



**WEST PALM BEACH**  
Executive Summary  
August 2018



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# ***Executive Summary***

## ***I. Study Overview***

### ***A. Introduction***

In 2015 the City of West Palm Beach (City) commissioned a Disparity Study (Study) because it has a compelling interest to remedy any ongoing effects of discrimination in its market area. The purpose of the disparity study is to determine whether or not a statistically significant disparity existed in the City's award of contracts to ready, willing, and able Minority and Woman-owned Business Enterprises' hereinafter referred to as Minority and Caucasian Female Business Enterprises (M/WBEs). Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs should be relatively close to the corresponding proportion of available M/WBEs<sup>1</sup> in the relevant market area. If the available M/WBE prime contractors are underutilized, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event which is less probable. *Croson*<sup>2</sup> states that an inference of discrimination can be made prima facie if the disparity is statistically significant. This analysis was applied to M/WBEs by ethnicity and gender within the three industries studied.

### ***B. Study Team***

Mason Tillman Associates, Ltd., a public policy consulting firm based in Oakland, California, was selected to perform the Study.

Mason Tillman subcontracted with a local business, Decision Support Partners, Inc., to assist with contract data collection. Festus Frank Hayden, City of West Palm Beach Procurement Officer, with assistance from Aisha Darrough, Small Business Program Compliance Specialist, managed the Study. Mr. Hayden and Ms. Darrough facilitated Mason Tillman's access to the City's data needed to complete the Study. The extraordinary cooperation of the City staff and the local business community should also be acknowledged.

### ***C. Industries and Study Period***

The Study reviewed City's contracts awarded during the study period, October 1, 2010 to September 30, 2014. The prime contracts examined included construction; professional services, including architecture and engineering (hereinafter referred to as professional services);

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<sup>1</sup> Availability is defined as the number of ready, willing, and able firms. The methodology for determining willing and able firms is detailed in Chapter 5.

<sup>2</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).



and goods and services. At the subcontract level, the analysis was limited to construction and professional services contracts. The three industries are defined below:

- **Construction** includes improvements to real property, such as constructing, altering, repairing, improving, or demolishing buildings, and related goods and services.<sup>3</sup>
- **Professional services** include services procured by the Consultants' Competitive Negotiation Act (CCNA) and non-CCNA. CCNA professional services include services of architecture, professional engineering, landscape architecture, or registered surveying and mapping. Non-CCNA professional services include any narrow discipline wherein a known practitioner has developed expert advisory and programming skills as a vocation through education and experience; any service performed primarily by vocational personnel which requires the analysis or certification of a professional; or any other advisory study, or programming activity where the Director of Purchasing determines that the levels of skills or creativity of the practitioner warrants a competitive proposal or submittal process.<sup>4</sup>
- **Goods and services** include any tangible personal property other than services or real property.<sup>5</sup> Services is defined as the furnishing of labor, time, or effort by a contractor wherein the provisions of goods or other specific end products (other than reports, studies, plans, advisories, contractual documents, or other documents relating to the required performance) is incidental or secondary. This term excludes construction, employment agreements, or collective bargaining agreements.<sup>6</sup>



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<sup>3</sup> PALM BEACH COUNTY, FL., ORDINANCE § CW-F-064 (MAY 13, 2011).

<sup>4</sup> PALM BEACH COUNTY, FL., ORDINANCE 02-064 §§ 2-80.21 (2002).

<sup>5</sup> *Id.*

<sup>6</sup> PALM BEACH COUNTY, FL., ORDINANCE 05-062 §§ 2-51-2-58 (2005).

#### **D. Ethnic and Gender Groups Studied**

The statistical data in the Study is disaggregated into six ethnic and gender groups. The six groups are listed in Table 1.

