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CHAPTER 1: TARGET MARKET PROGRAM STANDARDS

I. INTRODUCTION

Pursuant to Public Act 097-0228 and 44 Illinois Administrative Code Part 6, Subpart K (Code), the Illinois Department of Transportation (IDOT) seeks to formulate and implement a Target Market Program for transportation construction contracts awarded in District 4. State law authorizes the IDOT Chief Procurement Officer (CPO) to adopt rules and regulations to implement a Target Market Program to address documented disparity in the award of its contracts to Minority and Woman-owned Business Enterprises (M/WBEs).¹

In 2012, IDOT implemented its first Target Market Program specifically for District 8. The findings from the IDOT District 8 Construction Disparity Study permitted the CPO to implement a Target Market Program to address the disparity in the utilization of available M/WBEs on IDOT's District 8 transportation construction contracts.

IDOT commissioned Mason Tillman Associates, Ltd., to conduct a Disparity Study (Study) documenting any disparities in the award of transportation construction contracts in District 4 in 2012. District 4 is a twelve-county geographic area in northwestern Illinois encompassing Fulton, Henderson, Knox, McDonough, Marshall, Mercer, Peoria, Putnam, Stark, Tazewell, Warren, and Woodford Counties. The District 4 Study was performed in accordance with state law, and confirmed that there was a statistically significant disparity in the award of transportation construction contracts in District 4 demonstrating egregious discrimination in the relevant market area.



¹ Statute and 44 Illinois Administrative Code, Part 6, Subpart K.

II. SUMMARY OF THE ILLINOIS TARGET MARKET PROGRAM

A. Legal Authority for the Target Market Program

Illinois Senate Bill 1923 (Bill) was the impetus for Public Act 097-0228,² which mandates IDOT to develop and implement a Target Market Program if egregious discrimination is documented within its relevant market area. Introduced in the Illinois Senate, 97th General Assembly, on February 10, 2011, the Bill was sponsored by Senators Toi W. Hutchinson, Jacqueline Y. Collins, Mattie Hunter, Kwame Raoul, and Martin A. Sandoval. The Bill was also sponsored by House Representatives William Davis, Cynthia Soto, Edward J. Acevedo, Elizabeth Hernandez, Maria Antonia Berrios, Lisa M. Dugan, Derrick Smith, and Monique D. Davis.

On May 12, 2011, the Bill was passed in both houses and became effective on July 28, 2011, the date it was signed into law by Governor Pat Quinn. In accordance with Public Act 097-0228, rules were promulgated in 44 Illinois Administrative Code Part 6, Subpart K, Sections 6.800 through 6.860.

Public Act 097-0228 requires specific evidence of discrimination as the factual predicate for a Target Market Program. Given a finding of what is identified in Code 6 as “egregious discrimination,”³ the CPO, in consultation with IDOT, is charged with the responsibility for determining the appropriate remedial action and bidding procedures for a Target Market Program.

B. Purpose and Objective of the Target Market Program

The statutory rationale for the Target Market Program applicable to transportation construction projects as set forth in Section 6.800(a) is to “remedy particular incidents and patterns of egregious race and gender discrimination.” The factual predicate needed to support a Target Market Program requires documented specific instances of flagrant race or gender discrimination within the geographic market area for District 4, or within the transportation construction market in which District 4 operates.⁴

² The enactment of Public Act 097-0228 replaced Public Act 096-0795.

³ Pursuant to the Code, Subtitle A, Part 6, “egregious discrimination” is defined as flagrant race or gender discrimination documented in specific instances within the geographic market area in which IDOT operates.

⁴ Section 6.810.



The procedures outlined in the Code are intended to ensure that the design and implementation of a Target Market Program conforms to all applicable state and federal laws. The procedures also require that the race and gender-conscious remedies be narrowly tailored to the evidence proffered as the factual predicate.⁵ Methods for establishing the requisite evidentiary findings to implement a Target Market Program are set forth in the Code, and are also described herein.

The determination that the factual predicate is sufficient to demonstrate evidence of egregious discrimination in the relevant market area must be made by the CPO. Upon making the determination that the only remedy for race or gender discrimination is a narrowly tailored Target Market Program, the CPO must demonstrate that IDOT has a compelling interest in remedying the identified race or gender discrimination. There must also be a determination that race and gender-neutral remedies would be insufficient to remedy the findings of egregious discrimination.

C. Implementation Requirements

The Code outlines several methods to measure the existence of egregious race or gender discrimination affecting transportation construction businesses in IDOT's geographic market area. The disparity study is one method that meets the strict scrutiny standard which the Supreme Court established in *City of Richmond v. J.A. Croson Co.*,⁶ to which local governments must conform in order to implement a race-based program. A disparity study also includes a statistical analysis to determine whether there is underutilization of market area M/WBEs in IDOT's transportation construction contracts awarded during a specific time period.

The Target Market Program allows IDOT and the CPO to fashion a remedial program to assist M/WBEs using a number of strategies. IDOT's Division of Highways and the Office of Business and Workforce Diversity/Bureau of Small Business Enterprises, in consultation with the Department's CPO, would be given the responsibility of selecting Target Market Program projects based on the availability of M/WBEs.

1. Public Hearing

A finding that egregious race or gender discrimination exists in the construction industry within IDOT's geographic or transportation construction market areas requires a public hearing. The hearing must allow the public to comment on the findings, and should take place within thirty (30) days of the CPO's authorization of the Target Market Program at

⁵ 44 Adm. Code, Part 6, Subpart K Sec. 6.820 b) and Sec. Section 6.830.

⁶ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).



a time and place convenient to the contractor community. A written record of the public hearing must be produced. Within 14 days of the hearing, the CPO, in consultation with IDOT, must make a written determination to either implement a narrowly tailored target market remedial program, or discontinue further action.

D. Remedial Options

The Code sets forth a number of remedial measures that may be included in the Target Market Program. The remedial action must be supported by the factual findings and be specific and definite in duration.

1. Contract Formation

Designated contract work reserved for performance by M/WBEs—depending on the funding sources for the contract—can be considered as a remedial action. Relevant contract and procurement documents must require contractors to make a good faith effort to have the reserved work performed by eligible M/WBEs.

To facilitate this action, the following must be considered: (1) dividing procurements into smaller projects as a means for encouraging increased participation by M/WBEs, (2) scheduling contract lettings at alternative locations conducive to eligible M/WBE participation, (3) providing for bidding documentation and submission procedures conducive to eligible M/WBE participation and (4) removal of bid bond requirements to induce eligible M/WBE participation.⁷

2. Contract Goals

Separate minority and female business enterprise participation goals can be set as a remedial action on a particular contract or contracts.

3. Contract Incentive

Bid incentives for achievement of minority and female business enterprise goals advertised in contracts can be established as a remedial action.

4. Contract Set-Aside

Contracts can be advertised separately for minorities and female business enterprises pursuant to the remedial program.



⁷ *Croson*, 488 U.S. at 469.

E. Participation Eligibility

The Target Market Program is limited to minority-owned businesses and female-owned businesses defined in Section 2 of the Business Enterprises for Minorities, Women, and Persons with Disabilities Act.⁸ M/WBE joint ventures are also deemed eligible to participate in the program. Eligible businesses are limited to three target market contracts per calendar year.

III. LEGAL PREDICATE FOR A TARGET MARKET PROGRAM

The findings of egregious discrimination required by the Code must meet the strict scrutiny standard as set forth in the *City of Richmond v. J.A. Croson Co. (Croson)*.⁹

A. Standard of Review for Race-Based Remedies

Croson established the appropriate factual predicate for race-based remedies in local and state public contracting. In *Croson*, the Court declared that the constitutionality of affirmative action programs that employ racial classifications would be subject to “strict scrutiny.”¹⁰ Governments may adopt race-conscious programs only as a remedy for identified discrimination, and this remedy must impose a minimal burden upon unprotected classes.

B. Standard of Review for Gender-Based Remedies

Since *Croson*, the Supreme Court has remained silent with respect to the appropriate standard of review for WBE programs. In other contexts, however, the Supreme Court has ruled that gender classifications are not subject to the rigorous strict scrutiny standard applied to racial classifications. Instead, gender classifications are subject only to an “intermediate” level of review, regardless of which gender is favored.

C. Burden of Proof

⁸ For federal assistance contracts, certified Disadvantaged Business Enterprises are also eligible.

⁹ 488 U.S. 469 (1989).

¹⁰ *Id.* at 493.



1. Minority Business Enterprises

The procedural protocol established by *Croson* imposes an initial burden of proof upon the government to demonstrate that the challenged MBE program is supported by a strong factual predicate, which is documented evidence of past discrimination. Notwithstanding this requirement, the plaintiff bears the ultimate burden of proof to persuade the court that the MBE program is unconstitutional. The plaintiff may challenge a government's factual predicate on any one of the following five grounds. Those factors are:

- 1) the emphasis on the use of race-neutral measures to meet goals;
- 2) the substantial flexibility allowed;
- 3) the goals being tied to the local market;
- 4) participation being open to all small businesses who could show that they were socially and economically disadvantaged; and
- 5) the presumption that qualified minority businesses were limited to those with \$750,000 or less in net worth.

