



Executive Summary

Metropolitan St. Louis Sewer District

Draft Report

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EXECUTIVE SUMMARY

I. STUDY OVERVIEW

A. Study Purpose

In 2011 the Metropolitan St. Louis Sewer District (MSD) commissioned a disparity study because it is undertaking one of the largest construction projects in the St. Louis region. MSD's Capital Improvement and Replacement Plan (CIRP) is a \$4.7 billion program to update and rehabilitate the district's wastewater collection and treatment system. This multi-decade program will reduce community health and safety risks with the removal of nearly 400 sewer overflows, which release untreated wastewater into the waterways. The rehabilitation of interceptors, pump stations, and force mains for the seven wastewater treatment plants in MSD's 100-year-old sewer system are also part of the plan. A project of this scale and magnitude will create long-term economic and employment benefits within the region.

The purpose of the disparity study was to determine whether or not a statistically significant disparity existed in MSD's award of contracts to ready, willing, and able minority and women-owned business enterprises (M/WBEs). Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs should be relatively close to the corresponding proportion of available M/WBEs¹ in the relevant market area. If the available M/WBE prime contractors are underutilized, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event which is less probable. *Crosby* states that an inference of discrimination can be made prima facie if the disparity is statistically significant. This analysis was applied to M/WBEs by ethnicity and gender within the five industries studied.

B. Study Team

Mason Tillman Associates, Ltd., a public policy consulting firm based in Oakland, California, was selected to perform the Disparity Study. Mason Tillman subcontracted with three local businesses, ADE Consulting Services, Davis Associates, CPAs, and Project Controls Group, Inc., to perform anecdotal interviews and assist with contract data collection.

¹ Availability is defined as the number of ready, willing, and able firms. The methodology for determining willing and able firms is detailed in Chapter 4.



Vicki Taylor Edwards, MSD Director of Human Resources, managed the Study. Ramona Dickens and Todd Aschbacher were part of the management team. Ms. Edwards and the team facilitated Mason Tillman's access to the MSD data needed to complete the Study. The extraordinary cooperation of the MSD staff and business community should also be acknowledged.

C. Industries and Study Period

The Disparity Study reviewed the contracts awarded during the study period of July 1, 2007 to January 31, 2012. The contracts examined at the prime contract level were in the following industries: building construction, non-building construction, engineering professional services, non-engineering professional services, and supplies and contractual services. At the subcontract level, the same industries were studied except for supplies and contractual services as there were too few records in this industry to conduct an analysis. The scopes of the contracts in the five industries studied are defined below:

- **Building and Non-Building Construction Services** include capital improvement projects, wastewater collection, and treatment facilities.
- **Contractual Services** include all services not identified as professional services.
- **Engineering Professional Services** include architecture, engineers, engineering design services, land surveyors, planning and management consultants, and construction management consultants.
- **Non-Engineering Professional Services** include armed security guard services, claims adjusters, computer facilities management, computer programming services, financial auditing, financial consulting services, general investment advisory or consulting services, insurance advisory/consulting services or insurance broker of record, landscape design services, lawyers, legal services, pension fund investment portfolio management, pension fund trustee services, pension plan actuarial services, public relations services, rates consulting, real estate appraisal services, and real estate brokerage services.
- **Supplies** include all materials and equipment.



D. Ethnic and Gender Groups Studied

The analysis of disparity was disaggregated into nine ethnic and gender groups. The nine groups are listed in Table 1.

Table 1: Business Ethnic and Gender Groups

Ethnicity and Gender Category	Definition
African American Businesses	Businesses owned by male and female African Americans
Asian American Businesses	Businesses owned by male and female Asian Americans
Hispanic American Businesses	Businesses owned by male and female Hispanic Americans
Native American Businesses	Businesses owned by male and female Native Americans
Caucasian Female Business Enterprises	Businesses owned by Caucasian females
Minority Business Enterprises	Businesses owned by African American, Asian American, Hispanic American, and Native American males and females
Women Business Enterprises	Businesses owned by Caucasian females
Minority and Women Business Enterprises	Businesses owned by Minority males, Minority females, and Caucasian females
Non-Minority Male Business Enterprises	Businesses owned by Caucasian males, businesses that declined to declare their ethnicity, or businesses that could not be identified as minority or female-owned

E. Prime Contract Data

The prime contractor data was extracted from three database sources— Application Management Services (AMS), Companies and Intellectual Property Registration Office (CIPRO), and Oracle—and included contracts, non-blanket purchase orders, and blanket orders. In this study the data from each of the databases are referred to as contracts.

Most records in the three database sources contained both prime contract payment and award data. The data extraction was limited to awards made during the July 1, 2007 to



January 31, 2012 study period. The records in each of the three databases had a unique contract or purchase order number. However, when data in these systems were combined, a unique number was not always assigned. Before the analysis could be performed a unique number had to be assigned by Mason Tillman. The assignment of an unique contract number required sorting and grouping prime contract and payment data by vendor ID, project description, prime contract number, prime award date, and award amount.

