br>Firms) | Ratio of<br>Sales to<br>Number of<br>Firms<br>(Employer<br>Firms) | Ratio of<br>Payroll to<br>Number of<br>Employer<br>Firms |
|--|---|---|--|
| <b>Panel A: Disparity Ratios for Non-White Firms</b> |   |   |  |
| <b>Black</b>   | 5.5%  | 19.9%   | 28.1%  |
| <b>Latino</b>  | 18.2%   | 10.2%   | S  |
| <b>Native American</b>                               | S   | S   | S  |
| <b>Asian</b>   | 28.2%   | S   | S  |
| <b>Panel B: Disparity Ratios for All Firms</b>       |   |   |  |
| <b>Non-White</b>                                     | 12.7%   | 21.2%   | 27.6%  |
| <b>White Women</b>                                   | 14.6%   | 18.6%   | 26.3%  |
| <b>Not Non-White/Not<br/>White Women</b>             | 179.1%  | 128.9%  | 126.3%   |
|  |   |   |  |
| <b>All Firms</b>                                     | <b>100.0%</b>   | <b>100.0%</b>   | <b>100.0%</b>  |

Source: CHA calculations from Survey of Business Owners

## 6. Goods

The SBO was unable to provide reliable estimates for the firms that are equally owned by non-Whites and Whites and Native American firms in this sector; consequently, no analysis is provided for these demographic groups. All of the disparity ratios for non-White firms and White women firms presented in Table 12 fall below the 80% threshold.

**Table 12. Disparity Ratios – Aggregated Groups  
Goods, 2007**

|  | Ratio of<br>Sales to<br>Number of<br>Firms (All<br>Firms) | Ratio of<br>Sales to<br>Number of<br>Firms<br>(Employer<br>Firms) | Ratio of<br>Payroll to<br>Number of<br>Employer<br>Firms |
|--|---|---|--|
| <b>Panel A: Disparity Ratios for Non-White Firms</b> |   |   |  |
| <b>Black</b>   | 5.3%  | 23.0%   | 30.4%  |
| <b>Latino</b>  | 11.6%   | 20.0%   | 26.9%  |
| <b>Native American</b>                               | S   | S   | S  |
| <b>Asian</b>   | 18.5%   | 14.2%   | 14.7%  |
| <b>Panel B: Disparity Ratios for All Firms</b>       |   |   |  |
| <b>Non-White</b>                                     | 11.9%   | 17.1%   | 19.5%  |
| <b>White Women</b>                                   | 10.6%   | 20.5%   | 29.8%  |
| <b>Not Non-White/Not<br/>White Women</b>             | 157.0%  | 122.9%  | 121.1%   |
|  |   |   |  |
| <b>All Firms</b>                                     | <b>100.0%</b>   | <b>100.0%</b>   | <b>100.0%</b>  |

Source: CHA calculations from Survey of Business Owners

### **D. Disparate Treatment in the Marketplace: Evidence from the Census Bureau's 2007-2011 American Community Survey**

As discussed in the beginning of this Chapter, the key question is whether firms owned by non-Whites and White women face disparate treatment in the marketplace without the intervention of the District's M/WBE program.

In the previous section, we explored this question using SBO data. In this section, we use the Census Bureau's *American Community Survey* data to address other aspects of this question. One element asks if there exist demographic differences in the wage and salary income received by private sector workers. Beyond the issue of bias in the incomes generated in the private sector, this exploration is important for the issue of possible variations in the rate of business formation by different demographic groups. One of the determinants of business formation is the pool of financial capital at the disposal of the prospective entrepreneur. The size of this pool is related to the income level of

the individual either because the income level impacts the amount of personal savings that can be used for start-up capital or the income level affects one's ability to borrow funds. If particular demographic groups receive lower wages and salaries then they would have access to a smaller pool of financial capital, and thus reduce the likelihood of business formation.

The *American Community Survey* ("ACS") *Public Use Microdata Sample* ("PUMS") is useful in addressing these issues. The ACS is an annual survey of 1% of the population and the PUMS provides detailed information at the individual level. In order to obtain robust results from our analysis, we use the file that combines data for 2007 through 2011, the most recent available.<sup>186</sup> With this rich data set, our analysis can establish with greater certainty any causal links between race, gender and economic outcomes.

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

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

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

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<sup>186</sup> For more information about the ACS PUMS, please see <http://www.census.gov/acs/>.

industry) on another variable (wages), “controlling for” the movement of any other independent variables.

With respect to the second result of regression analysis, this technique also allows us to determine the statistical significance of the relationship between the dependent variable and independent variable. For example, the relationship between gender and wages might exist but we find that it is not statistically different from zero. In this case, we are not confident that there is not any relationship between the two variables. If the relationship is not statistically different from zero, then a variation in the independent variable has no impact on the dependent variable. The regression analysis allows us to say with varying degrees of statistical confidence that a relationship is different from zero. If the estimated relationship is statistically significant at the 0.05 level, that indicates we are 95% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.01 level, that indicates we are 99% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.001 level, that indicates we are 99.9% confident that the relationship is different from zero.<sup>187</sup>

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

- All Industries
- Construction
- Construction-related Services
- Information Technology
- Services
- Goods

Each sub-section first reports data on the share of a demographic group that forms a business (business formation rates); the probabilities that a demographic group will form a business relative to White men (business formation probabilities); the differences in wages received by a demographic group relative to White men (wage differentials); and the differences in business earnings received by a demographic group relative to White men (business earnings differentials).

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<sup>187</sup> Most social scientists do not endorse utilizing a confidence level of less than 95%. Appendix C explains more about statistical significance.

## 1. All Industries in Illinois

### a. Business Formation Rates

Table 13 presents business formation rates in the Illinois economy by demographic groups.

**Table 13. Business Formation Rates, Illinois**  
**All Industries, 2007-2011**

| Demographic Group      | Business Formation Rates |
|------------------------|--------------------------|
| Black                  | 4.5%                     |
| Latino                 | 4.7%                     |
| Native American        | 8.6%                     |
| Asian/Pacific Islander | 8.4%                     |
| Other                  | 5.9%                     |
| Non-White              | 5.2%                     |
| White Women            | 6.9%                     |
| Non-White Male         | 6.0%                     |
| White Male             | 11.2%                    |

Source: CHA calculations from the American Community Survey

White males have a higher rate of business formation than Non-White males. However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed.<sup>188</sup> The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

<sup>188</sup> Probit is a special type of regression technique where the dependent variable only has two possible values: 0 or 1. For instance, the unit of observation is an individual and he/she forms a business or does not form a business. In the former case, the value of the dependent variable would be 1 while in the latter case, the value of the dependent variable would be 0. This is in contrast to the multiple regression technique discussed earlier where the dependent variable such as wages might have any non-negative value. For a more extensive discussion of probit regression analysis, see Appendix B.

Table 14 presents the results of the probit analysis for the Illinois economy.

**Table 14. Business Formation Probability Differentials for Selected Groups  
Relative to White Men  
All Industries, 2007-2011**

| Demographic Group             | Probability of Forming a Business Relative to White Men |
|-------------------------------|---|
| <b>Black</b>                  | -4.9%***  |
| <b>Latino</b>                 | -3.2%***  |
| <b>Native American</b>        | -3.0%***  |
| <b>Asian/Pacific Islander</b> | -1.4%***  |
| <b>Other</b>                  | -0.9%***  |
| <b>White Women</b>            | -2.6%***  |

Source: CHA calculations from the American Community Survey

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

The analysis indicates that non-Whites and White women in Illinois are less likely than White men to form businesses even after controlling for key factors. The reduction in probability ranges from 0.9% to 4.9%. Once again, these estimates are statistically significant at the 99.1 level.

## b. Differences in Wage and Salary Incomes

Table 15 presents the findings from the wage and salary income regression analysis examining the Illinois economy. This indicates the wage differential for selected demographic groups in Illinois relative to White men.

**Table 15. Wage Differentials for Selected Groups Relative to White Men**

**All Industries, 2007-2011**

| Demographic Group             | Wages Relative to White Men (% Change) |
|-------------------------------|--|
| <b>Black</b>                  | -34.3% <sup>***</sup>                  |
| <b>Latino</b>                 | -12.1% <sup>***</sup>                  |
| <b>Native American</b>        | -32.6% <sup>***</sup>                  |
| <b>Asian/Pacific Islander</b> | -30.5% <sup>**</sup>                   |
| <b>Other</b>                  | -23.4% <sup>***</sup>                  |
| <b>White Women</b>            | -33.9% <sup>**</sup>                   |

Source: CHA calculations from the American Community Survey

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

\*\* Indicates statistical significance at the 0.01 level

Holding constant factors such as education, age, occupation, and industry, Blacks, Latinos, White women, Asian/Pacific Islanders and Others in Illinois earn less than White men in the overall economy. Estimates of the coefficients for Black, Latino, Native American, and Other are statistically significant at the 0.001 level. Estimates of the coefficients for Asian/Pacific Islander and White Women are statistically significant at the 0.01 level. For example, we are 99.9% confident that wages for Blacks in Illinois (after controlling for numerous other factors) are 34.3% less than those received by White men.



### c. Differences in Business Earnings

The same approach was used to investigate if there were differences in business earnings received by Non-Whites and White women entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 16 presents these findings.

**Table 16. Business Earnings Differentials for  
Selected Groups Relative to White Men**

**All Industries, 2007-2011**

| Demographic Group             | Earnings Relative to White Men (% Change) |
|-------------------------------|---|
| <b>Black</b>                  | -44.4% ***                                |
| <b>Latino</b>                 | -25.5% ***                                |
| <b>Native American</b>        | -49.3% ***                                |
| <b>Asian/Pacific Islander</b> | -24.2% ***                                |
| <b>Other</b>                  | -12.3% **                                 |
| <b>White Women</b>            | -53.2% ***                                |

Source: CHA calculations from the American Community Survey

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

\*\* indicates statistical significance at the 0.01 level

Once again, the estimates of the coefficients for these variables were found to be statistically significant at the 0.001 and 0.01 levels. The differentials in business earnings received by Non-Whites and White women compared to White males ranged from -12% to -53%.

### d. Conclusion

Using descriptive analysis, Table 13 shows that differentials exist between the business formation rates by Non-Whites and White women and White males across industry sectors. Table 14 presents the results of a further statistical analysis, which indicated that even after taking into account potential mitigating factors, the differential still exists. Tables 15 and 16 present data indicating differentials in wages and business earnings after controlling for possible explanatory factors. These analyses support the conclusion that barriers to business success do affect Non-Whites and White women entrepreneurs.

## 2. The Construction Industry in Illinois

### a. Business Formation Rates

Table 17 presents business formation rates in the Illinois construction industry for selected demographic groups.

**Table 17. Business Formation Rates, Illinois**

#### **Construction, 2007-2011**

| Demographic Group      | Business Formation Rates |
|------------------------|--------------------------|
| Black                  | 19.0%                    |
| Latino                 | 11.1%                    |
| Native American        | 22.3%                    |
| Asian/Pacific Islander | 18.2%                    |
| Other                  | 1.5%                     |
| Non-White              | 13.2%                    |
| White Women            | 6.9%                     |
| Non-White Male         | 13.7%                    |
| White Male             | 22.6%                    |

Source: CHA calculations from the American Community Survey

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

Table 18 presents the results of the probit analysis for the construction industry in Illinois.

**Table 18. Business Formation Probability  
Differentials for Selected Groups Relative to  
White Men**

**Construction, 2007-2011**

| <b>Demographic Group</b>      | <b>Probability of Forming a<br/>Business Relative to<br/>White Men</b> |
|-------------------------------|--|
| <b>Black</b>                  | -8.0%  |
| <b>Latino</b>                 | -7.7%  |
| <b>Native American</b>        | -8.5%  |
| <b>Asian/Pacific Islander</b> | -0.8%  |
| <b>Other</b>                  | -3.0%  |
| <b>White Women</b>            | -2.3%  |

Source: CHA calculations from the American Community Survey

The analysis indicates that Non-Whites and White women in Illinois are less likely to form construction businesses compared to White men even after controlling for key factors. The reduction in probability ranges from 0.8% to 8.5%. Once again, these estimates are statistically significant at the 99.1 level.

### b. Differences in Wage and Salary Incomes

Table 19 presents the findings from the wage and salary income regression analysis examining the construction industry in Illinois. This indicates the wage differential for selected demographic groups in Illinois relative to White men.

**Table 19. Wage Differentials for Selected Groups  
Relative to White Men**

**Construction, 2007-2011**

| Demographic Group      | Wages Relative to White Men<br>(% Change) |
|------------------------|---|
| Black                  | -51.0%***                                 |
| Latino                 | -13.3%***                                 |
| Native American        | -36.0%***                                 |
| Asian/Pacific Islander | -51.5%***                                 |
| Other                  | -13.3%***                                 |
| White Women            | -45.0%**                                  |

Source: CHA calculations from the American Community Survey

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

\*\* indicates statistical significance at the 0.01 level

Holding constant factors such as education, age, occupation, and industry, Blacks, Latinos, White women, Asian/Pacific Islanders and Others in Illinois earn less than White men in the construction industry. The differential ranges between 13% less and 52% less. Estimates of the coefficients for Black, Latino, Native American, Asian/Pacific Islander, and Other are statistically significant at the 0.001 level. Estimates of the coefficients for White Women are statistically significant at the 0.01 level.

### c. Differences in Business Earnings

The same approach was used to investigate if there were differences in business earnings received by Non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 20 presents these findings.

**Table 20. Business Earnings Differentials for Selected Groups Relative to White Men**

**Construction, 2007-2011**

| Demographic Group      | Earnings Relative to White Men (% Change) |
|------------------------|---|
| Black                  | -26.3%*                                   |
| Latino                 | -6.1%***                                  |
| Native American        | -25.8%***                                 |
| Asian/Pacific Islander | -10.0%**                                  |
| Other                  | 0.0%                                      |
| White Women            | -19.4%**                                  |

Source: CHA calculations from the American Community Survey

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

\*\* indicates statistical significance at the 0.01 level

\* indicates statistical significance at the 0.005 level

With the exception of the estimated coefficient for Other, the estimates of the coefficients for these variables were found to be statistically significant at the 0.001, 0.01, or 0.005 levels. The differentials in business earnings received by Non-Whites and White women compared to White males ranged from 6% less to 26% less. For the estimated coefficient for Other, the results were not found to be significantly statistically different from zero.

### d. Conclusion

Using descriptive analysis, Table 17 shows that differentials exist between the business formation rates by Non-White males and White males. Table 18 presents the results of a further statistical analysis, which indicated that even after taking into account potential mitigating factors, the differential still exists. Tables 19 and 20 present data indicating differentials in wage and business earnings after controlling for possible explanatory factors. These analyses

support the conclusion that barriers to business success do affect Non-Whites and White women entrepreneurs.

### 3. The Construction-Related Services Industry in Illinois

#### a. Business Formation Rates

Table 21 presents business formation rates in the construction-related services industry in Illinois for selected demographic groups.

**Table 21. Business Formation Rates, Illinois**

**Construction-Related Services, 2007-2011**

| Demographic Group      | Business Formation Rates |
|------------------------|--------------------------|
| Black                  | 4.6%                     |
| Latino                 | 4.2%                     |
| Native American        | 0.0%                     |
| Asian/Pacific Islander | 3.9%                     |
| Other                  | 0.0%                     |
| Non-White              | 4.1%                     |
| White Women            | 8.3%                     |
| Non-White Male         | 6.3%                     |
| White Male             | 10.9%                    |

Source: CHA calculations from the American Community Survey

White males have a higher rate of business formation than Non-White males. (There were zero reported Native American or Other entrepreneurs in the construction-related services industry.) However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed. The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

Table 22 presents the results of the probit analysis for the construction industry in Illinois.

**Table 22. Business Formation Probability  
Differentials for Selected Groups Relative to  
White Men  
Construction-related Services, 2007-2011**

| Demographic Group      | Probability of Forming a Business Relative to White Men |
|------------------------|---|
| Black                  | -6.2%***  |
| Latino                 | -1.3%***  |
| Native American        | ---   |
| Asian/Pacific Islander | -5.5%***  |
| Other                  | ---   |
| White Women            | -0.2%***  |

Source: CHA calculations from the American Community Survey

The analysis indicates that compared to White men, Non-Whites and White women in Illinois are less likely to form construction-related services businesses even after controlling for key factors. The reduction in probability ranges from 0.2% less to 6.2% less. Once again, these estimates are statistically significant at the 99.1 level.

## b. Differences in Wage and Salary Incomes

Table 23 presents the findings from the wage and salary income regression analysis examining the construction-related services industry in Illinois. This indicates the wage differential for selected demographic groups in Illinois relative to White men.

**Table 23. Wage Differentials for Selected Groups  
Relative to White Men**

**Construction-related Services, 2007-2011**

| Demographic Group             | Wages Relative to White Men<br>(% Change) |
|-------------------------------|---|
| <b>Black</b>                  | -49.2% **                                 |
| <b>Latino</b>                 | -20.2% ***                                |
| <b>Native American</b>        | -28.1% ***                                |
| <b>Asian/Pacific Islander</b> | -19.0% ***                                |
| <b>Other</b>                  | -13.0% *                                  |
| <b>White Women</b>            | -33.8% ***                                |

Source: CHA calculations from the American Community Survey

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

\*\* indicates statistical significance at the 0.01 level

\* indicates statistical significance at the 0.05 level

Holding constant factors such as education, age, occupation, and industry, Blacks, Latinos, White women, Asian/Pacific Islanders and Others in Illinois earn less than White men in the construction-related services industry. The differential ranges between 13% less and 49% less. Estimates of the coefficients for, Latino, Native American, Asian/Pacific Islander, and White Women are statistically significant at the 0.001 level. Estimates of the coefficients for Black are statistically significant at the 0.01 level. The estimated coefficient for Other is statistically significant at the 0.05 level.



### c. Differences in Business Earnings

The same approach was used to investigate if there were differences in business earnings received by Non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 24 presents these findings.

**Table 24. Business Earnings Differentials for  
Selected Groups Relative to White Men**

**Construction-related Services, 2007-2011**

| Demographic Group             | Earnings Relative to White Men (% Change) |
|-------------------------------|---|
| <b>Black</b>                  | -57.7%***                                 |
| <b>Latino</b>                 | 0.0%                                      |
| <b>Native American</b>        | 0.0%                                      |
| <b>Asian/Pacific Islander</b> | -222.6%*                                  |
| <b>Other</b>                  | 0.0%                                      |
| <b>White Women</b>            | -60.8%***                                 |

Source: CHA calculations from the American Community Survey

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

\* indicates statistical significance at the 0.005 level

The estimates of the coefficients for Black and White Women were found to be statistically significant at the 0.001 level. The estimated coefficient for Asian/Pacific Islander was statistically significant at the 0.05 level. The differentials in business earnings received by these three demographic groups were less than White males ranging from 57% to 222%. (The proper interpretation of the estimated coefficient for Asian/Pacific Islanders is that White men earn 222.6% greater than similarly situated Asian/Pacific Islanders.) The estimated coefficients for Latino, Native American, and Other were not found to be significantly statistically different from zero.

### d. Conclusion

Using descriptive analysis, Table 21 shows that differentials exist between the business formation rates by Non-White males and White males. Table 22

presents the results of a further statistical analysis, which indicated that even after taking into account potential mitigating factors, the differential still exists. Tables 23 and 24 present data indicating differentials in wage and business earnings after controlling for possible explanatory factors. These analyses support the conclusion that barriers to business success do affect Non-Whites and White women entrepreneurs.

#### 4. The Information Technology Industry in Illinois

##### a. Business Formation Rates

Table 25 presents business formation rates in the information technology industry in Illinois for selected demographic groups.

**Table 25. Business Formation Rates, Illinois**

Information Technology, 2007-2011

| Demographic Group      | Business Formation Rates |
|------------------------|--------------------------|
| Black                  | 2.2%                     |
| Latino                 | 4.3%                     |
| Native American        | 0.0%                     |
| Asian/Pacific Islander | 6.2%                     |
| Other                  | 5.4%                     |
| Non-White              | 4.4%                     |
| White Women            | 6.7%                     |
| Non-White Male         | 5.3%                     |
| White Male             | 11.4%                    |

Source: CHA calculations from the American Community Survey

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

Table 26 presents the results of the probit analysis for the information technology industry in Illinois.

**Table 26. Business Formation Probability  
Differentials for Selected Groups Relative to  
White Men**

**Information Technology, 2007-2011**

| Demographic Group             | Probability of Forming a Business Relative to White Men |
|-------------------------------|---|
| <b>Black</b>                  | -4.9% <sup>***</sup>                                    |
| <b>Latino</b>                 | -2.1% <sup>***</sup>                                    |
| <b>Native American</b>        | -1.5% <sup>***</sup>                                    |
| <b>Asian/Pacific Islander</b> | -4.7% <sup>***</sup>                                    |
| <b>Other</b>                  | -0.9% <sup>***</sup>                                    |
| <b>White Women</b>            | -2.0% <sup>***</sup>                                    |

Source: CHA calculations from the American Community Survey

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

The analysis indicates that Non-Whites and White women in Illinois are less likely to form information technology businesses compared to White men even after controlling for key factors. The reduction in probability ranges from 0.9% less to 4.9% less. Once again, these estimates are statistically significant at the 99.1 level.

### b. Differences in Wage and Salary Incomes

Table 27 presents the findings from the wage and salary income regression analysis examining the information technology industry in Illinois. This indicates the wage differential for selected demographic groups in Illinois relative to White men.