2. Women Business Enterprises

There are two principal guidelines that should be met to satisfy the intermediate scrutiny evidentiary standard: (1) the local government must demonstrate some past discrimination against women, but not necessarily discrimination by the government itself,¹¹ and (2) gender-conscious remedies must not be used as a “last resort,”¹² but instead must ensure that the affirmative action is “a product of analysis rather than a stereotyped reaction based on habit.”¹³ This determination turns on whether there is evidence of past discrimination in the economic sphere at which the affirmative action program is directed.¹⁴ The court also stated that “a gender-conscious program need not closely tie its numerical goals to the proportion of qualified women in the market.”¹⁵

D. Compelling Interest

The compelling interest prong of the strict scrutiny standard requires that a government entity present a strong basis in evidence to remedy identified racial discrimination. The

¹¹ *Engineering Contractors Ass'n of South Florida v. Metropolitan Dade County*, 943 F. Supp. 1546 (S.D. Fla. 1996), aff'd, 122 F.3d 895 (11th Cir. 1997).

¹² *Id.* (citing *Hayes v. N. State Law Enforcement Officers Ass'n.*, 10 F.3d 207, 217 (4th Cir. 1993)).

¹³ *Id.* (citing *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990 (3rd Cir. 1993), on remand, 893 F.Supp. 419 (E.D. Penn. 1995), aff'd, 91 F.3d 586 (3rd Cir. 1996) (quoting *Metro Broad, Inc. v. FCC*, 497 U.S. 547, 582-583 (1990)).

¹⁴ *Id.* (citing *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d at 1581 (11th Cir. 1994)).

¹⁵ *Dade County*, 122 F.3d at 929. However, Judge Posner, in *Builders Ass'n of Greater Chi. v. County of Cook*, 256 F.3d 642 (7th Cir. 2001), questioned why there should be a lesser standard where the discrimination was against women rather than minorities.



government must show that the remedial measure is narrowly tailored to achieve a compelling state interest.¹⁶ The Supreme Court recognized that a government's attempt to rectify the effects of identified, systemic racial discrimination within its jurisdiction is sufficient compelling interest to enact race-conscious remedial measures.¹⁷ A governmental entity can satisfy the compelling interest requirement by "remediating the effects of past or present racial discrimination."¹⁸

E. Narrow Tailoring

1. Minority Business Enterprises

The legal standard for the *Croson* requirement that a race-conscious remedy be "narrowly tailored" consists of the following: (1) the necessity of the policy and the efficacy as a relationship between the numerical goal and the percentage of minority group members in the relevant geographic market area; (2) the flexibility of the policy, including the provision of waivers if the goal cannot be met; and (3) the burden of the policy on innocent third parties.¹⁹

2. Women Business Enterprises

In 2010, the Fourth Circuit considered whether the statutory scheme for an M/WBE Program as it relates to WBEs met the narrowly tailored standard.²⁰ In *H.B. Rowe Company v. Tippett*, the evidence demonstrated that the North Carolina Department of Transportation's prime contractors "substantially over-utilized" WBEs on public road construction projects.²¹ Although WBEs were over-utilized, they were included in the gender-conscious goals based on anecdotal and private sector evidence. However, the circuit court determined that the private sector evidence did not provide "exceedingly persuasive justification" for gender-based remedies.²²

¹⁶ *Croson*, 488 U.S. at 493.

¹⁷ *Id.* at 509.

¹⁸ *Shaw v. Hunt*, 517 U.S. 899, 909 (1996).

¹⁹ *Northern Contracting Inc. v. Ill. Dep't of Transp.*, 473 F.3d 715 (7th Cir. 2007). In 2005, IDOT successfully defended its DBE Program's compelling interest and narrow tailoring methodology in the constitutional challenge filed in the U.S. Federal District Court in *Northern Contracting*.¹⁹ In this case, the Seventh Circuit Court of Appeals determined that the statistical and anecdotal evidence was sufficient to satisfy the strict scrutiny standard and to justify IDOT's overall DBE goals.

²⁰ *H.B. Rowe Co. v. Tippett*, 615 F.3d 233 (4th Cir. 2010).

²¹ *Id.* at 255.

²² *Id.* (citing *United States v. Virginia*, 518 U.S. 515, 531 (1996)).



F. Summary

As described above, 44 Illinois Administrative Code Part 6, Subpart K, documents IDOT's commitment to provide opportunities to M/WBEs on its transportation construction contracts. The District 4 Target Market Program will be implemented by the Office of Business and Workforce Diversity/Bureau of Small Business Enterprises to direct IDOT contract awards to M/WBEs through targeted publication of the solicitations. The eligibility requirements and benefits of IDOT's Target Market Program are posted on IDOT's website.

Target Market Informational Meetings are held to inform businesses about the Program and its procurement process. IDOT's race-neutral initiatives to increase the participation of M/WBEs in the Program include: (1) dividing procurements into smaller projects; (2) scheduling contract lettings at alternative locations conducive to eligible business participation; (3) offering bid documentation and submission procedures conducive to maximizing eligible business participation; (4) waiving bid bond requirements, and (5) publishing the lettings online.



CHAPTER 2: PRIME CONTRACTOR UTILIZATION ANALYSIS

I. INTRODUCTION

Croson set the standard for the determination of disparity to address identified statistically significant underutilization of M/WBEs.²³ The first step in a disparity study is the analysis of expenditures to document contracting history in the jurisdiction under review. The objective of the prime utilization analysis is to determine the level of M/WBE utilization as prime contractors in the study period of July 1, 2010 to June 30, 2011. This chapter documents the District 4 utilization of prime contractors by ethnic and gender group. The analysis was focused on the District 4 transportation construction contracts.

The data in the Study are separated into eight ethnic and gender groups. The eight groups are listed below in Table 2.01.²⁴

Table 2.01: Business Ethnic and Gender Groups

Ethnic and Gender Group	Definition
African American Businesses	Businesses owned by male and female African Americans
Asian American Businesses	Businesses owned by male and female Asian-Pacific and Subcontinent Asian Americans
Hispanic American Businesses	Businesses owned by male and female Hispanic Americans

²³ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

²⁴ The definitions for African American, Hispanic American, Asian American, and Native American businesses are consistent with “Minority Persons” described in the Business Enterprise for Minorities, Females, and Persons with Disabilities Act as set forth in 30 Illinois Compiled Statutes 575/2, Section 2, (A)(1).



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

II. PRIME CONTRACT DATA SOURCES

The dataset analyzed for prime contractor utilization consists of payment and award amounts for contracts issued by District 4 during the study period. Final payment data was provided for all closed contracts. For contracts open during the study period, the award data was provided.

The contract records were provided by the Division of Highways' Bureau of Construction. Mason Tillman, in collaboration with the Division of Highways' Bureau of Construction, processed the data to remove duplicates and identify missing or incomplete data.

Ethnicity and gender data is central to the validity of the prime contractor utilization analysis. Therefore, Mason Tillman conducted research to verify the ethnicity and gender for each contractor. Prime contractor names were cross-referenced with certification lists and trade organization membership directories. Websites were reviewed for the ethnicity and gender of business owners. Contractors whose ethnicity and gender could not be verified through published sources were surveyed. The Division of Highways' Bureau of Construction also assisted in confirming ethnicity and gender.

Once the contract records were rectified and the ethnicity and gender verified, the utilization analysis was performed.



III. PRIME CONTRACTOR UTILIZATION THRESHOLDS

Contracts in the transportation construction industry were analyzed at two dollar thresholds. The first threshold included all construction contracts valued at \$600,000 and under. This was the level at which there was a demonstrated capacity within the pool of willing M/WBEs to perform the District 4 contracts.

IV. PRIME CONTRACTOR UTILIZATION

A. Highly Used Prime Contractors

As depicted in Table 2.02, 40 vendors received 86 of the District 4 prime transportation construction contracts.

Table 2.02: Total Prime Contracts, Utilized Vendors, and Dollars Expended: Construction, 2010 to 2011

Prime Contracts/ Vendors/Dollars	Number of Contracts/ Vendors/Dollars
Total Prime Contracts	86
Total Utilized Vendors	40
Total Expenditures	\$110,656,001

As depicted in Table 2.03, 11 of the 40 vendors received \$100,020,592 or 90 percent of the prime contract dollars, and the remaining 29 of the 40 vendors received \$10,635,409 or 10 percent of the prime contract dollars.



Table 2.03: Distribution of All Construction Prime Contracts by Number of Vendors, 2010-2011

Vendors	Total Dollars	Percent of Dollars²⁵	Number of Contracts	Percent of Contracts
4 Vendors Received	\$76,121,849	69%	32	37.21%
6 Vendors Received	\$89,669,630	81%	38	44.19%
11 Vendors Received	\$100,020,592	90%	48	55.81%
29 Vendors Received	\$10,635,409	10%	38	44.19%
40 Vendors Received	\$110,656,001	100%	86	100.00%

Table 2.04 presents the ethnic and gender profile of the seven most highly used prime contractors, representing 69 percent of the dollars spent. The highly used prime contractors consisted of only Non-Minority Male Business Enterprises. The highly used prime contractors are defined as the prime contractors who were awarded the most dollars.