**Table 1: Business Ethnic and Gender Groups**

<b>Ethnicity and Gender Category</b>	<b>Definition</b>
African Americans	Businesses owned by male and female African Americans
Asian Americans	Businesses owned by male and female Asian Americans
Hispanic Americans	Businesses owned by male and female Hispanic Americans
Native Americans	Businesses owned by male and female Native Americans
Caucasian Female Business Enterprises (WBE)	Businesses owned by Caucasian females
Non-minority Male Business Enterprises (non-M/WBE)	Businesses owned by Caucasian males, and businesses that could not be identified as Minority or Caucasian Female-owned <sup>7</sup>

#### **E. Prime Contract Data**

The prime contract data consisted of purchase orders extracted from the E-Finance financial system. Purchase orders that included a contract number were grouped and the purchase order payments were combined to produce a total contract payment amount. Purchase orders without a contract number were classified as unique, and the payments were used as the contract amount.

The ethnicity and gender of each prime contractor was verified by cross-referencing the prime contractor's name with certification lists, chamber of commerce directories, and trade organization membership directories. Prime contractors' websites were also reviewed to verify the ethnicity and gender of the business owner. Prime contractors whose ethnicity and gender could not be verified through published sources were surveyed.

#### **F. Subcontractor Data**

The City provided prime contract records with subcontractor participation for its construction and professional services contracts. The subcontract data were compiled by the City in conjunction with Mason Tillman. The Subcontractor Utilization Report (SUR)

<sup>7</sup> See Section II: Prime Contract Data Sources for the methodology employed to identify the ethnicity and gender of the City's utilized prime contractors.



forms and Schedule of Contractors (B5) forms for the prime contracts containing subcontracts were provided by the City. Mason Tillman entered this information into a database. The data served as a primary source of subcontractor utilization. In addition, prime contractors were surveyed by Mason Tillman to secure subcontractor, subconsultant, supplier, and trucker awards, and payment data from their records. All identified subcontractors, subconsultants, suppliers, and truckers were surveyed to verify their payments. The ethnicity and gender of the subcontractors, etc. were compiled from certification lists, minority and woman business organization membership directories, Internet research, and telephone surveys.

## **II. Methodology**

### **A. Legal Framework**

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

#### **Disparity Study: Critical Components**

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

A legal review was the **first step** in the Study. Federal case law sets the standard for the methodology employed in a disparity study. **Step two** includes the collection of utilization records to determine the extent of the City's utilization of Minority, Caucasian Female-owned, and Non-Minority Male business enterprises as prime contractors to secure its needed construction, professional services, and goods and services. Utilization records were also used to determine the geographical area in which businesses that had received the City's contracts were located. In **step three**, the City's market area was

identified. Once the market area was defined, the **fourth step**, the availability analysis, identified businesses willing and able to provide construction, professional services, and goods and services needed by the City. In the **fifth step** an ordered logistic regression analysis was used to analyze the capacity of the availability business. In **step six** a disparity analysis was performed to determine whether there was a statistically significant underutilization within any of the three industries. In **step seven** the statistical analyses were reviewed and recommendations were provided to enhance the City's efforts in contracting with M/WBEs in the market area.

### **B. Structure of the Report**

The Study findings are presented in eight chapters. The contents of each chapter are outlined below:

#### **Overview of the Disparity Study Report**



- *Chapter 1: Legal Analysis* presents the federal case law applicable to business affirmative action programs and the methodology based on cases as appropriate to the Study.
- *Chapter 2: Prime Contractor Utilization Analysis* presents the distribution of prime contracts by industry, ethnicity, and gender.
- *Chapter 3: Subcontractor Utilization Analysis* presents the distribution of subcontracts by ethnicity, gender, and industry.
- *Chapter 4: Market Area Analysis* presents the legal basis for geographical market area determination and defines the City's market area.
- *Chapter 5: Prime Contractor and Subcontractor Availability Analysis* presents the distribution of willing and able businesses in the City's market area.
- *Chapter 6: Prime Contractor Disparity Analysis* presents prime contractor utilization compared to prime contractor availability by industry and M/WBE status and determines whether the comparison is statistically significant.
- *Chapter 7: Subcontractor Disparity Analysis* presents subcontractor utilization compared to subcontractor availability by industry and M/WBE status to determine whether the comparison is statistically significant.
- *Chapter 8: Recommendations* presents race and gender-conscious and race and gender-neutral remedies to enhance procurement procedures and the City's contracting with M/WBEs and small local businesses.