**Table 27. Wage Differentials for Selected Groups  
Relative to White Men**

Information Technology, 2007-2011

| Demographic Group      | Wages Relative to White Men<br>(% Change) |
|------------------------|---|
| Black                  | -15.5%***                                 |
| Latino                 | -8.1%***                                  |
| Native American        | -158.2%***                                |
| Asian/Pacific Islander | -18.4%***                                 |
| Other                  | -25.5%***                                 |
| White Women            | -24.6%***                                 |

Source: CHA calculations from the American Community Survey

Holding constant factors such as education, age, occupation, and industry, Blacks, Latinos, Native American, Asian/Pacific Islanders, Others, and White women in Illinois earn less than White men in the information technology industry. The differential ranges between 8% less and 158% less. (The proper interpretation of the estimated coefficient for Native Americans is that White men earn 158.2% greater than similarly situated Native Americans.) The estimates of all coefficients are statistically significant at the 0.001 level.

### c. Differences in Business Earnings

The same approach was used to investigate if there were differences in business earnings received by Non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 28 presents these findings.

**Table 28. Business Earnings Differentials for  
Selected Groups Relative to White Men**

**Information Technology, 2007-2011**

| Demographic Group             | Earnings Relative to White Men (% Change) |
|-------------------------------|---|
| <b>Black</b>                  | -42.0% <sup>***</sup>                     |
| <b>Latino</b>                 | -377.9% <sup>***</sup>                    |
| <b>Native American</b>        | -   |
| <b>Asian/Pacific Islander</b> | -17.6% <sup>*</sup>                       |
| <b>Other</b>                  | 0.0%                                      |
| <b>White Women</b>            | -67.4% <sup>***</sup>                     |

Source: CHA calculations from the American Community Survey

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

\* indicates statistical significance at the 0.005 level

The estimated coefficients for Black Latino, and White Women were statistically significant at the 0.001 level. The estimated coefficient for Asian/Pacific Islander was statistically significant at the 0.005 level. The differentials in business earnings received by these three demographic groups were less than White males from between 17.6% to 377.9%. (The proper interpretation of the estimated coefficient for Latinos is that White men earn 377.9% greater than similarly situated Latinos.) For the estimated coefficient for Other, the results were not found to be significantly statistically different from zero. For Native Americans the sample size was too small to calculate an estimated coefficient.

### d. Conclusion

Using descriptive analysis, Table 25 shows that differentials exist between the business formation rates and by Non-White males and White males. Table 26 presents the results of a further statistical analysis, which indicated that even after taking into account potential mitigating factors, the differential still exists.

Tables 27 and 28 present data indicating differentials in wage and business earnings after controlling for possible explanatory factors. These analyses support the conclusion that barriers to business success do affect Non-Whites and White women entrepreneurs.

## 5. The Services Industry in Illinois

### a. Business Formation Rates

Table 29 presents business formation rates in the services industry in Illinois for selected demographic groups.

**Table 29. Business Formation Rates, Illinois**

Services, 2007-2011

| Demographic Group      | Business Formation Rates |
|------------------------|--------------------------|
| Black                  | 4.0%                     |
| Latino                 | 5.2%                     |
| Native American        | 16.1%                    |
| Asian/Pacific Islander | 8.5%                     |
| Other                  | 5.3%                     |
| Non-White              | 5.3%                     |
| White Women            | 7.7%                     |
| Non-White Male         | 6.6%                     |
| White Male             | 17.6%                    |

Source: CHA calculations from the American Community Survey

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

Table 30 presents the results of the probit analysis for the services industry in Illinois.

**Table 30. Business Formation Probability  
Differentials for Selected Groups Relative  
to White Men**

**Services, 2007-2011**

| Demographic Group             | Probability of Forming a<br>Business<br>Relative to White<br>Men |
|-------------------------------|--|
| <b>Black</b>                  | -7.2% <sup>***</sup>   |
| <b>Latino</b>                 | -4.7% <sup>***</sup>   |
| <b>Native American</b>        | -5.7% <sup>***</sup>   |
| <b>Asian/Pacific Islander</b> | -5.0% <sup>***</sup>   |
| <b>Other</b>                  | -2.5% <sup>***</sup>   |
| <b>White Women</b>            | -4.2% <sup>***</sup>   |

Source: CHA calculations from the American Community Survey

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

The analysis indicates that compared to White men, Non-Whites and White women in Illinois are less likely to form services businesses even after controlling for key factors. The reduction in probability ranges from 2.5% less to 7.2% less. Once again, these estimates are statistically significant at the 99.1 level.

## b. Differences in Wage and Salary Incomes

Table 31 presents the findings from the wage and salary income regression analysis examining the services industry in Illinois. This indicates the wage differential for selected demographic groups in Illinois relative to White men.

**Table 31. Wage Differentials for Selected Groups  
Relative to White Men**

**Services, 2007-2011**

| Demographic Group      | Wages Relative to White Men<br>(% Change) |
|------------------------|---|
| Black                  | -44.5% <sup>***</sup>                     |
| Latino                 | -25.2% <sup>***</sup>                     |
| Native American        | -71.3% <sup>*</sup>                       |
| Asian/Pacific Islander | -28.3% <sup>***</sup>                     |
| Other                  | -25.9% <sup>***</sup>                     |
| White Women            | -40.0% <sup>***</sup>                     |

Source: CHA calculations from the American Community Survey

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

\* indicates statistical significance at the 0.05 level

Holding constant factors such as education, age, occupation, and industry, Blacks, Latinos, White women, Asian/Pacific Islanders and Others in Illinois earn less than White men in the services industry. The differential ranges between 25% less and 71% less. Estimates of the coefficients for Black, Latino, Asian/Pacific Islander, Other, and White Women are statistically significant at the 0.001 level. Estimates of the coefficients for Native American are statistically significant at the 0.05 level.



### c. Differences in Business Earnings

The same approach was used to investigate if there were differences in business earnings received by Non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 32 presents these findings.

**Table 32. Business Earnings Differentials for Selected Groups Relative to White Men**

**Services, 2007-2011**

| Demographic Group      | Earnings Relative to White Men (% Change) |
|------------------------|---|
| Black                  | -53.1% <sup>***</sup>                     |
| Latino                 | -37.3% <sup>***</sup>                     |
| Native American        | -77.1% <sup>***</sup>                     |
| Asian/Pacific Islander | -33.8% <sup>***</sup>                     |
| Other                  | -27.0% <sup>**</sup>                      |
| White Women            | -72.6% <sup>*</sup>                       |

Source: CHA calculations from the American Community Survey

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

\*\* indicates statistical significance at the 0.01 level

\* indicates statistical significance at the 0.005 level

The estimates of the coefficients for these variables were found to be statistically significant at the 0.001, 0.01, or 0.005 levels. The differentials in business earnings received by Non-Whites and White women compared to White males ranged from 27% less to 77% less.

### d. Conclusion

Using descriptive analysis, Table 29 shows that differentials exist between the business formation rates by Non-White males and White males. Table 30 presents the results of a further statistical analysis, which indicated that even after taking into account potential mitigating factors, the differential still exists. Tables 31 and 32 present data indicating differentials in wage and business earnings after controlling for possible explanatory factors. These analyses support the conclusion that barriers to business success do affect Non-Whites and White women entrepreneurs.

## 6. The Goods Industry in Illinois

### a. Business Formation Rates

Table 33 presents business formation rates in the goods industry in Illinois for selected demographic groups.

**Table 33. Business Formation Rates, Illinois**

**Goods, 2007-2011**

| Demographic Group      | Business Formation Rates |
|------------------------|--------------------------|
| Black                  | 2.1%                     |
| Latino                 | 4.6%                     |
| Native American        | 4.0% <sup>‡</sup>        |
| Asian/Pacific Islander | 11.3%                    |
| Other                  | 11.1% <sup>‡</sup>       |
| Non-White              | 5.0%                     |
| White Women            | 5.5%                     |
| Non-White Male         | 5.2%                     |
| White Male             | 7.9%                     |

Source: CHA calculations from the American Community Survey

<sup>‡</sup> The observations in this demographic group was too small for a reliable statistical analysis

White males have a higher rate of business formation than Non-Whites and White women. Note: the observed number of Native American and Other was too small for any reliable statistical analysis. However, as with the issue of income and earnings differences, the higher rates could be attributed to factors aside from race and/or gender. To explore this question further, a probit regression statistical technique was employed. The basic question is: how does the probability of forming a business vary as factors such as race, gender, etc. vary?

Table 34 presents the results of the probit analysis for the construction industry in Illinois.

**Table 34. Business Formation Probability  
Differentials for Selected Groups Relative  
to White Men**

**Goods, 2007-2011**

| Demographic Group      | Probability of Forming a<br>Business<br>Relative to White<br>Men |
|------------------------|--|
| Black                  | -4.0% <sup>***</sup>   |
| Latino                 | -1.7% <sup>***</sup>   |
| Native American        | ---  |
| Asian/Pacific Islander | 2.6% <sup>***</sup>  |
| Other                  | ---  |
| White Women            | -1.4% <sup>***</sup>   |

Source: CHA calculations from the American Community Survey

The analysis indicates that Blacks, Latinos, and White women in Illinois are less likely to form goods businesses compared to White men even after controlling for key factors. (Once again, this analysis does not include Native Americans and Others.) The reduction in probability ranges from 1.4% less to 4.0% less. However, Asian/Pacific Islanders were more likely to form businesses in this industry relative to White men by 2.6%. These estimates are statistically significant at the 99.1 level.

## b. Differences in Wage and Salary Incomes

Table 35 presents the findings from the wage and salary income regression analysis examining the goods industry in Illinois. This indicates the wage differential for selected demographic groups in Illinois relative to White men.

**Table 35. Wage Differentials for Selected Groups Relative to White Men**

Goods, 2007-2011

| Demographic Group      | Wages Relative to White Men<br>(% Change) |
|------------------------|---|
| Black                  | -41.5% **                                 |
| Latino                 | -11.6% ***                                |
| Native American        | -32.4% ***                                |
| Asian/Pacific Islander | -32.0% ***                                |
| Other                  | -97.8% ***                                |
| White Women            | -38.7% ***                                |

Source: CHA calculations from the American Community Survey

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

\*\* indicates statistical significance at the 0.01 level

Holding constant factors such as education, age, occupation, and industry, Blacks, Latinos, White women, Asian/Pacific Islanders and Others in Illinois earn less than White men in the goods industry. The differential ranges between 11% less and 97% less. Estimates of the coefficients for, Latino, Native American, Asian/Pacific Islander, Other, and White Women are statistically significant at the 0.001 level. The estimates of the coefficient for Black are statistically significant at the 0.01 level.

### c. Differences in Business Earnings

The same approach was used to investigate if there were differences in business earnings received by Non-White male entrepreneurs and White male entrepreneurs. Using the PUMS, we limited the sample to the self-employed and examined how their business income varied in response to factors such as race, gender, age, education, and industry. Table 36 presents these findings.

**Table 36. Business Earnings Differentials for Selected Groups Relative to White Men**

Goods, 2007-2011

| Demographic Group             | Earnings Relative to White Men (% Change) |
|-------------------------------|---|
| <b>Black</b>                  | -55.4% <sup>***</sup>                     |
| <b>Latino</b>                 | -28.8% <sup>***</sup>                     |
| <b>Native American</b>        | 0.0%                                      |
| <b>Asian/Pacific Islander</b> | -26.1% <sup>***</sup>                     |
| <b>Other</b>                  | 0.0%                                      |
| <b>White Women</b>            | -68.3% <sup>***</sup>                     |

Source: CHA calculations from the American Community Survey

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

With the exception of the estimated coefficient for Other and Native American, the estimates of the coefficients for these variables were found to be statistically significant at the 0.001 level. The differentials in business earnings received by Non-Whites and White women compared to White males ranged from 26% less to 68% less. For the estimated coefficient for Other and Native American, the results were not found to be significantly statistically different from zero.

### d. Conclusion

Using descriptive analysis, Table 33 shows that differentials exist between the business formation rates by Non-Whites and White women and White males. Table 34 presents the results of a further statistical analysis, which indicated that even after taking into account potential mitigating factors, the differential still exists. Tables 35 and 36 present data indicating differentials in wage and business earnings after controlling for possible explanatory factors. These analyses support the conclusion that barriers to business success do affect Non-Whites and White women entrepreneurs.

## VI. QUALITATIVE EVIDENCE OF RACE AND GENDER DISPARITIES IN MWRD'S MARKET

In addition to quantitative data, a disparity study should further explore anecdotal evidence of experiences with discrimination in contracting opportunities because it is relevant to the question of whether observed quantitative disparities are due to discrimination and not to some other non-discriminatory cause or causes. As observed by the Supreme Court, anecdotal evidence can be persuasive because it “brought the cold [statistics] convincingly to life.”<sup>189</sup> Evidence about discriminatory practices engaged in by prime contractors, bonding companies, suppliers, lenders and other actors relevant to business opportunities has been found relevant regarding barriers both to minority firms’ business formation and to their success on governmental projects.<sup>190</sup> While anecdotal evidence is insufficient standing alone, “[p]ersonal accounts of actual discrimination or the effects of discriminatory practices may, however, vividly complement empirical evidence. Moreover, anecdotal evidence of a [government’s] institutional practices that exacerbate discriminatory market conditions are [sic] often particularly probative.”<sup>191</sup> “[W]e do not set out a categorical rule that every case must rise or fall entirely on the sufficiency of the numbers. To the contrary, anecdotal evidence might make the pivotal difference in some cases; indeed, in an exceptional case, we do not rule out the possibility that evidence not reinforced by statistical evidence, as such, will be enough.”<sup>192</sup>

There is no requirement that anecdotal testimony be “verified” or corroborated, as befits the role of evidence in legislative decision-making as opposed to judicial proceedings. “Plaintiff offers no rationale as to why a fact finder could not rely on the State’s ‘unverified’ anecdotal data. Indeed, a fact finder could very well conclude that anecdotal evidence need not— indeed cannot— be verified because it ‘is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perception.”<sup>193</sup> Likewise, the Tenth Circuit held that “Denver was not required to present corroborating evidence and [plaintiff] was free to present its own witnesses to either refute the incidents described by Denver’s witnesses or to relate their own perceptions on discrimination in the Denver construction industry.”<sup>194</sup>

To explore this type of anecdotal evidence of possible discrimination against minorities and women in District’s geographic and industry markets, we conducted four group interviews, totaling 48 participants, and one stakeholders meeting. We met with business owners from a broad cross section of the industries from which the District purchases. Firms ranged in size from large

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<sup>189</sup> *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 399 (1977).

<sup>190</sup> *Adarand VII*, 228 F.3d at 1168-1172.

<sup>191</sup> *Concrete Works II*, 36 F.3d at 1520, 1530.

<sup>192</sup> *Engineering Contractors II*, 122 F.3d at 926.

<sup>193</sup> *Id.* at 249.

<sup>194</sup> *Concrete Works IV*, 321 F.3d at 989.

national businesses to decades-old family-owned firms to new start-ups. Owners' backgrounds included individuals with decades of experience in their fields and entrepreneurs beginning their careers. We sought to explore their experiences in seeking and performing public and private sector prime contracts and subcontracts, both with state agencies and in the private sector. We also elicited recommendations for improvements to the M/WBE Program, as discussed in Chapter III.

Many M/WBE participants reported that while some progress has been made in integrating their firms into public and private sector contracting activities through race- and gender-conscious contracting programs, significant barriers remain.

As discussed in Chapter II, this type of anecdotal data has been held by the courts to be relevant and probative of whether MWRD continues to have a need to use narrowly tailored M/WBE contract goals to remedy the effects of past and current discrimination, and create a level playing field for contract opportunities for all firms.

The following are summaries of the issues discussed. Quotations are indented, and have been edited for readability. They are representative of the views expressed by participants over the many sessions.

### **A. Discriminatory Attitudes and Negative Perceptions of Competence**

Many minority and women owners reported they experience negative attitudes about their competency and professionalism. The assumption is that M/WBEs are less qualified and capable.

[General contractors] do not rely on our expertise. They think we're just fronts or that we don't know our businesses and they don't trust us or that we know what we're doing. In the beginning, I know people didn't believe at all that I knew what I was doing.

I talked to a contractor two weeks ago, and I've known this estimator for 30 years. He used to be with another company, now he is with one of the prominent concrete contractors in the City of Chicago.... He said, I sent you the bid for blah, blah, blah, and I said, yea I know, I got it. He said, now you understand that you have to be really...low on this project. We can't give you this project just because you're a WBE. You have to have the low number. I said, damn I didn't realize that. I'm so shocked. I've been doing this for 30 years.

There are male white contractors that have been in and out of business three and four times.... [But] we're not presumed to be qualified just because we're minorities or women.

The first two years, three years I was in existence I wasn't even MBE and I would not put that on my website and I didn't make it known because where I worked for years, I knew it came with the scarlet letter. If you were an MBE firm you were automatically, they had lower expectations and higher rate of criticism about your work and everything else and so I approached work without a picture, a bio, nothing on my website. My website looked just technical and I was able to churn work just like that.

Some M/WBEs believe large general contractors see them a nuisance.

[General contractors] nickel and dime you so much and they've run several companies out of business.... [While large firms nickel and dime non-M/WBE subcontractors, too,] a lot of times they have relationships with other firms. And they're not going to screw their buddies. But if they look at you as a disposable item, hey we'll get him in here and get a low number, get as much work out as we can. Make him go [bankrupt] and reap the profits.

A non-M/WBE consultant also observed stereotypical and biased attitudes. Government agencies sometimes questioned his firm about why they would use a DBE or any smaller firm for a major role.

No one bats an eye if I, a major global firm, team with two other major global firms and then we do our 10 or 15 percent DBE. No one says anything. But on some projects, even if I bring in not just a minority firm but a smaller firm on a major role...people have issue with that.... I find that troubling when people make those comments.

M/WBEs were sometimes perceived to be more costly and troublesome.

[The general contractor] actually turned to the ownership and said, and because I got to use all these minorities, I'm going to need more money.

We've all heard that.

Lack of access to preferred pricing and supply networks sometimes did result in higher costs of doing business for minority and women contractors.

It does in a lot of situations cost more money because of [higher prices charged by suppliers to M/WBEs].

## **B. Obtaining Public Sector Work on an Equal Basis**

These types of barriers lead minorities and women to unanimous agreement that goals remain necessary to level the playing field and equalize opportunities. M/WBEs sought the right to compete on a fair and equal basis. Without goals, they believed they would be shut out of District contracts.



The program they have works.

The only thing really that the M/WBE program does, is allow you a second look. If they have minority or female requirements on a job, that will allow or encourages a general contractor to call you and say, your price is a little bit high, can you take another look. That in itself is a really important thing... Low bidders aren't born, they're made.... That's how they get all their buddies to work for them. So it does sometimes give us that entree.

Unless they're telling a prime to use you, those primes have no incentive to use you. So breaking in is always going to be hard because they have a limited number of primes that are going to get the work.

With all the qualifications, we would not have work without having this requirement or without having some kind of guidelines or something.

If there isn't a program somewhere, there is no incentive for anybody to use me. And the fact that there are minority- and women- and veteran-owned options, that is the only reason that I'm even going to get the experience to be able to become the prime.... In the engineering world, the larger firms are just getting larger so it's very hard to just even have entry.

[When agencies have eliminated contract goals,] we were basically told don't even bother.

We would not get that opportunity at all if it wasn't for the set aside.

It always goes back to relationships.... We're all in the trust business.... I for the life of me cannot figure out who to talk to at MWRD.

It's all about relationships. And you know what, somewhere behind there is lurking race too. Because we have not had that kind of exposure. So it's a part of this. Is it because of race? Is it because somebody's racist? I'm not saying that. I don't believe that's true. But what I'm saying is that it is about relationships and that in fact what the MWRD and these other agencies are doing is that they're forcing those relationships, at least the introduction of those relationships. If you don't do a good business you're not going to stay. And that's really the bottom line.

[Being M/WBE certified] gives us an opportunity to find out who those relationships are.

I really don't think that it has anything to do with race. It is because we're small and we don't have those resources. And how are they going to trust us? How do they know that we are able to provide

quality services for them? So we have to build that trust factor up to them.... The program gives us a foot in the door.

It always goes back to relationships.... We're all in the trust business.

Prime contract opportunities were especially difficult for M/WBEs to access.

There's no newcomers.... It's the same cast of characters....[The large general contractors] all have shops set up [on MWRD properties].

More or less you can only work as a sub.... Not many firms work with them. Even for the major firms.

A WBE reported she has received prime contracts from the District.

[District Affirmative Action staff] did everything in their power to make sure this was successful, believe me, because we were the first contract that they [issued to a M/WBE prime firm].... We were like the poster child.

Not only do M/WBEs benefit from working as prime contractors, but minority and women tradespeople do, too.

I employ probably more minorities than any other [trade contractor] because I am a minority.

[It's our] culture.

We do it because we have an internal motivation. It's us, so we approach it from a different perspective.... We developed a community involvement plan which was something that we felt we should do and we included as many local workers, as many minority and women contractors as we could because that's an added benefit you get with using minority contractors. Now on the flipside, you may have to pay a little bit more because it costs us more for insurance and financing and materials. But this is what you get. A lot of owners don't want to acknowledge that. Well, [a non-M/WBE bidder] number's here, your number's here. Can you get down here? Well, no we can't. So then they go over here. And then these guys are mandated to meet these quotas and they do whatever they can with the papers and shuffle them around and make it look like they're doing it. But they don't have a vested interest in making it a true success.

While mentor-protégé programs are often posited as a way to increase M/WBEs' capacities, several firm owners reported poor experiences with participation in a mentor-protégé arrangement.

If I did a Mentor-Protégé Program with [my major competitor], where do you think I would be at the end of that mentor-protégé? I'd be out of business. That man does not want to create another competitor.

I was just grateful to get out without being sued.... Everything got delayed and it just was a disaster. And I could already tell they were just using me and I did not want that reputation.