Each prime contract was then classified into one of the five industries. If the contract description was insufficient to assign an industry, Internet research was conducted. Mason Tillman's staff worked closely with MSD using object and organization codes to classify the contracts into the appropriate industry. Cooperative agreements and contracts with non-profits, government agencies, and utilities were excluded from the study. The industry classifications were reviewed and approved by MSD.

Once MSD approved the industry classifications, the ethnicity and gender of each prime contractor was verified. Certification databases, Internet research, and a survey were used to determine the ethnicity and gender of the prime contractors. Before performing the survey the prime contractor's business name was cross-referenced with the certification lists. Websites were reviewed for businesses which could not be reached through the survey. Internet research to identify the business owner's ethnicity and gender involved a review of social media sites, telephone directories, and search engines.

F. Subcontractor Data

Extensive research was undertaken to reconstruct the building construction and non-building construction, engineering professional services, and non-engineering professional services subcontracts issued by MSD's prime contractors. Subcontracts for supplies and contractual services contracts were not included in the analysis because prime contractors traditionally do not subcontract their work in these industries.

The subcontract data was compiled by MSD. All identified subcontractors were contacted to verify the award and payment amount. The subcontractor had the option of verifying data by telephone, email, fax, or U.S. mail. If the subcontractor could not be contacted, the original data from MSD was used in the utilization analysis.

G. Contract Thresholds

Contracts in each of the five industries were analyzed at two dollar levels. One level included all contracts regardless of size. A second level included all contracts under \$500,000. For supplies and contractual services a third dollar level was analyzed. The third threshold included informal contracts that did not require advertising.

The \$500,000 threshold was designated because capacity was demonstrated within the pool of willing M/WBEs at this level. The informal contract threshold was set forth in



MSD's procurement policy as \$25,000 for supplies and contractual services. MSD's procurement policy did not include an informal threshold for building construction and non-building construction, engineering professional services, and non-engineering professional services.

II. METHODOLOGY

A. Legal Framework

The review of *Croson* and related case law provided the legal framework for conducting the Disparity Study.

**Disparity Study:
Critical Components**

1. Legal Framework
2. Utilization Analysis
3. Market Area Analysis
4. Availability Analysis
5. Disparity Analysis
6. Anecdotal Analysis
7. Recommendations

A legal review was the **first step** in the disparity study. Case law sets the standard for the methodology employed in a disparity study. **Step two** was to collect utilization records and determine the extent to which MSD had used minority, women-owned, and other businesses to secure its needed building construction, non-building construction, engineering professional services, non-engineering professional services, and supplies and contractual services. Utilization records were also used to determine the geographical area in which companies that had received MSD contracts were

located. In **step three**, MSD's market area was identified. Once the market area was defined, the **fourth step**, the availability analysis, identified businesses willing and able to provide building construction, non-building construction, engineering professional services, non-engineering professional services, and supplies and contractual services needed by MSD. In the **fifth step** a disparity analysis was performed to determine whether there was a statistically significant underutilization within the five industries. In **step six**, the anecdotal analysis, the contemporary experiences of business owners in MSD's market area were collected. The anecdotal analysis also included testimony from trade and business representatives that provided information on their members' experiences seeking or working with MSD. In **step seven** the statistical and anecdotal analyses were reviewed and recommendations were written to enhance MSD's efforts in contracting with M/WBEs in its market area. In addition a regression analysis was conducted to determine if factors other than discrimination could account for any statistically significant disparity.



B. Structure of the Report

The Disparity Study findings are presented in eleven chapters. The contents of each chapter are briefly described below:

Overview of the Disparity Study Report

- *Chapter 1: Legal Analysis* presents the case law applicable to business affirmative action programs and the methodology based on those cases required for the Study.
- *Chapter 2: Contracting and Procurement Policies Analysis* presents MSD's contracting and procurement practices.
- *Chapter 3: Prime Contractor Utilization Analysis* presents the distribution of prime contracts by industry, ethnicity, and gender.
- *Chapter 4: Subcontractor Utilization Analysis* presents the distribution of subcontracts by industry, ethnicity, and gender.
- *Chapter 5: Market Area Analysis* presents the legal basis for geographical market area determination and defines MSD's market area.
- *Chapter 6: Prime Contractor and Subcontractor Availability Analysis* presents the distribution of available businesses in MSD's market area.
- *Chapter 7: Prime Contractor Disparity Analysis* presents prime contractor utilization compared to prime contractor availability by industry and M/WBE status and determines whether the comparison is statistically significant.
- *Chapter 8: Subcontractor Disparity Analysis* presents subcontractor utilization compared to subcontractor availability by industry and M/WBE status and determines whether the comparison is statistically significant.
- *Chapter 9: Regression Analysis* presents an examination of whether there are private sector economic indicators of discrimination in MSD's market area that could impact the formation and development of M/WBEs.
- *Chapter 10: Anecdotal Analysis* presents the business community's perceptions of barriers encountered in contracting or attempting to contract with MSD.
- *Chapter 11: Recommendations* presents race and gender-conscious and race and gender-neutral remedies to enhance procurement activities and MSD's contracting with M/WBEs and other small businesses.