Table 2.04: Top Four Highly Used Prime Contractors Representing 69 Percent of Dollars Spent, by Ethnicity and Gender, 2010-2011

Ethnicity/Gender	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Non-Minority Males	\$76,121,849	69%	32	37.21%



²⁵ Percentages are rounded to the nearest whole number.

B. Prime Contractor Utilization: Construction

1. Prime Contractor Utilization: All Contracts

Table 2.05 summarizes all prime contract dollars expended by District 4 on transportation construction contracts. MBEs received 0.21 percent of the construction prime contract dollars; Caucasian Female Business Enterprises received 0.45 percent; and Non-Minority Male Business Enterprises received 99.34 percent.

African Americans received none of the construction contracts during the study period.

Asian Americans received none of the construction contracts during the study period.

Hispanic Americans received 1 or 1.16 percent of the construction contracts during the study period, representing \$229,400 or 0.21 percent of the contract dollars.

Native Americans received none of the construction contracts during the study period.

Minority-owned Business Enterprises received 1 or 1.16 percent of the construction contracts during the study period, representing \$229,400 or 0.21 percent of the contract dollars.

Caucasian Female Business Enterprises received 3 or 3.49 percent of the construction contracts during the study period, representing \$498,487 or 0.45 percent of the contract dollars.

Minority and Women Business Enterprises received 4 or 4.65 percent of the construction contracts during the study period, representing \$727,887 or 0.66 percent of the contract dollars.

Non-Minority Male Business Enterprises received 82 or 95.35 percent of the construction contracts during the study period, representing \$109,928,114 or 99.34 percent of the contract dollars.



**Table 2.05: Construction Prime Contractor Utilization: All Contracts,
2010 to 2011**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	1	1.16%	\$229,400	0.21%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	3	3.49%	\$498,487	0.45%
Non-Minority Males	82	95.35%	\$109,928,114	99.34%
TOTAL	86	100.00%	\$110,656,001	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	1	1.16%	\$229,400	0.21%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	3	3.49%	\$498,487	0.45%
Non-Minority Males	82	95.35%	\$109,928,114	99.34%
TOTAL	86	100.00%	\$110,656,001	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	0	0.00%	\$0	0.00%
Minority Males	1	1.16%	\$229,400	0.21%
Caucasian Females	3	3.49%	\$498,487	0.45%
Non-Minority Males	82	95.35%	\$109,928,114	99.34%
TOTAL	86	100.00%	\$110,656,001	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	1	1.16%	\$229,400	0.21%
Caucasian Female Business Enterprises	3	3.49%	\$498,487	0.45%
Minority and Women Business Enterprises	4	4.65%	\$727,887	0.66%
Non-Minority Male Business Enterprises	82	95.35%	\$109,928,114	99.34%
TOTAL	86	100.00%	\$110,656,001	100.00%



2. Construction Prime Contractor Utilization: Contracts valued at \$600,000 and under

Table 2.06 summarizes all prime contract dollars expended by District 4 on transportation construction contracts valued at \$600,000 and under. Minority Business Enterprises received 2.13 percent of the construction prime contract dollars; Caucasian Female Business Enterprises received 4.64 percent; and Non-Minority Male Business Enterprises received 92.23 percent.

African Americans received none of the construction contracts during the study period.

Asian Americans received none of the construction contracts during the study period.

Hispanic Americans received one or 2.33 percent of the construction contracts during the study period, representing \$229,400 or 2.13 percent of the contract dollars.

Native Americans received none of the construction contracts during the study period.

Minority Business Enterprises received one or 2.33 percent of the construction contracts during the study period, representing \$229,400 or 2.13 percent of the contract dollars.

Caucasian Female Business Enterprises received three or 6.98 percent of the construction contracts during the study period, representing \$498,487 or 4.64 percent of the contract dollars.

Minority and Women Business Enterprises received four or 9.3 percent of the construction contracts during the study period, representing \$727,887 or 6.77 percent of the contract dollars.

Non-Minority Male Business Enterprises received 39 or 90.7 percent of the construction contracts during the study period, representing \$10,021,252 or 93.23 percent of the contract dollars.



Table 2.06: Construction Prime Contractor Utilization: Contracts valued at \$600,000 and under, 2010 to 2011

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	1	2.33%	\$229,400	2.13%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	3	6.98%	\$498,487	4.64%
Non-Minority Males	39	90.70%	\$10,021,252	93.23%
TOTAL	43	100.00%	\$10,749,138	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	1	2.33%	\$229,400	2.13%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	3	6.98%	\$498,487	4.64%
Non-Minority Males	39	90.70%	\$10,021,252	93.23%
TOTAL	43	100.00%	\$10,749,138	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	0	0.00%	\$0	0.00%
Minority Males	1	2.33%	\$229,400	2.13%
Caucasian Females	3	6.98%	\$498,487	4.64%
Non-Minority Males	39	90.70%	\$10,021,252	93.23%
TOTAL	43	100.00%	\$10,749,138	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	1	2.33%	\$229,400	2.13%
Caucasian Female Business Enterprises	3	6.98%	\$498,487	4.64%
Minority and Women Business Enterprises	4	9.30%	\$727,887	6.77%
Non-Minority Male Business Enterprises	39	90.70%	\$10,021,252	93.23%
TOTAL	43	100.00%	\$10,749,138	100.00%



V. SUMMARY

The prime contractor utilization analysis examined the total \$110,656,001 transportation construction dollars expended on 86 prime construction contracts issued to 40 contractors from July 1, 2010 to June 30, 2011. The analysis was performed for formal transportation construction contracts valued at \$600,000 and under. The *Prime Contractor Disparity Analysis Chapter* presents the statistical analysis of disparity in this industry.



CHAPTER 3: SUBCONTRACTOR UTILIZATION ANALYSIS

I. INTRODUCTION

This chapter documents the utilization of M/WBE subcontractors, suppliers, and truckers by construction prime contractors in District 4 during the July 1, 2010 to June 30, 2011 study period. Subcontractors, suppliers, and truckers are referred to as contractors in this chapter.

Croson set the standard for the determination of disparity.¹ The first step in a disparity study is the analysis of expenditures to document M/WBEs' contracting history in the jurisdiction under review. Therefore, the objective of the subcontractor utilization analysis is to determine the level of M/WBE subcontractor utilization by ethnic group compared to non-M/WBE subcontractor utilization.

The data as reported in this Study are separated into eight ethnic and gender groups. The eight groups are listed below in Table 3.01.

Table 3.01: Business Ethnic and Gender Groups

Ethnic and Gender Group	Definition
African American Businesses	Businesses owned by male and female African Americans
Asian American Businesses	Businesses owned by male and female Asian-Pacific and Subcontinent Asian Americans
Hispanic American Businesses	Businesses owned by male and female Hispanic Americans
Native American Businesses	Businesses owned by male and female Native Americans

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



Ethnic and Gender Group	Definition
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
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 and businesses that did not declare their ethnicity or could not be identified as minority or female-owned

II. CONTRACT DATA SOURCES

The Division of Highways' Bureau of Construction tracks awards and payments to M/WBE contractors. Mason Tillman worked closely with the District 4 staff in an attempt to reconstruct non-M/WBE contractors, particularly the truckers and suppliers. In addition to the efforts of the District 4 staff, Mason Tillman mailed a survey to each prime contractor which received one or more contracts valued at \$100,000 or greater, requesting a list of their subcontractors. The prime contractor was asked to provide the subcontractor name, contact information, award, and total payment amounts. Both Mason Tillman and the District 4 staff conducted reminder telephone calls to encourage prime contractors to respond to the survey.

The subcontractors secured through the prime contractor survey were added to the relational database. Subcontractors identified from District 4 records and the prime contractor surveys were contacted to verify their participation and payment on each prime contract. Mason Tillman and the District 4 staff also attempted to reconstruct the non-M/WBE supplier data by reconciling the prime contracts with the supplier data tracked in the Bureau of Materials & Physical Research's *Materials Approved Inspection Report*, and IDOT's bidding and letting records.



The ethnicity and gender of the utilized subcontractors was verified through a combination of research methods. Company names were cross-referenced with certification lists, websites and, as needed, with IDOT staff. Businesses were also surveyed in order to secure the information. The extraordinary effort of the District 4 staff and assistance from the contractors made it possible to reconstruct a substantial number of the subcontractors used on the prime contracts awarded during the study period.

III. SUBCONTRACTOR UTILIZATION

A. Subcontracts

As depicted in Table 3.02 below, 502 construction subcontracts awarded by District 4 prime contractors in 2010 and 2011 were analyzed.

The construction subcontractor payments made by District 4 prime contractors for the 502 contracts during the study period totaled \$39,308,073.

Table 3.02: Total Construction Subcontracts and Dollars Expended 2010 and 2011

Industry	Total Number of Subcontracts	Total Dollars Expended
Construction	502	\$39,308,073



B. Construction Subcontractor Utilization: All Contracts

Table 3.03 summarizes all contract dollars expended by District 4 prime contractors on construction subcontracts. MBEs received 3.28 percent of the transportation construction subcontract dollars; Caucasian Female Business Enterprises received 7.07 percent; and Non-Minority Male Business Enterprises received 89.65 percent.