Participation in joint ventures had rarely produced better outcomes.

They're the same cast of characters that are [using joint venture agreements]. You see the names on all these JVs. They're just a guy that can swing a hammer, that has some carpenters. They're good guys but they've never grown their businesses but they've been the partner to [large general contractors] and a lot of these big companies.

One commonly suggested approach is setting aside some smaller contracts for bidding only by small firms on a race- and gender-neutral basis.

That would make sense.

If the District wants more participation from us, they have to create a pathway.

The District could benefit from...a set aside program for small business.

## **C. Conclusion**

Consistent with other evidence reported in this Study, anecdotal interview information strongly suggests that minorities and women continue to suffer discriminatory barriers to full and fair access to MWRD and private sector contracts and subcontracts. While not definitive proof that the District may apply race- and gender-conscious measures to these impediments, the results of the personal interviews are the types of evidence that, especially when considered alongside the numerous pieces of statistical evidence assembled, the courts have found to be highly probative of whether MWRD may use narrowly tailored M/WBE contract goals to address that discrimination.

## **VII. RECOMMENDATIONS FOR MWRD'S MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM**

The quantitative and qualitative data in this study provide a thorough examination of the evidence regarding the experiences of minority- and women-owned firms in the District's geographic and industry markets. As required by strict scrutiny, we analyzed evidence of such firms' utilization by the District as measured by dollars spent, as well as M/WBEs' experiences in obtaining contracts in the public and private sectors. We gathered statistical and anecdotal data to provide the agency with the evidence necessary to determine whether there is a strong basis in evidence for the continued use of race- and gender-conscious goals, and if so, how to narrowly tailor its Minority- and Women-Owned Business Enterprise ("M/WBE") program. Based upon the results, we make the following recommendations.

MWRD has implemented an aggressive and successful program for many years. Utilization of M/WBEs has exceeded availability in most industry sectors and for most groups. This is the result of setting contract goals, conducting outreach, and enforcing requirements. The results have been exemplary.

However, evidence beyond the District's achievements strong suggests these results are the effect of the program. Outside of MWRD contracts, M/WBEs face large disparities in opportunities for public sector and private sector work.

- The records and findings in the unsuccessful challenges to the programs of the City of Chicago, IDOT and the Illinois Tollway support the conclusion that the current effects of past discrimination and ongoing bias would be barriers to District work in the absence of affirmative action remedies.
- M/WBEs continue to suffer barriers throughout the Illinois economy.
- Business owners reported instances of bias and discrimination, and that they receive little work without the use of contract goals.

We therefore recommend that the program be continued, with the enhancements.

### **A. Augment Race- and Gender-Neutral Initiatives**

The courts require that governments use race- and gender-neutral approaches to the maximum feasible extent to address identified discrimination. This is a critical element of narrowly tailoring the program, so that the burden on non-M/WBEs is no more than necessary to achieve the District's remedial purposes. Increased participation by M/WBEs through race-neutral measures will also reduce the need to set M/WBE contract goals. We therefore suggest the following enhancements of MWRD's current efforts, based on the business owner interviews, the input of agency staff, and national best practices for M/WBE programs.

## **1. Implement an Electronic Contracting Data Collection, Monitoring and Notification System**

A critical element of this Study and a major challenge was data collection of full and complete prime contract and associated subcontractor records. As is very common, the District did not have all the information needed for the inclusion of subcontractor payments in the analysis. While the District purchased a system in 2012, it was not able to generate data for the study period. The lack of a system also makes it more difficult to monitor, enforce and review the program. It further means outreach is not as automated and convenient as these efforts could be.

We recommend the District implement an electronic data collection system for the M/WBE program with at least the following functionality:

- Full contact information for all firms, including email addresses, NAICS codes, race and gender ownership, and small business certification status.
- Contract/project-specific goal setting, using the data from this study.
- Utilization plan capture for prime contractor's submission of subcontractor utilization plans, including real-time verification of M/WBE certification status and NAICS codes, and proposed utilization/goal validation.
- Contract compliance for certified and non-certified prime contract and subcontract payments for all formally procured contracts for all tiers of all subcontractors; verification of prompt payments to subcontractors; and information sharing between the District, prime vendors and subcontractors about the status of pay applications.
- Spend analysis of informal expenditures, such as those made with agency credit cards or on purchase orders, to determine the utilization of certified firms.
- Program report generation that provides data on utilization by industries, race, gender, dollar amount, procurement method, etc.
- An integrated email and fax notification and reminder engine to notify users of required actions, including reporting mandates and dates.
- Outreach tools for eBlasts and related communications and event management for tracking registration and attendance.
- Import/export integration with existing systems to exchange contract, payment, and vendor data.
- Access by authorized MWRD staff, prime contractors and subcontractors to perform all necessary activities.

## **2. Continue to Focus on Reducing Barriers to M/WBE Prime Contract Awards**

Our 2012 Report recommended that MWRD increase efforts to make prime contract awards to M/WBEs, and progress has been made. The District has developed contract specifications with an eye towards unbundling projects into less complex scopes and lower dollar values. It has also increased the use of Job Order Contracts, which have lower bonding, financing and experience standards. Further, MWRD now only requires a bid deposit in lieu of a performance bond. Experience requirements have been reduced to three years from five in many instances. These efforts should continue.

We further suggested reviewing surety bonding, insurance and experience requirements so they are no greater than necessary to protect its interests. These are possible barriers to contracting by small firms that have been mentioned by the courts as areas to be considered. Steps might include reducing or eliminating insurance requirements on smaller contracts and removing the cost of the surety bonds from the calculation of lowest apparent bidder on appropriate solicitations. We reiterate this recommendation.

If contract goals are extended to non-construction related contracts, a focus on prime contracts will be important, not only for the usual benefits of increased access and increased competition but also because these industries often do not follow the construction model of prime contractors hiring subcontractors to perform direct work. Services and commodities contracts may lack meaningful subcontracting elements, so facilitating M/WBEs' participation as prime vendors will be key to reducing any barriers to District work.

## **3. Ensure Bidder Non-Discrimination and Fairly Priced Subcontractor Quotations**

Appendix D requires contractors to adopt explicit non-discrimination contractual provisions and commit to equal opportunity measures for their subcontractors and employees. Our earlier report recommended the District require bidders to maintain all subcontractor quotes received on larger projects. At the District's discretion, the prices and scopes can then be compared to ensure that bidders are in fact soliciting and contracting with subcontractors on a non-discriminatory basis and that M/WBEs are not inflating quotes. This approach was part of the Illinois Department of Transportation's DBE plan that was specifically approved by the court: "IDOT requires contractors seeking prequalification to maintain and produce solicitation records on all projects... Such evidence will assist IDOT in investigating and evaluating discrimination complaints."<sup>195</sup>

Another suggestion was to provide with the invitation for bid the scopes of work used by the District to set the contract goal. This would provide guidance to prime firms on

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<sup>195</sup> *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868, at \* 87 (Sept. 8, 2005).

specialties on which to concentrate for making good faith efforts, as well as increase transparency about how the program operates. It will be necessary to stress that firms may meet the goal using firms outside these industries and that only soliciting firms in these identified industries does not *per se* constitute making good faith efforts to meet the goal.

#### **4. Conduct Networking Events Focused on Design Projects**

MWRD participates in many outreach and networking events. However, there was a belief business owners in the construction-related professional sector that more outreach to their firms and more information about MWRD opportunities would be helpful.

#### **5. Revise the Small Business Enterprise Program Element**

The District currently sets a standard goal of 10 percent for participation by SBEs on construction contracts, and M/WBEs can be double counted towards the SBE goal. Participants in the interviews suggested this was not useful, and added unneeded complexity and burdens to crafting utilization plans, by requiring additional efforts to meet three goals, to the extent not included in the M/WBEs. Further, there is no basis for the goal and it increases work for prime bidders.

An effective approach would be to set aside some smaller contract for bidding only by SBEs as prime contractors. If implemented on a fully race- and gender-neutral basis, this is a constitutionally acceptable method to increase opportunities for all small firms. SBE setasides are especially useful for those industries that do not operate on a prime vendor-subcontractor model, such as consulting services. It will reduce the need to set contract goals to ensure equal opportunities, and is an approach specifically approved by the courts.

Many small firms, both M/WBEs and non-M/WBEs, endorsed this initiative. The District would have to determine the size limits for contracts (such as contracts under \$500,000) and the types of contracts to be included (such as only single scope jobs or lower dollar value multiple scope projects). For example, maintenance contracts might be a successfully procured using this method. It will be critical to keep complete race and gender information on bidders to evaluate whether this is an effective race- and gender-neutral measure to reduce barriers.

#### **6. Consider Partnering with Other Agencies to Implement a Small Contractor Bonding and Financing Program**

Access to bonding and working capital are major barriers to the development and success of M/WBEs and small firms. Traditional underwriting standards have often excluded these businesses. One approach that has proven to be effective for some governments is to develop an agency-sponsored bonding and financing assistance program for such firms. This goes beyond the provision of providing information about outside bonding resources to providing actual assistance to firms through a program

consultant. It would not, however, function as a bonding guarantee program that places the District's credit at risk or provides direct subsidies to participants. Rather, this concept brings the commitment of a surety to provide a bond for firms that have successfully completed the training and mentoring program. The Illinois Tollway has recently undertaken efforts along these lines, and we suggest MWRD explore finding partners to provide this type of assistance to M/WBEs.

## **7. Explore Developing a Linked Deposit Program**

In 2012, we recommended the District consider implementing a Linked Deposit program, whereby its depository banks would agree to make loans to District certified M/WBEs that have been awarded District prime contracts. For example, the Treasurer for the State of Illinois has a somewhat similar program, called the Business Invest Program, where the Treasurer's Office deposits state funds at below market rates to support loans to eligible Illinois businesses.<sup>196</sup> This below-market cost of funds enables the financial institution to offer a reduced interest rate on the business's loan. The reduced interest rate is available for up to the first 5 years of the loan. The borrower's savings on the loan can be applied to hiring new employees and funding operating costs and other expenses. We reiterate our suggestion that a comparable program could be instituted for District contracts.

## **8. Develop a Mentor-Protégé Program**

The District has had a Mentor-Protégé program element as part of its Ordinance for many years, whereby mentors would receive credit towards meeting M/W/SBE contract goals and protégés would receive support to increase their experience and capacities. We suggested in 2012 that a program be fully developed, including standards for participation, how credit will be given for utilization of the protégé, reimbursable expenses, program monitoring, and measures for program success. Elements should include:

- Formal program guidelines.
- A District-approved written development plan, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement, a schedule for meetings and development of plans, and the services and resources to be provided by the mentor to the protégé. The development targets should be quantifiable and verifiable, and reflect objectives to increase the protégé's capacities and expand its business areas and expertise. Targets for improvement must be specified, such as increased bonding capacity, increased sales, increased areas of work specialty, etc.
- A long term and specific commitment between the parties, *e.g.*, 12 to 36 months.
- Extra credit for the mentor's use of the protégé to meet a contract goal (*e.g.*, 1.25 percent for each dollar spent).

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<sup>196</sup> <http://www.treasurer.il.gov/programs/business-invest/business-invest.aspx>



- A fee schedule to cover the direct and indirect cost for services provided by the mentor for specific training and assistance to the protégé.
- Regular review by the District of compliance with the plan and progress towards meeting its objectives. Failure to adhere to the terms of the plan would be grounds for termination from the Program.

We reiterate this recommendation. While there was skepticism by several interview participants about mentor-protégé program in general and some had experienced less than optimal outcomes on specific programs, reports of successful relationships under initiatives such as that implemented by the Missouri Department of Transportation suggest to us that if carefully crafted and monitored, a mentor-protégé approach can be helpful in promoting M/WBEs' capacities.

## **B. Continue to Implement Narrowly Tailored Race- and Gender-Conscious Measures**

### **1. Use the Study to Set M/WBE Contract Goals**

The District's program has been very successful in opening up opportunities for M/WBEs on its contracts. As reported in Chapter IV, utilization has been significantly higher than availability, except for the goods sector.

As discussed in Chapter II of the study, the District's constitutional responsibility is to ensure that its program is narrowly tailored to its geographic and procurement marketplace. The highly detailed availability estimates in the Study can serve as the starting point for contract goal setting. This methodology involves four steps.

1. The District weighs the estimated dollar value of the scopes of the contract as determined during the process of creating the solicitation.
2. It then determines the availability of M/WBEs in those scopes as estimated in the Study.
3. A weighted goal is calculated based upon the scopes and the availability of firms.
4. The District adjusts the resulting percentage based on current market conditions and progress towards the annual goals.

The electronic system should have a goal setting module and written procedures spelling out the steps should be drafted. The District's procurement function uses National Institute of Government Purchasing ("NIGP") codes instead of the NAICS codes employed for this study. NIGP codes are too granular to permit solid statistical analysis, but a crosswalk is available to convert NIGP codes into NAICS codes so that the availability data in the study and can form the basis for the step in setting contract-specific goals.

We further recommend that the use of contract goals be extended to all industries to ensure that not only construction but also other types of projects are fully inclusive.

In a recent development, the District is entering into intergovernmental agreements (“IGAs”) with other agencies, and those agencies will in turn procure contracts with these IGA cost sharing funds. This seems similar to the role played by the U.S. Department of Transportation with its direct recipients with subrecipients. We recommend that, where appropriate, the District apply its program to work performed with District funds, including all eligibility, goal setting and reporting requirements. It should also consider reserving the right to set and approve goals and to conduct on site and paper monitoring.

Where appropriate, we urge MWRD to bid some contracts that it determines have significant opportunities for M/WBE participation without goals, especially in light of the high participation of M/WBEs during the study period. These “control contracts” can illuminate whether certified firms are used or even solicited in the absence of goals, as suggested by the study data. The development of some unremediated markets data will be probative of whether the programs remain needed to level the playing field for minorities and women and was important to our successful defense of IDOT’s DBE program.

## **2. Continue to Apply Narrowly Tailored Eligibility Standards**

The Interim Ordinance adopted a personal net worth test and size standards for certification. These requirements should be continued.

We suggest that the certification period be extended to three years to reduce the burden on MWRD staff and businesses. We also urge consideration of accepting without additional review (unless some specific item warrants it) M/WBE certifications in non-construction industries, so long as the certifying agency applies a personal net worth test and size standards at least as stringent as those of the District. The issues with fraudulent applications have surfaced almost entirely in the construction area, and it will be a burden on the Diversity Section to conduct this additional layer of review for other industries, should the goals be extended outside the current scope.

## **3. Revise Program Administration Elements**

We recommend that the District count second and lower tier M/WBE participation. Several general contractors noted that this highly unusual stance makes it more difficult for them to meet goals and may deprive some M/WBEs of the chance to work on District projects in smaller scopes not bid directly to the prime contractor. A comprehensive data collection system should permit such utilization to be tracked appropriately.

Another revision that will facilitate M/WBE participation, especially that of firms unfamiliar to a general contractor, is to allow a brief post-submission time to submit some of the compliance paperwork. The prime bidder would still have to submit its

utilization plan, and would not be permitted to augment participation after bid opening, but this would allow forms like a signed letter of intent to be submitted after bid opening. This is not to be confused with a “cure period,” whereby a prime firm is permitted to change its plan or “cure” its failure to make good faith efforts to meet the goal. This flexibility should help prime contractors to use a broader array of subcontractors, while maintaining program integrity and the policy that M/WBE compliance is a material element of responsiveness.

Next, we suggest adopting the approach of the USDOT DBE program and the city of Chicago that supplier participation be credited at 60 percent, not the current 25 percent ceiling. This is the lowest level of which we are aware across the country, and it seems so low as to effectively reduce any incentive to utilize M/WBEs suppliers. While perhaps not as much of a restriction in construction, should the program be extended to industries such as goods, the ability of use, for example, minority-owned information technology resellers, will be severely hampered.

Both District staff and prime contractors suggested that the waiver policy be more specific and more widely disseminated. This type of flexibility is critical to a determination that the program remains narrowly tailored. Moreover, to the extent prime vendors believe waivers are not possible, it may reduce the number of bids or proposals submitted, thereby reducing competition for District work.

Finally, we suggest a thorough review of current forms. Several have not been revised in many years and still require notarization. Fillable PDFs and online submissions will assist everyone to comply with the program. Requiring the use of commodity codes on utilization plans will assist with tracking and future goal setting.

Revisions could be conducted in conjunction with the process of implementing an electronic system.

### **C. Develop Performance Measures for Program Success**

MWRD should develop quantitative performance measures for M/WBEs and overall success of the program to evaluate its effectiveness in reducing the systemic barriers identified by the study. In addition to meeting the overall, annual goal, possible benchmarks might be:

- The number of bids or proposals and the dollar amount of the awards and the goal shortfall where the bidder submitted good faith efforts to meet the contract goal;
- The number and dollar amount of bids or proposals rejected as non-responsive for failure to make good faith efforts to meet the goal;
- The number, type and dollar amount of M/WBE substitutions during contract performance;

- Increased bidding by certified firms;
- Increased prime contract awards to certified firms;
- Increased “capacity” of certified firms as measured by bonding limits, size of jobs, profitability, etc.; and
- Increased variety in the industries in which M/WBEs are awarded prime contracts and subcontracts.

#### **D. Continue to Conduct Regular Program Reviews**

MWRD adopted a sunset date for the Interim Ordinance, and we suggest this approach be continued. Data should be reviewed approximately every five to six years, to evaluate whether race- and gender-based barriers have been reduced such that affirmative efforts are no longer needed, and if such measures are necessary, to ensure that they remain narrowly tailored.

## APPENDIX A: MASTER D/M/W/BE DIRECTORY

To supplement race and sex information in Dun & Bradstreet/Hoovers used to estimate M/W/DBE availability in the District's market area, we identified 119 organizations that might have lists of minority, women and disadvantaged firms. We included national entities and organizations from neighboring states because of the possibility that firms on these lists might be doing business with the District. These lists were used to supplement data on the race and sex of firms' ownership to improve the accuracy and coverage of race and sex assignments to estimate M/WBE availability.

In addition to MWRD's list, we obtained lists from the following entities:

- Business Research Services
- Chicago Chinatown Chamber of Commerce
- Chicago Minority Suppliers Development Council
- Chicago Rockford International Airport
- Chicago United
- Chicago Urban League
- City of Chicago
- City of Rockford
- Cook County
- Diversity Information Resources
- DuPage County
- Illinois Department of Central Management Services
- Illinois State Black Chamber of Commerce
- Illinois UCP
- National Organization of Minority Architects
- Small Business Administration/Central Contractor Registry
- Suburban Minority Contractors Association
- Black Contractors United
- Federation of Women Contractors
- Hispanic American Construction Industry
- Women Construction Owners & Executives

The following entities had relevant lists of MWDBEs that were duplicates of the lists we obtained:

Abraham Lincoln Capital Airport  
Central Illinois Regional Airport  
Chicago Midway International Airport  
Chicago O'Hare International Airport  
Chicago Public Schools  
Chicago Transit Authority  
Greater Peoria Regional Airport  
Illinois Department of Transportation  
Illinois Tollway  
METRA (Chicago Railway)  
Metropolitan Pier and Exposition Authority  
University of Illinois  
University of Illinois Willard Airport

The following entities either did not have a list of MWDBEs or the list did not include race and gender information:

American Indian Development Association  
Champaign County  
Chicago Black Pages  
Village of Arlington Heights  
City of Cicero  
City of Elgin  
City of Evanston  
City of Joliet  
City of Naperville  
Village of Schaumburg  
City of Waukegan  
Decatur Airport  
Hispanic Lawyers Association of Illinois  
Illinois Hispanic Chamber of Commerce  
Joliet Region Chamber of Commerce  
Kane County  
Kankakee County  
Kendall County  
Lake County  
Marshall County  
McHenry County  
McLean County  
Menard County

National Center of American Indian Enterprise Development  
 Rock Island County  
 Society of Taiwanese Americans  
 Tazewell County  
 The John Marshall Law School  
 Vermillion County  
 Williamson County Regional Airport  
 Rogers Park Business Alliance  
 Association of Asian Construction Enterprises  
 Taiwanese American Professionals Chicago

We were unable to obtain lists from the following entities:

Alliance of Business Leaders & Entrepreneurs  
 Arab American Bar Association of Illinois  
 Arquitectos - The Society of Hispanic Professional Architects  
 Asian American Alliance  
 Asian American Bar Association of the Greater Chicago Area  
 Asian American Institute  
 Asian American Small Business Association  
 Black Chamber of Commerce of Lake County  
 Chatham Business Association, Small Business Development  
 Chicago State University  
 Chicago Women in Architecture  
 Aurora Regional Chamber of Commerce  
 City of Aurora  
 City of Springfield  
 Coalition of African American Leaders  
 Cosmopolitan Chamber of Commerce  
 Enterpriz Cook County  
 Hispanic SMB  
 Illinois Department of Commerce and Economic Opportunity  
 Indian American Bar Association  
 MidAmerica St. Louis Airport  
 National Association of Women Business Owners  
 National Society of Hispanic MBAs - Chicago Chapter  
 Puerto Rican Bar Association of Illinois  
 Puerto Rican Chamber of Commerce  
 Quad City International Airport  
 Rainbow Push Coalition International Trade Bureau  
 Rockford Black Pages  
 St. Clair County  
 Tribal Procurement Institute PTAC

Will County  
 Women's Bar Association  
 Business Partners - The Chamber for Uptown  
 Philippine American Chamber of Commerce of Greater Chicago  
 Korea Business Association  
 Korean American Association of Chicago  
 Chicago Korean American Chamber of Commerce  
 Taiwanese American Chamber of Commerce of Greater Chicago  
 Taiwanese Chambers of Commerce of North America  
 Vietnamese American National Chamber of Commerce  
 West Ridge Chamber of Commerce  
 Arab American Association for Engineers & Architects  
 Chicago Minority Business Association  
 Association of Subcontractors & Affiliates

The following entities declined to provide either their list or the race and gender information in their list:

Aurora Hispanic Chamber of Commerce  
 Austin Chamber of Commerce  
 Black Women Lawyers of Greater Chicago, Inc.  
 Latin American Chamber of Commerce  
 Women's Business Development Center  
 African American Contractors Association



## APPENDIX B: FURTHER EXPLANATION OF THE MULTIPLE REGRESSION ANALYSIS

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

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

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

The estimation process takes this equation and transforms it into:

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

where C is the constant term;  $\beta_1$ ,  $\beta_2$  and  $\beta_3$  are coefficients, and  $\mu$  is the random error term.