III. NOTABLE FINDINGS

A. Prime Contractor Utilization Analysis

MSD issued 40,868 contracts during the July 1, 2007 through January 31, 2012 study period. The 40,868 contracts included 27 for building construction, 772 for non-building construction, 186 for engineering professional services, 337 for non-engineering professional services, and 39,546 for supplies and contractual services.

The payments made by MSD during the study period totaled \$914,888,875 for the 40,868 contracts.² Payments included \$265,714,726 for building construction, \$288,669,563 for non-building construction, \$90,658,256 for engineering professional services, \$59,704,115 for non-engineering professional services, and \$210,142,214 for supplies and contractual services.

B. Subcontractor Utilization Analysis

A total of 1,489 subcontracts were analyzed, which included 389 building construction subcontracts, 1,031 non-building construction subcontracts, 51 engineering professional services subcontracts, and 18 non-engineering professional services subcontracts for the May 1, 2010 to January 31, 2012 subcontractor study period. The subcontractor study period differs from the overall study period because it represents the time period for which subcontract records are readily available.

There were \$143,099,473 total subcontract dollars expended during the May 1, 2010 to January 31, 2012 study period, which included \$97,035,474 for building construction subcontracts, \$42,383,416 for non-building construction subcontracts, \$2,505,118 for engineering professional services subcontracts, and \$1,175,465 for non-engineering professional services subcontracts.

C. Market Area Analysis

During the study period MSD awarded 40,868 non-building construction, building construction, engineering professional services, non-engineering professional services, and supplies and contractual services contracts valued at \$914,888,875. MSD awarded 77.63 percent of these contracts and 71.67 percent of dollars to businesses located in the City of St. Louis and St. Louis County respectively. Given the distribution of the contracts awarded by MSD the study's market area is determined to be the City of St. Louis and St. Louis County.



² All figures are rounded to the nearest dollar.

D. Contract Size Analysis

MSD's contracts were grouped into nine dollar ranges.³ Each industry was analyzed to determine the number and percentage of contracts that fell within the nine size categories. The size distribution for contracts awarded within the nine dollar ranges in all industries combined demonstrates that 96.61 percent of MSD's contracts were less than \$25,000; 97.63 percent were less than \$50,000; 98.37 percent were less than \$100,000; and 99.5 percent were less than \$500,000.⁴ Only 0.5 percent of MSD's contract awards were over \$500,000.

IV. DISPARITY FINDINGS OF STATISTICAL UNDERUTILIZATION

Below are the prime contract and subcontract disparity findings. There were findings of statistically significant underutilization of certain ethnic and gender groups in the award of prime contracts and subcontracts.

A. Prime Contract Disparity Findings

1. Building Construction Prime Contracts

As indicated in Table 2, there were no findings of statistically significant disparity in the building construction industry for contracts valued under \$500,000.

Table 2: Disparity Summary: Building Construction Prime Contract Dollars, July 1, 2007 through January 31, 2012

Ethnicity/Gender	Contracts under \$500,000
African Americans	No
Asian Americans	No
Hispanic Americans	No
Native Americans	No



³ The nine dollar ranges are \$1 to \$25,000; \$25,001 to \$50,000; \$50,001 to \$100,000; \$100,001 to \$250,000; \$250,001 to \$500,000; \$500,001 to \$750,000; \$750,001 to \$1,000,000; \$1,000,001 to \$3,000,000; and \$3,000,001 and greater.

⁴ Percents represent cumulative amounts and therefore do not sum to 100 percent.

Ethnicity/Gender	Contracts under \$500,000
Minority Business Enterprises	No
Women Business Enterprises	**
Minority and Women Business Enterprises	**

Yes = The analysis is statistically significant.
 No = The analysis is not statistically significant or there are too few available firms to test statistical significance.
 (**) = The analysis does not statistically test the overutilization of M/WBES.

2. Non-Building Construction Prime Contracts

As indicated in Table 3, disparity was found for African American, Asian American, and Minority Business Enterprise non-building construction contractors for contracts valued under \$500,000.

Table 3: Disparity Summary: Non-Building Construction Prime Contract Dollars, July 1, 2007 through January 31, 2012

Ethnicity/Gender	Contracts under \$500,000
African Americans	Yes
Asian Americans	Yes
Hispanic Americans	No
Native Americans	No
Minority Business Enterprises	Yes
Women Business Enterprises	**
Minority and Women Business Enterprises	**

Yes = The analysis is statistically significant.
 No = The analysis is not statistically significant or there are too few available firms to test statistical significance.
 (**) = The analysis does not statistically test the overutilization of M/WBES.