### **III. Notable Findings**

#### **A. Prime Contractor Utilization Analysis**

The City issued 5,081 prime contracts during the study period. The 5,081 prime contracts included 518 for construction, 380 for professional services, and 4,183 for goods and services. The payments made by the City during the study period totaled \$278,877,819, for all 5,081 prime contracts. Payments included \$97,793,831, for construction, \$54,070,233, for professional services, and \$127,013,755, for goods and services.

##### **1. Highly Used Contractors**

###### **A) Construction Prime Contractors**

The City awarded a total of 518 construction contracts during the study period to 133 unique vendors. Fourteen of the 133 vendors received \$68,926,887, or 70% of the total construction prime contract dollars.



## **B) Professional Services Prime Contractors**

The City awarded a total of 380 professional services contracts during the study period to 164 unique vendors. Ten of the 164 vendors received \$37,476,588, or 69% of the total professional services prime contract dollars.

## **C) Goods and Services Prime Contractors**

The City awarded a total of 4,183 goods and services contracts during the study period to 999 unique vendors. Sixty-two of the 999 vendors received \$88,814,533, or 70% of the total goods and services prime contract dollars.

### ***B. Subcontractor Utilization Analysis***

For the two industries a total of 528 subcontracts were analyzed, which included 440 construction, and 88 professional services subcontracts. There were \$29,259,315, total subcontract dollars expended during the study period. These dollars included \$23,356,014, for construction and \$5,903,301, for professional services subcontracts.

### ***C. Market Area Analysis***

During the study period, the City awarded 5,129 construction, professional services, and goods and services, prime contracts valued at \$278,964,423. The City awarded 43.21% of prime contracts and 51.47% of dollars to businesses domiciled within Palm Beach County. Given the distribution of the contracts awarded by the City, the study's market area is determined to be Palm Beach County.

### ***D. Prime Contractor and Subcontractor Availability Analysis***

#### **1. Determination of Willingness**

All businesses included in the availability analysis were determined to be willing to contract with the City. "Willingness" is defined in *Croson* and its progeny as a business' interest in contracting with the government. To be classified as willing, each business either bid on a government contract, secured government certification, or was listed on a business organization's membership list and affirmed an interest in contracting with the City through the willingness survey.

#### **2. Capacity**

The second component of the availability requirement set forth in *Croson* is the capacity or ability of a business to perform the contracts that a jurisdiction awards.<sup>8</sup> However, capacity requirements are not delineated in *Croson*. In those cases where capacity has been considered, the matter has involved large, competitively bid construction prime contracts.

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<sup>8</sup> *Croson*, 488 U.S. 469.



Nevertheless, the capacity of willing market area businesses to perform the City's contracts was assessed using several measures. The analysis included an analysis of contract size and vendor capacity.

- **Largest Awards:** The analysis classified the largest contracts that the City's awarded by ethnicity and gender within industry to determine M/WBEs' capacity to perform large formal purchase orders.
- **Size Analysis:** Contract size is a determinant of the capacity that a willing business needs to be competitive. The distribution of contracts by size within industry was calculated using a quartile analysis to determine the range of the City's contracts by award amount. The quartile analysis was used to set the threshold in which the analysis was performed. The contracts analyzed were limited by dollar value, representing 75% of the City's contracts awarded in each of the four industries.
- **Capacity Assessment:** The capacity assessment questionnaire was designed to elicit information on economic indicators of a business's ability to perform the City's contracts. The questionnaire was administered to assess the relative capacity of M/WBEs and similarly situated non-M/WBEs. The findings from this analysis are described in *Section C* below.

### **3. Summary**

This chapter provided the availability analysis for the City's market area. A total of 2,609 unique businesses that provided goods and services during the study period in one or more of the 3 industries were identified.

Prime contractor and subcontractor availability were analyzed by ethnicity and gender. Minority-owned Businesses account for 21.69% of prime contractors within the 3 industries, Caucasian Females account for 17.71% of prime contractors, and Non-minority Males account for 60.60% of prime contractors.

