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.
• 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.
• 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.
• 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.