3. Engineering Professional Services Prime Contracts

As indicated in Table 4 below, disparity was found for Asian American, Women Business Enterprise, Minority Business Enterprise, and Minority and Women Business Enterprise engineering professional services prime contractors for contracts valued under \$500,000.

Table 4: Disparity Summary: Engineering Professional Services Prime Contract Dollars, July 1, 2007 through January 31, 2012

Ethnicity/Gender	Contracts under \$500,000
African Americans	No
Asian Americans	Yes
Hispanic Americans	**
Native Americans	No
Minority Business Enterprises	Yes
Women Business Enterprises	Yes
Minority and Women Business Enterprises	Yes

Yes = The analysis is statistically significant.

No = The analysis is not statistically significant or there are too few available firms to test statistical significance.

(**) = The analysis does not statistically test the overutilization of M/WBEs.



4. Non-Engineering Professional Services Prime Contracts

As indicated in Table 5 below, disparity was found for African American, Asian American, Hispanic American, Minority Business Enterprise, Women Business Enterprise, and Minority and Women Business Enterprise non-engineering professional services prime contractors for contracts valued under \$500,000.

Table 5: Disparity Summary: Non-Engineering Professional Services Prime Contract Dollars, July 1, 2007 through January 31, 2012

Ethnicity/Gender	Contracts under \$500,000
African Americans	Yes
Asian Americans	Yes
Hispanic Americans	Yes
Native Americans	No
Minority Business Enterprises	Yes
Women Business Enterprises	Yes
Minority and Women Business Enterprises	Yes

Yes = The analysis is statistically significant.

No = The analysis is not statistically significant or there are too few available firms to test statistical significance.

(**) = The analysis does not statistically test the overutilization of M/WBEs.



5. Supplies and Contractual Services Prime Contracts

As indicated in Table 6 below, disparity was found for African American, Asian American, Minority Business Enterprise, and Women Business Enterprise supplies and contractual services prime contractors for contracts valued under \$500,000. Disparity was found for African American, Asian American, Minority Business Enterprise, and Minority and Women Business Enterprise supplies and contractual services prime contractors at the informal level for contracts valued at \$25,000 and under.

Table 6: Disparity Summary: Supplies and Contractual Services Prime Contract Dollars, July 1, 2007 through January 31, 2012

Ethnicity/Gender	Supplies and Contractual Services	
	Contracts under \$500,000	Contracts \$25,000 and under
African Americans	Yes	Yes
Asian Americans	Yes	Yes
Hispanic Americans	**	**
Native Americans	No	No
Minority Business Enterprises	Yes	Yes
Women Business Enterprises	Yes	**
Minority and Women Business Enterprises	No (it's not significant)	Yes

Yes = The analysis is statistically significant.

No = The analysis is not statistically significant or there are too few available firms to test statistical significance.

(**) = The analysis does not statistically test the overutilization of M/WBES.



B. Subcontractor Disparity Findings

Findings of statistically significant underutilization at the subcontracting level establish the factual predicate necessary for M/WBE program modifications. As indicated in Table 7, disparity was found for African American and Hispanic American building construction subcontractors. Disparity was also found for African American non-building construction subcontractors. There were too few supplies and contractual services records to conduct a disparity analysis at the subcontracting level.

**Table 7: Subcontractor Disparity Summary,
May 1, 2010 to January 31, 2012**

Ethnicity / Gender	Building Construction	Non-Building Construction	Engineering Professional Services	Non-Engineering Professional Services
African Americans	Yes	Yes	**	**
Asian Americans	No	No	**	No
Hispanic Americans	Yes	No	**	No
Native Americans	No	No	No	No
Minority Business Enterprises	Yes	No (it's not significant)	**	**
Women Business Enterprises	**	**	**	**
Minority and Women Business Enterprises	Yes	No	**	**

Yes = The analysis is statistically significant.

No = The analysis is not statistically significant or there are too few available firms to test statistical significance.

** = The analysis does not statistically test the overutilization of M/WBEs.

C. Race and Gender-Conscious Subcontracting Goals

An M/WBE subcontracting goals program can be instituted based upon the findings of the Disparity Study. Race and gender-conscious subcontracting goals can be set for groups with findings of statistically significant disparity at the subcontracting level. For example in the building construction industry race and gender-conscious goals can be set for African Americans and Hispanic Americans at the rate for which they are available. Likewise, in the non-building construction industry race and gender-conscious goals can be set for African Americans at the rate they are available. There were no findings of



statistically significant disparity in the engineering and non-engineering professional services. It should be noted that the application of the goal is not a percent of the dollars that the prime subcontracts. Instead, it is a percent of the total contract value that should be awarded to groups with a finding of statistically significant disparity, and should be attained through subcontracting. Table 8 depicts race and gender-conscious subcontracting goals according to industry, ethnic and gender groups, and availability.

Table 8: Race and Gender-Conscious Subcontracting Goals

Industry	Ethnicity	Availability	Subcontracting Goal*
Building Construction	African American	28.5%	30%
	Hispanic American	1.21%	
Non-Building Construction	African American	17.3%	17%

* Subcontracting Goals are the sum of the availability percentages rounded to the nearest whole number.