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

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

A coefficient was estimated for each independent variable. The broad idea is that a person's wage or earnings is dependent upon the person's race, gender, age, industry, occupation, and education. An additional factor was included: because of our interest in the impact of race and gender on wages and earnings, we made the assumption that the impact of those variables might vary from state to state (*i.e.*, the impact of being Black on wages is different in Illinois than it is in Alabama). We therefore developed new variables that would show the interaction between race and gender and one particular state. Since this Report examined Illinois, that was the state employed. The coefficient for the new variable showed the impact of being a member of that race or gender in Illinois. Consequently, the impact of race or gender on wages or earnings had two components: the national coefficient and the state-specific impact.

## APPENDIX C: FURTHER EXPLANATION OF THE PROBIT REGRESSION ANALYSIS

Probit regression is a special type of regression analysis. While there are many differences between the underlying estimation techniques used in the probit regression and the standard regression analysis, the main differences from the lay person's point of view lie in the nature of dependent variable and the interpretation of the coefficients associated with the independent variables.

The basic model looks the same:

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

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

The estimation process takes this equation and transforms it into:

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

where C is the constant term;  $\beta_1$ ,  $\beta_2$ , and  $\beta_3$  are coefficients, and  $\mu$  is the random error term.

In the standard regression model, the dependent variable is continuous and can take on many values, in the probit model, the dependent variable is dichotomous and can take on only two values: zero or one. For instance, in the standard regression analysis, we may be exploring the impact of a change in some independent variable on wages. In this case, the value of one's wage might be any non-negative number. In contrast, in the probit regression analysis, the exploration might be the impact of a change in some independent variable on the probability that some event occurs. For instance, the question might be how an individual's gender impacts the probability of that person forming a business. In this case, the dependent variable has two values: zero, if a business is not formed; one, if a business is formed.

The second significant difference—the interpretation of the independent variables' coefficients—is fairly straight-forward in the standard regression model: the unit change in the independent variable impacts the dependent variable by the amount of the coefficient.<sup>197</sup> However, in the probit model, the initial coefficients cannot be interpreted this way. One additional step --- which can be computed easily by most statistical packages --- must be undertaken in order to yield a result that indicates how the change in the independent variable affects the probability of an event (e.g. business formation) occurs. For instance, using

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<sup>197</sup> The exact interpretation depends upon the functional form of the model.

our previous example of the impact on gender on business formation, if the independent variable was WOMAN (with a value of 0 if the individual was male and 1 if the individual was female) and the final transformation of the coefficient of WOMAN was -0.12, we would interpret this to mean that women have a 12% lower probability of forming a business compared to men.

## APPENDIX D: SIGNIFICANCE LEVELS

Many tables in this report contain asterisks indicating a number has statistical significance at 0.001 or 0.01 levels and the body of the report repeats these descriptions. While the use of the term seems important, it is not self-evident what the term means. This appendix provides a general explanation of significance levels.

This report seeks to address the question whether non-Whites and White women received disparate treatment in the economy relative to White males. From a statistical viewpoint, this primary question has two sub-questions:

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

For example, an important question facing the District as it explores the necessity of intervening in the marketplace through contract goals to ensure it is not a passive participant in the continuation of historic and contemporary bias is do non-Whites and White women receive lower wages than White men? As discussed in Appendix B, one way to uncover the relationship between the dependent variable (e.g., wages) and the independent variable (e.g., non-whites) is through multiple regression analysis. An example helps to explain this concept.

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

To resolve the second sub-question, statistical hypothesis tests are utilized. Hypothesis testing assumes that there is no relationship between belonging to a particular demographic group and the level of economic utilization relative to White men (e.g., non-Whites earn identical wages compared to White men or non-Whites earn 0% less than White men). This sometimes called the null hypothesis. We then calculate a confidence interval to find explore the probability that the observed relationship (e.g., - 35%) is between 0 and minus that confidence interval.<sup>198</sup> The confidence interval will vary depending upon the level

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<sup>198</sup> Because 0 can only be greater than -35%, we only speak of “minus the confidence level”. This is a one-tailed hypothesis test. If, in another example, the observed relationship could be above or below the hypothesized value, then we would say “plus or minus the confidence level” and this would be a two-tailed test.

of confidence (statistical significance) we wish to have in our conclusion. Hence, a statistical significance of 99% would have a broader confidence interval than statistical significance of 95%. Once a confidence interval is established, if -35% lies outside of that interval, we can assert the observed relationship (e.g., 35%) is accurate at the appropriate level of statistical significance.

## APPENDIX E: ADDITIONAL DATA FROM THE ANALYSIS OF THE SURVEY OF BUSINESS OWNERS<sup>199</sup>

**Table E1. Demographic Distribution of Sales and Payroll Data**  
Construction, 2007

|   | Total<br>Number of<br>Firms<br>(All Firms) | Sales &<br>Receipts (All<br>Firms)<br>(\$1,000) | Number of<br>Firms with<br>Paid<br>Employees<br>(Employer<br>Firms) | Sales &<br>Receipts<br>Firms with<br>Paid<br>Employees<br>(Employer<br>Firms)<br>(\$1,000) | Number of<br>Paid<br>Employees | Annual<br>payroll<br>(\$1,000) |
|---|--|---|---|--|--------------------------------|--------------------------------|
| <b>Panel A: Distribution of Non-White Firms</b> |  |   |   |  |                                |                                |
| <b>Black</b>                                    | 3.5%                                       | 0.9%  | 0.8%  | 0.8%   | 1.0%                           | 0.9%                           |
| <b>Latino</b>                                   | 6.0%                                       | 1.8%  | 3.2%  | 1.6%   | 2.6%                           | 2.1%                           |
| <b>Native American</b>                          | 0.4%                                       | 0.1%  | 0.2%  | 0.1%   | 0.1%                           | 0.1%                           |
| <b>Asian</b>                                    | 1.0%                                       | 0.5%  | 0.8%  | 0.5%   | 0.6%                           | 0.6%                           |
| <b>Panel B: Distribution of All Firms</b>       |  |   |   |  |                                |                                |
| <b>Non-White</b>                                | 10.9%                                      | 3.2%  | 4.6%  | 2.9%   | 4.0%                           | 3.6%                           |
| <b>White Women</b>                              | 7.5%                                       | 6.5%  | 9.2%  | 6.5%   | 9.3%                           | 8.8%                           |
| <b>White Men</b>                                | 66.0%                                      | 65.5%   | 62.8%   | 65.5%  | 63.5%                          | 64.6%                          |
| <b>Equally Non-white &amp;<br/>White</b>        | S  | S   | S   | S  | S                              | S                              |
| <b>Equally Women &amp; Men</b>                  | 13.0%                                      | 7.9%  | 17.5%   | 7.0%   | 9.9%                           | 7.8%                           |
| <b>Firms Not Classifiable</b>                   | 2.1%                                       | 16.8%   | 5.8%  | 18.0%  | 13.1%                          | 15.0%                          |
|   |  |   |   |  |                                |                                |
| <b>All Firms</b>                                | 100.0%                                     | 100.0%  | 100.0%  | 100.0%   | 100.0%                         | 100.0%                         |

Source: CHA calculations from Survey of Business Owners

<sup>199</sup> See Footnote 158 for an explanation of the reported value of “S”.

**Table E2. Demographic Distribution of Sales and Payroll Data – Aggregated Groups**  
Professional, Scientific, and Technical Services, 2007

|   | Total Number<br>of Firms<br>(All Firms) | Sales &<br>Receipts<br>(All Firms)<br>(\$1,000) | Number of<br>Firms with<br>Paid<br>Employees<br>(Employer<br>Firms) | Sales &<br>Receipts<br>Firms with<br>Paid<br>Employees<br>(Employer<br>Firms)<br>(\$1,000) | Number of<br>Paid<br>Employees | Annual<br>payroll<br>(\$1,000) |
|---|---|---|---|--|--------------------------------|--------------------------------|
| <b>Panel A: Distribution of Non-White Firms</b> |   |   |   |  |                                |                                |
| <b>Black</b>                                    | 4.9%                                    | 0.8%  | 1.3%  | 0.7%   | 0.9%                           | 0.7%                           |
| <b>Latino</b>                                   | 3.2%                                    | 0.9%  | 1.7%  | 0.8%   | 1.0%                           | 0.6%                           |
| <b>Native American</b>                          | S                                       | S   | S   | S  | S                              | S                              |
| <b>Asian</b>                                    | 5.5%                                    | 2.6%  | 5.1%  | 2.4%   | 2.4%                           | 2.4%                           |
| <b>Panel B: Distribution of All Firms</b>       |   |   |   |  |                                |                                |
| <b>Non-White</b>                                | 14.2%                                   | 4.3%  | 7.8%  | 3.7%   | 4.2%                           | 3.7%                           |
| <b>White Women</b>                              | 23.0%                                   | 6.2%  | 16.4%   | 5.1%   | 6.6%                           | 4.8%                           |
| <b>White Men</b>                                | 48.3%                                   | 37.3%   | 57.5%   | 36.0%  | 37.8%                          | 36.2%                          |
| <b>Equally Non-white &amp;<br/>White</b>        | 1.3%                                    | 0.2%  | 0.4%  | 0.2%   | 0.2%                           | 0.1%                           |
| <b>Equally Women &amp; Men</b>                  | 10.7%                                   | 3.8%  | 9.7%  | 3.1%   | 3.8%                           | 2.4%                           |
| <b>Firms Not Classifiable</b>                   | 2.5%                                    | 48.3%   | 8.2%  | 51.9%  | 47.4%                          | 52.8%                          |
|   |   |   |   |  |                                |                                |
| <b>All Firms</b>                                | <b>100.0%</b>                           | <b>100.0%</b>                                   | <b>100.0%</b>   | <b>100.0%</b>  | <b>100.0%</b>                  | <b>100.0%</b>                  |

Source: CHA calculations from Survey of Business Owners

**Table E3. Demographic Distribution of Sales and Payroll Data – Aggregated Groups**  
Information, 2007

|   | Total<br>Number<br>of<br>Firms<br>(All<br>Firms) | Sales &<br>Receipts<br>(All<br>Firms)<br>(\$1,000) | Number of<br>Firms with<br>Paid<br>Employees<br>(Employer<br>Firms) | Sales &<br>Receipts<br>Firms with<br>Paid<br>Employees<br>(Employer<br>Firms)<br>(\$1,000) | Number of<br>Paid<br>Employees | Annual<br>payroll<br>(\$1,000) |
|---|--|--|---|--|--------------------------------|--------------------------------|
| <b>Panel A: Distribution of Non-White Firms</b> |  |  |   |  |                                |                                |
| <b>Black</b>                                    | 8.0%   | 1.7%   | 1.2%  | 1.7%   | 0.9%                           | 3.0%                           |
| <b>Latino</b>                                   | 3.0%   | 0.2%   | 0.8%  | 0.1%   | 0.2%                           | 0.1%                           |
| <b>Native American</b>                          | S  | S  | S   | S  | S                              | S                              |
| <b>Asian</b>                                    | 3.8%   | 0.7%   | 3.0%  | 0.6%   | 0.7%                           | 0.8%                           |
| <b>Panel B: Distribution of All Firms</b>       |  |  |   |  |                                |                                |
| <b>Non-White</b>                                | 15.1%  | 2.5%   | 4.9%  | 2.4%   | 1.7%                           | 3.9%                           |
| <b>White Women</b>                              | 20.9%  | 1.2%   | 14.2%   | 1.1%   | 2.5%                           | 1.5%                           |
| <b>White Men</b>                                | 46.1%  | 13.9%  | 46.0%   | 13.5%  | 18.4%                          | 17.4%                          |
| <b>Equally Non-white &amp; White</b>            | S  | S  | S   | S  | S                              | S                              |
| <b>Equally Women &amp; Men</b>                  | 10.5%  | 0.8%   | 11.2%   | 0.7%   | 1.8%                           | 0.9%                           |
| <b>Firms Not Classifiable</b>                   | 6.1%   | 81.4%  | 23.1%   | 82.2%  | 75.5%                          | 76.2%                          |
|   |  |  |   |  |                                |                                |
| <b>All Firms</b>                                | <b>100.0%</b>                                    | <b>100.0%</b>                                      | <b>100.0%</b>   | <b>100.0%</b>  | <b>100.0%</b>                  | <b>100.0%</b>                  |

Source: CHA calculations from Survey of Business Owners



**Table E4. Demographic Distribution of Sales and Payroll Data – Aggregated Groups**  
Services, 2007

|   | Total Number of Firms (All Firms) | Sales & Receipts (All Firms) (\$1,000) | Number of Firms with Paid Employees (Employer Firms) | Sales & Receipts Firms with Paid Employees (Employer Firms) (\$1,000) | Number of Paid Employees | Annual payroll (\$1,000) |
|---|-----------------------------------|--|--|---|--------------------------|--------------------------|
| <b>Panel A: Distribution of Non-White Firms</b> |                                   |  |  |   |                          |                          |
| <b>Black</b>                                    | 12.9%                             | 0.7%                                   | 2.1%   | 0.4%  | 1.2%                     | 0.6%                     |
| <b>Latino</b>                                   | 5.6%                              | 1.0%                                   | 8.4%   | 0.8%  | S                        | S                        |
| <b>Native American</b>                          | S                                 | S                                      | S  | S   | S                        | S                        |
| <b>Asian</b>                                    | 5.9%                              | 1.7%                                   | S  | S   | S                        | S                        |
| <b>Panel B: Distribution of All Firms</b>       |                                   |  |  |   |                          |                          |
| <b>Non-White</b>                                | 24.7%                             | 3.1%                                   | 11.8%  | 2.5%  | 5.1%                     | 3.3%                     |
| <b>White Women</b>                              | 23.1%                             | 3.4%                                   | 14.7%  | 2.7%  | 6.0%                     | 3.9%                     |
| <b>White Men</b>                                | 36.4%                             | 20.9%                                  | 44.9%  | 19.4%   | 28.9%                    | 24.7%                    |
| <b>Equally Non-white &amp; White</b>            | S                                 | S                                      | S  | S   | S                        | S                        |
| <b>Equally Women &amp; Men</b>                  | 10.9%                             | 3.3%                                   | 14.6%  | 2.7%  | 5.9%                     | 3.8%                     |
| <b>Firms Not Classifiable</b>                   | 3.8%                              | 69.0%                                  | 13.5%  | 72.5%   | 53.8%                    | 64.1%                    |
|   |                                   |  |  |   |                          |                          |
| <b>All Firms</b>                                | <b>100.0%</b>                     | <b>100.0%</b>                          | <b>100.0%</b>  | <b>100.0%</b>   | <b>100.0%</b>            | <b>100.0%</b>            |

Source: CHA calculations from Survey of Business Owners

**Table E5. Demographic Distribution of Sales and Payroll Data – Aggregated Groups**  
**Goods, 2007**

|   | Total<br>Number of<br>Firms<br>(All Firms) | Sales &<br>Receipts<br>(All Firms)<br>(\$1,000) | Number of<br>Firms with<br>Paid<br>Employees<br>(Employer<br>Firms) | Sales &<br>Receipts<br>Firms with<br>Paid<br>Employees<br>(Employer<br>Firms)<br>(\$1,000) | Number of<br>Paid<br>Employees | Annual<br>payroll<br>(\$1,000) |
|---|--|---|---|--|--------------------------------|--------------------------------|
| <b>Panel A: Distribution of Non-White Firms</b> |  |   |   |  |                                |                                |
| <b>Black</b>                                    | 4.1%                                       | 0.2%  | 0.9%  | 0.2%   | 0.3%                           | 0.3%                           |
| <b>Latino</b>                                   | 4.2%                                       | 0.5%  | 2.4%  | 0.5%   | 0.8%                           | 0.6%                           |
| <b>Native American</b>                          | S  | S   | S   | S  | S                              | S                              |
| <b>Asian</b>                                    | 5.8%                                       | 1.1%  | 7.3%  | 1.0%   | 1.5%                           | 1.1%                           |
| <b>Panel B: Distribution of All Firms</b>       |  |   |   |  |                                |                                |
| <b>Non-White</b>                                | 14.3%                                      | 1.7%  | 9.7%  | 1.7%   | 2.5%                           | 1.9%                           |
| <b>White Women</b>                              | 24.7%                                      | 2.6%  | 12.4%   | 2.5%   | 4.2%                           | 3.7%                           |
| <b>White Men</b>                                | 38.5%                                      | 24.4%   | 50.1%   | 24.3%  | 34.9%                          | 34.2%                          |
| <b>Equally Non-white &amp;<br/>White</b>        | S  | S   | S   | S  | S                              | S                              |
| <b>Equally Women &amp; Men</b>                  | 16.6%                                      | 2.8%  | 16.6%   | 2.6%   | 5.3%                           | 3.9%                           |
| <b>Firms Not Classifiable</b>                   | 4.8%                                       | 68.6%   | 11.4%   | 68.9%  | 53.0%                          | 56.3%                          |
|   |  |   |   |  |                                |                                |
| <b>All Firms</b>                                | <b>100.0%</b>                              | <b>100.0%</b>                                   | <b>100.0%</b>   | <b>100.0%</b>  | <b>100.0%</b>                  | <b>100.0%</b>                  |

Source: CHA calculations from Survey of Business Owners

## APPENDIX F: ADDITIONAL DATA FROM THE ANALYSIS OF AMERICAN COMMUNITY SURVEY

**Table F1. Partial Results from Log-linear Regression Analysis**

All Industries, 2007-2011

| Dependent Variable: Logarithm of Wages  |             |
|---|-------------|
| Independent Variable                    | Coefficient |
| <b>Black</b>                            | -.296***    |
| <b>Latino</b>                           | -.186***    |
| <b>Native American</b>                  | -.326***    |
| <b>Asian/Pacific Islander</b>           | -.277***    |
| <b>Other</b>                            | -.234***    |
| <b>White Women</b>                      | -.324***    |
| <b>IL_Black</b>                         | -.0473***   |
| <b>IL_Latino</b>                        | .0648***    |
| <b>IL_Native American</b>               | -0.072      |
| <b>IL_Asian/Pacific Islander</b>        | -.0275**    |
| <b>IL_Other</b>                         | -0.048      |
| <b>IL_White Women</b>                   | -.0145**    |
|   |             |
| <b>Adjusted R-Squared</b>               | 0.486       |
|   |             |
| legend: * p<0.05; ** p<0.01; ***p<0.001 |             |

Source: CHA calculations from the American Community Survey

**Table F2. Partial Results from Log-linear Regression Analysis**

All Industries, 2007-2011

| Dependent Variable: Logarithm of Business Earnings |             |
|--|-------------|
| Independent Variable                               | Coefficient |
| <b>Black</b>                                       | -.444***    |
| <b>Latino</b>                                      | -.255***    |
| <b>Native American</b>                             | -.493***    |
| <b>Asian/Pacific Islander</b>                      | -.242***    |
| <b>Other</b>                                       | -.123**     |
| <b>White Women</b>                                 | -.532***    |
| <b>IL_Black</b>                                    | 0.034       |
| <b>IL_Latino</b>                                   | 0.026       |
| <b>IL_Native American</b>                          | -0.248      |
| <b>IL_Asian/Pacific Islander</b>                   | 0.034       |
| <b>IL_Other</b>                                    | 0.118       |
| <b>IL_White Women</b>                              | -0.035      |
|  |             |
| <b>Adjusted R-Squared</b>                          | 0.197       |
|  |             |
| legend: * p<0.05; ** p<0.01; ***p<0.001            |             |

Source: CHA calculations from the American Community Survey

**Table F3. Partial Results from Probit Regression Analysis**

All Industries, 2007-2011

| Dependent Variable: Probability of Forming a Business |             |
|---|-------------|
| Independent Variable                                  | Coefficient |
| <b>Black</b>  | -0.383      |
| <b>Latino</b>   | -0.256      |
| <b>Native American</b>                                | -0.235      |
| <b>Asian/Pacific Islander</b>                         | -0.109      |
| <b>Other</b>  | -0.067      |
| <b>White Women</b>                                    | -0.202      |
| <b>IL_Black</b>                                       | 0.037       |
| <b>IL_Latino</b>                                      | -0.066      |
| <b>IL_Native American</b>                             | 0.168       |
| <b>IL_Asian/Pacific Islander</b>                      | 0.059       |
| <b>IL_Other</b>                                       | -0.122      |
| <b>IL_White Women</b>                                 | 0.015       |
|   |             |
| <b>Pseudo R-Square</b>                                | 0.242       |