African American Businesses received 12 or 2.39 percent of the construction subcontracts during the study period, representing \$457,156.69 or 1.16 percent of the subcontract dollars.

Asian American Businesses received 1 or 0.2 percent of the construction subcontracts during the study period, representing \$40,000 or 0.1 percent of the subcontract dollars.

Hispanic American Businesses received 15 or 2.99 percent of the construction contracts during the study period, representing \$792,206.39 or 2.02 percent of the contract dollars.

Native American Businesses received none of the construction contracts during the study period.

Caucasian Female Business Enterprises received 85 or 16.93 percent of the construction subcontracts during the study period, representing \$2,778,533.80 or 7.07 percent of the subcontract dollars.

Minority Business Enterprises received 28 or 5.58 percent of the construction subcontracts during the study period, representing \$1,289,363.08 or 3.28 percent of the subcontract dollars.

Minority and Women Business Enterprises received 113 or 22.51 percent of the construction subcontracts during the study period, representing \$4,067,896.88 or 10.35 percent of the subcontract dollars.

Non-Minority Male Businesses Enterprises received 389 or 77.49 percent of the construction subcontracts during the study period, representing \$35,240,176.52 or 89.65 percent of the subcontract dollars.



**Table 3.03: Construction Subcontractor Utilization: Total Contracts,
2010 and 2011**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	12	2.39%	\$457,156.69	1.16%
Asian Americans	1	0.20%	\$40,000.00	0.10%
Hispanic Americans	15	2.99%	\$792,206.39	2.02%
Native Americans	0	0.00%	\$0.00	0.00%
Caucasian Females	85	16.93%	\$2,778,533.80	7.07%
Non-Minority Males	389	77.49%	\$35,240,176.52	89.65%
TOTAL	502	100.00%	\$39,308,073.40	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0.00	0.00%
African American Males	12	2.39%	\$457,156.69	1.16%
Asian American Females	1	0.20%	\$40,000.00	0.10%
Asian American Males	0	0.00%	\$0.00	0.00%
Hispanic American Females	5	1.00%	\$232,970.60	0.59%
Hispanic American Males	10	1.99%	\$559,235.79	1.42%
Native American Females	0	0.00%	\$0.00	0.00%
Native American Males	0	0.00%	\$0.00	0.00%
Caucasian Females	85	16.93%	\$2,778,533.80	7.07%
Non-Minority Males	389	77.49%	\$35,240,176.52	89.65%
TOTAL	502	100.00%	\$39,308,073.40	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	6	1.20%	\$272,970.60	0.69%
Minority Males	22	4.38%	\$1,016,392.48	2.59%
Caucasian Females	85	16.93%	\$2,778,533.80	7.07%
Non-Minority Males	389	77.49%	\$35,240,176.52	89.65%
TOTAL	502	100.00%	\$39,308,073.40	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	28	5.58%	\$1,289,363.08	3.28%
Caucasian Female Business Enterprises	85	16.93%	\$2,778,533.80	7.07%
Minority and Women Business Enterprises	113	22.51%	\$4,067,896.88	10.35%
Non-Minority Male Business Enterprises	389	77.49%	\$35,240,176.52	89.65%
TOTAL	502	100.00%	\$39,308,073.40	100.00%



CHAPTER 4: MARKET AREA ANALYSIS

I. MARKET AREA DEFINITION

A. Legal Criteria for Geographic Market Area

State law authorizes IDOT to adopt rules and regulations to implement a Target Market Program to address documented disparity in the award of its contracts to M/WBEs. The Target Market Program, established for District 4, sets goals for the participation of M/WBEs, and must be supported by evidence of past discrimination within the relevant geographic market area.

The Supreme Court's decision in *Croson* was explicit in its ruling that the local construction market was the appropriate geographical framework within which to perform statistical comparisons of business availability and business utilization.¹ Therefore, the identification of the local market area was particularly important because this factor established the parameters within which to conduct a disparity study. The market area was defined as the counties where the majority of the prime contract dollars were expended.

B. Application of the Croson Standard

While *Croson* emphasized the importance of the local market area, it provided little assistance in defining its parameters.² However, it is informative to review the Court's definition of the City of Richmond's market area in the case. In discussing the geographic parameters of the constitutional violation that must be investigated, the Court interchangeably used the terms "relevant market,"³ "Richmond construction industry,"⁴ and "city's construction industry."⁵ Thus, these terms were used to define the proper scope for examining the existence of discrimination within the City of Richmond. The

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

² *Adarand*, which extended *Croson*'s strict scrutiny standard to federal programs, did not change *Croson*'s approach to market area where federal funds are involved.

³ *Croson*, 488 U.S. at 471.

⁴ *Id.* at 500.

⁵ *Id.* at 470.



interchangeable use of terms lends support to a definition of market area that coincides with the boundaries of a contracting jurisdiction.

An analysis of the cases following *Croson* reveals a pattern that provides additional guidance for defining the market area. The body of cases examining *reasonable* market area definition is *fact-based*, rather than dictated by a specific formula.⁶ In *Cone Corporation v. Hillsborough County*, the Eleventh Circuit Court of Appeals considered a study in support of Florida's Hillsborough County M/WBE Program, which used minority contractors located in the county as the measure of available firms.⁷ The program was found to be constitutional under the compelling governmental interest element of the strict scrutiny standard.⁸

Hillsborough County's program was based on statistics indicating that specific discrimination existed in the construction contracts awarded by Hillsborough County, but not in the construction industry in general.⁹ Hillsborough County had extracted data from within its own jurisdictional boundaries and assessed the percentage of minority businesses available in the county. The Court stated that the study was properly conducted within the "local construction industry."¹⁰

Similarly, in *Associated General Contractors v. Coalition for Economic Equity (AGCCII)*,¹¹ the Ninth Circuit Court of Appeals found the City and County of San Francisco's M/WBE Program to have the factual predicate necessary to survive strict scrutiny. The San Francisco M/WBE Program was supported by a study that assessed the number of available M/WBE contractors within the City and County of San Francisco. The court found it appropriate to use the city and county boundaries as the relevant market area within which to conduct a disparity study.¹²

In *Coral Construction v. King County*, the Ninth Circuit Court of Appeals held that "a set-aside program is valid only if actual, identifiable discrimination has occurred within the local industry affected by the program."¹³ In support of its M/WBE Program, King County offered studies compiled by other jurisdictions, including entities completely within the county or coterminous with the boundaries of the county, as well as a separate jurisdiction completely outside of the county.¹⁴ The plaintiffs contended that *Croson*

⁶ See, e.g., *Concrete Works of Colo. v. City of Denver*, 36 F.3d 1513, 1528 (10th Cir. 1994).

⁷ *Cone Corp. v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 915.

¹¹ *Associated Gen. Contractors of Cal. v. Coal. for Econ. Equity & City & Cnty. of San Francisco*, 950 F.2d 1401 (9th Cir. 1991).

¹² *Id.* at 1415.

¹³ *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991), cert. denied, 502 U.S. 1033 (1992).

¹⁴ *Id.*



required King County to compile its own data and cited *Croson* as prohibiting data sharing.¹⁵

The court found that data sharing could potentially lead to the improper use of societal discrimination data as the factual basis for a local M/WBE program, and that innocent third parties could be unnecessarily burdened if an M/WBE program were based on outside data.¹⁶ However, the court also found that the data from entities within the county and from coterminous jurisdictions was relevant to discrimination in the County.¹⁷ They also found that the data posed no risk of unfairly burdening innocent third parties.¹⁸

The court concluded that data gathered by a neighboring county could not be used to support King County's M/WBE Program.¹⁹ The court noted:

It is vital that a race-conscious program align itself as closely to the scope of the problem legitimately sought to be rectified by the governmental entity. To prevent overbreadth, the enacting jurisdiction should limit its factual inquiry to the presence of discrimination within its own boundaries.²⁰

However, the court did note that the “world of contracting does not conform itself neatly to jurisdictional boundaries.”²¹

There are other situations where courts have approved a definition of market area that extends beyond a jurisdiction's geographic boundaries. In *Concrete Works v. City and County of Denver*, the Tenth Circuit Court of Appeals directly addressed the issue of whether extra-jurisdictional evidence of discrimination can be used to determine the “local market area” for a disparity study.²² In *Concrete Works*, the defendant relied on evidence of discrimination in the six-county Denver Metropolitan Statistical Area (MSA) to support its M/WBE program. Plaintiffs argued that the U.S. Constitution prohibited consideration of evidence beyond jurisdictional boundaries.²³ The Court of Appeals disagreed.²⁴

¹⁵ *Coral Construction*, 941 F.2d at 910.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 917.

²¹ *Id.*

²² *Concrete Works*, 36 F.3d 1513, 1528 (10th Cir. 1994).

