

New York State MWBE Forum
TRANSFORMATION 2017

**New York State Disparity Study:
Outcomes, Trends, and
New Opportunities**



**Engage, Empower
and Elevate Your Business**

Why a Disparity Study?

- 1989 Supreme Court Case *City of Richmond v. J.A. Croson*
 - Richmond created MWBE program based on demographics of residents;
 - Challenged by local contractors.
- Race-based classifications are inherently suspect, subject to strict scrutiny.



Strict Scrutiny

- State must demonstrate a compelling governmental interest in the classification;
- State must narrowly tailor remedies to the identified problem.



Effect of Disparity Study

- Identifies scope of problem that the State can constitutionally address.
 - Who can the State assist, and to what extent?
- Recommends policies to achieve narrowly tailored remedy.
 - Roadmap, not a directive.



Disparity Study Outline

- Compares the utilization of MWBEs as prime contractors and subcontractors to non-MWBEs;
- Identifies MWBE availability in the market area;
- Determines the existence of a statistically significant disparity;
- Makes recommendations for policy enhancements to the MWBE program;
- Evaluates the impact of the PNW requirement;
- Studies workforce disparities.



MWBE Utilization

- Mason Tillman sampled contracts to measure MWBE utilization from April 01, 2010 to March 31, 2015.
- MWBE Utilization as Prime Contractors
 - Construction - 22.71%
 - Construction-related Services – 13.84%
 - Non-Construction Services – 32.54%
 - Commodities – 25.88%
- MWBE Utilization as Subcontractors
 - Construction – 28.63%
 - Construction-related Services – 28.84%
 - Non-Construction Services – 22.96%



Measuring MWBE Availability

- The Study identified MWBE availability via:
 - Contracting records;
 - Bidding records;
 - Business Directories;
 - Trade organizations; and
 - Surveys.

MWBE Prime Contractor Availability: **53.05%**

MWBE Subcontractor Availability: **53.48%**



Testing Disparity

- Study tested results against parameters other than ownership.
- Strong Evidence of Disparity:
 - Black-owned Businesses;
 - Hispanic and Latino-owned Businesses;
 - Asian-Pacific-owned Businesses;
 - Caucasian Women-owned Businesses.
- Mixed Evidence of Disparity:
 - Asian-Indian-owned Subcontractors;
 - Native American-owned Businesses.



Workforce Disparity Analysis

- U.S. Census data shows that available minority group members and women are 68.48% of the workforce.
- Minority group members and women only worked 44.47% of the hours studied.
- Significant disparities for almost all minority groups and for Caucasian women.



Program Transformation: Prime Contractors

- Bidding credits for MWBE prime contractors.
 - Study recommends 10% credit.
 - MWBE bid of \$100,000 assessed as if \$90,000.
- Increased discretionary purchasing thresholds.
 - MTA threshold currently \$400,000.
- Eliminate unnecessary qualification barriers.
- Revisit preferred source offerings.



Program Transformation: Goals

- Creating opportunities for all MWBEs.
 - Addressing largest disparities, especially for Black, Hispanic and Latino-owned Businesses.
- Focusing on strategic industries.
- Enhancing monitoring of MWBE participation.
 - Prompt payment;
 - Substitution.



Program Transformation: Certification

- Incorporate procurement qualification.
 - Licensure;
 - Bonding;
 - Profile.
- Tailor personal net worth requirements.
 - Industry-specific standards.
- Streamline the certification process.



Program Transformation: Growth

- Sustainable graduation.
 - Incentivizing growth.
 - Encouraging utilization after graduation.
- Support for mentorship and joint ventures.
- Training and technical assistance.



Program Transformation: Workforce

- Potential new policies for workforce diversity.
 - Demanding equality of opportunity for workers.
- Incentivizing diversity.
 - Establishing metrics for workforce deployment.
 - Ensuring contractor compliance.
- Isolating disparities, measuring success.
 - Groups who need assistance vary by industry.
 - Tools may vary by industry and procurement method.



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