Source: CHA calculations from the American Community Survey

**Table F4. Partial Results from Log-linear Regression Analysis**

Construction, 2007-2011

| Dependent Variable: Logarithm of Wages  |             |
|---|-------------|
| Independent Variable                    | Coefficient |
| <b>Black</b>                            | -.387***    |
| <b>Latino</b>                           | -.133***    |
| <b>Native American</b>                  | -.36***     |
| <b>Asian/Pacific Islander</b>           | -.25***     |
| <b>Other</b>                            | -.133***    |
| <b>White Women</b>                      | -.38***     |
| <b>IL_Black</b>                         | -.123***    |
| <b>IL_Latino</b>                        | 0.0214      |
| <b>IL_Native American</b>               | 0.18        |
| <b>IL_Asian/Pacific Islander</b>        | -.265***    |
| <b>IL_Other</b>                         | 0.127       |
| <b>IL_White Women</b>                   | -.0696**    |
|   |             |
| <b>Adjusted R-Squared</b>               | 0.302       |
|   |             |
| legend: * p<0.05; ** p<0.01; ***p<0.001 |             |

Source: CHA calculations from the American Community Survey

**Table F5. Partial Results from Log-linear Regression Analysis**

Construction, 2007-2011

| Dependent Variable: Logarithm of Business Earnings |             |
|--|-------------|
| Independent Variable                               | Coefficient |
| Black  | -.492***    |
| Latino   | -.0612***   |
| Native American                                    | -.258***    |
| Asian/Pacific Islander                             | -.1**       |
| Other  | 0.0441      |
| White Women  | -.515***    |
| IL_Black   | .229*       |
| IL_Latino  | 0.138       |
| IL_Native American                                 | 0.0293      |
| IL_Asian/Pacific Islander                          | -0.00983    |
| IL_Other   | 0.976       |
| IL_White Women                                     | .321**      |
|  |             |
| Adjusted R-Squared                                 | 0.158       |
|  |             |
| legend: * p<0.05; ** p<0.01; ***p<0.001            |             |

Source: CHA calculations from the American Community Survey

**Table F6. Partial Results from Probit Regression Analysis**

Construction, 2007-2011

| Dependent Variable: Probability of Forming a Business |             |
|---|-------------|
| Independent Variable                                  | Coefficient |
| <b>Black</b>  | -0.299      |
| <b>Latino</b>   | -0.287      |
| <b>Native American</b>                                | -0.316      |
| <b>Asian/Pacific Islander</b>                         | -0.032      |
| <b>Other</b>  | -0.113      |
| <b>White Women</b>                                    | -0.085      |
| <b>IL_Black</b>                                       | 0.172       |
| <b>IL_Latino</b>                                      | -0.122      |
| <b>IL_Native American</b>                             | 0.213       |
| <b>IL_Asian/Pacific Islander</b>                      | 0.000       |
| <b>IL_Other</b>                                       | -1.128      |
| <b>IL_White Women</b>                                 | 0.010       |
| <b>Pseudo R-Square</b>                                | 0.11        |

Source: CHA calculations from the American Community Survey



**Table F7. Partial Results from Log-linear Regression Analysis**

Services, 2007-2011

| Dependent Variable: Logarithm of Wages  |             |
|---|-------------|
| Independent Variable                    | Coefficient |
| <b>Black</b>                            | -.367***    |
| <b>Latino</b>                           | -.252***    |
| <b>Native American</b>                  | -.412***    |
| <b>Asian/Pacific Islander</b>           | -.283***    |
| <b>Other</b>                            | -.259***    |
| <b>White Women</b>                      | -.342***    |
| <b>IL_Black</b>                         | -.0777***   |
| <b>IL_Latino</b>                        | 0.00162     |
| <b>IL_Native American</b>               | -.301*      |
| <b>IL_Asian/Pacific Islander</b>        | -0.03       |
| <b>IL_Other</b>                         | -0.2        |
| <b>IL_White Women</b>                   | -.0578***   |
|   |             |
| <b>Adjusted R-Squared</b>               | 0.395       |
|   |             |
| legend: * p<0.05; ** p<0.01; ***p<0.001 |             |

Source: CHA calculations from the American Community Survey

**Table F8. Partial Results from Log-linear Regression Analysis**

Services, 2007-2011

| Dependent Variable: Logarithm of Business Earnings |             |
|--|-------------|
| Independent Variable                               | Coefficient |
| <b>Black</b>                                       | -.531***    |
| <b>Latino</b>                                      | -.373***    |
| <b>Native American</b>                             | -.771***    |
| <b>Asian/Pacific Islander</b>                      | -.338***    |
| <b>Other</b>                                       | -.27**      |
| <b>White Women</b>                                 | -.616***    |
| <b>IL_Black</b>                                    | -0.101      |
| <b>IL_Latino</b>                                   | -0.0557     |
| <b>IL_Native American</b>                          | -0.218      |
| <b>IL_Asian/Pacific Islander</b>                   | 0.0659      |
| <b>IL_Other</b>                                    | -1.62       |
| <b>IL_White Women</b>                              | -.11*       |
|  |             |
| <b>Adjusted R-Squared</b>                          | .179        |
|  |             |
| legend: * p<0.05; ** p<0.01; ***p<0.001            |             |

Source: CHA calculations from the American Community Survey

**Table F9. Partial Results from Probit  
Regression Analysis**

Services, 2007-2011

| Dependent Variable: Probability of Forming a Business |             |
|---|-------------|
| Independent Variable                                  | Coefficient |
| <b>Black</b>  | -0.477      |
| <b>Latino</b>   | -0.310      |
| <b>Native American</b>                                | -0.377      |
| <b>Asian/Pacific Islander</b>                         | -0.334      |
| <b>Other</b>  | -0.167      |
| <b>White Women</b>                                    | -0.283      |
| <b>IL_Black</b>                                       | -0.018      |
| <b>IL_Latino</b>                                      | -0.022      |
| <b>IL_Native American</b>                             | 0.442       |
| <b>IL_Asian/Pacific Islander</b>                      | 0.092       |
| <b>IL_Other</b>                                       | -0.391      |
| <b>IL_White Women</b>                                 | 0.010       |
| <b>Pseudo R-Square</b>                                | 0.193       |

Source: CHA calculations from the American Community Survey

**Table F10. Partial Results from Log-linear Regression Analysis**

Goods, 2007-2011

| Dependent Variable: Logarithm of Wages  |             |
|---|-------------|
| Independent Variable                    | Coefficient |
| <b>Black</b>                            | -.317***    |
| <b>Latino</b>                           | -.235***    |
| <b>Native American</b>                  | -.324***    |
| <b>Asian/Pacific Islander</b>           | -.32***     |
| <b>Other</b>                            | -.24***     |
| <b>White Women</b>                      | -.387***    |
| <b>IL_Black</b>                         | -.0977**    |
| <b>IL_Latino</b>                        | .119***     |
| <b>IL_Native American</b>               | 0.0578      |
| <b>IL_Asian/Pacific Islander</b>        | -0.00309    |
| <b>IL_Other</b>                         | -.738***    |
| <b>IL_White Women</b>                   | 0.00589     |
|   |             |
| <b>Adjusted R-Squared</b>               | 0.391       |
|   |             |
| legend: * p<0.05; ** p<0.01; ***p<0.001 |             |

Source: CHA calculations from the American Community Survey

**Table F11. Partial Results from Log-linear Regression Analysis**

Goods, 2007-2011

| Dependent Variable: Logarithm of Business Earnings   |             |
|--|-------------|
| Independent Variable   | Coefficient |
| <b>Black</b>   | -.554***    |
| <b>Latino</b>  | -.288***    |
| <b>Native American</b>   | -0.213      |
| <b>Asian/Pacific Islander</b>  | -.261***    |
| <b>Other</b>   | 0.326       |
| <b>White Women</b>   | -.683***    |
| <b>IL_Black</b>  | -0.0222     |
| <b>IL_Latino</b>   | 0.341       |
| <b>IL_Native American</b>  | (omitted)   |
| <b>IL_Asian/Pacific Islander</b>   | -0.00143    |
| <b>IL_Other</b>  | -1.05       |
| <b>IL_White Women</b>  | -0.185      |
| <b>Adjusted R-Squared</b>  | 0.094       |
| legend: * p<0.05; ** p<0.01; ***p<0.001<br>Source: CHA calculations from the American Community Survey |             |

**Table F12. Partial Results from Probit Regression Analysis**

Goods, 2007-2011

| Dependent Variable: Probability of Forming a Business |             |
|---|-------------|
| Independent Variable                                  | Coefficient |
| <b>Black</b>  | -0.300      |
| <b>Latino</b>   | -0.127      |
| <b>Native American</b>                                | -0.031      |
| <b>Asian/Pacific Islander</b>                         | 0.196       |
| <b>Other</b>  | -0.001      |
| <b>White Women</b>                                    | -0.105      |
| <b>IL_Black</b>                                       | -0.163      |
| <b>IL_Latino</b>                                      | 0.182       |
| <b>IL_Native American</b>                             | -0.217      |
| <b>IL_Asian/Pacific Islander</b>                      | 0.083       |
| <b>IL_Other</b>                                       | 0.368       |
| <b>IL_White Women</b>                                 | -0.015      |
| <b>Pseudo R-Square</b>                                | 0.120       |

Source: CHA calculations from the American Community Survey

**Table F13. Partial Results from Log-linear Regression Analysis**

Information Technology, 2007-2011

| Dependent Variable: Logarithm of Wages  |             |
|---|-------------|
| Independent Variable                    | Coefficient |
| <b>Black</b>                            | -.267***    |
| <b>Latino</b>                           | -.197***    |
| <b>Native American</b>                  | -.292***    |
| <b>Asian/Pacific Islander</b>           | -.184***    |
| <b>Other</b>                            | -.255***    |
| <b>White Women</b>                      | -.246***    |
| <b>IL_Black</b>                         | .112***     |
| <b>IL_Latino</b>                        | .116**      |
| <b>IL_Native American</b>               | -1.29***    |
| <b>IL_Asian/Pacific Islander</b>        | 0.0357      |
| <b>IL_Other</b>                         | 0.208       |
| <b>IL_White Women</b>                   | -0.0277     |
|   |             |
| <b>Adjusted R-Squared</b>               | 0.386       |
|   |             |
| legend: * p<0.05; ** p<0.01; ***p<0.001 |             |

Source: CHA calculations from the American Community Survey

**Table F14. Partial Results from Log-linear Regression Analysis**

Information Technology, 2007-2011

| Dependent Variable: Logarithm of Business Earnings   |             |
|--|-------------|
| Independent Variable   | Coefficient |
| <b>Black</b>   | -.42***     |
| <b>Latino</b>  | -.339***    |
| <b>Native American</b>   | -0.572      |
| <b>Asian/Pacific Islander</b>  | -.176*      |
| <b>Other</b>   | 0.0975      |
| <b>White Women</b>   | -.674***    |
| <b>IL_Black</b>  | -0.106      |
| <b>IL_Latino</b>   | -3.44***    |
| <b>IL_Native American</b>  | (omitted)   |
| <b>IL_Asian/Pacific Islander</b>   | -0.366      |
| <b>IL_Other</b>  | -0.123      |
| <b>IL_White Women</b>  | 0.147       |
| <b>Adjusted R-Squared</b>  | .112        |
| legend: * p<0.05; ** p<0.01; ***p<0.001<br>Source: CHA calculations from the American Community Survey |             |



**Table F15. Partial Results from Probit Regression Analysis**

Information Technology, 2007-2011

| Dependent Variable: Probability of Forming a Business |             |
|---|-------------|
| Independent Variable                                  | Coefficient |
| <b>Black</b>  | -0.371      |
| <b>Latino</b>   | -0.162      |
| <b>Native American</b>                                | -0.111      |
| <b>Asian/Pacific Islander</b>                         | -0.353      |
| <b>Other</b>  | -0.070      |
| <b>White Women</b>                                    | -0.148      |
| <b>IL_Black</b>                                       | -0.318      |
| <b>IL_Latino</b>                                      | -0.166      |
| <b>IL_Native American</b>                             | (omitted)   |
| <b>IL_Asian/Pacific Islander</b>                      | -0.005      |
| <b>IL_Other</b>                                       | -0.195      |
| <b>IL_White Women</b>                                 | -0.034      |
|   |             |
| <b>Pseudo R-Square</b>                                | 0.087       |

**Table F16. Partial Results from Log-linear Regression Analysis**

Construction-related Services , 2007-2011

| Dependent Variable: Logarithm of Wages  |             |
|---|-------------|
| Independent Variable                    | Coefficient |
| <b>Black</b>                            | -.248***    |
| <b>Latino</b>                           | -.202***    |
| <b>Native American</b>                  | -.281***    |
| <b>Asian/Pacific Islander</b>           | -.19***     |
| <b>Other</b>                            | -.13*       |
| <b>White Women</b>                      | -.338***    |
| <b>IL_Black</b>                         | -.244**     |
| <b>IL_Latino</b>                        | -0.0366     |
| <b>IL_Native American</b>               | -0.504      |
| <b>IL_Asian/Pacific Islander</b>        | 0.0984      |
| <b>IL_Other</b>                         | 0.212       |
| <b>IL_White Women</b>                   | -0.0293     |
|   |             |
| <b>Adjusted R-Squared</b>               | 0.424       |
|   |             |
| legend: * p<0.05; ** p<0.01; ***p<0.001 |             |

Source: CHA calculations from the American Community Survey

**Table F17. Partial Results from Log-linear Regression Analysis**

Construction-related Services , 2007-2011

| Dependent Variable: Logarithm of Business Earnings |             |
|--|-------------|
| Independent Variable                               | Coefficient |
| <b>Black</b>                                       | -.577***    |
| <b>Latino</b>                                      | -0.0634     |
| <b>Native American</b>                             | -0.386      |
| <b>Asian/Pacific Islander</b>                      | -.206*      |
| <b>Other</b>                                       | -1.03       |
| <b>White Women</b>                                 | -.608***    |
| <b>IL_Black</b>                                    | 0.558       |
| <b>IL_Latino</b>                                   | 0.529       |
| <b>IL_Native American</b>                          | (omitted)   |
| <b>IL_Asian/Pacific Islander</b>                   | -2.02**     |
| <b>IL_Other</b>                                    | (omitted)   |
| <b>IL_White Women</b>                              | -0.612      |
|  |             |
| <b>Adjusted R-Squared</b>                          | 0.094       |
|  |             |
| legend: * p<0.05; ** p<0.01; ***p<0.001            |             |

Source: CHA calculations from the American Community Survey

**Table F18. Partial Results from Probit Regression Analysis**

Construction-related Services , 2007-2011

| Dependent Variable: Probability of Forming a Business |             |
|---|-------------|
| Independent Variable                                  | Coefficient |
| <b>Black</b>  | -0.375      |
| <b>Latino</b>   | -0.079      |
| <b>Native American</b>                                | -0.048      |
| <b>Asian/Pacific Islander</b>                         | -0.334      |
| <b>Other</b>  | -0.342      |
| <b>White Women</b>                                    | -0.009      |
| <b>IL_Black</b>                                       | -0.003      |
| <b>IL_Latino</b>                                      | -0.133      |
| <b>IL_Native American</b>                             | (omitted)   |
| <b>IL_Asian/Pacific Islander</b>                      | -0.124      |
| <b>IL_Other</b>                                       | (omitted)   |
| <b>IL_White Women</b>                                 | 0.129       |
|   |             |
| <b>Pseudo R-Square</b>                                | 0.131       |

Source: CHA calculations from the American Community Survey

## APPENDIX G: UTILIZATION AND AVAILABILITY DATA BY INDUSTRY SECTOR

**Table G1: NAICS Code Distribution of Contract Dollars – All Sectors**

| NAICS        | NAICS Code Description  | Total Contract Dollars | Pct Total Contract Dollars |
|--------------|---|------------------------|----------------------------|
| 237310       | Highway, Street, and Bridge Construction  | \$238,513,254          | 24.60%                     |
| 238220       | Plumbing, Heating, and Air-Conditioning Contractors   | \$122,286,689          | 12.60%                     |
| 238210       | Electrical Contractors and Other Wiring Installation Contractors                                | \$115,172,013          | 11.90%                     |
| 236220       | Commercial and Institutional Building Construction  | \$70,355,861           | 7.30%                      |
| 238990       | All Other Specialty Trade Contractors   | \$66,668,705           | 6.90%                      |
| 238110       | Poured Concrete Foundation and Structure Contractors  | \$60,730,715           | 6.30%                      |
| 238910       | Site Preparation Contractors  | \$41,624,000           | 4.30%                      |
| 541330       | Engineering Services  | \$32,120,279           | 3.30%                      |
| 237110       | Water and Sewer Line and Related Structures Construction  | \$31,255,222           | 3.20%                      |
| 484110       | General Freight Trucking, Local   | \$31,323,121           | 3.20%                      |
| 423840       | Industrial Supplies Merchant Wholesalers  | \$25,648,789           | 2.60%                      |
| 238140       | Masonry Contractors   | \$24,015,366           | 2.50%                      |
| 238120       | Structural Steel and Precast Concrete Contractors   | \$15,421,294           | 1.60%                      |
| 424720       | Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)      | \$11,443,066           | 1.20%                      |
| 562910       | Remediation Services  | \$11,511,131           | 1.20%                      |
| 332911       | Industrial Valve Manufacturing  | \$11,066,861           | 1.10%                      |
| 423610       | Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers | \$10,287,975           | 1.10%                      |
| 238130       | Framing Contractors   | \$7,556,927            | 0.80%                      |
| 484220       | Specialized Freight (except Used Goods) Trucking, Local   | \$7,933,798            | 0.80%                      |
| 238320       | Painting and Wall Covering Contractors  | \$6,460,408            | 0.70%                      |
| 238160       | Roofing Contractors   | \$5,537,369            | 0.60%                      |
| 561730       | Landscaping Services  | \$5,742,715            | 0.60%                      |
| 562219       | Other Nonhazardous Waste Treatment and Disposal   | \$5,665,015            | 0.60%                      |
| 332312       | Fabricated Structural Metal Manufacturing   | \$5,289,732            | 0.50%                      |
| 332996       | Fabricated Pipe and Pipe Fitting Manufacturing  | \$4,924,200            | 0.50%                      |
| 237990       | Other Heavy and Civil Engineering Construction  | \$733,849              | 0.10%                      |
|              |   |                        |                            |
| <b>Total</b> |   | <b>\$969,288,354</b>   | <b>100.00%</b>             |

Source: CHA analysis of MWRD data.

**Table G2: NAICS Code Distribution of Contract Dollars – Construction**

| <b>NAICS</b> | <b>NAICS Code Description</b>   | <b>Total Contract Dollars</b> | <b>Pct Total Contract Dollars</b> |
|--------------|---|-------------------------------|-----------------------------------|
| 237310       | Highway, Street, and Bridge Construction  | \$238,513,254                 | 27.68%                            |
| 238220       | Plumbing, Heating, and Air-Conditioning Contractors   | \$122,286,689                 | 14.19%                            |
| 238210       | Electrical Contractors and Other Wiring Installation Contractors                                | \$115,172,013                 | 13.37%                            |
| 236220       | Commercial and Institutional Building Construction  | \$70,355,861                  | 8.17%                             |
| 238990       | All Other Specialty Trade Contractors   | \$66,668,705                  | 7.74%                             |
| 238110       | Poured Concrete Foundation and Structure Contractors  | \$60,730,715                  | 7.05%                             |
| 238910       | Site Preparation Contractors  | \$41,624,000                  | 4.83%                             |
| 237110       | Water and Sewer Line and Related Structures Construction  | \$31,255,222                  | 3.63%                             |
| 484110       | General Freight Trucking, Local   | \$31,323,121                  | 3.64%                             |
| 238140       | Masonry Contractors   | \$24,015,366                  | 2.79%                             |
| 238120       | Structural Steel and Precast Concrete Contractors   | \$15,421,294                  | 1.79%                             |
| 423610       | Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers | \$10,287,975                  | 1.19%                             |
| 238130       | Framing Contractors   | \$7,556,927                   | 0.88%                             |
| 484220       | Specialized Freight (except Used Goods) Trucking, Local   | \$7,933,798                   | 0.92%                             |
| 238320       | Painting and Wall Covering Contractors  | \$6,460,408                   | 0.75%                             |
| 238160       | Roofing Contractors   | \$5,537,369                   | 0.64%                             |
| 561730       | Landscaping Services  | \$5,742,715                   | 0.67%                             |
| 237990       | Other Heavy and Civil Engineering Construction  | \$733,849                     | 0.09%                             |
|              |   |                               |                                   |
| <b>Total</b> |   | <b>\$861,619,281</b>          | <b>100.00%</b>                    |

Source: CHA analysis of MWRD data.

**Table G3: NAICS Code Distribution of Contract Dollars – Construction Related Services**

| <b>NAICS</b> | <b>NAICS Code Description</b> | <b>Total Contract Dollars</b> | <b>Pct Total Contract Dollars</b> |
|--------------|-------------------------------|-------------------------------|-----------------------------------|
| 541330       | Engineering Services          | \$32,120,279                  | 73.62%                            |
| 562910       | Remediation Services          | \$11,511,131                  | 26.38%                            |
|              |                               |                               |                                   |
| <b>Total</b> |                               | <b>\$43,631,410</b>           | <b>100.00%</b>                    |

Source: CHA analysis of MWRD data.

**Table G4: NAICS Code Distribution of Contract Dollars – Goods**

| <b>NAICS</b> | <b>NAICS Code Description</b>  | <b>Total Contract Dollars</b> | <b>Pct Total Contract Dollars</b> |
|--------------|--|-------------------------------|-----------------------------------|
| 423840       | Industrial Supplies Merchant Wholesalers   | \$25,648,789                  | 43.94%                            |
| 424720       | Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals) | \$11,443,066                  | 19.60%                            |
| 332911       | Industrial Valve Manufacturing   | \$11,066,861                  | 18.96%                            |
| 332312       | Fabricated Structural Metal Manufacturing  | \$5,289,732                   | 9.06%                             |
| 332996       | Fabricated Pipe and Pipe Fitting Manufacturing   | \$4,924,200                   | 8.44%                             |
|              |  |                               |                                   |
| <b>Total</b> |  | <b>\$58,372,648</b>           | <b>100.00%</b>                    |

Source: CHA analysis of MWRD data.