²³ *Id.*

²⁴ *Id.*



Critical to the court's acceptance of the Denver MSA as the relevant local market was the finding that more than 80 percent of construction and design contracts awarded by Denver were awarded to contractors within the MSA.²⁵ Another consideration was that Denver's analysis was based on U.S. Census data, which was available for the Denver MSA but not for the city itself.²⁶ There was no undue burden placed on non-culpable parties, as Denver had conducted a majority of its construction contracts within the area defined as the local market.²⁷ Citing *AGCCII*,²⁸ the court noted

[t]hat any plan that extends race-conscious remedies beyond territorial boundaries must be based on very specific findings that actions that the city has taken in the past have visited racial discrimination on such individuals.²⁹

Similarly, New York State conducted a disparity study in which the geographic market consisted of New York State and eight counties in northern New Jersey. The geographic market was defined as the area encompassing the location of businesses that received more than 90 percent of the dollar value of all contracts awarded by the agency.³⁰

State and local governments must pay special attention to the geographical scope of their disparity studies. *Croson* determined that the statistical analysis should focus on the number of qualified minority business owners in the government's marketplace.³¹ The text of *Croson* itself suggests that the geographical boundaries of the government entity comprise an appropriate market area,³² and other courts have agreed with this finding. In addition, other cases have approved the use of a percentage of the dollars spent by an agency on contracting.

Therefore, an entity may limit consideration of evidence of discrimination to discrimination occurring within its own jurisdiction. Under certain circumstances, extra-jurisdictional evidence can be used if the percentage of governmental dollars supports such boundaries.

²⁵ *Concrete Works*, 36 F.3d at 1528.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *AGCCII*, 950 F.2d 1401 (9th Cir. 1991).

²⁹ *Concrete Works*, 36 F.3d at 1528 (10th Cir. 1994).

³⁰ *Opportunity Denied! New York State's Study*, 26 Urban Lawyer No. 3, Summer 1994.

³¹ *Croson*, 488 U.S. at 501.

³² *Id.*



II. MARKET AREA ANALYSIS

During the study period, District 4 awarded 86 construction contracts valued at \$110,656,001.04. District 4 awarded 97 percent of these contracts and 91.51 percent of dollars to businesses located in the market area. Given the distribution of the contracts awarded by District 4 and the applicable case law, the Study's market area is determined to be the twelve counties within District 4. The twelve counties include Fulton, Henderson, Knox, McDonough, Marshall, Mercer, Peoria, Putnam, Stark, Tazewell, Warren, and Woodford. The analysis of discrimination has been limited to an examination of contracts awarded to available market area businesses.

A. IDOT District 4 Market Area

Table 4.01 below presents an overview of the number of transportation construction contracts District 4 awarded and the dollars spent in the market area during the July 1, 2010 through June 30, 2011 study period.

Construction Contracts: Twenty-four, or 27.91 percent, of construction contracts were awarded to market area businesses. The dollar value of those contracts was \$26,193,723.08 or 23.67 percent of the total construction dollars.

Table 4.01: District 4 Market Area Contract Distribution: Construction, 2010 - 2011

Market Area	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Market Area	77	89.53%	\$107,509,696	97.16%
Outside Market Area	9	10.47%	\$3,146,304	2.84%
Total	86	100.00%	\$110,656,001	100.00%



CHAPTER 5: PRIME AND SUBCONTRACTOR AVAILABILITY ANALYSIS

I. INTRODUCTION

According to *Croson*, “availability” is defined as the number of businesses in the jurisdiction’s market area that are willing and able to provide goods and services.¹ To determine availability, M/WBEs and non-M/WBEs within the jurisdiction’s market area that are willing and able to provide the goods and services need to be enumerated. When considering sources for determining the number of willing and able M/WBEs and non-M/WBEs, the selection must be based on whether two significant aspects about the population in question can be gauged. One is a business’ interest in doing business with the jurisdiction, as implied by the term “willing;” and the other is a business’ ability or capacity to provide a service or good, as implied by the term “able.”

The determination of availability for the prime contractors must be made within the jurisdiction’s market area. The analysis presented in *Chapter 4: Market Area Analysis* defines the market area.

The compiled list of available businesses includes M/WBEs and non-M/WBEs in the transportation construction industry. The distribution of available businesses by ethnicity and gender for the transportation construction industry is presented in this chapter.



¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509 (1989).

II. PRIME CONTRACTOR AVAILABILITY ANALYSIS

A. Sources of Potentially Willing and Able Contractors

Contractor availability was limited to willing and able businesses in the market area which perform transportation construction services. All utilized prime contractors were included in the calculation of availability. Additional market area contractors were identified from IDOT's prequalification lists, certification lists, chambers of commerce lists, industry association lists, business resource centers, and trade and professional organizations lists.

B. Determination of Contractor Willingness

Prime contractors, prequalified contractors, and certified contractors were presumed to be willing because they were either awarded a contract, or they expressed a willingness to perform a District 4 contract. The willingness of businesses identified from the other sources had to be determined.

C. Determination of Capacity

All utilized prime contractors were considered "willing" and "able" and, therefore, were included in the calculation of availability. The decision to include the other willing businesses was based upon the size of the prime contracts awarded in District 4. Half the prime contract awards in District 4 were less than \$600,000. The \$600,000 threshold is the minimum threshold to document disparity, and also includes a substantive proportion of the sample of contracts awarded.

1. Prime Construction Contracts by Size

A total of 50 percent of construction prime contracts were valued at \$600,000 and under, and 26.74 percent of the construction prime contracts were less than \$250,000. These relatively small contracts require considerably less capacity than the few large contracts.



D. Construction Prime Contractor Availability

The distribution of available prime transportation construction contractors is summarized in Table 5.01.²

African American Businesses account for 17.78 percent of the construction firms in the District 4 market area.

Asian American Businesses account for 1.11 percent of the construction firms in the District 4 market area.

Hispanic American Businesses account for 3.33 percent of the construction firms in the District 4 market area.

Native American Businesses account for none of the construction firms in the District 4 market area.

Minority Business Enterprises account for 22.22 percent of the construction firms in the District 4 market area.

Caucasian Female Business Enterprises account for 14.44 percent of the construction firms in the District 4 market area.

Minority and Women Business Enterprises account for 36.67 percent of the construction firms in the District 4 market area.

Non-Minority Male Business Enterprises account for 63.33 percent of the construction firms in the District 4 market area.



² It should be noted that a slight increase in the number of available M/WBEs will markedly change the M/WBE percentages due to the small pool of all available businesses.

Table 5.01: Available Prime Construction Contractors, 2010-2011

Ethnicity	Percent of Businesses
African Americans	17.78%
Asian Americans	1.11%
Hispanic Americans	3.33%
Native Americans	0.00%
Caucasian Females	14.44%
Non-Minority Males	63.33%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	3.33%
African American Males	14.44%
Asian American Females	1.11%
Asian American Males	0.00%
Hispanic American Females	1.11%
Hispanic American Males	2.22%
Native American Females	0.00%
Native American Males	0.00%
Caucasian Females	14.44%
Non-Minority Males	63.33%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	5.56%
Minority Males	16.67%
Caucasian Females	14.44%
Non-Minority Males	63.33%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	22.22%
Caucasian Female Business Enterprises	14.44%
Minority and Women Business Enterprises	36.67%
Non-Minority Male Business Enterprises	63.33%
TOTAL	100.00%



III. SUBCONTRACTOR AVAILABILITY ANALYSIS

A. Sources of Potentially Willing and Able Subcontractors

All available prime construction contractors were included in the calculation of subcontractor availability. Additional M/WBE and non-M/WBE subcontractors, suppliers, and truckers in the District 4 market area were identified using unique subcontractor availability data sources provided by IDOT and prime contractors.

B. Determination of Contractor Willingness

Subcontractor availability was limited to businesses determined to be willing and able to perform as prime contractors as well as businesses utilized as subcontractors; therefore, the determination of willingness was achieved. It is notable that using this method to identify subcontractors verified the business's capacity although *Croson* does not require a measure of subcontractor capacity.

C. Determination of Capacity

The District 4 construction subcontracts were analyzed to determine the size of awarded contracts and, therefore, the capacity required to perform on the District 4 subcontracts. The District 4 construction subcontracts were analyzed for the July 1, 2010 to June 30, 2011 study period.

The subcontract size distribution illustrates the fact that the majority of the District 4 subcontracts were under \$25,000. This distribution also illustrates that limited capacity is needed to perform the overwhelming majority of the District 4 subcontracts.

The District 4 subcontracts were grouped into eight dollar amount ranges.³ Each award was analyzed to determine the number and percentage of subcontracts that fall within the eight size categories. The size distribution of subcontracts awarded to non-M/WBEs was then compared to the size distribution of contracts awarded to MBEs and Caucasian Female Business Enterprises.



³ The eight dollar amount ranges are \$1 to \$24,999; \$25,000 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; \$1,000,000 to \$2,999,999; and \$3,000,000 and greater.

D. Construction Subcontractor Availability

The distribution of available transportation construction subcontractors is summarized in Table 5.02.

African American Businesses account for 11.35 percent of the construction firms in the District 4 market area.

Asian American Businesses account for 0.71 percent of the construction firms in the District 4 market area.

