

City of Chicago Construction Disparity Study

**Colette Holt & Associates
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City of Chicago M/WBE Program

- Background on City's Ordinance
 - Adopted in 1990
 - Construction portion challenged in *BAGC* case
 - Ordinance was held to be based on a “compelling interest” but it was no longer “narrowly tailored” in 2004
 - Construction Program adopted in 2004; modified and extended in 2009 and 2015
 - Current Program sunsets 12/31/2020

Disparity Study Team

- Colette Holt & Associates

- Colette Holt, J.D. - Project Manager

- Nationally recognized expert, educator and author on D/M/WBE issues

- Steven Pitts, Ph.D. - Economist and Statistician

- Nationally recognized expert, educator and author on market issues regarding minorities for over 30 years

- Joanne Lubart, J.D. - Associate Counsel

- National expert DBE & M/WBE programs

- Glenn Sullivan - Director of Technology

- Extensive experience with CHA data collection and website management

Disparity Study Team

- Ilene Grossman, B.A. - Assistant Project Manager
 - Coordinates all study requirements and oversees CHA day-to-day operations
- Victoria Farrell, M.B.A. - Researcher
 - Coordinates with Project Manager
- Carol Borst - Contract Data Collection Team Manager
 - Coordinates all follow up activities to ensure complete study contract data files
- Sandi Llano & Associates (WBE)
 - Specializes in D/M/WBE consulting services to government, small and large firms and nonprofits

M/WBE Program Legal Standards

- Must have a “strong basis in evidence” to use the highly disfavored remedy of race-conscious behavior
 - Strict constitutional scrutiny applies to race-based government decision making
 - Government can use its spending powers to eradicate private discrimination
 - Government must be a “passive participant” in a discriminatory marketplace
 - No need to prove the agency discriminated
 - Motive cannot be politics or racial stereotyping

M/WBE Program Legal Standards

- Program must be narrowly tailored to the evidence in the disparity study
 - “Societal” discrimination is not sufficient
 - All racial and ethnic groups must suffer discrimination in the local marketplace (“social disadvantage”)
 - Owner must suffer “economic disadvantage” (personal net worth test)
 - Firms must be “small”
 - Remedies must be flexible; no quotas or set-asides
 - Race-neutral measures must be seriously considered
 - There must be a sunset provision requiring periodic program review

Disparity Study Objectives

- Comply with constitutional mandate to regularly review evidence supporting race- and gender-based programs
- Provide a defense if the program is challenged
- Develop accurate data for annual and contract goal setting
- Gather feedback for program improvements
- Educate elected officials, City staff, assist agencies, and business owners on these issues

Disparity Study Elements

- Legal Review
 - Overview of *Croson* standards
 - Current cases
- City's utilization of M/WBEs as a percentage of all dollars
 - Geographic market
 - Industry market
 - Study period is FY 2015 to FY 2019

Disparity Study Elements

- Step 1: Gather City's prime contracts to create Initial Contact Data File
- Step 2: Gather any additional data for contracts in the Sample Contract Data File
- Step 3: Contact primes for missing subcontractor data
 - Collect at least 80% of the contract dollars
 - Assign missing race and gender ownership status
 - Assign missing NAICS codes

Disparity Study Elements

- Step 4: Determine geographic and product markets
 - Determine the unconstrained product market
 - Analyze data for primes, subs and primes and subs combined
 - Determine the geographic market for at least 75% of the contracts
 - Determine product market constrained by geographic market to create Final Contract Data Utilization File
 - Determine detailed utilization by race, gender and 6-digit NAICS codes

Disparity Study Elements

- Availability of M/WBEs in the City's markets
 - Create Master List of M/WBEs from multiple entities
 - Develop list from the contract Data File and other City lists
 - Obtain Hoovers/Dun & Bradstreet for initial business universe
 - Assign missing race and gender status and NAICS codes
 - Estimate detailed, unweighted and weighted availability combined and disaggregated by race, gender and industry codes

Disparity Study Elements

- Disparity analysis
 - Disparity ratio = M/WBE utilization ÷ weighted availability
 - 80% or less is substantive, supporting the inference of discrimination
 - Confidence intervals for statistical significance
 - Calculate disparity indices for:
 - All race and sex groups and all industry groups combined and race and sex disaggregated
 - To the extent data are available, calculate disparity indices separately for contracts with and without goals

Disparity Study Elements

- Economy-wide disparity analyses
 - Compare M/WBEs' revenues to non-M/WBEs' using the Census Bureau's Survey of Business Owners
 - Compare M/WBEs' formation rates and business earnings to non-M/WBEs' using the Census Bureau's American Community Survey
 - Critical for evaluation of effectiveness of race- and gender-neutral measures

Disparity Study Elements

- Anecdotal data collection and analysis
 - Stakeholder Sessions
 - Small group business owner interviews
 - M/WBEs and non-M/WBEs
 - Group firms into construction and construction related services
 - Explore
 - Barriers to M/WBEs' success in the Chicago area markets
 - Experiences with discrimination
 - Ability to access City prime and subcontracts
 - Possible supportive services or other race- and gender-neutral measures
 - City of Chicago staff interviews

Disparity Study Elements

- Program Review
 - Review policy/program documents
 - Solicit stakeholders', business owners' and City staff's suggestions
 - Topics will include:
 - Barriers to City contracting and subcontracting
 - Outreach to M/WBEs and small firms
 - Program elements
 - Contract data collection processes

Disparity Study Elements

- Recommendations
 - Race- and gender-neutral measures to reduce barriers and increase opportunities
 - Potential narrowly tailored race- and gender-conscious remedies
 - Program eligibility
 - Annual M/WBE goals
 - Contract goal setting methodology
 - Bid/proposal evaluation
 - Monitoring and data collection

Study Participation Information

- Stakeholder Interviews in April 2020
- Business Owner Interviews June 2020
- Study completion December 2020
- Study information
 - <http://chicago.disparity-study.com>
 - chicago-study@mwbelaw.com
 - 855-692-3529 (855-MWBELAW)



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