Minority-owned Businesses account for 21.72% of subcontractors within the 2 industries, Caucasian Females account for 17.67% of subcontractors, and Non-minority Males account for 60.61% of subcontractors.

#### ***E. Prime Contract Disparity Findings***

To ensure that there was documented capacity to perform the prime contracts analyzed, a threshold level for the disparity analysis was set. The threshold which was used to assess the statistical significance of disparity for formal contracts was determined for each industry. The thresholds for the analysis of formal contracts are below:

- \$500,000 and under for construction
- \$350,000 and under for professional services
- \$225,000 and under for goods and services



The informal contract analysis of statistical significance was performed at the threshold stipulated in the City’s procurement policy.

The first threshold depicted in Tables 2-4 includes the formal prime contracts determined by the quartile analysis, representing 75% of the City’s awarded contracts. The second threshold includes informal prime contracts set by the procurement guidelines.

### 1. Construction Prime Contracts

As indicated in Table 2 below, at the formal contract threshold disparity was found for African American, Asian American, and Caucasian Female prime contractors on construction contracts valued at \$500,000 and under. At the informal contract threshold, disparity was found for Asian American and Hispanic American prime contractors on construction contracts valued at \$100,000 and under.

**Table 2: Disparity Summary: Construction Prime Contract Dollars, October 1, 2010, to September 30, 2014**

Ethnicity/Gender	Construction	
	Contracts Valued \$500,000 and Under	Contracts Valued \$100,000 and Under
African Americans	<i>Disparity</i>	No Disparity
Asian Americans	<i>Disparity</i>	<i>Disparity</i>
Hispanic Americans	No Disparity	<i>Disparity</i>
Native Americans	No Disparity	No Disparity
Caucasian Females	<i>Disparity</i>	No Disparity



## 2. Professional Services Prime Contracts

As indicated in Table 3 below, at the formal contract threshold, disparity was found for African American, Hispanic American, and Caucasian Female prime contractors on professional services contracts valued at \$350,000 and under. At the informal contract threshold, disparity was found for African American, Hispanic American, and Caucasian Female prime contractors on professional services contracts valued at \$50,000 and under.

**Table 3: Disparity Summary: Professional Services Prime Contract Dollars, October 1, 2010, to September 30, 2014**

Ethnicity/Gender	Professional Services	
	Contracts Valued \$350,000 and Under	Contracts Valued \$50,000 and Under
African Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	No Disparity	No Disparity
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans	No Disparity	No Disparity
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>



### 3. Goods and Services Prime Contracts

As indicated in Table 4 below, at the formal contract threshold, disparity was found for African American, Asian American, Hispanic American, and Caucasian Female prime contractors on goods and services contracts valued at \$225,000 and under. At the informal contract threshold, disparity was found for African American, Asian American, Hispanic American, and Caucasian Female prime contractors on goods and services contracts valued at \$50,000 and under.

**Table 4: Disparity Summary: Goods and Services Prime Contract Dollars, October 1, 2010, to September 30, 2014**

Ethnicity/Gender	Goods and Services	
	Contracts Valued \$225,000 and Under	Contracts Valued \$50,000 and Under
African Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	<i>Disparity</i>	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans	No Disparity	No Disparity
Caucasian Female	<i>Disparity</i>	<i>Disparity</i>



**F. Subcontractor Disparity Findings**

Findings of statistically significant underutilization at the subcontract level establish the factual predicate necessary for M/WBE program modifications. As indicated in Table 5, disparity was found for African American, Hispanic American, and Caucasian Female construction subcontractors, and African American professional services subcontractors.

**Table 5: Subcontract Disparity Summary, October 1, 2010, to September 30, 2014**

<b>Ethnicity/ Gender</b>	<b>Construction</b>	<b>Professional Services</b>
African Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	<b>No Disparity</b>	<b>No Disparity</b>
Hispanic Americans	<i>Disparity</i>	<b>No Disparity</b>
Native Americans	<b>No Disparity</b>	<b>No Disparity</b>
Caucasian Females	<i>Disparity</i>	<b>No Disparity</b>

**G. Small Business Program Assessment**

The Small Business Program Assessment evaluates the Program’s effectiveness in prohibiting discrimination in the award of subcontracts. The assessment revealed that African Americans and Minority and Woman-owned business enterprises certified as SBEs were underutilized when compared to their availability.