Hispanic American Businesses account for 2.13 percent of the construction firms in the District 4 market area.

Native American Businesses account for none of the construction firms in the District 4 market area.

Minority Business Enterprises account for 14.18 percent of the construction firms in the District 4 market area.

Caucasian Female Business Enterprises account for 12.06 percent of the construction firms in the District 4 market area.

Minority and Women Business Enterprises account for 26.24 percent of the construction firms in the District 4 market area.

Non-Minority Male Business Enterprises account for 73.76 percent of the construction firms in the District 4 market area.



Table 5.02: Available Construction Subcontractors, 2010-2011

Group	Percent of Businesses
African Americans	11.35%
Asian Americans	0.71%
Hispanic Americans	2.13%
Native Americans	0.00%
Caucasian Females	12.06%
Non-Minority Males	73.76%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	2.13%
African American Males	9.22%
Asian American Females	0.71%
Asian American Males	0.00%
Hispanic American Females	0.71%
Hispanic American Males	1.42%
Native American Females	0.00%
Native American Males	0.00%
Caucasian Females	12.06%
Non-Minority Males	73.76%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	3.55%
Minority Males	10.64%
Caucasian Females	12.06%
Non-Minority Males	73.76%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	14.18%
Caucasian Female Business Enterprises	12.06%
Minority and Women Business Enterprises	26.24%
Non-Minority Male Business Enterprises	73.76%
TOTAL	100.00%





CHAPTER 6: ANECDOTAL ANALYSIS

I. INTRODUCTION

The United States Supreme Court in its 1989 decision, *City of Richmond v. J.A. Croson Co.*,¹ established the importance of anecdotal testimony in determining evidence of discrimination. The Court specified the use of anecdotal testimony as a means to determine whether remedial, race-conscious relief may be justified in a particular market area. According to *Croson*, evidence of a pattern of individual discriminatory acts can lend support to a local government's determination that broader remedial relief is justified if supported by appropriate statistical proof. Therefore, anecdotal testimony can document the routine practices M/WBEs encounter in doing business within the District 4 market area, but it will not suffice standing alone to establish the requisite predicate for a race-conscious program.

II. PURPOSE AND BACKGROUND

The purpose of this anecdotal analysis was to determine if there were patterns of egregious discrimination in District 4 experienced by M/WBEs which have worked on a District 4 contract or sought work from District 4. The anecdotal analysis includes a summary of the comments received at a public hearing IDOT held to elicit comments on the proposed District 4 Target Market Program, as well as answers to a web-based survey sent to market area businesses.

III. PUBLIC HEARING

The public hearing was held on December 15, 2011 at the Gateway Building in Peoria, Illinois. Mr. Frank McNeil, Director of the Office of Business & Workforce Diversity, facilitated the meeting. In addition to IDOT representatives, the participants included state and local elected officials. The Honorable Toi W. Hutchinson, Honorable Mattie Hunter, Representative William Davis, Representative Jehan Gordon, Senator David Koehler, and Senator Darin LaHood were present.

The hearing began with a video of the Secretary of Transportation, Ann Schneider, welcoming the participants and providing comments regarding IDOT's proposed Target Market Program for District 4. The state and local officials were given an opportunity to

¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509 (1989).



provide introductory comments. Most of the introductory statements supported IDOT's commitment to creating a level playing field for M/WBEs, and implementing remedial measures to correct any findings of egregious discrimination in transportation construction contracting in District 4.

When the public comment period opened, the business owners were encouraged to provide comments on any egregious discrimination experienced with IDOT, its prime contractors, and financial institutions in District 4. Comment cards were distributed to the participants with instructions to express their comments during the meeting or in writing.

The meeting proceedings were recorded and transcribed by Midwest Litigation Services. A summary of the comments is provided below.

A. Public Comment Summary

The comments expressed by the attendees included bonding and insurance requirements, discrimination by unions, and late payments by prime contractors.

1. Discrimination by Unions

A minority male owner of a construction company reported on the cost his small business has expended working with unions:

My main problem is bonding. My other problem is with the unions because they want you to pay about \$3,000 a month just to be on the job site, and it's money that we don't have.

A minority male owner of a construction company reported that he was discriminated against by a union:

To be frank, when we were in Bloomington, I thought I was in Mississippi because of what the unions did to our company and other companies. It was just straight-out discrimination. We're the only company that had to sign an agreement so that other companies could work. And they made us pay our employees more than any other employees on the whole job site. And I'm trying to understand how the State lets them get away with that. How can unions come in here and dictate what happens on a State and federally funded job? The only companies that had to do it were the minority companies. None of the other White companies had to do it or sign an agreement. If we wanted to work on the job, they said because we were from Peoria, that we had to pay our employees more. And I thought that was wrong, unfair, and unrighteous.



A minority male owner of a construction company reported on the barriers he encountered trying to work with unions:

I've tried for 20 years to hire a good foreman. When you find somebody and you take them to the unions, you can't hire them because they deny us a union card. The big contractors get to use whoever they want. If they only have two days of school, they can use whoever regardless if they have a high school degree or a college degree. But they don't let me do it.

2. Inability Meeting Bonding, Insurance, and Prequalification Requirements

A minority female owner of a construction company reported that she experienced difficulties meeting prequalification and bonding requirements:

I have yet to be awarded an IDOT contract, but we have not been the low bidder. Going forward with the Target Market Program, we had issues with the prequalification and bonding requirements. I hope we do not have to go through the same parameters with this program.

A minority male owner of a construction company reported that he experienced difficulty meeting insurance requirements:

Most small businesses are paying more for insurance than majorities or other large businesses. So, when we bid against companies that have been established for a number of years, their cost is lower. There are companies in Peoria that are not subject to the same insurance requirements as minority companies in Peoria.

A minority male owner of a construction company described the difficulties he encountered meeting insurance requirements:

In Peoria, I have a trucking company. I went through the trials of becoming DBE, and I went to different companies here in Peoria, but they said you need special insurance. We went and got that, and for two years I paid for this insurance but never got any work.

A minority female owner of a construction company explained why the Mentor Protégé Program has not benefitted her small company:

I've also worked with the Mentor Protégé Program, but the problem is that you need to have three years of IDOT experience, so I do not qualify for IDOT's Mentor Protégé Program.



3. Late Payments by Prime Contractors

A minority male owner of a construction company reported that he has waited up to eight years to receive payments from prime contractors:

My story is that if you can't get us paid by the general contractors, then all of the talking and everything that we're doing is just for nothing. Because we've had two or three meetings about this same thing, trying to voice our opinion. The longest I've ever waited on my money for a job was eight years. I've had four different jobs where I had to wait five to seven years. This was on Dirksen Parkway in Sangamon.

IV. WEB-BASED SURVEY

A. Identification of the Survey Pool

The web-based survey was emailed to 2,240 African American, Asian American, Hispanic American, Native American, Caucasian Female, and Non-Minority Male-owned construction firms willing to perform District 4 prime contracts and subcontracts. A total of 175 surveys were returned, representing 7.8 percent of the 2,240 businesses that received an email invitation to complete the survey. Within the population there were 46 businesses with an office within District 4. Forty-six of the 175 respondents work in District 4.

B. Survey Instrument

The survey included 26 questions yielding a yes-or-no, multiple choice, or rating scale response, as well as ten open-ended questions. Fourteen of the 26 questions were designated as “required.” Survey Monkey™, a web-based survey tool, was used to elicit responses to the 26 questions. A copy of the E-survey is attached as Appendix A.

The survey questions were designed to elicit information about the following: (1) business profiles; (2) perceptions of District 4, other public agencies, and private sector contracting; (3) experiences with DBE program; and (4) recommendations to help businesses obtain work from District 4.

C. Profile of Respondents

Table 6.01 presents the number of respondents working in District 4 by ethnicity and gender. Respondents were allowed to select multiple districts. The 16 businesses that work in District 4 include businesses that are also located in District 4. It should be noted that no Native American businesses responded to the survey; therefore, they are not represented in the tables.



Table 6.01: Respondents that Work in District 4 by Ethnicity and Gender

District	African American	Asian American	Hispanic American	Caucasian Female	Non-Minority Male	Total
4	3	3	1	13	26	46

Table 6.02 presents the number of respondents that are located in District 4 by ethnicity and gender.

Table 6.02: Respondents that are Located in District 4 by Ethnicity and Gender

District	African American	Asian American	Hispanic American	Caucasian Female	Non-Minority Male	Total
4	1	1	0	4	10	16

Table 6.03 presents the number of prime construction contractors that work in District 4 by ethnicity and gender.

Table 6.03: Prime Construction Contractors that Work in District 4 by Ethnicity and Gender

District	African American	Asian American	Hispanic American	Caucasian Female	Non-Minority Male	Total
4	0	0	0	5	10	15

D. Survey Findings

1. Recommendations to Increase the Participation of M/WBEs on IDOT Contracts

Best management practices were recommended by respondents to support the effort of M/WBEs to obtain work from IDOT. The recommendations summarized below include suggestions to revamp prequalifications, increase transparency, expand diversity, and improve training initiatives.