V. ANECDOTAL FINDINGS

In addition to requiring a statistical analysis, the United States Supreme Court in *Croson* stated that anecdotal findings, “if supported by appropriate statistical proofs, lend support to a [local entity’s] determination that broader remedial relief [be] justified.”⁵ *Croson* authorizes anecdotal inquiries along two lines. The first approach examines barriers attributed to the local entity. Such action is defined as the active participation of the government entity. The second approach examines passive participation, which constitute barriers created by contractors that are awarded public funds.⁶

The anecdotal analysis included testimony from interviews with 37 business owners and representatives from 15 trade and business associations domiciled in MSD’s market area. The business owners described accounts of barriers encountered while working or seeking work directly with MSD, and the trade and business association representatives reported experiences of their members. Exemplary practices of MSD and its managers are also recounted in the interviews.



⁵ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

⁶ *Id.*

A. Summary of In-Depth Interviews

The anecdotal analysis describes general market conditions, prime contractor barriers, and the range of experiences encountered by interviewees attempting to do business with MSD. Some barriers the interviewees identified include:

- Racial barriers and harassment
- Higher standards of review for M/WBEs
- Difficulty meeting pre-qualification requirements
- Bid shopping and inadequate lead time to respond to solicitations
- Difficulty negotiating supplier agreements
- M/WBE certification process challenges
- Front companies being used to meet M/WBE goals
- Barriers to financial resources
- Barriers to bonding
- Late payments from prime contractors

The interviewees also provided comments about the M/WBE Program, exemplary MSD business practices, and recommendations to increase M/WBE participation on MSD contracts.

VI. REGRESSION ANALYSIS

Three regression models were used to determine whether there were factors in the private sector which might help explain any statistical disparities between M/WBE availability and utilization identified in the Disparity Study. The three models examined the following outcome variables—business ownership, business earnings, and business loan approval.

These analyses were performed for three industries—construction, professional services, and supplies and contractual services. The regression analyses examined the effect of race and gender on the three outcome variables. The business ownership analysis and the earnings disparity analysis used data from the 2007 through 2010 PUMS datasets for the City of St. Louis and St. Louis County, and compared business ownership rates and earnings for M/WBEs to those of similarly situated Caucasian males. The business loan approval analysis used the 2003 NSSBF dataset and compared business loan approval rates for M/WBEs to those of similarly situated Caucasian males.

A. Business Ownership Analysis

The business ownership regression analysis examined the impact of different explanatory variables on an individual's probability of owning a business. Controlling for race and



gender-neutral factors, the business ownership analysis results reveal statistically significant disparities in the probability of owning a business for minorities and females when compared to similarly situated Caucasian males. Caucasian Females experience the greatest disparity as they are significantly less probable to own a business in all industry specifications. African Americans and Asian Americans are significantly less probable to own a business in two of the industries—professional services and supplies and contractual services, for African Americans, and construction and professional services for Asian Americans.

Hispanic Americans, Native Americans, and Other Minorities did not have any statistically significant findings.

B. Business Earnings Analysis

The business earnings regression analysis examined the impact of different explanatory variables on a business owner's earnings. Controlling for race and gender-neutral factors, the business earnings analysis documented statistically significant disparities in business earnings for minorities and females when compared to similarly situated Caucasian males. Caucasian Females have lower business earnings at a statistically significant level for two of the industries— professional services and supplies and contractual services. African Americans and Asian Americans have significantly lower business earnings in the supplies and contractual services industry. Finally, Other Minorities have significantly lower business earnings in the professional services industry.

Hispanic Americans and Native Americans had no statistically significant findings.

C. Business Loan Approval Analysis

The business loan regression analysis examined the impact of different explanatory variables on the probability of receiving a business loan. Controlling for race and gender-neutral factors, the business loan approval regression model analysis reveals statistically significant disparities for M/WBEs when compared to similarly situated Caucasian males. Caucasian Females had a statistically significant disparity in the construction industry, and minorities had statistically significant disparities in the professional services and supplies and contractual services industry.

The statistically significant disparity documented for M/WBEs when compared to similarly situated Caucasian males points to the presence of race and gender-based discrimination as a factor in access to business capital. Access to business capital in the private sector constitutes a major factor in business development, continuity, and growth. The documented disparity in M/WBEs' access to business capital may have adversely impacted the number of these businesses in the construction, professional services, and supplies and contractual services industries available to perform MSD's contracts during the study period.



VII. RACE AND GENDER-CONSCIOUS REMEDIES

Mason Tillman recommends several race and gender-conscious remedies to address the disparity findings. The recommendations are narrowly tailored to the ethnic and gender groups which had a documented disparity. The application of the numeric remedy could be a combined M/WBE goal limited to the groups with a statistical disparity.