**1. Small Business Program Assessment - Findings**

The findings demonstrate that a significant percentage of the SBEs utilized on subcontracts are Non-minority Male certified SBEs. These results reflect the findings in the disparity analysis, where M/WBEs were underutilized at a statistically significant level. The fact that the utilization of certified SBEs that are members of an ethnic group has been lower than their availability is additional evidence that the SBE Program has not achieved its objective of affording all businesses an opportunity for participation in the City’s procurement process and prohibiting discrimination by the City or its providers of goods, services, and construction.<sup>9</sup> Although the SBE Program has not prohibited discrimination, the program



<sup>9</sup> West Palm Beach, Florida Code of Ordinances, Ord. No.4548-15 § 66-222 (a) (February 2, 2015).

should be continued because it offers subcontracting opportunities to local small businesses.

#### **IV. Race and Gender-Conscious Remedies**

Several race and gender-conscious remedies are recommended to address the disparity findings. The recommendations are narrowly tailored to the ethnic and gender groups which had a documented disparity.

##### **A. Prime Contract Remedies**

###### **1. Construction**

Race and gender-conscious prime contract remedies should apply to the disparity documented on construction contracts valued at \$500,000 and under. At this threshold there was documented evidence of M/WBE capacity to perform the prime contracts that the City awarded.

###### **D) Apply Bid Discount to Construction Prime Contracts**

A five percent (5%) bid discount should be applied on low bid construction prime contracts. The bid discount would reduce the bidder's price by 5% for evaluation purposes only. Listed in Table 1.7 are the groups that had a documented disparity and would be eligible for the bid discount on prime construction contracts valued at \$500,000 and under.

**Table 6: Groups Eligible for Construction Bid Discounts**

<b>Construction</b>	
<b>Ethnicity/Gender</b>	<b>Formal Contracts Valued \$500,000 and Under</b>
African Americans	<i>Disparity</i>
Asian Americans	<i>Disparity</i>
Hispanic Americans	<b>No Disparity</b>
Caucasian Females	<i>Disparity</i>

###### **2. Professional Services**

###### **E) Apply Evaluation Preference Points to Professional Services Prime Contracts**

During the evaluation process for contracts with an estimated value at the \$350,000 and under threshold, the City should assign ten percent (10%) of the evaluation points to a prime contractor that is a member of an ethnic or gender group with a documented



disparity. Listed in Table 1.8 are the groups with a documented disparity that would be eligible for the evaluation preference points on prime contracts valued at \$350,000 and under.

**Table 7: Groups Eligible for Professional Services Evaluation Preference Points**

Professional Services	
Ethnicity/Gender	Formal Contracts Valued \$350,000 and Under
African Americans	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>
Caucasian Females	<i>Disparity</i>

**3. Goods and Services**

**F) Apply Bid Discount to Goods and Services Prime Contracts**

The City should apply a five percent (5%) bid discount on low bid goods and services prime contracts. The bid discount would reduce the bidder’s price by 5% for evaluation purposes. The maximum bid discount would be \$11,250. Listed in Table 1.9 are the groups with a documented disparity that would be eligible for the bid discount on prime contracts valued at \$225,000 and under.

**Table 8: Groups Eligible for Goods and Services Bid Discounts**

Goods and Services	
Ethnicity/Gender	Formal Contracts Valued \$225,000 and Under
African Americans	<i>Disparity</i>
Asian Americans	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>
Caucasian Females	<i>Disparity</i>

**B. Subcontract Remedies**

Race and gender-conscious subcontract remedies should be applied to construction and professional service subcontracts. The application of the subcontract goal should be combined to the groups with a statistical disparity.