A summary of the best management practices recommended to increase the participation of M/WBEs on IDOT construction transportation contracts is detailed below:

➤ **Financing**

- Increase financial capabilities of firms.
- Introduce a long-term funding strategy for M/WBEs.
- Increase efficiency of payments.
- Create incentives to grow M/WBEs by receiving larger contracts.
- Provide easier access to credit.
- Encourage timely payments from prime contractors.
- Support M/WBE growth by increasing larger contract awards.

➤ **Diversity**

- Improve strategies to encourage diversity on District 4 contracts.
- Implement M/WBE rotation to diversify M/WBEs that are awarded contracts.
- Reassess prequalification standards that limit the size of eligible prime bidders.
- Create more than construction contract opportunities for M/WBEs to bid on.

➤ **Training and Education**

- Increase training and education initiatives.
- Schedule training seminars at the convenience of M/WBEs.
- Make attending IDOT training seminars easier and more convenient.
- Expand the Mentor-Protégé Program to support more types of businesses.
- Improve the Mentor-Protégé Program to increase its effectiveness.
- Create an “assistance” phone line or contact person to answer questions and help M/WBEs to fill out forms and documents.

➤ **Networking**

- Encourage relationship-building between prime contractors and subcontractors.
- Create a pre-proposal conference on major projects.



CHAPTER 7: DISPARITY ANALYSIS AND SUMMARY FINDINGS

I. INTRODUCTION

The objective of the disparity analysis is to determine the level that MBEs and WBEs were utilized on contracts awarded in District 4. MBEs are analyzed by ethnic and gender group. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to the groups would approximate their proportion of available businesses¹ in the relevant market area. If there is an underutilization of available M/WBEs a statistical test is conducted to determine if the underutilization is random and due to chance.² According to *Croson*, if the statistical test is significant, then, *prima facie* an inference of discrimination can be made.

The first step in conducting the statistical test is to calculate the contract value that each ethnic and gender group is expected to receive. This value is based on each group's availability in the market area or the **expected contract dollars**. The next step computes the difference between each ethnic and gender group's expected contract dollars and the **actual dollars** received by each group. The third step is to compute the **disparity ratio** by dividing the actual contract dollar amount by the expected contract dollar amount.

A disparity ratio of less than one indicates underutilization while a disparity ratio of 0.80 or less reveals a significant degree of disparity. To test the significance of a disparity ratio, a P-value must be calculated.³ The three methods employed to calculate statistical significance are: a parametric analysis,⁴ a non-parametric analysis,⁵ and a "Monte Carlo" simulation analysis.⁶

¹ Availability is defined as the number of willing and able firms. The methodology for determining willing and able firms is detailed in *Chapter 5: Availability Analysis*.

² The study does not test statistically the overutilization of M/WBEs or the utilization of Caucasian Males.

³ P-value is a measure of statistical significance.

⁴ Parametric analysis is a statistical examination based on the actual values of the variable. In this case, the parametric analysis consists of the actual dollar values of the contracts.

⁵ Non-parametric analysis is a method to make data more suitable for statistical testing by allowing one variable to be replaced with a new variable that maintains the essential characteristics of the original one. In this case, the contracts are ranked from the smallest to the largest. The dollar value of each contract is replaced with its rank order number.

⁶ The "Monte Carlo" simulation analysis can be conducted using contract dollar amounts or contract rankings.



A parametric analysis is most commonly used when the number of contracts in the population is sufficiently large, and the variation of the contract dollar amounts is not too large. When the variation in contract dollar amounts is large, a disparity may not be detectable using a parametric analysis. Therefore, a non-parametric analysis would be employed to analyze the contracts ranked by dollar amount. Both parametric and non-parametric analyses are effective due to the central limit theorem, which is strongest when the number of contracts is large and the data are not skewed. When there are too few contracts,⁷ or the contract dollar data are skewed, a “Monte Carlo” simulation is employed. The utility of the “Monte Carlo” simulation is also dependent on the severity of the disparity when there are too few contracts.

The “Monte Carlo” simulation utilizes randomization to simulate a distribution for the contract awards. The “Monte Carlo” simulation randomly awards a contract to an available business in its corresponding industry. The odds that a business will be randomly awarded a contract are equal to the number of the specific group of businesses available in that industry, divided by the total number of businesses available in the industry. For example, the odds that an African American construction contractor is randomly awarded a construction contract are equal to the African American availability in the construction industry divided by all businesses in the construction industry. By conducting multiple trials in the “Monte Carlo” simulation, the empirical data can be used to test the statistical significance of the distribution of contract awards. The output of the “Monte Carlo” simulation is the number of trials for which the observed disparity ratio is replicated. Using a minimum of 500,000 trials and applying a two-tailed test for a 95 percent confidence level, the maximum number of trials for a result to be statistically significant is 12,500.

For parametric and non-parametric analyses, the P-value takes into account the number of contracts, amount of contract dollars, and variation in contract dollars. If the difference between the actual and expected number of contracts and total contract dollars has a P-value equal to or less than 0.05, the difference is statistically significant.⁸ In the “Monte Carlo” simulation analysis, the P-value takes into account a combination of the distribution formulated from the empirical data and the contract dollar amounts or contract rank. If the actual contract dollar amount, or actual contract rank, falls below the fifth percentile of the distribution, it denotes a P-value less than 0.05, which is statistically significant.

The statistical model applied all three methods to the transportation construction prime and subcontracts awarded during the study period. Where the P-value from any one of the three methods was 0.05 or less, the finding for both the prime and subcontracts is reported in the disparity analysis summary tables as statistically significant. When the P-value was greater than 0.05, the finding is reported as not statistically significant except



⁷ Note: A relatively small availability population size decreases the reliability of the statistical results. Therefore, any availability percentage under one percent cannot be labeled as statistically significant.

⁸ A statistical test is not performed for Non-Minority Males, or when the ratio of utilized to available businesses is greater than one for DBEs.

for the prime contracts where there were too few contracts in the total population and the group's availability was low. Since the statistical test does not produce a reliable finding for an underutilized group with too few available businesses, a limited number of contracts are therefore reported.

II. PRIME CONTRACTOR DISPARITY FINDINGS

The prime contract disparity analysis was performed on District 4 construction contracts valued at \$600,000 and under awarded from July 1, 2010 to June 30, 2011. To ensure that the pool of available M/WBEs had the capacity to perform, the contracts analyzed a threshold level for the disparity analysis was set at \$600,000. This threshold represents the lower 50 percent of contracts awarded. Within this threshold there were 43 contracts valued at \$600,000 and under that were subject to the prime contractor analysis.

Table 7.01 summarizes the findings of the statistical analysis of the underutilization of M/WBEs on the prime construction contracts valued at \$600,000 and under awarded during the study period.



A. Prime Disparity Analysis

African American Businesses represent 17.78 percent of the available construction services businesses and received none of the dollars for construction services prime contracts valued at \$600,000 and under. This underutilization is statistically significant.

Asian American Businesses represent 1.11 percent of the available construction services businesses and received none of the dollars for construction services prime contracts valued at \$600,000 and under. This group is underutilized, however, there are too few available firms given the sample size to produce a reliable finding of statistical significance.

Hispanic American Businesses represent 3.33 percent of the available construction services businesses and received 2.13 percent of the dollars for construction services prime contracts valued at \$600,000 and under. This group is underutilized, however, there are too few available firms given the sample size to produce a reliable finding of statistical significance.

Native American Businesses represent none of the available construction services businesses and received none of the dollars for construction services prime contracts valued at \$600,000 and under. There were no available firms to test the statistical significance.

Minority Business Enterprises represent 22.22 percent of the available construction services businesses and received 2.13 percent of the dollars for construction services prime contracts valued at \$600,000 and under. This underutilization is statistically significant.

Caucasian Female Business Enterprises represent 14.44 percent of the available construction services businesses and received 4.64 percent of the dollars for construction services prime contracts valued at \$600,000 and under. This underutilization is not statistically significant.

Minority and Women Business Enterprises represent 36.67 percent of the available construction services businesses and received 6.77 percent of the dollars for construction services prime contracts valued at \$600,000 and under. This underutilization is statistically significant.

Non-Minority Male Business Enterprises represent 63.33 percent of the available construction services businesses and received 93.23 percent of the dollars for construction services prime contracts valued at \$600,000 and under. This overutilization is statistically significant.