**Table G5: NAICS Code Distribution of Contract Dollars – Other Services**

| <b>NAICS</b> | <b>NAICS Code Description</b>                   | <b>Total Contract Dollars</b> | <b>Pct Total Contract Dollars</b> |
|--------------|---|-------------------------------|-----------------------------------|
| 562219       | Other Nonhazardous Waste Treatment and Disposal | \$5,665,015                   | 100.00%                           |
|              |   |                               |                                   |
| <b>Total</b> |   | <b>\$5,665,015</b>            | <b>100.00%</b>                    |

Source: CHA analysis of MWRD data.

**Table G6: Distribution of Contract Dollars by Race and Gender – All Sectors  
(total dollars)**

| NAICS        | Black               | Hispanic             | Asian               | Native American | White Women          | Non-M/WBE               |
|--------------|---------------------|----------------------|---------------------|-----------------|----------------------|-------------------------|
| 236220       | \$933,747           | \$0                  | \$0                 | \$0             | \$703,552            | \$68,718,563            |
| 237110       | \$0                 | \$72,720             | \$18,326,385        | \$0             | \$10,207,569         | \$2,648,548             |
| 237310       | \$3,614,728         | \$8,002,400          | \$6,499,770         | \$0             | \$965,781            | \$219,430,574           |
| 237990       | \$460,080           | \$0.00               | \$0                 | \$0             | \$0                  | \$273,770               |
| 238110       | \$29,154,461        | \$27,533,050         | \$47,617            | \$0             | \$2,454,079          | \$1,541,508             |
| 238120       | \$0                 | \$89,660             | \$0                 | \$0             | \$13,863,139         | \$1,468,495             |
| 238130       | \$0                 | \$0                  | \$0                 | \$0             | \$7,235,338          | \$321,588               |
| 238140       | \$14,784,499        | \$3,146,131          | \$0                 | \$0             | \$175,746            | \$5,908,989             |
| 238160       | \$0                 | \$580,000            | \$0                 | \$0             | \$0                  | \$4,957,369             |
| 238210       | \$4,214,000         | \$9,722,134          | \$0                 | \$0             | \$10,642,378         | \$90,593,502            |
| 238220       | \$286,360           | \$7,018,700          | \$54,475            | \$0             | \$8,641,956          | \$106,285,198           |
| 238320       | \$16,832            | \$2,098,381          | \$0                 | \$0             | \$3,620,113          | \$725,082               |
| 238910       | \$728,354           | \$842,706            | \$0                 | \$0             | \$756,990            | \$39,295,949            |
| 238990       | \$0                 | \$17,095,413         | \$129,048           | \$37,781        | \$11,076,730         | \$38,329,733            |
| 332312       | \$0                 | \$0                  | \$0                 | \$0             | \$1,105,979          | \$4,183,752             |
| 332911       | \$0                 | \$0                  | \$0                 | \$0             | \$0                  | \$11,066,861            |
| 332996       | \$0                 | \$4,887,201.00       | \$0                 | \$0             | \$0                  | \$36,999                |
| 423610       | \$0                 | \$0.00               | \$0                 | \$0             | \$9,982,842          | \$305,133               |
| 423840       | \$0                 | \$21,419,635.00      | \$0                 | \$0             | \$3,899,839          | \$329,314               |
| 424720       | \$0                 | \$349,725.00         | \$10,490,856        | \$0             | \$601,333            | \$1,151                 |
| 484110       | \$3,162,336         | \$12,891,650.00      | \$0                 | \$0             | \$13,848,086         | \$1,421,049             |
| 484220       | \$6,388,908         | \$1,215,683.00       | \$199,770           | \$0             | \$129,437            | \$0                     |
| 541330       | \$368,495           | \$536,651.00         | \$5,852,495         | \$0             | \$2,506,758          | \$22,855,880            |
| 561730       | \$141,758           | \$348,729.00         | \$0                 | \$0             | \$2,750,391          | \$2,501,837             |
| 562219       | \$697,108           | \$0                  | \$0                 | \$0             | \$0                  | \$4,967,907             |
| 562910       | \$388,893           | \$4,149,256          | \$530,545           | \$0             | \$0                  | \$6,442,437             |
|              |                     |                      |                     |                 |                      |                         |
| <b>Total</b> | <b>\$65,340,559</b> | <b>\$121,999,827</b> | <b>\$42,130,961</b> | <b>\$37,781</b> | <b>\$105,168,038</b> | <b>\$634,611,189.00</b> |

Source: CHA analysis of MWRD data.



**Table G7: Distribution of Contract Dollars by Race and Gender – All Sectors  
(share of total dollars)**

| NAICS        | Black        | Hispanic      | Asian        | Native American | White Women   | Non-M/WBE     |
|--------------|--------------|---------------|--------------|-----------------|---------------|---------------|
| 236220       | 1.30%        | 0.00%         | 0.00%        | 0.00%           | 1.00%         | 97.70%        |
| 237110       | 0.00%        | 0.20%         | 58.60%       | 0.00%           | 32.70%        | 8.50%         |
| 237310       | 1.50%        | 3.40%         | 2.70%        | 0.00%           | 0.40%         | 92.00%        |
| 237990       | 62.70%       | 0.00%         | 0.00%        | 0.00%           | 0.00%         | 37.30%        |
| 238110       | 48.00%       | 45.30%        | 0.10%        | 0.00%           | 4.00%         | 2.50%         |
| 238120       | 0.00%        | 0.60%         | 0.00%        | 0.00%           | 89.90%        | 9.50%         |
| 238130       | 0.00%        | 0.00%         | 0.00%        | 0.00%           | 95.70%        | 4.30%         |
| 238140       | 61.60%       | 13.10%        | 0.00%        | 0.00%           | 0.70%         | 24.60%        |
| 238160       | 0.00%        | 10.50%        | 0.00%        | 0.00%           | 0.00%         | 89.50%        |
| 238210       | 3.70%        | 8.40%         | 0.00%        | 0.00%           | 9.20%         | 78.70%        |
| 238220       | 0.20%        | 5.70%         | 0.00%        | 0.00%           | 7.10%         | 86.90%        |
| 238320       | 0.30%        | 32.50%        | 0.00%        | 0.00%           | 56.00%        | 11.20%        |
| 238910       | 1.70%        | 2.00%         | 0.00%        | 0.00%           | 1.80%         | 94.40%        |
| 238990       | 0.00%        | 25.60%        | 0.20%        | 0.10%           | 16.60%        | 57.50%        |
| 332312       | 0.00%        | 0.00%         | 0.00%        | 0.00%           | 20.90%        | 79.10%        |
| 332911       | 0.00%        | 0.00%         | 0.00%        | 0.00%           | 0.00%         | 100.00%       |
| 332996       | 0.00%        | 99.20%        | 0.00%        | 0.00%           | 0.00%         | 0.80%         |
| 423610       | 0.00%        | 0.00%         | 0.00%        | 0.00%           | 97.00%        | 3.00%         |
| 423840       | 0.00%        | 83.50%        | 0.00%        | 0.00%           | 15.20%        | 1.30%         |
| 424720       | 0.00%        | 3.10%         | 91.70%       | 0.00%           | 5.30%         | 0.00%         |
| 484110       | 10.10%       | 41.20%        | 0.00%        | 0.00%           | 44.20%        | 4.50%         |
| 484220       | 80.50%       | 15.30%        | 2.50%        | 0.00%           | 1.60%         | 0.00%         |
| 541330       | 1.10%        | 1.70%         | 18.20%       | 0.00%           | 7.80%         | 71.20%        |
| 561730       | 2.50%        | 6.10%         | 0.00%        | 0.00%           | 47.90%        | 43.60%        |
| 562219       | 12.30%       | 0.00%         | 0.00%        | 0.00%           | 0.00%         | 87.70%        |
| 562910       | 3.40%        | 36.00%        | 4.60%        | 0.00%           | 0.00%         | 56.00%        |
|              |              |               |              |                 |               |               |
| <b>Total</b> | <b>6.70%</b> | <b>12.60%</b> | <b>4.30%</b> | <b>0.00%</b>    | <b>10.90%</b> | <b>65.50%</b> |

Source: CHA analysis of MWRD data.

**Table G8: Distribution of Contract Dollars by Race and Gender – All Sectors  
(MBE, White Women, Non-M/WBE)  
(total dollars)**

| NAICS        | MBE                  | White Women          | M/WBE                | Non-M/WBE            | Total                |
|--------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| 236220       | \$933,747            | \$703,552            | \$1,637,299          | \$68,718,563         | \$70,355,861         |
| 237110       | \$18,399,105         | \$10,207,569         | \$28,606,674         | \$2,648,548          | \$31,255,222         |
| 237310       | \$18,116,899         | \$965,781            | \$19,082,680         | \$219,430,574        | \$238,513,254        |
| 237990       | \$460,080            | \$0                  | \$460,080            | \$273,770            | \$733,849            |
| 238110       | \$56,735,128         | \$2,454,079          | \$59,189,207         | \$1,541,508          | \$60,730,715         |
| 238120       | \$89,660             | \$13,863,139         | \$13,952,799         | \$1,468,495          | \$15,421,294         |
| 238130       | \$0                  | \$7,235,338          | \$7,235,338          | \$321,588            | \$7,556,927          |
| 238140       | \$17,930,630         | \$175,746            | \$18,106,377         | \$5,908,989          | \$24,015,366         |
| 238160       | \$580,000            | \$0                  | \$580,000            | \$4,957,369          | \$5,537,369          |
| 238210       | \$13,936,134         | \$10,642,378         | \$24,578,512         | \$90,593,502         | \$115,172,013        |
| 238220       | \$7,359,534          | \$8,641,956          | \$16,001,490         | \$106,285,198        | \$122,286,689        |
| 238320       | \$2,115,213          | \$3,620,113          | \$5,735,327          | \$725,082            | \$6,460,408          |
| 238910       | \$1,571,061          | \$756,990            | \$2,328,051          | \$39,295,949         | \$41,624,000         |
| 238990       | \$17,262,243         | \$11,076,730         | \$28,338,972         | \$38,329,733         | \$66,668,705         |
| 332312       | \$0                  | \$1,105,979          | \$1,105,979          | \$4,183,752          | \$5,289,732          |
| 332911       | \$0                  | \$0                  | \$0                  | \$11,066,861         | \$11,066,861         |
| 332996       | \$4,887,201          | \$0                  | \$4,887,201          | \$36,999             | \$4,924,200          |
| 423610       | \$0                  | \$9,982,842          | \$9,982,842          | \$305,133            | \$10,287,975         |
| 423840       | \$21,419,635         | \$3,899,839          | \$25,319,475         | \$329,314            | \$25,648,789         |
| 424720       | \$10,840,581         | \$601,333            | \$11,441,914         | \$1,151              | \$11,443,066         |
| 484110       | \$16,053,986         | \$13,848,086         | \$29,902,072         | \$1,421,049          | \$31,323,121         |
| 484220       | \$7,804,361          | \$129,437            | \$7,933,798          | \$0                  | \$7,933,798          |
| 541330       | \$6,757,641          | \$2,506,758          | \$9,264,399          | \$22,855,880         | \$32,120,279         |
| 561730       | \$490,487            | \$2,750,391          | \$3,240,878          | \$2,501,837          | \$5,742,715          |
| 562219       | \$697,108            | \$0                  | \$697,108            | \$4,967,907          | \$5,665,015          |
| 562910       | \$5,068,694          | \$0                  | \$5,068,694          | \$6,442,437          | \$11,511,131         |
|              |                      |                      |                      |                      |                      |
| <b>Total</b> | <b>\$229,509,128</b> | <b>\$105,168,038</b> | <b>\$334,677,166</b> | <b>\$634,611,189</b> | <b>\$969,288,356</b> |

Source: CHA analysis of MWRD data.

**Table G9: Distribution of Contract Dollars by Race and Gender –All Sectors  
(MBE, White Women, Non-M/WBE)  
(share of total dollars)**

| NAICS        | MBE           | White Women   | M/WBE         | Non-M/WBE     | Total          |
|--------------|---------------|---------------|---------------|---------------|----------------|
| 236220       | 1.30%         | 1.00%         | 2.30%         | 97.70%        | 100.00%        |
| 237110       | 58.90%        | 32.70%        | 91.50%        | 8.50%         | 100.00%        |
| 237310       | 7.60%         | 0.40%         | 8.00%         | 92.00%        | 100.00%        |
| 237990       | 62.70%        | 0.00%         | 62.70%        | 37.30%        | 100.00%        |
| 238110       | 93.40%        | 4.00%         | 97.50%        | 2.50%         | 100.00%        |
| 238120       | 0.60%         | 89.90%        | 90.50%        | 9.50%         | 100.00%        |
| 238130       | 0.00%         | 95.70%        | 95.70%        | 4.30%         | 100.00%        |
| 238140       | 74.70%        | 0.70%         | 75.40%        | 24.60%        | 100.00%        |
| 238160       | 10.50%        | 0.00%         | 10.50%        | 89.50%        | 100.00%        |
| 238210       | 12.10%        | 9.20%         | 21.30%        | 78.70%        | 100.00%        |
| 238220       | 6.00%         | 7.10%         | 13.10%        | 86.90%        | 100.00%        |
| 238320       | 32.70%        | 56.00%        | 88.80%        | 11.20%        | 100.00%        |
| 238910       | 3.80%         | 1.80%         | 5.60%         | 94.40%        | 100.00%        |
| 238990       | 25.90%        | 16.60%        | 42.50%        | 57.50%        | 100.00%        |
| 332312       | 0.00%         | 20.90%        | 20.90%        | 79.10%        | 100.00%        |
| 332911       | 0.00%         | 0.00%         | 0.00%         | 100.00%       | 100.00%        |
| 332996       | 99.20%        | 0.00%         | 99.20%        | 0.80%         | 100.00%        |
| 423610       | 0.00%         | 97.00%        | 97.00%        | 3.00%         | 100.00%        |
| 423840       | 83.50%        | 15.20%        | 98.70%        | 1.30%         | 100.00%        |
| 424720       | 94.70%        | 5.30%         | 100.00%       | 0.00%         | 100.00%        |
| 484110       | 51.30%        | 44.20%        | 95.50%        | 4.50%         | 100.00%        |
| 484220       | 98.40%        | 1.60%         | 100.00%       | 0.00%         | 100.00%        |
| 541330       | 21.00%        | 7.80%         | 28.80%        | 71.20%        | 100.00%        |
| 561730       | 8.50%         | 47.90%        | 56.40%        | 43.60%        | 100.00%        |
| 562219       | 12.30%        | 0.00%         | 12.30%        | 87.70%        | 100.00%        |
| 562910       | 44.00%        | 0.00%         | 44.00%        | 56.00%        | 100.00%        |
|              |               |               |               |               |                |
| <b>Total</b> | <b>23.70%</b> | <b>10.90%</b> | <b>34.50%</b> | <b>65.50%</b> | <b>100.00%</b> |

Source: CHA analysis of MWRD data.

**G10: Distribution of Contract Dollars by Race and Gender- Construction  
(total dollars)**

| NAICS        | Black               | Hispanic            | Asian               | Native American | White Women         | Non-M/WBE            |
|--------------|---------------------|---------------------|---------------------|-----------------|---------------------|----------------------|
| 236220       | \$933,747           | \$0                 | \$0                 | \$0             | \$703,552           | \$68,718,563         |
| 237110       | \$0                 | \$72,720.00         | \$18,326,385        | \$0             | \$10,207,569        | \$2,648,548          |
| 237310       | \$3,614,728         | \$8,002,400         | \$6,499,770         | \$0             | \$965,781           | \$219,430,574        |
| 237990       | \$460,080           | \$0                 | \$0                 | \$0             | \$0                 | \$273,770            |
| 238110       | \$29,154,461        | \$27,533,050        | \$47,617            | \$0             | \$2,454,079         | \$1,541,508          |
| 238120       | \$0                 | \$89,660            | \$0                 | \$0             | \$13,863,139        | \$1,468,495          |
| 238130       | \$0                 | \$0                 | \$0                 | \$0             | \$7,235,338         | \$321,588            |
| 238140       | \$14,784,499        | \$3,146,131         | \$0                 | \$0             | \$175,746           | \$5,908,989          |
| 238160       | \$0                 | \$580,000           | \$0                 | \$0             | \$0                 | \$4,957,369          |
| 238210       | \$4,214,000         | \$9,722,134         | \$0                 | \$0             | \$10,642,378        | \$90,593,502         |
| 238220       | \$286,360           | \$7,018,700         | \$54,475            | \$0             | \$8,641,956         | \$106,285,198        |
| 238320       | \$16,832            | \$2,098,381         | \$0                 | \$0             | \$3,620,113         | \$725,082            |
| 238910       | \$728,354           | \$842,706           | \$0                 | \$0             | \$756,990           | \$39,295,949         |
| 238990       | \$0                 | \$17,095,413        | \$129,048           | \$37,781        | \$11,076,730        | \$38,329,733         |
| 423610       | \$0                 | \$0                 | \$0                 | \$0             | \$9,982,842         | \$305,133            |
| 484110       | \$3,162,336         | \$12,891,650        | \$0                 | \$0             | \$13,848,086        | \$1,421,049          |
| 484220       | \$6,388,908         | \$1,215,683         | \$199,770           | \$0             | \$129,437           | \$0                  |
| 561730       | \$141,758           | \$348,729           | \$0                 | \$0             | \$2,750,391         | \$2,501,837          |
|              |                     |                     |                     |                 |                     |                      |
| <b>Total</b> | <b>\$63,886,063</b> | <b>\$90,657,357</b> | <b>\$25,257,065</b> | <b>\$37,781</b> | <b>\$97,054,127</b> | <b>\$584,726,887</b> |

Source: CHA analysis of MWRD data.

**Table G11: Distribution of Contract Dollars by Race and Gender - Construction  
(share of total dollars)**

| NAICS        | Black        | Hispanic      | Asian        | Native American | White Women   | Non-M/WBE     |
|--------------|--------------|---------------|--------------|-----------------|---------------|---------------|
| 236220       | 1.30%        | 0.00%         | 0.00%        | 0.00%           | 1.00%         | 97.70%        |
| 237110       | 0.00%        | 0.20%         | 58.60%       | 0.00%           | 32.70%        | 8.50%         |
| 237310       | 1.50%        | 3.40%         | 2.70%        | 0.00%           | 0.40%         | 92.00%        |
| 237990       | 62.70%       | 0.00%         | 0.00%        | 0.00%           | 0.00%         | 37.30%        |
| 238110       | 48.00%       | 45.30%        | 0.10%        | 0.00%           | 4.00%         | 2.50%         |
| 238120       | 0.00%        | 0.60%         | 0.00%        | 0.00%           | 89.90%        | 9.50%         |
| 238130       | 0.00%        | 0.00%         | 0.00%        | 0.00%           | 95.70%        | 4.30%         |
| 238140       | 61.60%       | 13.10%        | 0.00%        | 0.00%           | 0.70%         | 24.60%        |
| 238160       | 0.00%        | 10.50%        | 0.00%        | 0.00%           | 0.00%         | 89.50%        |
| 238210       | 3.70%        | 8.40%         | 0.00%        | 0.00%           | 9.20%         | 78.70%        |
| 238220       | 0.20%        | 5.70%         | 0.00%        | 0.00%           | 7.10%         | 86.90%        |
| 238320       | 0.30%        | 32.50%        | 0.00%        | 0.00%           | 56.00%        | 11.20%        |
| 238910       | 1.70%        | 2.00%         | 0.00%        | 0.00%           | 1.80%         | 94.40%        |
| 238990       | 0.00%        | 25.60%        | 0.20%        | 0.10%           | 16.60%        | 57.50%        |
| 423610       | 0.00%        | 0.00%         | 0.00%        | 0.00%           | 97.00%        | 3.00%         |
| 484110       | 10.10%       | 41.20%        | 0.00%        | 0.00%           | 44.20%        | 4.50%         |
| 484220       | 80.50%       | 15.30%        | 2.50%        | 0.00%           | 1.60%         | 0.00%         |
| 561730       | 2.50%        | 6.10%         | 0.00%        | 0.00%           | 47.90%        | 43.60%        |
|              |              |               |              |                 |               |               |
| <b>Total</b> | <b>7.41%</b> | <b>10.52%</b> | <b>2.93%</b> | <b>0.00%</b>    | <b>11.26%</b> | <b>67.86%</b> |

**Table G12: Distribution of Contract Dollars by Race and Gender – Construction**  
**(MBE, White Women, Non-M/WBE)**  
**(total dollars)**

| NAICS        | MBE                  | White Women         | M/WBE                | Non-M/WBE            | Total                |
|--------------|----------------------|---------------------|----------------------|----------------------|----------------------|
| 236220       | \$933,747            | \$703,552           | \$1,637,299          | \$68,718,563         | \$70,355,861         |
| 237110       | \$18,399,105         | \$10,207,569        | \$28,606,674         | \$2,648,548          | \$31,255,222         |
| 237310       | \$18,116,899         | \$965,781           | \$19,082,680         | \$219,430,574        | \$238,513,254        |
| 237990       | \$460,080            | \$0                 | \$460,080            | \$273,770            | \$733,849            |
| 238110       | \$56,735,128         | \$2,454,079         | \$59,189,207         | \$1,541,508          | \$60,730,715         |
| 238120       | \$89,660             | \$13,863,139        | \$13,952,799         | \$1,468,495          | \$15,421,294         |
| 238130       | \$0                  | \$7,235,338         | \$7,235,338          | \$321,588            | \$7,556,927          |
| 238140       | \$17,930,630         | \$175,746           | \$18,106,377         | \$5,908,989          | \$24,015,366         |
| 238160       | \$580,000            | \$0                 | \$580,000            | \$4,957,369          | \$5,537,369          |
| 238210       | \$13,936,134         | \$10,642,378        | \$24,578,512         | \$90,593,502         | \$115,172,013        |
| 238220       | \$7,359,534          | \$8,641,956         | \$16,001,490         | \$106,285,198        | \$122,286,689        |
| 238320       | \$2,115,213          | \$3,620,113         | \$5,735,327          | \$725,082            | \$6,460,408          |
| 238910       | \$1,571,061          | \$756,990           | \$2,328,051          | \$39,295,949         | \$41,624,000         |
| 238990       | \$17,262,243         | \$11,076,730        | \$28,338,972         | \$38,329,733         | \$66,668,705         |
| 423610       | \$0                  | \$9,982,842         | \$9,982,842          | \$305,133            | \$10,287,975         |
| 484110       | \$16,053,986         | \$13,848,086        | \$29,902,072         | \$1,421,049          | \$31,323,121         |
| 484220       | \$7,804,361          | \$129,437           | \$7,933,798          | \$0                  | \$7,933,798          |
| 561730       | \$490,487            | \$2,750,391         | \$3,240,878          | \$2,501,837          | \$5,742,715          |
|              |                      |                     |                      |                      |                      |
| <b>Total</b> | <b>\$179,838,268</b> | <b>\$97,054,127</b> | <b>\$276,892,396</b> | <b>\$584,726,887</b> | <b>\$861,619,281</b> |

Source: CHA analysis of MWRD data.

