

Metropolitan Water Reclamation District

Minority, Women-Owned and Small Business Program

Study Session

March 25, 2019

M/WBE Program Legal Standards

- Sunset provision requiring periodic program review
- “Societal” discrimination is not sufficient
- All racial and ethnic groups must suffer in the local marketplace
- Disparities between population and agency utilization of M/WBEs are insufficient
- Race-neutral measures must be seriously considered
- Strict scrutiny is not fatal in fact: some affirmative action programs are permissible

M/WBE Program Legal Standards

- Ordinance must be narrowly tailored to address discrimination
- Narrow tailoring requires:
 - Examination of the effectiveness of race-neutral remedies
 - Development of overall goals related to availability
 - Implementation of contract specific goals
 - Flexible goals, with waivers for good faith efforts
 - Program eligibility must be limited to socially and economically disadvantaged groups suffering discrimination in the agency's geographic and procurement market

Counting M/WBE participation

§ “Indirect” participation on District contracts (*i.e.*, work not directly related to the District’s contract)

- Difficult and highly burdensome to track
- Apportion to percentage value of District contracts?
- What about multiple contracts?
- Ceiling on percentage?
- Element of good faith efforts for bidders who did not meet the goal(s)?

§ “Indirect” participation on non-District contracts

- Impossible to track
- Substitute for good faith efforts?

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