**Table 7.01: Prime Disparity Summary: Prime Construction Contract Dollars,
2010-2011**

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$0	0.00%	17.78%	\$1,910,958	-\$1,910,958	0.00	< .05 *
Asian Americans	\$0	0.00%	1.11%	\$119,435	-\$119,435	0.00	^
Hispanic Americans	\$229,400	2.13%	3.33%	\$358,305	-\$128,905	0.64	^
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$498,487	4.64%	14.44%	\$1,552,653	-\$1,054,167	0.32	not significant
Non-Minority Males	\$10,021,252	93.23%	63.33%	\$6,807,788	\$3,213,464	1.47	< .05 †
TOTAL	\$10,749,138	100.00%	100.00%	\$10,749,138			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	3.33%	\$358,305	-\$358,305	0.00	not significant
African American Males	\$0	0.00%	14.44%	\$1,552,653	-\$1,552,653	0.00	< .05 *
Asian American Females	\$0	0.00%	1.11%	\$119,435	-\$119,435	0.00	^
Asian American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic American Females	\$0	0.00%	1.11%	\$119,435	-\$119,435	0.00	^
Hispanic American Males	\$229,400	2.13%	2.22%	\$238,870	-\$9,470	0.96	^
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$498,487	4.64%	14.44%	\$1,552,653	-\$1,054,167	0.32	not significant
Non-Minority Males	\$10,021,252	93.23%	63.33%	\$6,807,788	\$3,213,464	1.47	< .05 †
TOTAL	\$10,749,138	100.00%	100.00%	\$10,749,138			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$0	0.00%	5.56%	\$597,174	-\$597,174	0.00	not significant
Minority Males	\$229,400	2.13%	16.67%	\$1,791,523	-\$1,562,123	0.13	< .05 *
Caucasian Females	\$498,487	4.64%	14.44%	\$1,552,653	-\$1,054,167	0.32	not significant
Non-Minority Males	\$10,021,252	93.23%	63.33%	\$6,807,788	\$3,213,464	1.47	< .05 †
TOTAL	\$10,749,138	100.00%	100.00%	\$10,749,138			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$229,400	2.13%	22.22%	\$2,388,697	-\$2,159,297	0.10	< .05 *
Caucasian Female Business Enterprises	\$498,487	4.64%	14.44%	\$1,552,653	-\$1,054,167	0.32	not significant
Minority and Women Business Enterprises	\$727,887	6.77%	36.67%	\$3,941,351	-\$3,213,464	0.18	< .05 *
Non-Minority Male Business Enterprises	\$10,021,252	93.23%	63.33%	\$6,807,788	\$3,213,464	1.47	< .05 †

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of non-minority males.

(----) denotes an underutilized group with no available firms to test statistical significance.

(^) denotes an underutilized group with too few available firms given the sample size to produce a reliable finding.

III. SUBCONTRACTOR DISPARITY ANALYSIS

Table 7.02 summarizes the disparity of construction subcontract dollars awarded during the study period. The subcontract disparity analysis was performed on District 4 transportation construction contracts awarded from July 1, 2010 to June 30, 2011

A. Subcontractor Disparity Analysis Summary

African American Businesses represent 11.35 percent of the available construction subcontractors and received 1.16 percent of the dollars for construction services subcontracts. This underutilization is statistically significant.

Asian American Businesses represent 0.71 percent of the available construction subcontractors and received 0.1 percent of the dollars for construction services subcontracts. There were too few available firms to test the statistical significance.

Hispanic American Businesses represent 2.13 percent of the available construction subcontractors and received 2.02 percent of the dollars for construction services subcontracts. This underutilization is not statistically significant.

Native American Businesses represent none of the available construction subcontractors and received none of the dollars for construction services subcontracts. There were no available firms to test the statistical significance.

Minority-owned Business Enterprises represent 14.18 percent of the available construction subcontractors and received 3.28 percent of the dollars for construction services subcontracts. This underutilization is statistically significant.

Caucasian Female Business Enterprises represent 12.06 percent of the available construction subcontractors and received 7.07 percent of the dollars for construction services subcontracts. This underutilization is not statistically significant.

Minority and Women Business Enterprises represent 26.24 percent of the available construction subcontractors and received 10.35 percent of the dollars for construction services subcontracts. This underutilization is statistically significant.

Non-Minority Male Business Enterprises represent 73.76 percent of the available construction subcontractors and received 89.65 percent of the dollars for construction services subcontracts. This overutilization is statistically significant.



**Table 7.02: Subcontractor Disparity Summary: Construction Subcontract Dollars,
2010-2011**

Group	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$457,157	1.16%	11.35%	\$4,460,491	-\$4,003,334	0.10	< .05 *
Asian Americans	\$40,000	0.10%	0.71%	\$278,781	-\$238,781	0.14	----
Hispanic Americans	\$792,206	2.02%	2.13%	\$836,342	-\$44,136	0.95	not significant
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$2,778,534	7.07%	12.06%	\$4,739,271	-\$1,960,737	0.59	not significant
Non-Minority Males	\$35,240,177	89.65%	73.76%	\$28,993,189	\$6,246,988	1.22	< .05 †
TOTAL	\$39,308,073	100.00%	100.00%	\$39,308,073			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	2.13%	\$836,342	-\$836,342	0.00	< .05 *
African American Males	\$457,157	1.16%	9.22%	\$3,624,149	-\$3,166,992	0.13	< .05 *
Asian American Females	\$40,000	0.10%	0.71%	\$278,781	-\$238,781	0.14	----
Asian American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic American Females	\$232,971	0.59%	0.71%	\$278,781	-\$45,810	0.84	----
Hispanic American Males	\$559,236	1.42%	1.42%	\$557,561	\$1,674	1.00	**
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$2,778,534	7.07%	12.06%	\$4,739,271	-\$1,960,737	0.59	not significant
Non-Minority Males	\$35,240,177	89.65%	73.76%	\$28,993,189	\$6,246,988	1.22	< .05 †
TOTAL	\$39,308,073	100.00%	100.00%	\$39,308,073			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$272,971	0.69%	3.55%	\$1,393,903	-\$1,120,933	0.20	< .05 *
Minority Males	\$1,016,392	2.59%	10.64%	\$4,181,710	-\$3,165,317	0.24	< .05 *
Caucasian Females	\$2,778,534	7.07%	12.06%	\$4,739,271	-\$1,960,737	0.59	not significant
Non-Minority Males	\$35,240,177	89.65%	73.76%	\$28,993,189	\$6,246,988	1.22	< .05 †
TOTAL	\$39,308,073	100.00%	100.00%	\$39,308,073			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$1,289,363	3.28%	14.18%	\$5,575,613	-\$4,286,250	0.23	< .05 *
Caucasian Female Business Enterprises	\$2,778,534	7.07%	12.06%	\$4,739,271	-\$1,960,737	0.59	not significant
Minority and Women Business Enterprises	\$4,067,897	10.35%	26.24%	\$10,314,885	-\$6,246,988	0.39	< .05 *
Non-Minority Male Business Enterprises	\$35,240,177	89.65%	73.76%	\$28,993,189	\$6,246,988	1.22	< .05 †

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of M/WBEs or the underutilization of non-minority males.

(----) denotes an underutilized group with no available firms to test statistical significance.

IV. SUMMARY OF FINDINGS

A. Key Statistical Findings

District 4 issued 86 transportation construction prime contracts during the 2010 to 2011 study period. The payments made by District 4 during the study period for the 86 construction contracts totaled \$110,656,001. Only prime transportation construction contracts valued at \$600,000 and under were analyzed.

Mason Tillman also analyzed 502 construction subcontracts for the 2010 to 2011 study period. Of the construction subcontracts analyzed, \$39,308,073.40 total dollars were expended during the study period.

1. Prime Contractor Findings

African American, MBE, and M/WBE construction contractors were determined to be underutilized at a statistically significant level on construction contracts valued at \$600,000 and under. Caucasian Female-owned Businesses had a disparity ratio of less than .80 but were not found to be statistically significant.

2. Subcontractor Findings

African American, MBE, and M/WBE subcontractors were determined to be underutilized at a statistically significant level. Asian Americans and Caucasian Female Business Enterprises had a disparity ratio of less than .80 but were not found to be statistically significant. Non-Minority Male-owned businesses received 89.65 percent of the subcontract dollars in District 4.

B. Key Anecdotal Findings

The anecdotal analysis as described in Chapter 6, *Anecdotal Analysis*, was conducted to determine if there were patterns of egregious discrimination experienced by M/WBEs seeking construction work or working on projects in District 4. The anecdotal analysis included anecdotal evidence that was derived from the following two sources:

- 2011 IDOT Target Market Program Public Hearing
- 2012 District 4 Disadvantaged Business Enterprise Survey

The barriers reported by M/WBEs in both of the anecdotal sources demonstrate a pattern of discriminatory practices in transportation construction contracting during the 2010 to 2011 study period.



V. CONCLUSION

The statistical and anecdotal analyses provide overwhelming evidence of egregious discriminatory contracting practices in District 4. As indicated above, a disparity was found for African American, MBE, and M/WBE prime contractors at a statistically significant level on transportation construction contracts valued at \$600,000 and under. WBEs were found to be underutilized but not at a statistically significant level.

A disparity was also found for African American, MBE, and M/WBEs on construction subcontracts. Asian American, Hispanic American, and WBEs were underutilized on construction subcontracts, but not at a statistically significant level. A finding of statistically significant disparity is a sufficient factual predicate for race and gender conscious remedies.¹ The evidence presented herein constitutes a sufficient factual predicate to support the enactment of the Target Market Program for District 4. The Target Market Program authorizes separate goals for MBEs and WBEs.



¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989); *H.B. Rowe Company v. Tippett*, 615 F.3d 233, Court of Appeals, Fourth Circuit (N.C. July 22, 2010).