**1. Construction Subcontract Goals**

An M/WBE subcontract goal should be set to eliminate the documented disparity. The M/WBE subcontract goal should apply to African American, Hispanic American, and Caucasian Female Business Enterprises. To meet the narrowly tailored standard, the



subcontract goal should be based on the availability of the groups with a statistically significant disparity. Table 1.10 depicts the documented construction subcontractor availability for the groups with a statistically significant disparity.

**Table 9: M/WBE Subcontractor Construction Availability**

<b>M/WBE Construction Subcontractor Availability</b>	
<b>Ethnicity/Gender</b>	<b>Availability</b>
African Americans	11.17%
Hispanic Americans	11.45%
Caucasian Females	12.71%

**2. Professional Services Subcontract Goals**

A Minority Business Enterprise (MBE) subcontract goal should be set to eliminate the documented disparity. The MBE goal should apply to African Americans. To meet the narrowly tailored standard, the subcontract goal should be based on the group’s availability. Table 1.11 below depicts the professional services subcontractor availability for the group with a statistically significant disparity.

**Table 10: M/WBE Professional Services Subcontractor Availability**

<b>M/WBE Professional Services Subcontractor Availability</b>	
<b>Ethnicity/Gender</b>	<b>Availability</b>
African Americans	9.92%

**3. Require Subcontract Goal Attainment at Bid Opening**

The prime contractor should be required to meet the MBE subcontract goal at the time of bid opening. A Subcontractor Utilization Plan listing all subcontractors for professional service contracts and construction contracts, including the suppliers and truckers proposed to meet the subcontract goal, should be submitted with the bid. The plan should detail each subcontractor’s percentage of the prime contractor’s bid amount. A responsive bid should meet the MBE goal or document a good faith effort to meet the goal.

**4. Quantify Good Faith Effort Criteria**

The City should determine whether the prime contractor has complied with all requirements of the solicitation documents and made the required good faith effort. A value should be assigned to each good faith effort element, thus quantifying the good faith effort



analysis. The maximum score should be 100 points. A prime contractor should achieve a minimum score of 80 points to demonstrate a bona fide good faith effort.

## **V. Administrative Recommendations**

Administrative recommendations are also offered to eliminate the documented disparities.

### **1. Establish a Minority and Woman-owned Business Enterprise Program**

An M/WBE Program should be established and managed by the Procurement Department (Department). The Department should have the resources to ensure that the M/WBE Program's objectives and policies are implemented and all City departments are in compliance. The Program's objectives should include the following recommended components:

#### **a. M/WBE Program Certification Eligibility Requirements**

An established standard upon which the certification process may be modeled is set forth in the United States Department of Commerce Small Business Administration (SBA) regulations, CFR 124. SBA standards define eligibility by ethnicity, gender, ownership, and control.

#### **b. Minority-owned Business Definition**

According to the SBA standard, the recognized ethnic categories for Minority-owned businesses are African American, Hispanic American, Asian American, and Native American male and female business owners.

#### **c. Woman-owned Business Definition**

A woman-owned business, according to the SBA standard, must be a for-profit enterprise that is at least 51 percent owned and controlled by one or more women.

#### **d. Eligibility Ownership Control and Standards**

The City should establish eligibility standards in accordance with the current SBE program. However, the size thresholds required by the SBE Program would not be required for the M/WBE Program. M/WBEs should meet the following criteria: (1) the business has a current business tax receipt issued by Palm Beach County or the City; (2) the business has a physical business address located within the geographical city limits and has continuously maintained the physical address for at least six months prior to the time of application; (3) the business has demonstrated that it has sufficient staffing capabilities; (4) the business has provided a commercially useful function; and (5) the business has identified the



commodity or service that it provides and listed it in the certification document.<sup>10</sup> A business must be owned and controlled by an ethnic group member or woman. A certified M/WBE must submit an annual application for re-certification.

## **2. Maintain an M/WBE Directory**

The City should maintain an electronic listing of certified M/WBEs. The M/WBE certification status should be incorporated into the existing SBE certification database. Currently, the SBE certification directory is organized by industry description, business name, and contact person. The SBE directory should be modified to also indicate M/WBE certification status.