**Table G13: Distribution of Contract Dollars by Race and Gender – Construction**  
**(MBE, White Women, Non-M/WBE)**  
**(share of total dollars)**

| NAICS        | MBE           | White Women   | M/WBE         | Non-M/WBE     | Total          |
|--------------|---------------|---------------|---------------|---------------|----------------|
| 236220       | 1.30%         | 1.00%         | 2.30%         | 97.70%        | 100.00%        |
| 237110       | 58.90%        | 32.70%        | 91.50%        | 8.50%         | 100.00%        |
| 237310       | 7.60%         | 0.40%         | 8.00%         | 92.00%        | 100.00%        |
| 237990       | 62.70%        | 0.00%         | 62.70%        | 37.30%        | 100.00%        |
| 238110       | 93.40%        | 4.00%         | 97.50%        | 2.50%         | 100.00%        |
| 238120       | 0.60%         | 89.90%        | 90.50%        | 9.50%         | 100.00%        |
| 238130       | 0.00%         | 95.70%        | 95.70%        | 4.30%         | 100.00%        |
| 238140       | 74.70%        | 0.70%         | 75.40%        | 24.60%        | 100.00%        |
| 238160       | 10.50%        | 0.00%         | 10.50%        | 89.50%        | 100.00%        |
| 238210       | 12.10%        | 9.20%         | 21.30%        | 78.70%        | 100.00%        |
| 238220       | 6.00%         | 7.10%         | 13.10%        | 86.90%        | 100.00%        |
| 238320       | 32.70%        | 56.00%        | 88.80%        | 11.20%        | 100.00%        |
| 238910       | 3.80%         | 1.80%         | 5.60%         | 94.40%        | 100.00%        |
| 238990       | 25.90%        | 16.60%        | 42.50%        | 57.50%        | 100.00%        |
| 423610       | 0.00%         | 97.00%        | 97.00%        | 3.00%         | 100.00%        |
| 484110       | 51.30%        | 44.20%        | 95.50%        | 4.50%         | 100.00%        |
| 484220       | 98.40%        | 1.60%         | 100.00%       | 0.00%         | 100.00%        |
| 561730       | 8.50%         | 47.90%        | 56.40%        | 43.60%        | 100.00%        |
|              |               |               |               |               |                |
| <b>Total</b> | <b>20.87%</b> | <b>11.26%</b> | <b>32.14%</b> | <b>67.86%</b> | <b>100.00%</b> |

**Table G14: Distribution of Contract Dollars by Race and Gender – Construction Related Services  
(total dollars)**

| NAICS        | Black            | Hispanic           | Asian              | Native American | White Women        | Non-M/WBE           |
|--------------|------------------|--------------------|--------------------|-----------------|--------------------|---------------------|
| 541330       | \$368,495        | \$536,651          | \$5,852,495        | \$0             | \$2,506,758        | \$22,855,880        |
| 562910       | \$388,893        | \$4,149,256        | \$530,545          | \$0             | \$0                | \$6,442,437         |
|              |                  |                    |                    |                 |                    |                     |
| <b>Total</b> | <b>\$757,388</b> | <b>\$4,685,907</b> | <b>\$6,383,040</b> | <b>\$0</b>      | <b>\$2,506,758</b> | <b>\$29,298,317</b> |

Source: CHA analysis of MWRD data.

**Table G15: Distribution of Contract Dollars by Race and Gender- Construction Related Services  
(share of total dollars)**

| NAICS        | Black        | Hispanic      | Asian         | Native American | White Women  | Non-M/WBE     |
|--------------|--------------|---------------|---------------|-----------------|--------------|---------------|
| 541330       | 1.10%        | 1.70%         | 18.20%        | 0.00%           | 7.80%        | 71.20%        |
| 562910       | 3.40%        | 36.00%        | 4.60%         | 0.00%           | 0.00%        | 56.00%        |
|              |              |               |               |                 |              |               |
| <b>Total</b> | <b>1.74%</b> | <b>10.74%</b> | <b>14.63%</b> | <b>0.00%</b>    | <b>5.75%</b> | <b>67.15%</b> |

Source: CHA analysis of MWRD data.

**Table G16: Distribution of Contract Dollars by Race and Gender – Construction Related Services  
(MBE, WBE, M/WBE, Non-M/WBE)  
(total dollars)**

| NAICS        | MBE                 | White Women        | M/WBE               | Non-M/WBE           | Total               |
|--------------|---------------------|--------------------|---------------------|---------------------|---------------------|
| 541330       | \$6,757,641         | \$2,506,758        | \$9,264,399         | \$22,855,880        | \$32,120,279        |
| 562910       | \$5,068,694         | \$0                | \$5,068,694         | \$6,442,437         | \$11,511,131        |
|              |                     |                    |                     |                     |                     |
| <b>Total</b> | <b>\$11,826,335</b> | <b>\$2,506,758</b> | <b>\$14,333,093</b> | <b>\$29,298,317</b> | <b>\$43,631,410</b> |

Source: CHA analysis of MWRD data.

**Table G17: Distribution of Contract Dollars by Race and Gender – Construction Related Services  
(MBE, White Women, Non-M/WBE)  
(share of total dollars)**

| NAICS        | MBE           | White Women  | M/WBE         | Non-M/WBE     | Total          |
|--------------|---------------|--------------|---------------|---------------|----------------|
| 541330       | 21.00%        | 7.80%        | 28.80%        | 71.20%        | 100.00%        |
| 562910       | 44.00%        | 0.00%        | 44.00%        | 56.00%        | 100.00%        |
|              |               |              |               |               |                |
| <b>Total</b> | <b>27.11%</b> | <b>5.75%</b> | <b>32.85%</b> | <b>67.15%</b> | <b>100.00%</b> |

Source: CHA analysis of MWRD data.

**Table G18: Distribution of Contract Dollars by Race and Gender – Goods  
(total dollars)**

| NAICS        | Black      | Hispanic            | Asian               | Native American | White Women        | Non-M/WBE           |
|--------------|------------|---------------------|---------------------|-----------------|--------------------|---------------------|
| 332312       | \$0        | \$0                 | \$0                 | \$0             | \$1,105,979        | \$4,183,752         |
| 332911       | \$0        | \$0                 | \$0                 | \$0             | \$0                | \$11,066,861        |
| 332996       | \$0        | \$4,887,201         | \$0                 | \$0             | \$0                | \$36,999            |
| 423840       | \$0        | \$21,419,635        | \$0                 | \$0             | \$3,899,839        | \$329,314           |
| 424720       | \$0        | \$349,725           | \$10,490,856        | \$0             | \$601,333          | \$1,151             |
|              |            |                     |                     | \$0             |                    |                     |
| <b>Total</b> | <b>\$0</b> | <b>\$26,656,561</b> | <b>\$10,490,856</b> | <b>\$0</b>      | <b>\$5,607,151</b> | <b>\$15,618,077</b> |

Source: CHA analysis of MWRD data.

**Table G19: Distribution of Contract Dollars by Race and Gender – Goods  
(share of total dollars)**

| NAICS        | Black        | Hispanic      | Asian         | Native American | White Women  | Non-M/WBE     |
|--------------|--------------|---------------|---------------|-----------------|--------------|---------------|
| 332312       | 0.00%        | 0.00%         | 0.00%         | 0.00%           | 20.90%       | 79.10%        |
| 332911       | 0.00%        | 0.00%         | 0.00%         | 0.00%           | 0.00%        | 100.00%       |
| 332996       | 0.00%        | 99.20%        | 0.00%         | 0.00%           | 0.00%        | 0.80%         |
| 423840       | 0.00%        | 83.50%        | 0.00%         | 0.00%           | 15.20%       | 1.30%         |
| 424720       | 0.00%        | 3.10%         | 91.70%        | 0.00%           | 5.30%        | 0.00%         |
|              |              |               |               |                 |              |               |
| <b>Total</b> | <b>0.00%</b> | <b>45.67%</b> | <b>17.97%</b> | <b>0.00%</b>    | <b>9.61%</b> | <b>26.76%</b> |

Source: CHA analysis of MWRD data.

**Table G20: Distribution of Contract Dollars by Race and Gender – Goods  
(MBE, White Women, Non-DBE)  
(total dollars)**

| NAICS        | MBE                 | White Women        | M/WBE               | Non-M/WBE           | Total               |
|--------------|---------------------|--------------------|---------------------|---------------------|---------------------|
| 332312       | \$0                 | \$1,105,979        | \$1,105,979         | \$4,183,752         | \$5,289,732         |
| 332911       | \$0                 | \$0                | \$0                 | \$11,066,861        | \$11,066,861        |
| 332996       | \$4,887,201         | \$0                | \$4,887,201         | \$36,999            | \$4,924,200         |
| 423840       | \$21,419,635        | \$3,899,839        | \$25,319,475        | \$329,314           | \$25,648,789        |
| 424720       | \$10,840,581        | \$601,333          | \$11,441,914        | \$1,151             | \$11,443,066        |
|              |                     |                    |                     |                     |                     |
| <b>Total</b> | <b>\$37,147,417</b> | <b>\$5,607,151</b> | <b>\$42,754,569</b> | <b>\$15,618,077</b> | <b>\$58,372,648</b> |

Source: CHA analysis of MWRD data.

**Table G21: Distribution of Contract Dollars by Race and Gender - Goods**  
**(MBE, White Women, Non-M/WBE)**  
**(share of total dollars)**

| NAICS        | MBE           | White Women  | M/WBE         | Non-M/WBE     | Total          |
|--------------|---------------|--------------|---------------|---------------|----------------|
| 332312       | 0.00%         | 20.90%       | 20.90%        | 79.10%        | 100.00%        |
| 332911       | 0.00%         | 0.00%        | 0.00%         | 100.00%       | 100.00%        |
| 332996       | 99.20%        | 0.00%        | 99.20%        | 0.80%         | 100.00%        |
| 423840       | 83.50%        | 15.20%       | 98.70%        | 1.30%         | 100.00%        |
| 424720       | 94.70%        | 5.30%        | 100.00%       | 0.00%         | 100.00%        |
|              |               |              |               |               |                |
| <b>Total</b> | <b>63.64%</b> | <b>9.61%</b> | <b>73.24%</b> | <b>26.76%</b> | <b>100.00%</b> |

Source: CHA analysis of MWRD data.

**Table G22: Distribution of Contract Dollars by Race and Gender – Other Services**  
**(total dollars)**

| NAICS        | Black            | Hispanic   | Asian      | Native American | White Women | Non-M/WBE          |
|--------------|------------------|------------|------------|-----------------|-------------|--------------------|
| 562219       | \$697,108        | \$0        | \$0        | \$0             | \$0         | \$4,967,907        |
|              |                  |            |            |                 |             |                    |
| <b>Total</b> | <b>\$697,108</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b>      | <b>\$0</b>  | <b>\$4,967,907</b> |

Source: CHA analysis of MWRD data.

**Table G23: Distribution of Contract Dollars by Race and Gender – Other Services**  
**(share of total dollars)**

| NAICS        | Black         | Hispanic     | Asian        | Native American | White Women  | Non-M/WBE     |
|--------------|---------------|--------------|--------------|-----------------|--------------|---------------|
| 562219       | 12.30%        | 0.00%        | 0.00%        | 0.00%           | 0.00%        | 87.70%        |
|              |               |              |              |                 |              |               |
| <b>Total</b> | <b>12.30%</b> | <b>0.00%</b> | <b>0.00%</b> | <b>0.00%</b>    | <b>0.00%</b> | <b>87.70%</b> |

Source: CHA analysis of MWRD data.

**Table G24: Distribution of Contract Dollars by Race and Gender – Other Services**  
**(MBE, White Women, Non-DBE)**  
**(total dollars)**

| NAICS        | MBE              | White Women | M/WBE            | Non-M/WBE          | Total              |
|--------------|------------------|-------------|------------------|--------------------|--------------------|
| 562219       | \$0              | \$0         | \$697,108        | \$4,967,907        | \$5,665,015        |
|              |                  |             |                  |                    |                    |
| <b>Total</b> | <b>\$697,108</b> | <b>\$0</b>  | <b>\$697,108</b> | <b>\$4,967,907</b> | <b>\$5,665,015</b> |

Source: CHA analysis of MWRD data.

**Table G25: Distribution of Contract Dollars by Race and Gender – Other Services**  
**(MBE, White Women, Non-DBE)**  
**(share of total dollars)**

| NAICS        | MBE           | White Women  | M/WBE         | Non-M/WBE     | Total          |
|--------------|---------------|--------------|---------------|---------------|----------------|
| 562219       | 12.30%        | 0.00%        | 12.30%        | 87.70%        | 100.00%        |
|              |               |              |               |               |                |
| <b>Total</b> | <b>12.30%</b> | <b>0.00%</b> | <b>12.30%</b> | <b>87.70%</b> | <b>100.00%</b> |

Source: CHA analysis of MWRD data.



**Table G26: Unweighted Availability – All Sectors**  
(total dollars)

| NAICS        | Black        | Hispanic     | Asian        | Native American | White Women  | MBE          | M/WBE         | Non-M/WBE     | Total          |
|--------------|--------------|--------------|--------------|-----------------|--------------|--------------|---------------|---------------|----------------|
| 236220       | 8.90%        | 7.19%        | 3.91%        | 0.17%           | 9.41%        | 20.17%       | 29.58%        | 70.42%        | 100.00%        |
| 237110       | 4.58%        | 6.03%        | 3.24%        | 0.04%           | 13.89%       | 13.89%       | 27.78%        | 72.22%        | 100.00%        |
| 237310       | 7.50%        | 10.31%       | 3.20%        | 0.05%           | 8.50%        | 21.06%       | 29.56%        | 70.44%        | 100.00%        |
| 237990       | 4.23%        | 1.88%        | 2.57%        | 0.02%           | 10.87%       | 8.70%        | 19.57%        | 80.43%        | 100.00%        |
| 238110       | 6.47%        | 5.82%        | 1.43%        | 0.05%           | 7.21%        | 13.77%       | 20.98%        | 79.02%        | 100.00%        |
| 238120       | 11.12%       | 9.22%        | 1.39%        | 0.06%           | 17.95%       | 21.79%       | 39.74%        | 60.26%        | 100.00%        |
| 238130       | 2.83%        | 2.56%        | 0.74%        | 0.15%           | 3.79%        | 6.28%        | 10.07%        | 89.93%        | 100.00%        |
| 238140       | 4.59%        | 3.51%        | 1.07%        | 0.04%           | 7.50%        | 9.20%        | 16.70%        | 83.30%        | 100.00%        |
| 238160       | 2.58%        | 1.86%        | 0.93%        | 0.17%           | 3.79%        | 5.54%        | 9.33%         | 90.67%        | 100.00%        |
| 238210       | 4.80%        | 2.85%        | 1.56%        | 0.04%           | 10.63%       | 9.24%        | 19.87%        | 80.13%        | 100.00%        |
| 238220       | 2.52%        | 1.73%        | 0.72%        | 0.03%           | 5.05%        | 4.99%        | 10.04%        | 89.96%        | 100.00%        |
| 238320       | 2.88%        | 1.99%        | 0.67%        | 0.02%           | 5.68%        | 5.56%        | 11.23%        | 88.77%        | 100.00%        |
| 238910       | 6.82%        | 7.20%        | 2.27%        | 0.06%           | 10.58%       | 16.35%       | 26.92%        | 73.08%        | 100.00%        |
| 238990       | 2.22%        | 2.27%        | 0.92%        | 0.21%           | 6.16%        | 5.62%        | 11.78%        | 88.22%        | 100.00%        |
| 332312       | 3.97%        | 5.24%        | 1.36%        | 0.06%           | 10.00%       | 10.63%       | 20.63%        | 79.38%        | 100.00%        |
| 332911       | 0.00%        | 0.00%        | 4.17%        | 0.00%           | 16.67%       | 4.17%        | 20.83%        | 79.17%        | 100.00%        |
| 332996       | 0.00%        | 4.17%        | 0.00%        | 0.00%           | 8.33%        | 4.17%        | 12.50%        | 87.50%        | 100.00%        |
| 423610       | 3.40%        | 2.40%        | 1.50%        | 0.04%           | 9.98%        | 7.33%        | 17.31%        | 82.69%        | 100.00%        |
| 423840       | 2.74%        | 2.35%        | 1.25%        | 0.22%           | 7.98%        | 6.56%        | 14.54%        | 85.46%        | 100.00%        |
| 424720       | 4.02%        | 3.66%        | 1.82%        | 0.04%           | 5.03%        | 9.55%        | 14.57%        | 85.43%        | 100.00%        |
| 484110       | 2.45%        | 1.90%        | 0.72%        | 0.03%           | 4.25%        | 5.10%        | 9.35%         | 90.65%        | 100.00%        |
| 484220       | 16.28%       | 33.27%       | 2.15%        | 0.06%           | 11.40%       | 51.75%       | 63.16%        | 36.84%        | 100.00%        |
| 541330       | 6.36%        | 4.67%        | 6.80%        | 0.13%           | 6.88%        | 17.96%       | 24.84%        | 75.16%        | 100.00%        |
| 561730       | 3.33%        | 3.00%        | 0.81%        | 0.03%           | 5.86%        | 7.17%        | 13.03%        | 86.97%        | 100.00%        |
| 562219       | 1.29%        | 1.06%        | 0.52%        | 0.02%           | 4.35%        | 2.90%        | 7.25%         | 92.75%        | 100.00%        |
| 562910       | 17.25%       | 20.07%       | 6.17%        | 0.10%           | 6.41%        | 43.59%       | 50.00%        | 50.00%        | 100.00%        |
|              |              |              |              |                 |              |              |               |               |                |
| <b>Total</b> | <b>4.09%</b> | <b>3.55%</b> | <b>1.71%</b> | <b>0.07%</b>    | <b>6.70%</b> | <b>9.42%</b> | <b>16.12%</b> | <b>83.88%</b> | <b>100.00%</b> |

Source: CHA analysis of MWRD and Hoovers data.

**Table G27: Unweighted Availability – Construction**  
(total dollars)

| NAICS        | Black       | Hispanic    | Asian       | Native American | White Women | MBE         | M/WBE        | Non-M/WBE    | Total         |
|--------------|-------------|-------------|-------------|-----------------|-------------|-------------|--------------|--------------|---------------|
| 236220       | 8.9%        | 7.2%        | 3.9%        | 0.2%            | 9.4%        | 20.2%       | 29.6%        | 70.4%        | 100.0%        |
| 237110       | 4.6%        | 6.0%        | 3.2%        | 0.0%            | 13.9%       | 13.9%       | 27.8%        | 72.2%        | 100.0%        |
| 237310       | 7.5%        | 10.3%       | 3.2%        | 0.1%            | 8.5%        | 21.1%       | 29.6%        | 70.4%        | 100.0%        |
| 237990       | 4.2%        | 1.9%        | 2.6%        | 0.0%            | 10.9%       | 8.7%        | 19.6%        | 80.4%        | 100.0%        |
| 238110       | 6.5%        | 5.8%        | 1.4%        | 0.0%            | 7.2%        | 13.8%       | 21.0%        | 79.0%        | 100.0%        |
| 238120       | 11.1%       | 9.2%        | 1.4%        | 0.1%            | 17.9%       | 21.8%       | 39.7%        | 60.3%        | 100.0%        |
| 238130       | 2.8%        | 2.6%        | 0.7%        | 0.1%            | 3.8%        | 6.3%        | 10.1%        | 89.9%        | 100.0%        |
| 238140       | 4.6%        | 3.5%        | 1.1%        | 0.0%            | 7.5%        | 9.2%        | 16.7%        | 83.3%        | 100.0%        |
| 238160       | 2.6%        | 1.9%        | 0.9%        | 0.2%            | 3.8%        | 5.5%        | 9.3%         | 90.7%        | 100.0%        |
| 238210       | 4.8%        | 2.8%        | 1.6%        | 0.0%            | 10.6%       | 9.2%        | 19.9%        | 80.1%        | 100.0%        |
| 238220       | 2.5%        | 1.7%        | 0.7%        | 0.0%            | 5.0%        | 5.0%        | 10.0%        | 90.0%        | 100.0%        |
| 238320       | 2.9%        | 2.0%        | 0.7%        | 0.0%            | 5.7%        | 5.6%        | 11.2%        | 88.8%        | 100.0%        |
| 238910       | 6.8%        | 7.2%        | 2.3%        | 0.1%            | 10.6%       | 16.3%       | 26.9%        | 73.1%        | 100.0%        |
| 238990       | 2.2%        | 2.3%        | 0.9%        | 0.2%            | 6.2%        | 5.6%        | 11.8%        | 88.2%        | 100.0%        |
| 423610       | 3.4%        | 2.4%        | 1.5%        | 0.0%            | 10.0%       | 7.3%        | 17.3%        | 82.7%        | 100.0%        |
| 484110       | 2.5%        | 1.9%        | 0.7%        | 0.0%            | 4.3%        | 5.1%        | 9.4%         | 90.6%        | 100.0%        |
| 484220       | 16.3%       | 33.3%       | 2.1%        | 0.1%            | 11.4%       | 51.8%       | 63.2%        | 36.8%        | 100.0%        |
| 561730       | 3.3%        | 3.0%        | 0.8%        | 0.0%            | 5.9%        | 7.2%        | 13.0%        | 87.0%        | 100.0%        |
|              |             |             |             |                 |             |             |              |              |               |
| <b>Total</b> | <b>3.9%</b> | <b>3.4%</b> | <b>1.2%</b> | <b>0.1%</b>     | <b>6.6%</b> | <b>8.6%</b> | <b>15.2%</b> | <b>84.8%</b> | <b>100.0%</b> |

Source: CHA analysis of MWRD and Hoovers data.