A. Prime Contract Remedies

1. Institute Incentive Credits for Engineering and Non-Engineering Professional Service Contracts

Incentive credits should be given to Asian American and Women Business Enterprise prime contractors in the evaluation process for prime contract awards in engineering professional services, and African American, Asian American, Hispanic American, and Women Business Enterprise prime contractors in non-engineering professional services.

B. Subcontract Remedies

1. Set Overall M/WBE Subcontracting Goal

An overall M/WBE subcontracting goal should be established to remedy the documented disparity in the building construction and non-building construction industries, where there was a finding of statistically significant underutilization. The goal should be limited to the groups with a statistical disparity. The overall subcontracting goal should reflect the availability of these specific groups the Study found to be underutilized at a statistically significant level. Further discussion of the goals can be found in the Executive Summary in Section IV: Disparity Findings of Statistical Underutilization, part C: Race and Gender-Conscious Subcontracting Goals.

2. Set Contract-Specific M/WBE Construction Subcontracting Goals

A subcontracting goal should be set on all building and non-building construction prime contracts over \$50,000 for each ethnic and gender group that had statistically significant disparity.

3. Conduct M/WBE Subcontracting Goal Attainment Reviews

Goal attainment reviews should be conducted for all prime contractor bid submittals prior to the recommendation for award to ascertain whether or not the bidder has met the M/WBE subcontracting goal(s) with contractors performing commercially useful functions.



VIII. RACE AND GENDER-NEUTRAL RECOMMENDATIONS

Mason Tillman recommends several race and gender-neutral remedies to address the study findings. The race and gender-neutral recommendations are not limited to groups with findings of statistically significant disparity. In fact, the recommendations are particularly pertinent to small businesses interested in bidding at the prime contractor and subcontract levels, and are intended to increase the participation of small businesses.

A. Pre-Award Recommendations

1. Expand Unbundling Policy

MSD should unbundle its contracts into smaller projects to increase the number of businesses participating at both the prime contracting and subcontracting levels. Large multi-year contracts limit prime contracting opportunities and give few contractors control over substantial subcontracting opportunities.

2. Establish a Direct Purchase Program for Construction Contracts

A direct purchase program could allow MSD to procure construction materials and supplies directly from the supplier. The bid would include the estimate, and MSD would make the purchase and pay the vendor's invoice directly resulting in lower supplier pricing for the prime contractor. For the purpose of bonding a job the cost of supplies could be subtracted from the bid price, thereby reducing the amount of the contractor's bond.

3. Promote Diversity in Distributorships

Manufacturers seeking business with MSD should be required to document their efforts to authorize M/WBE distributors to sell its product line at the regional or national level.

4. Advertise Small Contracts Bond Provisions

MSD should promote its progressive procurement policy which waives the bonding requirement for non-building construction prime contracts when the engineer's estimate is less than \$25,000.

5. Pay Mobilization to Subcontractors

When mobilization payments are approved for the prime contractor, the subcontractor should be paid an amount equal to their participation percentage no later than five (5) business days before they are required to mobilize to perform their work.



6. Review the Pre-qualification Application for Construction, Architectural, Engineering, and Surveying Contracts

The pre-qualification process for construction, architectural, engineering, and surveying contracts should be reassessed in order to support the M/WBE Program. The pre-qualification evaluation standards should be made more transparent.

7. Publish Pre-qualification Evaluation Standards

Construction, architectural, engineering, and surveying pre-qualification evaluation standards should be published. Businesses should be provided a written evaluation report when their pre-application is not approved.

8. Support a Training Program to Pre-qualify Businesses for Sewer Construction Work

MSD should participate in a training program to increase the number of M/WBE and small local businesses eligible for the sewer layers license required for to be pre-qualified for sewer construction and deep sewer construction work.

9. Maintain Virtual Plan Room

MSD should consider purchasing software that would allow bidders to obtain digitized plans and specifications on its website at no cost. Online access to plans and specifications could reduce the cost for MSD to produce the documents and the contractor to acquire them.

10. Revise Insurance Requirements

Insurance requirements should be evaluated to ensure that smaller contracts do not require a disproportionately high level of coverage.

11. Form Partnerships with Financial Institutions

MSD's relationships with financial institutions should be leveraged to assist M/WBEs and small businesses with project financing and operating capital. Financial institutions currently providing services to MSD could offer financial assistance to M/WBEs and small businesses that typically face barriers to commercial capital.

12. Review Selection Panel Process

The evaluation panel members for engineering professional services and non-engineering professional services contracts should have accountability for their individual scores. The panel members should be required to sign their evaluation form. The evaluation score of the panel members should be released when the Intent to Award is issued.