## **3. Monitor Compliance with M/WBE Goals**

Each City department should perform a monthly compliance review of all contracts with M/WBE participation. The Subcontractor Utilization Report that is submitted at bid opening should be monitored, and payments to the listed subcontractors should be tracked.

## **4. Report Compliance with M/WBE Goals**

An M/WBE Utilization Report should be prepared on a quarterly basis to track the original award amount, payment(s) to date, and contract modifications for M/WBE prime contractors and subcontractors by ethnicity, gender, and certification status. The report should also present the utilization by department and industry.

## **5. Publish M/WBE Utilization Reports**

The M/WBE Utilization Report should be published quarterly. At a minimum, the utilization reports should be posted on the City's website and made available to businesses by email.

## **6. Conduct an M/WBE Program Outreach Campaign**

Once an M/WBE Program Ordinance is approved, a comprehensive outreach campaign should be conducted to promote the Program. The outreach plan should minimally include the following strategies:

- Create an M/WBE Program webpage
- Disseminate press releases and public service announcements to the media to inform the community regarding the M/WBE Program
- Establish partnerships with local business organizations to communicate with M/WBEs

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<sup>10</sup> West Palm Beach, Florida Code of Ordinances, Ord. No.66-225 § (a) (1)-(7) (2015).



- Produce an electronic newsletter to announce the M/WBE Program and monitor its effectiveness
- Coordinate with market area governments to maximize the dissemination of M/WBE Program information

## **VI. Race and Gender-Neutral Remedies**

Race and gender-neutral recommendations are offered as best management practices to eliminate barriers to small, Minority-owned, and Woman-owned businesses.

### **1. Establish Dispute Resolution Standards**

Dispute resolution standards should be established to allow businesses to resolve issues relating to work performance after a contract award. The dispute resolution process should include provisions for an ombudsperson. The ombudsperson could handle disputes, as needed, to achieve timely and cost-effective resolution. A dispute resolution meeting should be mandatory in the event a dispute cannot be resolved by the ombudsperson within twenty (20) working days.

### **2. Implement a Prompt Payment Program**

Expedited payment standards should be implemented in order to remove the most significant barrier to small businesses development—late payments from prime contractors. Payments to prime contractors would be made within fifteen (15) days of the City receiving an undisputed invoice, and prime contractors would be required to pay their subcontractors within five (5) days of receipt of their invoice payment.

#### **a. Give Five-day Notice of Invoice Disputes**

The City should establish a formal invoice dispute resolution process. Within five (5) days of receiving a disputed invoice, the City should provide the contractor with a notification that details all items in dispute. Undisputed invoice amounts should be paid within fifteen (15) days, and disputed items should be resolved in a timely manner and thereafter paid promptly.

### **3. Verify Subcontractor Payment**

In order to monitor compliance with the prompt payment provision, payments made to M/WBE subcontractors should be verified. A payment verification program would allow subcontractors to notify the City of late payments or non-payments in real time.

## **VII. Information Management Recommendations**

The financial system should capture each contract award and purchase order issued against the contract. A module to capture the related subcontract awards and payments should be added to the system. The prime contract record should include the contract number,



contract name, award amount and date, total payments, North American Industry Classification System (NAICS) code, vendor name, and contact information.

### **1. Create a Subcontractor Tracking System**

A subcontract tracking system would allow for the tracking and monitoring of subcontract utilization by prime contract. Computerized data entry forms should be designed to capture the proposed subcontractor participation listed on the Schedule of Contractors form submitted with the bid, and the verified subcontractor participation documented on the Subcontractor Utilization Report form.

### **2. Establish Industry Classifications**

It is recommended that the City use the North American Industry Classification System (NAICS) to classify the prime contract by industry. The NAICS is the standard used by the Federal Statistical Agencies System in classifying business establishments for the purpose of publishing statistical data related to the United States business economy.

### **3. Expand Vendor Information Tracking**

The Active Vendor Information Module should be updated to capture the NAICS classification, certification status, ethnicity, gender, URL, and email address.