**Table G28: Unweighted Availability - Construction Related Services**  
(total dollars)

| NAICS        | Black       | Hispanic    | Asian       | Native American | White Women | MBE          | M/WBE        | Non-M/WBE    | Total         |
|--------------|-------------|-------------|-------------|-----------------|-------------|--------------|--------------|--------------|---------------|
| 541330       | 6.4%        | 4.7%        | 6.8%        | 0.1%            | 6.9%        | 18.0%        | 24.8%        | 75.2%        | 100.0%        |
| 562910       | 17.2%       | 20.1%       | 6.2%        | 0.1%            | 6.4%        | 43.6%        | 50.0%        | 50.0%        | 100.0%        |
|              |             |             |             |                 |             |              |              |              |               |
| <b>Total</b> | <b>6.8%</b> | <b>5.3%</b> | <b>6.8%</b> | <b>0.1%</b>     | <b>6.9%</b> | <b>19.0%</b> | <b>25.9%</b> | <b>74.1%</b> | <b>100.0%</b> |

Source: CHA analysis of MWRD and Hoovers data.

**Table G29: Unweighted Availability – Goods**  
(total dollars)

| NAICS         | Black       | Hispanic    | Asian       | Native American | White Women | MBE         | M/WBE        | Non-M/WBE    | Total         |
|---------------|-------------|-------------|-------------|-----------------|-------------|-------------|--------------|--------------|---------------|
| <b>332312</b> | 4.0%        | 5.2%        | 1.4%        | 0.1%            | 10.0%       | 10.6%       | 20.6%        | 79.4%        | 100.0%        |
| <b>332911</b> | 0.0%        | 0.0%        | 4.2%        | 0.0%            | 16.7%       | 4.2%        | 20.8%        | 79.2%        | 100.0%        |
| <b>332996</b> | 0.0%        | 4.2%        | 0.0%        | 0.0%            | 8.3%        | 4.2%        | 12.5%        | 87.5%        | 100.0%        |
| <b>423840</b> | 2.7%        | 2.3%        | 1.3%        | 0.2%            | 8.0%        | 6.6%        | 14.5%        | 85.5%        | 100.0%        |
| <b>424720</b> | 4.0%        | 3.7%        | 1.8%        | 0.0%            | 5.0%        | 9.5%        | 14.6%        | 85.4%        | 100.0%        |
|               |             |             |             |                 |             |             |              |              |               |
| <b>Total</b>  | <b>3.1%</b> | <b>3.1%</b> | <b>1.4%</b> | <b>0.1%</b>     | <b>7.9%</b> | <b>7.7%</b> | <b>15.7%</b> | <b>84.3%</b> | <b>100.0%</b> |

Source: CHA analysis of MWRD and Hoovers data.

**Table G30: Unweighted Availability - Other Services**  
(total dollars)

| NAICS         | Black       | Hispanic    | Asian       | Native American | White Women | MBE         | M/WBE       | Non-M/WBE    | Total         |
|---------------|-------------|-------------|-------------|-----------------|-------------|-------------|-------------|--------------|---------------|
| <b>562219</b> | 1.3%        | 1.1%        | 0.5%        | 0.0%            | 4.3%        | 2.9%        | 7.2%        | 92.8%        | 100.0%        |
|               |             |             |             |                 |             |             |             |              |               |
| <b>Total</b>  | <b>1.3%</b> | <b>1.1%</b> | <b>0.5%</b> | <b>0.0%</b>     | <b>4.3%</b> | <b>2.9%</b> | <b>7.2%</b> | <b>92.8%</b> | <b>100.0%</b> |

Source: CHA analysis of MWRD and Hoovers data.

**Table G31: Share of MWRD Spending by NAICS Code – All Sectors**

| <b>NAICS</b> | <b>NAICS Code Description</b>   | <b>Weight (PCT Share of Total Sector Dollars)</b> |
|--------------|---|---|
| 237310       | Highway, Street, and Bridge Construction  | 24.60%  |
| 238220       | Plumbing, Heating, and Air-Conditioning Contractors   | 12.60%  |
| 238210       | Electrical Contractors and Other Wiring Installation Contractors                                | 11.90%  |
| 236220       | Commercial and Institutional Building Construction  | 7.30%   |
| 238990       | All Other Specialty Trade Contractors   | 6.90%   |
| 238110       | Poured Concrete Foundation and Structure Contractors  | 6.30%   |
| 238910       | Site Preparation Contractors  | 4.30%   |
| 541330       | Engineering Services  | 3.30%   |
| 237110       | Water and Sewer Line and Related Structures Construction  | 3.20%   |
| 484110       | General Freight Trucking, Local   | 3.20%   |
| 423840       | Industrial Supplies Merchant Wholesalers  | 2.60%   |
| 238140       | Masonry Contractors   | 2.50%   |
| 238120       | Structural Steel and Precast Concrete Contractors   | 1.60%   |
| 424720       | Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)      | 1.20%   |
| 562910       | Remediation Services  | 1.20%   |
| 332911       | Industrial Valve Manufacturing  | 1.10%   |
| 423610       | Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers | 1.10%   |
| 238130       | Framing Contractors   | 0.80%   |
| 484220       | Specialized Freight (except Used Goods) Trucking, Local   | 0.80%   |
| 238320       | Painting and Wall Covering Contractors  | 0.70%   |
| 238160       | Roofing Contractors   | 0.60%   |
| 561730       | Landscaping Services  | 0.60%   |
| 562219       | Other Nonhazardous Waste Treatment and Disposal   | 0.60%   |
| 332312       | Fabricated Structural Metal Manufacturing   | 0.50%   |
| 332996       | Fabricated Pipe and Pipe Fitting Manufacturing  | 0.50%   |
| 237990       | Other Heavy and Civil Engineering Construction  | 0.10%   |
|              |   |   |
| <b>Total</b> |   | <b>100.00%</b>                                    |

Source: CHA analysis of MWRD data.

**Table G32: Share of MWRD Spending by NAICS Code – Construction**

| <b>NAICS</b> | <b>NAICS Code Description</b>   | <b>(PCT Share of Total Sector Dollars)</b> |
|--------------|---|--|
| 237310       | Highway, Street, and Bridge Construction  | 27.68%                                     |
| 238220       | Plumbing, Heating, and Air-Conditioning Contractors   | 14.19%                                     |
| 238210       | Electrical Contractors and Other Wiring Installation Contractors                                | 13.37%                                     |
| 236220       | Commercial and Institutional Building Construction  | 8.17%                                      |
| 238990       | All Other Specialty Trade Contractors   | 7.74%                                      |
| 238110       | Poured Concrete Foundation and Structure Contractors  | 7.05%                                      |
| 238910       | Site Preparation Contractors  | 4.83%                                      |
| 237110       | Water and Sewer Line and Related Structures Construction  | 3.63%                                      |
| 484110       | General Freight Trucking, Local   | 3.64%                                      |
| 238140       | Masonry Contractors   | 2.79%                                      |
| 238120       | Structural Steel and Precast Concrete Contractors   | 1.79%                                      |
| 423610       | Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers | 1.19%                                      |
| 238130       | Framing Contractors   | 0.88%                                      |
| 484220       | Specialized Freight (except Used Goods) Trucking, Local   | 0.92%                                      |
| 238320       | Painting and Wall Covering Contractors  | 0.75%                                      |
| 238160       | Roofing Contractors   | 0.64%                                      |
| 561730       | Landscaping Services  | 0.67%                                      |
| 237990       | Other Heavy and Civil Engineering Construction  | 0.09%                                      |
|              |   |  |
| <b>Total</b> |   | <b>100.00%</b>                             |

Source: CHA analysis of MWRD data.

**Table G33: Share of MWRD Spending by NAICS Code – Construction Related Services**

| <b>NAICS</b> | <b>NAICS Code Description</b> | <b>(PCT Share of Total Sector Dollars)</b> |
|--------------|-------------------------------|--|
| 541330       | Engineering Services          | 73.62%                                     |
| 562910       | Remediation Services          | 26.38%                                     |
|              |                               |  |
| <b>Total</b> |                               | <b>100.00%</b>                             |

Source: CHA analysis of MWRD data.

**Table G34: Share of MWRD Spending by NAICS Code – Goods**

| NAICS        | NAICS Code Description   | (PCT Share of Total Sector Dollars) |
|--------------|--|-------------------------------------|
| 423840       | Industrial Supplies Merchant Wholesalers   | 43.94%                              |
| 424720       | Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals) | 19.60%                              |
| 332911       | Industrial Valve Manufacturing   | 18.96%                              |
| 332312       | Fabricated Structural Metal Manufacturing  | 9.06%                               |
| 332996       | Fabricated Pipe and Pipe Fitting Manufacturing   | 8.44%                               |
|              |  |                                     |
| <b>Total</b> |  | <b>100.00%</b>                      |

Source: CHA analysis of MWRD data.

**Table G35: Share of MWRD Spending by NAICS Code – Other Services**

| NAICS        | NAICS Code Description                          | (PCT Share of Total Sector Dollars) |
|--------------|---|-------------------------------------|
| 562219       | Other Nonhazardous Waste Treatment and Disposal | 100.00%                             |
| <b>Total</b> |   | <b>100.00%</b>                      |

Source: CHA analysis of MWRD data.

**Table G36: Aggregated Weighted Availability – All Sectors  
(total dollars)**

| NAICS        | Black       | Hispanic    | Asian       | Native American | White Women | MBE         | M/WBE       | Non-M/WBE    | Total         |
|--------------|-------------|-------------|-------------|-----------------|-------------|-------------|-------------|--------------|---------------|
| <b>Total</b> | <b>1.3%</b> | <b>1.1%</b> | <b>0.5%</b> | <b>0.0%</b>     | <b>4.3%</b> | <b>2.9%</b> | <b>7.2%</b> | <b>92.8%</b> | <b>100.0%</b> |

Source: CHA analysis of MWRD and Hoovers data.

**Table G37: Aggregated Weighted Availability - Construction  
(total dollars)**

| NAICS        | Black        | Hispanic    | Asian       | Native American | White Women | MBE          | M/WBE        | Non-M/WBE    | Total         |
|--------------|--------------|-------------|-------------|-----------------|-------------|--------------|--------------|--------------|---------------|
| <b>Total</b> | <b>5.62%</b> | <b>6.0%</b> | <b>2.1%</b> | <b>0.1%</b>     | <b>8.3%</b> | <b>13.7%</b> | <b>22.0%</b> | <b>78.0%</b> | <b>100.0%</b> |

Source: CHA analysis of MWRD and Hoovers data.

**Table G38: Aggregated Weighted Availability – Construction Related Services  
(total dollars)**

| NAICS        | Black        | Hispanic     | Asian        | Native American | White Women  | MBE           | M/WBE         | Non-M/WBE     | Total          |
|--------------|--------------|--------------|--------------|-----------------|--------------|---------------|---------------|---------------|----------------|
| <b>Total</b> | <b>9.23%</b> | <b>8.74%</b> | <b>6.63%</b> | <b>0.12%</b>    | <b>6.75%</b> | <b>24.72%</b> | <b>31.48%</b> | <b>68.52%</b> | <b>100.00%</b> |

Source: CHA analysis of MWRD and Hoovers data.

**Table G39: Aggregated Weighted Availability – Goods  
(total dollars)**

| NAICS        | Black        | Hispanic     | Asian        | Native American | White Women  | MBE          | M/WBE         | Non-M/WBE     | Total          |
|--------------|--------------|--------------|--------------|-----------------|--------------|--------------|---------------|---------------|----------------|
| <b>Total</b> | <b>2.35%</b> | <b>2.58%</b> | <b>1.82%</b> | <b>0.11%</b>    | <b>9.26%</b> | <b>6.86%</b> | <b>16.12%</b> | <b>83.88%</b> | <b>100.00%</b> |

Source: CHA analysis of MWRD and Hoovers data.

**Table G40: Aggregated Weighted Availability – Other Services  
(total dollars)**

| NAICS        | Black        | Hispanic     | Asian        | Native American | White Women  | MBE          | M/WBE        | Non-M/WBE     | Total          |
|--------------|--------------|--------------|--------------|-----------------|--------------|--------------|--------------|---------------|----------------|
| <b>Total</b> | <b>1.29%</b> | <b>1.06%</b> | <b>0.52%</b> | <b>0.02%</b>    | <b>4.35%</b> | <b>2.90%</b> | <b>7.25%</b> | <b>92.75%</b> | <b>100.00%</b> |

Source: CHA analysis of MWRD and Hoovers data.

## TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

### COMMITTEE ON AFFIRMATIVE ACTION

Mr. David St. Pierre, Executive Director

..Title

Authority to Adopt Ordinance O15-002, Affirmative Action Ordinance, Revised Appendix D, of the Metropolitan Water Reclamation District of Greater Chicago

..Body

Dear Sir:

On July 20, 1978, the Board of Commissioners of the MWRD enacted its Affirmative Action Program as an ordinance. In April 1989, the Board adopted an interim Appendix D Ordinance that suspended all numerical goals for the utilization of minority business enterprises (MBEs) and women-owned business enterprises (WBEs) while the District investigated ways in which to craft the program so as come into conformity with the criteria established by the United States Supreme Court in *City of Richmond v. Croson*, 488 U.S. 469 (1989). The new Ordinance, passed on March 15, 1990, included flexible, industry-specific goals based upon market availability, a waiver provision and periodic evaluation. A minor revision to the Ordinance was passed on June 21, 2001. Thereafter, a major review and revision of the Ordinance took place in 2007. At that time, the District passed a revised interim Ordinance that included significant revisions. The revised Ordinance was adopted on December 6, 2007, and included a 5-year sunset provision. The Affirmative Action Ordinance was further amended April 2, 2009.

In September 2012, Colette Holt & Associates, a preeminent law and consulting firm specializing in disparity studies and affirmative action contracting programs, was retained to conduct a comprehensive review of Appendix D. On November 15, 2012, the Board of Commissioners adopted Affirmative Action Ordinance, Interim Appendix D, with a sunset date of December 6, 2014. That interim Ordinance also included a number of significant revisions.

Following adoption of the interim Ordinance in 2012, the District undertook a comprehensive Disparity Study conducted by Colette Holt & Associates to determine whether minority-owned and women-owned business enterprises have equal access to District contracts, and if not, what remedies might be appropriate to redress barriers created by race or gender discrimination. That study, which consisted of in-depth legal analysis of the District's affirmative action program supported by statistical and anecdotal evidence, commenced in March 2014 and concluded in May 2015. To facilitate completion of the Disparity Study, in November 2014, Ordinance No. O14-014 was passed thereby extending the sunset date of the interim Appendix D to June 4, 2015.

The Disparity Study reveals that there is a basis for continuing the District's program with certain recommendations for enhancing the program that will need to be thoroughly vetted by the Diversity Section and Law Department to determine whether those recommendations are in keeping with the District's vision for its program into the future.

At this time, the Affirmative Action Ordinance, revised Appendix D, includes only non-substantive changes that update the status of the Affirmative Action Program and the Ordinance.

The Ordinance now has a five-year sunset provision, whereby the Revised Appendix D will sunset on June 4, 2020. However, within the next twelve months, the Diversity Section, in coordination with the Law Department, will return to the Board with recommended program enhancements that will be the subject of a future study session.



The attached Affirmative Action Ordinance, Revised Appendix D, in the opinion of special counsel Colette Holt, represents an Affirmative Action Program that meets all current legal requirements, while addressing important areas of concern for both the Board of Commissioners and the business community. The Ordinance demonstrates the Board's continuing commitment to provide a level playing field for minority and women businesses engaged in the construction and construction related industries in the greater Chicago area.

Requested, Beverly Sanders, Acting Diversity Administrator, BS:TCS:RMH:HSW:MTC:bh  
Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Affirmative Action  
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

Attachments



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

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**File #:** PWR15-001, **Version:** 1

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### **TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015**

#### **COMMITTEE ON LABOR & INDUSTRIAL RELATIONS**

Mr. David St. Pierre, Executive Director

Adoption of Prevailing Wage Act Ordinance

**TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015****COMMITTEE ON LABOR & INDUSTRIAL RELATIONS**

Mr. David St. Pierre, Executive Director

..Title

Adoption of Prevailing Wage Act Ordinance

..Body

Dear Sir:

In accordance with the requirement of the State of Illinois Prevailing Wage Act, approved on June 26, 1941, as amended, 820 ILCS 130/0.01, et seq., the Metropolitan Water Reclamation District is required to pass an ordinance which establishes the prevailing rate of wages for laborers, mechanics and other workers to be employed on any Metropolitan Water Reclamation projects.

Accordingly, it is respectfully requested that the Executive Director recommend to the Board of Commissioners that it adopt the attached Ordinance setting forth the prevailing rate of wages for construction work in Cook and Fulton Counties as determined by the Department of Labor of the State of Illinois, effective June 1, 2015, and as may be amended from time to time by the Illinois Department of Labor.

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management,  
DAL:SEB:lc

Respectfully Submitted, Cynthia M. Santos, Chairman Committee on Labor & Industrial Relations  
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

Attachments

**ORDINANCE PWR 15-001**

An Ordinance to Determine the Prevailing Rate of Wages

**WHEREAS**, the State of Illinois has enacted the "Prevailing Wage Act," 820 ILCS 130/0.01, et seq.

**WHEREAS**, the aforesaid Act requires that the Metropolitan Water Reclamation District of Greater Chicago investigate and ascertain the prevailing rate of wages as defined in said Act for laborers, mechanics and other workers in the locality of said Metropolitan Water Reclamation District of Greater Chicago employed in performing construction of public works for said Metropolitan Water Reclamation District of Greater Chicago. This includes any maintenance, repair, assembly, or disassembly work performed on equipment, whether owned, leased or rented.

**NOW, THEREFORE**, be it ordained by the Board of Commissioners of the Metropolitan Water Reclamation District of Greater Chicago:

**SECTION 1:** To the extent and as required by the "Prevailing Wage Act," the general prevailing rate of wages in this locality for laborers, mechanics and other workers engaged in construction of public works coming under the jurisdiction of the Metropolitan Water Reclamation District of Greater Chicago is hereby ascertained to be the same as the prevailing rate of wages for construction work in Cook and Fulton County areas as determined by the Department of Labor of the State of Illinois as of June 2015, a copy of that determination being attached hereto and incorporated herein by reference. The definition of any terms appearing in this Ordinance which are also used in aforesaid Act shall be the same as in said Act.

**SECTION 2:** Nothing herein contained shall be construed to apply said general prevailing rate of wages as herein ascertained to any work or employment except public works construction of the Metropolitan Water Reclamation District of Greater Chicago to the extent required by the aforesaid Act.

**SECTION 3:** The Clerk of the Metropolitan Water Reclamation District of Greater Chicago shall publicly post or keep available for inspection by any interested party in the main office of the Metropolitan Water Reclamation District of Greater Chicago this determination of such prevailing rate of wage.

**SECTION 4:** The Clerk of the Metropolitan Water Reclamation District of Greater Chicago shall mail a copy of this determination to any employer, and to any association of employers and to any person or association of employees who have filed their names and addresses, requesting copies of any determination stating the particular rates and the particular class of workers whose wages will be affected by such rates.

**SECTION 5:** The Clerk of the Metropolitan Water Reclamation District of Greater Chicago shall promptly file a certified copy of this Ordinance with both the Secretary of State and the Department of Labor of the State of Illinois.

**SECTION 6:** The Clerk of the Metropolitan Water Reclamation District of Greater Chicago shall cause to be published in a newspaper of a general circulation within the District's area a copy of this Ordinance, and such publication shall constitute notice that the determination is effective and that this is the determination of the public body.

PASSED this 4th day of June, 2015.

Approved:

/s/ Mariyana Spyropoulos  
President, Board of Commissioners  
of the Metropolitan Water  
Reclamation District of  
Greater Chicago

/s/ Commissioner Cynthia M. Santos  
Chairman, Committee on Labor &  
Industrial Relations of the  
Metropolitan Water Reclamation  
District of Greater Chicago

Approved as to Form and Legality:

/s/ Helen Shields-Wright  
Head Assistant Attorney

/s/ Ronald M. Hill  
General Counsel