13. Enhance M/WBE Outreach Campaign

MSD's existing outreach campaign should be enhanced to promote the M/WBE Program's objectives and policy goals. The following outreach and marketing objectives should be implemented:

- (a) Disseminate press releases and public service announcements to inform the media and community regarding MSD's Diversity Programs Office;
- (b) Pursue quarterly interviews with local radio and television stations and partner with local business organizations to discuss opportunities for collaboration that will benefit M/WBEs and small businesses;
- (c) Make print and electronic information on MSD's diversity programs readily available;
- (d) Draft a business development brochure and manual for MSD's diversity programs;
- (e) Provide E-notifications for programs and events;
- (g) Promote cross marketing strategies with other jurisdictions and trade and professional associations; and
- (h) Develop a quarterly newsletter that includes contracting information pertaining to M/WBEs and highlights MSD's M/WBE Program's success.

B. Post-Award Recommendations

1. Implement M/WBE Subcontractor Substitution Standards

When an M/WBE is substituted out of a contract, the replacement should also be an M/WBE. Prime contractors should provide written justification when seeking approval to substitute another subcontractor for one already identified in the contract.

2. Institute a Payment Verification Program

The M/WBE Involvement Reporting web-based application should be modified to capture all subcontractors and verify their payments. Each subcontractor listed as paid for the previous billing cycle should be contacted electronically to verify the payment received.



3. Develop an Expedited Subcontractor Payment Program

The expedited payment program should be expanded to require prime contractors to pay M/WBE subcontractors, subconsultants, truckers, and suppliers in a timely manner. Prime contractors should be required to pay their M/WBE subcontractors within five (5) days of their receipt of payment.

4. Publish Prime Contractor Payments

All prime contractor payments should be posted on MSD's website as a means of addressing the late payment problem and informing subcontractors of MSD's payments.

5. Track All Subcontractors

Prime contractors should be required to record all M/WBE and non-M/WBE subcontractors, suppliers, and truckers on the M/WBE Involvement Report web application.

6. Conduct Routine Post-Award Contract Compliance Monitoring

Monthly contract compliance monitoring should be conducted to ensure that the subcontractor participation listed in bids, proposals, and statements of qualification is achieved for the contract duration.

7. Publish M/WBE Utilization Reports

M/WBE Utilization Reports should be published on MSD's website measuring the effectiveness of the M/WBE Program and present year-to-date payment, original award, and modified award by change order or amendment.

8. Develop Contract Opportunities Forecast

A list of upcoming contracts should be published annually with a 12 to 24 month forecast. The forecast should identify the industries within which contract opportunities are anticipated to be awarded.

9. Provide Debriefing Sessions for Unsuccessful Bidders

Debriefing sessions should be made available to any unsuccessful bidders. This option should be published on MSD's website and included in the Notice of Intent to Award that is sent to unsuccessful bidders.



C. Procurement Process Enhancements

1. Standardize and Publish MSD's Procurement Procedures

Standards should be established to make MSD's procurement procedures and M/WBE Program policies more accessible to the business community. MSD's District Procurement Procedures should be updated on an annual basis to reflect new policies and procedures adopted by MSD, instead of periodically issuing addenda.

2. Implement a Commercially Useful Function Requirement

Prime contractors should be required to list certified M/WBE subcontractors, suppliers, and truckers on their bids and proposals that will perform a Commercially Useful Function (CUF). The responsibility for listing businesses to perform a CUF should be the sole responsibility of the prime contractor.

3. Delegate to Diversity Programs Office Authorization to Approve Subcontractor Waivers

The authority to approve a waiver to a contract-specific M/WBE goal should be delegated to the Diversity Programs Office. The intent to grant a waiver should describe the project, listing the MSD project manager, the prime contractor, and findings of the Good Faith Effort review.

4. Quantified Good Faith Effort

MSD should quantify the good faith effort criteria in its policy in order to measure a prime contractor's efforts to secure the participation of M/WBEs when a goal is applied to a contract.

For example, a prime contractor would earn five points for advertising at least twice in the general circulation media, minority-focused media, or trade-related publications, ten (10) days prior to submission.

5. Enhance the Goal Attainment Review

Goal attainment should be verified before a Notice of Intent to award the contract is issued. The intent to award should be published on MSD's website at least ten (10) days prior to issuing an award. It should list the prime contractor's name, award amount, and subcontractors.



D. M/WBE Program Enhancements

1. Expand Small Sewer Contracts Program

Consideration should be given to enhancing the Diversity Programs to include an expanded Small Sewer Contracts Program. This change would expand the contracts in the program to include all industries and limit the participation to small local businesses (SLBEs). The program would be renamed the Small Business Contracts Program.

2. Certification Requirements

The approved certification agencies from which M/WBE certification is accepted should be reconsidered. The certification policy should state that accepted certification agencies must conduct certification based on verification of the application documentation and the service must not be fee-based or under the jurisdiction of a trade or professional organization.

3. Evaluate Staff Compliance with the M/WBE Program

Staff compliance should be evaluated through both department-level reports of M/WBE utilization and staff performance reviews. The M/WBE quarterly monitoring reports should describe the level of M/WBE contracting by department.

4. Fully Staff Diversity Programs Office

The Diversity Programs office should be further supported with the addition of more professional staff. At a minimum the additional staff should be capable of performing compliance monitoring and reporting, goal attainment reviews, good faith effort reviews, and outreach services to M/WBEs and certified small businesses.

5. Establish an M/WBE Ombudsperson Position

The appointment of an Ombudsperson as a resource to support the Diversity Programs Office should be authorized. The Ombudsperson should have the authority to receive, investigate, and mediate complaints concerning the actions of MSD staff, its prime contractors, and subcontractors.

E. Website Enhancements

1. Publish Useful Information on Homepage

A number of items should be available on the MSD's website:

- Virtual plan rooms
- Upcoming informal contracts



- Utilization reports
- Procurement procedures
- Diversity Programs policies and procedures
- Protest procedures
- Debriefing process
- Prequalification requirements

2. Maintain Navigation to MSD Website

Any domain outside of MSD should be loaded in a new window or new tab. Currently, the external links on the “Supplier Diversity” page are loaded on the MSD parent window. The user will lose navigation of MSD’s page once these pages are loaded.

3. Develop Mobile-Optimized Website

Given the popularity of small handheld devices, it is recommended that a mobile-optimized website be implemented for a more efficient experience for handheld device users.

4. Display the Contracting Telephone Number on the Homepage

The telephone number for the purchasing department should be listed next to “billing” and “customer service” on the homepage and entitled “purchasing.” MSD should afford the same assistance to its contractors as it does to its rate payers.

5. List Complete Contact Information for Procurement and Diversity Program Departments

Names, telephone numbers, email addresses, and facsimile numbers for key staff within Diversity Programs and Procurement should be published for the convenience of vendors and customers.

6. Clearly Advertise CIRP Project Opportunities

Because CIRP projects require pre-qualification, these solicitations should be specified on the Bid Opportunities page. MSD already advertises CIRP opportunities; however, it is not always designated which projects are CIRPs.

7. Publicize the Entire Scope of MSD’s Diversity Programs

MSD currently has programs in place to support small businesses which should be publicized prominently on the website. The Small Sewer Contractors Program is not advertised anywhere on the site.



8. Provide Bidding History on all Contracts over \$50,000

The content provided in the “CIRP Overview” listing past and current businesses that have bid and/or been awarded CIRP projects should become a standard. This listing is comprehensive and should be used to provide the same information for all MSD contracts valued over \$50,000.

9. Promote Business Outreach Efforts

While MSD’s website has an events calendar and blog, it should provide links to market area events, conferences, and training sessions as well.

10. Publish Small Contracts

Contracts under \$25,000 should be listed and published on MSD’s website. The threshold for informal contracts should be posted on MSD’s website, and M/WBEs and small businesses should be requested to register their interest in performing the small contracts.

11. Offer Links to Small Business Enterprise Supportive Service Program

The MSD website should offer links to local governments and its trade and business association partners in the market area that offer small business enterprise supportive services.

12. Create Functionality to Advertise Pre-Apprentice and Apprentice Programs Training Opportunities

Information contained under the “I am seeking a job” tab should allow pre-apprentice and apprentice programs to post training information. The application criteria for the apprentice programs should be published on this page by trade so that the page can act as a centralized location for CIRP-related training opportunities.

F. Data Management Enhancements

1. Use a Unique Number for all Contracts Regardless of Procurement Type

One numbering scheme should be used for all purchase types in order to eliminate duplicate contract numbers.

2. Add Source of Certification in the Prime Contractor Profile

A field should be added to the prime contractor profile to capture the certifying agency or source. Currently, the Oracle system only captures the certification status.



3. Utilize a Uniform Industry Code Classification System

The use of NAICS codes, an industry classification system, should be utilized to ensure uniformity in the classification of contracts.

4. Create a System to Report, Track, and Collect all Subcontractor Information

The M/WBE Involvement Reporting system used to report and track M/WBE subcontractor payment information should be uniformly applied to all subcontractors regardless of M/WBE status. This system should be enhanced to have the functionality to track contract amounts and payments to all subcontractors, subconsultants, suppliers, and truckers.

5. Create a Field to Capture Prime Contractor and Subcontractor E-mail and URL Information

Adding an email and URL field in Oracle will help to facilitate communication when necessary. Electronic communication is a simple way to establish contact between MSD and its prime contractors and subcontractors.

6. Uniformly Capture Ethnicity and Gender for Contractors/Vendors

The gender and ethnicity of contractors should be uniformly captured regardless of the procurement type. Currently, the ethnicity and gender is captured differently for purchase orders, blanket purchase orders, and prime contracts.

7. Accept Electronic Signature on M/WBE Involvement Report Web Application

The M/WBE Involvement Report web application should be modified to eliminate redundancies and reduce the management effort that is currently required from the Diversity Programs Office and the contractor to track and record the information. While the M/WBE Involvement Report Form is easily accessible online, the current structure requires that the form be completed and submitted online, as well as printed, signed, and faxed to MSD.

The Disparity Study was completed and submitted to MSD in December 2012. Copies are available on MSD's website at <http://www.stlmsd.com/home>.





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